CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

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CHAPTER 4. ALTERNATE DISPUTE RESOLUTION

CHAPTER 5. MISCELLANEOUS MATTERS

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Preface

The judges of this district wish to express their gratitude to the advisory group's members for their thoughts and work in preparing their report, with particular thanks to the group's reporter, Professor Jay Tidmarsh of the University of Notre Dame Law School. The court also wishes to thank the advisory group for keeping the court apprised of its thoughts through preliminary drafts of its reports, allowing the court to consider some of the group's recommendations even prior to the report's submission on October 24, 1991, and its in-person presentment to the court on December 20, 1991.

With due regard for the district's caseload history and trends, the principal causes of delay within this district, and the advisory group's recommendations, the court now unanimously adopts the following plan for reduction of expense and delay in civil cases.

CHAPTER 1. PURPOSE; DEFINITIONS; AUTHORITY

§ 1.01 History of Plan

(a) Consideration of Advisory Group's Report. The district judges and magistrate judges of the United States District Court for the Northern District of Indiana have reviewed the report of the advisory group appointed for this district by the Chief

Judge pursuant to 28 U.S.C. § 478, and have considered the group's recommendations, commentary, and underlying data.

(b) Determination to adopt individualized plan. The advisory group's report leads the court to conclude that the district's caseload and composition are sufficiently unique to warrant the court's development of its own plan, rather than selecting a model plan yet to be promulgated.

Comment.

Subsection (a). Chief Judge Sharp appointed the district's Advisory Group pursuant to 28 U.S.C. §§ 472 and 478 on January 29, 1991, after consultation with the other judges of the court. 28 U.S.C. § 478(b) requires that the Advisory Group "shall be balanced and include attorneys and other persons who are representative of major categories of litigants in" the court. This district's Advisory Group also was selected with a view toward balance between the district's various divisions.

The Advisory Group consisted of the following attorneys: Patrick J. Galvin of Hammond; United States Attorney John Hoehner; Leon R. Kaminski of LaPorte; Assistant United States Attorney Philip Klingenberger; Milford M. Miller of Fort Wayne; Richard W. Morgan of South Bend; Margaret G. Robb of Lafayette; Jay Tidmarsh of the University of Notre Dame; Teri L. Whitaker of Fort Wayne; and David B. Weisman of South Bend. Magistrate Judge Robin D. Pierce also served as a member of the Advisory Group. Professor Tidmarsh was named reporter for the Advisory Group pursuant to 28 U.S.C. § 478(e).

The Advisory Group also included the following persons who were included as other persons who are representative of major categories of litigants in the court: John Flores of East Chicago; Barbara Cope of Gary; Richard Clark of Michigan City; and Donald O'Blenis of South Bend. Mr. Flores is a high school principal; Ms. Cope is vice chancellor of a state university; Mr. Clark is

superintendent of a state prison; and Mr. O'Blenis is an official of a labor union. Additionally, attorney Teri Whitaker is corporate counsel for a business.

District Judges Lee and Miller served as ex officio members of the Advisory Group, as did the clerk of court, Richard Timmons.

The Advisory Group submitted its report to the court on October 24, 1991.

Subsection (b). In complying with the Civil Justice Reform Act of 1990, a district court may create its own plan or await development by the Judicial Conference of a model civil justice expense and delay reduction plan. See 28 U.S.C. § 477(a)(1). Part I of the Advisory Group's report, which presented an assessment of civil litigation in this district, see Advisory Group's Report, at 3-41, supports the conclusion that this district's strengths, weaknesses, and geographic differences are such that a plan tailored to this district, rather than a model plan, is appropriate.

§ 1.02 Purpose

It is the intent and purpose of this plan to expedite the disposition of civil cases and to reduce the expense of litigation in this district. This plan is not intended to create new substantive or procedural rights.

Comment.

28 U.S.C. § 471 provides, "The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolution of civil disputes."

§ 1.03 Definitions

As used in this plan, the term "judge" applies to district and magistrate judges alike.

Comment.

Because this district's magistrate judges have significant caseloads of their own through operation of the consent procedures of 28 U.S.C. § 636, this plan does not distinguish between district judges and magistrate judges. This approach is consistent with 28 U.S.C. § 482.

§ 1.04 Authority

This plan is intended to comply with the directives of 28 U.S.C. § 473, and is intended to exercise the authority given to district courts pursuant to 28 U.S.C. § 473(b)(6).

Comment.

28 U.S.C. § 473 requires each district court to adopt a civil justice expense and delay reduction plan and sets forth various techniques, principles, and guidelines the plan must consider and address. 28 U.S.C. § 473(b)(6) provides that in addition to specified techniques for reducing expense and delay, a plan "may include . . . such other factors as the district court considers appropriate after considering the recommendations of the advisory group . . . ."

§ 1.05 Effective Date

This plan shall take effect December 31, 1991, and shall remain in effect, as amended from time to time, until December 1, 1997.

Comment.

28 U.S.C. § 482(b)(1) requires implementation of a civil justice expense and delay reduction plan by December 1, 1993. 28 U.S.C. § 482(b)(2) provides that the requirements of the Civil Justice Reform Act of 1990 shall expire on December 1, 1997.

CHAPTER 2. PRETRIAL DIFFERENTIAL CASE MANAGEMENT

§ 2.01 Early Judicial Involvement

The judges of this court will continue to engage in early, ongoing, and active judicial control of civil cases.

Comment:

28 U.S.C. § 473 requires the court to consider specified principles, guidelines, and techniques of litigation management and cost and delay reduction. The advisory group's report addressed each such concept, see Advisory Group's Report, at 82-83, and also addressed several other topics of particular interest within this district. The court has considered the content of the Advisory Group's report and has brought the individual views of the district's judges to bear on the other topics, as well.

Federal Rule of Civil Procedure 16(b) directs the court's exercise of early management of control over civil litigation, and the judicial officers of this district have acted consistently with that directive even prior to the Civil Justice Reform Act's enactment. Early court control establishes a reasonable timetable for the performance, by the court and counsel, of those tasks necessary to prepare a case for trial or disposition without trial. Such control has been shown to be effective in reducing delay. R. Peckham, The Federal Judge as a Case Manager, 69 CALIF. L. REV. 770, 783 (1981). The judges also recognize that care must be exercised in wielding such control. Excessive court intervention may increase expense to the litigants by requiring attendance at

unnecessary conferences, and tax the court's capabilities to the extent intervention in the discovery process is sought or imposed.

§ 2.02 No Systematic Differential Treatment

The court declines to adopt a program of systematic differential treatment that would place cases on "tracks" with presumptive scheduling deadlines at filing.

Comment:

28 U.S.C. § 473(a)(1) requires the court to consider adoption of a program of 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.

Although this court strongly favors individualized case management, the court agrees with the Advisory Group that the sort of systematic case treatment described in 28 U.S.C. § 473(a)(1) is not appropriate for this district. Advisory Group's Report, at 65-66.

Rule 16(b) requires the court to establish, within 120 days, deadlines for amending the pleadings, completion of discovery, and the filing of dispositive motions. Except in cases exempted from the application of Rule 16(b) by District Rule 21(b), the court believes these deadlines generally should be established only after advice is sought from counsel, whether through a written report or at a pretrial conference. The utility of Rule 16(b) deadlines depends upon the attorneys' abilities to meet them; counsel's awareness of their schedules and the case's needs must exceed that of the court. The judges should attempt to be confident that counsel's requests are reasonable, seeking neither too much time nor too little, but should also place significant weight

upon the attorneys' recommendations. Accordingly, the judges generally will solicit the attorneys' views of the times necessary to achieve the events discussed in Rule 16(b): amendments to the pleadings, completion of discovery, and filing of dispositive motions.

Except in routine cases or cases exempt from Rule 16(b) because of District Rule 21(b), the court should not attempt to assign a new case to a "track" or impose presumptive deadlines absent input from counsel and unrepresented parties. The Advisory Group believed "that some form of differential case management is advisable; simple cases should be given shorter discovery periods and earlier trial dates than complex cases. The Group does not endorse the view that a more formal differentiation system is presently necessary." Advisory Group's Report, at 65. The court agrees with the Advisory Group that while this process may be well designed for a high-volume urban court, see D. Somerlot, M. Solomon & B. Mahoney, "Straightening Out Delay in Civil Litigation", 28 JUDGES' JOURNAL 11 (Fall, 1989); H. Baake & M. Solomon, "Case Differentiation: An Approach to Individualized Case Management", 73 JUDICATURE 17 (June-July, 1989), it is poorly suited to a court with sufficient time to address each case and its needs and constraints individually. Such a "tracking" system would ignore, or at least make more difficult, the recommendations of those most familiar with the case and its likely time demands upon the time of counsel and the court.

§ 2.03 Determination of Deadlines

(a) Deadlines to be set. Except in those cases in which such procedures would increase expense, the judges will establish and enforce deadlines for the amendments to the pleadings, completion of discovery, the filing of dispositive motions, and, as soon

as reasonably practicable and within eighteen months if possible, a trial date.

(b) Soliciting recommended deadlines. The deadlines referred to in § 2.03(a) will be set only after inviting the attorneys' views as to the time necessary for the scheduled events, and will be memorialized in a written order issued by the court.

(c) Required reports. The court declines to adopt a policy precluding judges from requiring written submissions in preparation for the initial pretrial conference and/or scheduling order. Each judge will retain the option of requiring or inviting such reports.

(d) Timing of deadlines. These deadlines will be established at the first pretrial conference, or following the receipt of written reports if no conference is conducted.

(e) No presumptive deadlines. The court adopts no presumptive deadlines. Instead, the court will tailor deadlines to a given case's needs.

(f) Cases exempt from requirement of scheduling order. The judges will consider use of such deadlines in individual cases that are exempt from the requirement of scheduling orders.

(g) Modification of deadlines. The deadlines referred to in § 2.03(a) will not be changed except for good cause shown.

Comment:

28 U.S.C. § 473(a)(1) requires the court to consider adoption of a program of 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.

As noted in the introduction, the district's caseload is of sufficiently complexity and depth as to require active case management by the district's judges. To reduce delay and expense, the judges of this district will, except in those cases in which such procedures would increase expense, establish and enforce deadlines for the amendments to the pleadings, completion of discovery, the filing of dispositive motions, and, as soon as reasonably practicable and within eighteen months if possible, a trial date.

Subsection (a). The court agrees with the Advisory Group that at the first pretrial conference, or following the receipt of written reports if no conference is conducted, the judge should establish firm deadlines for the filing of any amendments to the pleadings (including the filing of any objection to proposed amendments), the completion of discovery (including the designation of experts when appropriate), and the filing of any dispositive motions.

If the conference or written reports disclose potentially dispositive issues that can be addressed early in the case's progress, the judge should consider establishing an early deadline for resolution of those issues, so as to reduce the cost of the litigation.

Subsection (b). The court agrees with the Advisory Group's recommendation that the court should memorialize, in a written order, the deadlines established at the initial pretrial conference for amendments to the pleadings, joinder of parties, completion of discovery, designation of expert witnesses when appropriate, and the filing of dispositive motions. Advisory Group's Report, at 62. The court also agrees with the Advisory Group that these deadlines generally should be established only after inviting the attorneys' views as to the time necessary for the scheduled events. Advisory Group's Report, at 63.

Subsection (c). The Advisory Group found questionable utility in the requirement of some judges that parties file preliminary pretrial, or "status", reports before the initial pretrial conference. Advisory Group's Report, at 35. The report notes that some of the Advisory Group felt that such reports increase the cost of litigation without significant benefit to the parties in terms of clarifying issues. Because several judges believe such reports are very useful, the court declines to abolish their use.

Those judges who require the reports have found that the preliminary report allows the attorneys to set forth their views as to appropriate deadlines without requiring court time, and assists the judge in identifying cases that may require more intensive judicial control or involvement. One judge, for example, requires the parties to set forth a discovery plan if, but only if, the parties request more than six months for discovery. Another judge occasionally uses the preliminary report as the attorneys' opportunity to state their opinions as to the proper timetables to be established, rather than conducting conferences in all cases; this approach may reduce delay in the caseload generally, as time need not be found for preliminary pretrial conferences.

Accordingly, the court declines the Advisory Group's suggestion that written preliminary pretrial reports be abandoned. For the reasons discussed below with respect to the judges' orders with respect to trial, the court believes that attempts to standardize the required reports would increase expense unjustifiably.

Section (d). The court agrees with the Advisory Group that at the scheduling deadlines should be established at the first pretrial conference, or following the receipt of written reports if no conference is conducted.

Subsection (e). The Advisory Group's report suggests that "the court might wish to develop some presumptive dates for the handling of simple, standard, and complex cases." Advisory Group's Report, at 63. After consideration, the court declines to do so at this time.

Adoption of presumptive deadlines is not without some attraction. Presumptive deadlines would serve to inform counsel of the court's expectation as to a reasonable period of discovery for a case of an assumed complexity. Such information may prove useful to counsel who may be accustomed to a more leisurely litigation track. On the other hand, a presumptive deadline might encourage counsel to seek more time for discovery than they otherwise might think necessary simply because of the court's stated general expectation. Whether presumptive deadlines would speed or retard litigation in the long run is uncertain.

Further, even if it is assumed that presumptive deadlines would produce more benefit than detriment, the court cannot identify appropriate presumptive deadlines. First, as the Advisory Group's report notes, significant differences exist between the bars that appear in the court's various divisions. Given attorneys' expectations and commitments, a standard discovery period might simultaneously be too short in one division and too long in another. Second, the conduct of experiments, discussed below, with mandatory standardized disclosures is expected to impact significantly upon the time needed for discovery. In theory, presumptive deadlines should be shorter in cases assigned to the judges participating in the experiment, but the court has too little experience with mandatory standardized disclosures to know what such presumptive deadlines should be.

Accordingly, the better practice for the present appears to be to communicate to the attorneys and parties that they should take the time necessary for discovery, but no more. For these reasons, the court adopts no presumptive deadlines for any sort of case. Except in cases covered by District Rule 21(b), the judges generally will adopt such scheduling deadlines only after soliciting the views of the attorneys and/or litigants concerning the time necessary for preparation of the given case. The court will solicit those views through the use of a pretrial conference, written reports, or both.

Subsection (f). District Rule 21(b) exempts certain classes of cases from the requirements of Rule 16(b) concerning the issuance of a scheduling order. The judges will consider whether some or all of these scheduling practices should be applied to specific cases notwithstanding their exemption. For example, a judge might consider conducting a pretrial conference in government collection cases in which the defendant has appeared and filed an answer in denial.

Subsection (g). Counsel should recognize that Federal Rule 16(b) requires a showing of good cause for any modification of these deadlines. Once deadlines are established, the judges will observe and enforce the deadlines unless intervening events make it impossible to do so. Attorneys should not seek, and judges will be reluctant to grant, extensions of deadlines without a good showing of why the deadline could not be met.

§ 2.04 The Initial and/or Interim Pretrial Conference.

(a) Authority to bind on specific topics. Participating attorneys will be required to have authority to bind the parties on following matters, which may be discussed at an initial pretrial conference:

(1) whether any issue exists concerning jurisdiction over the subject matter or the person, or concerning venue;

(2) whether all parties have been properly designated and served;

(3) whether all counsel have filed appearances;

(4) whether any issue exists concerning joinder of parties or claims;

(5) whether any party contemplates adding further parties;

(6) the factual bases and legal theories for the claims and defenses involved in the case;

(7) the type and extent of damages being sought;

(8) whether any question exists concerning appointment of a guardian at litem, next friend, administrator, executor, receiver, or trustee;

(9) the extent of discovery undertaken to date;

(10) the extent and timing of anticipated future discovery, including, in appropriate cases, a proposed schedule for the taking of depositions, serving of interrogatories and motions to produce, etc.;

(11) identification of anticipated witnesses or persons then known to have pertinent information;

(12) whether any discovery disputes are anticipated;

(13) the time reasonably expected to be required for completion of all discovery;

(14) the existence and prospect of any pretrial motions, including dispositive motions;

(15) whether a trial by jury has been demanded in a timely fashion;

(16) whether it would useful to separate claims, defenses, or issues for trial or discovery;

(17) whether related actions in any court are pending or contemplated;

(18) the estimated time required for trial;

(19) whether special verdicts will be needed at trial and, if so, the issues verdict forms will have to address;

(20) a report on settlement prospects, including the prospect of disposition without trial through any process, the status of settlement negotiations, and the advisability of a formal mediation or settlement conference either before or at the completion of discovery;

(21) the advisability of court-ordered mediation or early neutral evaluation proceedings, where available;

(22) the advisability of use of a court-appointed expert or master to aid in administration or settlement efforts; and

(23) whether the parties are willing to consent to trial by a magistrate judge.

(b) Additional matters by specific order. By specific order, a judge also may require participation in a settlement conference immediately after the pretrial conference and may require preparation to discuss any other matter that appears to be likely to further the just, speedy, and inexpensive resolution of the case, including notification to the parties of the estimated fees and expenses likely to be incurred if the matter proceeds to trial.

(c) Attendance of party. The judge may require the attendance or availability of the parties, as well as counsel.

Comment.

28 U.S.C. § 473(b)(2) directs the court to consider requiring "that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for dis-

cussion at the conference and all reasonably related matters". Advisory Group's Report, at 68. The court agrees with the Advisory Group's recommendation. As the examples noted in the report indicate, attorneys without authority to bind a party on substantive or procedural matters may stymie proper use of the conference.

Accordingly, the judges will encourage participation in pretrial conferences of the attorneys who will conduct the trial, and participating attorneys will be required to have authority to bind the parties on matters listed in Section 2.04(a), which may be discussed at such a conference.

Counsel should meet before the pretrial conference to discuss the matters to be addressed at the conference.

The court recognizes the Department of Justice's position that the government cannot be required to send counsel authorized to bind it in light of 28 U.S.C. § 473(c), which provides, "Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General." The court does not view this plan as the appropriate forum for statutory construction, but urges the government, at the least, to assure that its counsel are vested with as much binding authority as is feasible at all pretrial conferences.

§ 2.05 Trial Dates

(a) Early, firm trial date. In all cases in which it is feasible to do so, the judges will set trial dates at the initial pretrial conference and will endeavor to schedule trials within sixteen months of the conference. The court adopts no requirement that a judge certify reasons for declining to establish a trial date at the initial conference or for declining to set a trial date within a specified period from the conference.

(b) Where trial setting is infeasible. If the case is too complex or otherwise inappropriate for a trial date to be set at the initial pretrial conference, the judge will consider scheduling a subsequent pretrial conference, to be conducted later in the discovery process. The judge and counsel should consider whether discovery should proceed in stages in such cases so as to reduce the expense to the parties.

(c) Trailing calendars. Due to presently existing conditions, the court declines to abolish the use of "trailing calendars" in trial settings. Judges and attorneys should consider all reasonable techniques to shorten trials. Attorneys should endeavor to estimate the length of trial as accurately as possible to assist in efficient trial scheduling.

Comment.

Subsection (a). The court agrees with the Advisory Group that if a case is not too complex or otherwise inappropriate, the court should consider setting a firm trial date at the first pretrial conference. The existence of a realistic trial date is the greatest impetus to the completion of discovery, the filing of realistic dispositive motions, and settlement discussion. E. Elliott, Managerial Judging and the Evolution of Procedure, 53 U. CHI. L. REV. 306, 313 (1986).

The Advisory Group's report recommended that "barring unusual complications, the court should aim to try 'simple' cases within three to four months of the initial pretrial conference, with 'standard' and 'complicated' cases being given somewhat longer pretrial periods of nine to fifteen months from the date of the pretrial conference." Advisory Group's Report, at 52. The court believes that the Advisory Group's recommended time frames for the setting of trials will be workable in most cases. Each judge will

set the trial date, if possible, within sixteen months of the conference, but also will give due regard to the likelihood of the filing of dispositive motions at the completion of discovery, and will afford a framework for the disposition of the motion.

The Advisory Group also recommended, however, that "while the court should set a firm trial date at the initial conference whenever it is reasonable to do so, the court should have the discretion, without a requirement of certification of reasons, to decline to do so in appropriate cases." Advisory Group's Report, at 54-55. The court agrees that the judge should not be required to make any certification to avoid setting a trial date at the initial pretrial conference. Numerous and varied impediments may exist to establishing a firm trial setting at the initial conference. For example, discovery may be needed to determine whether joinder of additional parties, or the filing of a dispositive motion, is appropriate. To set a trial date in such a case either builds in delay that might prove to be unnecessary or establishes a deadline that will have to be modified for foreseeable reasons; neither approach reduces cost or delay. Accordingly, while the judge should set a firm trial date at the initial conference whenever it is reasonable to do so, the judge should have the discretion, without a requirement of certification of reasons, to decline to do so in appropriate cases.

Subsection (b). 28 U.S.C. § 473(a)(3) requires consideration of a series of discovery-case management conferences in complex cases in which the judge to whom the case assigned would explore settlement possibilities, address staged resolution of issues in the case, establish a discovery schedule designed to limit expense, and set deadlines for the filing of dispositive motions and their resolution.

Further conferences generally will prove to be unnecessary if a trial date is set at the initial pretrial conference. If the case is too complex or otherwise inappropriate for a trial date to be set at the initial pretrial conference, the judge will consider scheduling a subsequent pretrial conference to be con-

ducted later in the discovery process. The judge and counsel should consider whether discovery should proceed in stages in such cases so as to reduce the expense to the parties. At the subsequent pretrial conference, the judge should consider discussion of settlement, identification of contested issues, modification of deadlines, and the setting of trial.

Subsection (c). The Advisory Group's report strongly disfavors the use of "trailing calendars", the process by which several cases are scheduled to be tried serially within a given block of time. Advisory Group's Report, at 36-37, 53. The court welcomes the Advisory Group's views on this practice, and acknowledges that the use of trailing calendars may increase the expense of litigation and doubtlessly increases the uncertainty to the trial participants.

Nonetheless, the court believes that the trailing calendar is, under present conditions, a necessary method of addressing its caseload, especially in Hammond and Lafayette. The reasons for necessity differ. Time for civil matters simply is less available in Hammond than in the other divisions. The advisory group noted that Hammond's criminal docket comprises two-thirds of the district's criminal caseload. That statistic does not tell the whole story of the criminal docket's impact on civil cases in Hammond. In the twelve months ending on September 30, 1991, the district judges outside the Hammond Division spent 51 percent of their overall trial time (and 57 percent of the jury trial time) in criminal trials; in the same period, the district judges in Hammond spent 73 percent of their overall trial time (and 79 percent of their jury trial time) in criminal trials.

The omnipresence of the Hammond criminal docket requires that maximum use of time available for civil trials be made. Abolition of the trailing calendar in Hammond would produce fewer trial dates, and so increase delay, for civil cases.

The situation in Lafayette is more easily explained: maximum use must be made of the time available to the non-resident judge, who usually sits in South Bend. Abolition of the trailing

calendar in Lafayette would produce delay in the handling of civil cases in Lafayette or South Bend, or both.

The court will give strong consideration to abandoning the "trailing calendar" method of scheduling trials should conditions change, but sufficient change appears unlikely in the near future. The court will welcome suggestions from the Advisory Group on methods by which to make the trailing calendar less expensive and uncertain, but the court foresees no immediate easing of the conditions that make trailing calendars necessary.

Judges and attorneys should consider all techniques reasonable in light of the nature of the case and the demands of justice to shorten trials, including but not limited to multiple jury selection, pre-filed direct testimony, deposition summaries, and time limits. Attorneys should endeavor to estimate the length of trial as accurately as possible to minimize the time the courtrooms are dark or other litigants and attorneys await the courtroom.

§ 2.06 Telephonic Conferences

The court declines to adopt a uniform policy requiring or forbidding telephonic conferences, but each judge will consider the use of telephonic means to conduct the initial pretrial conference if counsel are located distant from the site of the conference.

Comment.

The Advisory Group recommended that the court routinely conduct preliminary pretrial and discovery conferences by telephone because of the cost involved in personal attendance for routine matters. Advisory Group's Report, at 69. The court believes that, in general, even preliminary pretrial conferences may be conducted more effectively through personal attendance than by telephone:

informative conversation between more than two people flows more naturally in person than by phone, and informal, cost-reducing discovery arrangements are more likely to result from pre- and post-conference discussion in or around the courtroom. Technological limitations come into play, as well: the federal telephone system allows conference calls to no more than five locations, and immediate access to a conferencing line cannot always be obtained. The personal style of the judge conducting the conference also may affect the relative benefits of an in-person conference as opposed to a telephone conference.

The court recognizes as well, however, that personal attendance by attorneys increases the cost of litigation, particularly when attorneys are located a considerable distance from the courthouse. Use of local counsel may reduce that expense, but the conference's effectiveness may be hampered by limitations on authority, willingness to exercise authority without conferring with lead counsel, and familiarity with the case.

Accordingly, if a judge chooses to employ an initial pretrial conference, the judge will consider the use of telephonic means to conduct the conference if counsel are located distant from the site of the conference. The court will not, however, adopt a uniform policy requiring or forbidding telephonic conferences. Instead, each judge will consider each case depending upon the nature of the case, the number and location of counsel, and the goals hoped to be met at the conference.

§ 2.07 Agreed Discovery and Case Management Plans

(a) No general requirement. The court declines to adopt a requirement that counsel submit a specific and detailed joint plan for discovery and management of the case in all cases, but the judges will consider ordering such a submission in appropriate cases.

(b) Optional agreement. Attorneys should consider agreeing to such a plan in appropriate cases absent court order, so as to avoid delay.

Comment.

A requirement that counsel submit a joint discovery-case management plan early in the litigation may reduce expense and delay in some cases. The court agrees with the Advisory Group, however, that in other cases, such a requirement would cause unnecessary expenditure of attorney time, causing unjustifiable expense. Advisory Group's Report, at 67. Accordingly, the court declines to adopt a uniform requirement for such joint plans in each case. The court also agrees, however, that requiring a joint discovery-case management plan is a useful tool in the appropriate case, and each judge should remain alert for such cases.

In short, the judges will consider ordering the parties to submit a specific and detailed joint plan for discovery and management of the case in appropriate cases, but will not require such a detailed joint plan in all cases. Attorneys should consider agreeing to such a plan in appropriate cases absent court order, so as to avoid delay.

CHAPTER 3. DISCOVERY

§ 3.01 Cost-Effective Discovery

(a) Encouragement by court. Each judge will encourage cost-effective discovery.

(b) Counsel's duty to confer. Each judge will continue to insist on compliance with District Rule 13, which requires that discovery motions be accompanied by a certification of a good faith effort to reach agreement with opposing counsel.

(c) Proportionality. In determining discovery motions, the judges will consider the proportionality of requested discovery to the issues and stakes involved in the litigation, and will consider exercising their authority to assess costs under the Federal Rules of Civil Procedure.

(d) Duty of counsel and litigants. Principal responsibility for reducing the cost of the discovery process, however, must remain with attorneys and litigants, who should comply, whenever possible, with the District Rules' limits on interrogatories and requests for admissions and should seek to keep costly depositions to a minimum. Litigants, in turn, should inquire of their counsel concerning the need for contemplated discovery.

Comment.

Subsections (a) and (b). All judges encourage cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices. In furtherance of that goal, each judge will continue to insist on compliance with District Rule 13, which prohibits consideration of motions for protective orders or orders to compel discovery unless the motion is 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) requires consideration of conserving "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." As noted in the preceding paragraph, the court's local rules have long contained such a requirement. N.D. Ind. Rule 13.

Subsection (c). When such agreement is not reached and discovery issues come before the court, the judges will consider the proportionality of requested discovery to the issues and stakes involved in the litigation. When discovery disputes evidence the breakdown of the spirit of cooperative discovery, the judges will consider exercising their authority to assess costs under Federal Rules 26(c), 26(g), and 37(a)(4).

As noted above, the judges will establish discovery deadlines in all cases to which Fed. R. Civ. P. 16(b) applies. The enforcement of a discovery deadline should help control expense and delay due to discovery. Because responses to discovery may take time, the courts will, and hence the attorneys should, view the discovery deadline as the date by which discovery is to be completed, not the date by which discovery is to be commenced.

Subsection (d). Time limits, however construed and enforced, cannot alone prevent excessive discovery, however. Because the present discovery scheme of the Federal Rules of Civil Procedure is largely extrajudicial, attorneys and litigants must bear principal responsibility for reducing the cost of the discovery process.

Thus, in cases not before judges experimenting with mandatory standardized disclosure, see § 2.03, attorneys should endeavor to achieve, and the judges should encourage, informal exchange of information that would be discoverable in any event, without the requirement of costly and time-consuming requests. Wherever possible, attorneys should comply with the District Rules' limits of twenty-five interrogatories and twenty-five requests for admissions. Attorneys should seek to keep costly depositions to a minimum.

Litigants should inquire of their counsel concerning the need for contemplated discovery. Judges, attorneys, and litigants should consider early disclosure by counsel to client of the anticipated cost of litigation if the case should go to trial.

§ 3.02 Parties' Signatures on Requests for Discovery Extensions.

The court declines to adopt a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request, although such signatures may be required when appropriate in individual cases.

Comment.

28 U.S.C. § 473(b)(3) directs the court to consider "a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request". Such a requirement would assure the parties' awareness of the reasons for delay in litigation. Nonetheless, the court agrees with the Advisory Group's recommendation that no such requirement be adopted and agrees with the Group for the reasons stated in the Group's report. Advisory Group's Report, at 68-69.

The court recognizes that rare instances may occur in which the presiding judge may deem it appropriate to inquire into a parties' concurrence in a request for continuance. The court believes, however, that Fed. R. Civ. P. 16(b) provides ample authority for the court to require the party's attendance at a pretrial conference in those rare instances. See generally G. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989) (en banc).

§ 3.03 Experiments with Mandatory Disclosures

The court will, by January 15, 1992, implement three separate experiments, one in each principal division of the court, with standardized early mandated disclosure:

(a) District Judge Lee and Magistrate Judge Cosbey will proceed with one such experiment in the Fort Wayne Division; District Judge Miller will conduct another such experiment in the South Bend Division; and District Judges Moody and Lozano and Magistrate Judge Rodovich will experiment with standardized disclosures in the Hammond Division.

(b) The experiments will vary somewhat with respect to the matters to be disclosed and the timing of the disclosures in relation to the initial pretrial conference.

(c) Not later than December 31, 1992, Judges Lee, Cosbey, Miller, Moody, Lozano, and Rodovich will report to the court and to the advisory group with respect to their experiences under these experiments.

(d) The court will invite the advisory group's comments and determine, by May 1, 1993, whether a court-wide standardized, mandatory early disclosure rule or order should be adopted.

Comment.

The court concurs with the Advisory Group that discovery is either the foremost cause of delay, or among the principal causes of delay, in civil litigation in this district. Advisory Group's Report, at 39. National observers generally agree that excessive discovery is the principal cause of both delay and expense of litigation. Justice For All, at 6-7 (1989); Louis Harris & Associates, Judges' Opinions on Procedural Issues, 69 B.U. L. REV. 731, 733, 735, 736 (1989). Those observers believe that attorneys engage in too much discovery, F. Easterbrook, Discovery as Abuse, 69 B.U. L. REV. 635, 637-638 (1989); J. Weinstein, What

Discovery Abuse?, 69 B.U. L. REV. 649, 649-650 (1989); Note, Discovery Abuse Under the Federal Rules: Causes and Cures, 92 YALE L.J. 352 (1982), and that judges fail to control discovery. See J. Solovy & R. Byman, Hardball Discovery, 15 LITIGATION 8, 11 (Fall, 1988).

This district's Advisory Group did not perceive excessive or abusive discovery to be as pervasive a problem in this district as it is perceived to be nationally. The court agrees with that perception. Instances of abusive discovery appear to have been infrequent in this district thus far.

The discovery process, however, is inherently expensive and fosters delay to the extent a trial setting must be delayed to allow completion of discovery. Some who have studied the issue seem to have thrown up their hands at the prospect of limiting discovery to some objective standard of reasonableness, preferring instead simply to limit the time within which discovery may be conducted. Justice for All, at 19-20 (1989). The judges of this court already impose deadlines for completion of discovery and, in many cases, this may suffice; less will be done in six months than would be done in twelve. If counsel or the parties truly believe that discovery is necessary, however -- notwithstanding that the discovery might appear to be unreasonable in retrospect -- only an unreasonable time limit will affect the scope of discovery. Additional lawyers will be called upon for discovery; depositions will be conducted in longer time blocks; initial requests for production of documents will be more inclusive and burdensome. If unreasonable time limitations foreclose necessary, reasonable discovery, the cause of justice is not served.

Unduly restrictive time limits, only a partial safeguard against excessive discovery under any circumstances, may be particularly inappropriate in this district. As the Advisory Group report notes, the Northern District of Indiana is a mix between rural and urban areas; the vast majority of litigants in this court are not represented by large law firms that can reassign attorneys to discovery in their case so as to complete discovery efforts

within the limited time afforded by the court. Advisory Group's Report, at 5. Litigants represented by small firms or sole practitioners simply will be left to do without some discovery, notwithstanding that discovery necessary to the fair presentation of the case might be left undone.

The court also recognizes that if excessive discovery is occurring, use of the sanctioning process provided by the Federal Rules of Civil Procedure is a costly process. When faced with a discovery request thought to be abusive or excessive, responding counsel must decide whether the preparation and filing of a motion and placing sufficient information before the judge concerning the case and the discovery issue would be more costly than simply responding to the request. J. Setear, The Barrister and the Bomb, 69 B.U. L. REV. 569, 593 (1989); Note, Discovery Abuse Under the Federal Rules: Causes and Cures, 92 YALE L.J. 352, 359 (1982).

Attorneys, of course, have the option to arrange for voluntary disclosure of discoverable information without formal request, an option mentioned in the Civil Justice Reform Act of 1990. 28 U.S.C. § 473(a)(4). While the court applauds and encourages such disclosures, voluntary disclosure does not provide a dependable response to the expense and time involved in discovery in this district. While some divisions of this district continue to maintain a fairly small core of attorneys with federal practices, national trends in the practice of law lead to increasing appearances of attorneys from outside the district. No implication is intended that such attorneys lessen the professionalism of attorneys in this court. Such attorneys, however, are unfamiliar with their adversaries, and so are understandably reluctant to rely on unknown opponents to give them the discovery to which the Federal Rules of Civil Procedure would entitle them. Even attorneys who have worked closely with each other for years may find voluntary disclosures to be troublesome.

Accordingly, the court concurs with the Advisory Group that the court should experiment with a program of early, court-mandated, standardized discovery. Advisory Group's Report, at 44-

51. The potential virtues of such a program have led the Civil Rules Advisory Committee to recommend amendment of the Federal Rules of Civil Procedure to require such disclosures as a matter of course in all litigation. See 137 F.R.D. 87-135 (1991). Those recommendations have not yet been adopted, however, and the court recognizes that uncertainties remain with respect to such procedures. Accordingly, the court believes that, unless and until the Federal Rules of Civil Procedure are amended along the lines proposed, prudence dictates that this court proceed with caution and flexibility.

With these principles in mind, the court will, by January 15, 1992, implement four separate experiments, in each principal division of the court, with standardized early mandated disclosure.

Judges Lee and Cosbey's Experimental Program. Judge Lee and Magistrate Judge Cosbey typically conduct their initial pretrial conferences within three weeks of the appearance of counsel for the defendants and often before the filing of an answer. Under such a time frame, a formalized pretrial disclosure of information cannot meaningfully occur.

However, so as to accelerate discovery Judge Lee and Magistrate Judge Cosbey will place on the agenda of the initial pretrial conference the required mutual exchange between the parties of basic standardized information to occur shortly thereafter. The mutual exchange of information will then be memorialized in the order that follows the initial pretrial conference. In this fashion, Judge Lee and Magistrate Judge Cosbey can consider on a case by case basis what information will be disclosed, how it will be disclosed, as well as when and by whom. In general, it is anticipated that in all cases some basic information will be exchanged very soon following the initial pretrial conference except for those cases exempted by District Rule 21 from the requirements of Rule 16(b) of the Federal Rules of Civil Procedure. The Court will also consider on a case by case basis requests that the exchange of information not occur while the court addresses pending

exchange of information not occur while the court addresses pending or anticipated procedural motions. The parties will be under a continuous duty to supplement their disclosures on a timely basis.

The order to be employed by Judges Lee and Cosbey is attached to this plan as Appendix A.

Judge Miller's Experimental Program. Judge Miller will devise a standard order to be entered in all cases not exempted by District Rule 21 from the requirements of Rule 16(b) of the Federal Rules of Civil Procedure. That order will require each party in the case to disclose the following information:

(a) the name and, if known, the address and telephone number of each person likely to have information that bears significantly on any claim, defense, or entitlement to relief, identifying the subjects of the information;

(b) the production, or description by category and location, of all documents or tangible things that bear significantly upon any claim, defense, or entitlement to relief;

(c) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying any evidentiary material on which the claim is based; and

(d) the production of all potentially pertinent contracts for insurance.

Judge Miller's order will require disclosure of these items, in writing, to the extent then known, before the date originally scheduled for the initial pretrial conference to be held under Fed. R. Civ. P. 16(b), subject to a duty to supplement the disclosures. Judge Miller's order also will require, at a later point in the proceedings, disclosure of the identity of each expert witness to be called at trial, together with a statement of the information required under Fed. R. Civ. P. 26(b)(4). Judge Miller traditionally has conducted the initial pretrial conference at a later point in the proceedings than have Judges Lee and Cosbey and,

accordingly, is agreeable to experimenting with a pre-conference disclosure order.

Judge Miller's order is attached as Appendix B.

Judges Moody's and Lozano's Experimental Program. Judges Moody and Lozano already have been requiring significant pretrial disclosures, such as witnesses and damages computations, through their orders for a joint report prior to the initial pretrial conference. Judges Moody and Lozano will expand the order for a joint report to require disclosure of insurance coverage, medical and employment records and authorizations to obtain such records, and expert witnesses and the opinions. Their program will require disclosures on a timetable independent of the initial pretrial conference.

Judges Moody's and Lozano's modified order for joint report is attached as Appendix C.

Judge Rodovich's Experimental Program. Magistrate Judge Rodovich's experiment will face challenges different from the others because the cases assigned to him by the parties' consent arrive on his docket at varying ages. In many instances, he will not have received the case by the time disclosures already would be due under the experimental programs in the Fort Wayne and South Bend Divisions.

Accordingly, Judge Rodovich's orders will employ a timetable keyed to the date of the order, rather than to the initial pretrial conference. Judge Rodovich will require disclosure by the plaintiff of:

> (a) the name, address and telephone number of each person known or reasonably believed to have information relating to the allegations in the complaint, and a short statement each such witness' expected testimony;
>
> (b) the identity of each expert witness expected to be called at trial, and a short statement each such expert's expected testimony;

(c) a list of all expenses that the plaintiff is claiming as special damages; and

(d) a concise but meaningful description of the factual basis for the complaint's allegations.

In appropriate cases, the plaintiff also will be ordered to disclose a list of all the plaintiff's medical expenses, making certain disclosures with respect to those expenses, and an itemization of all claimed lost wages.

Judge Rodovich will require disclosure by the defendant of:

(a) the name, address and telephone number of each person known or reasonably believed to have information relating to the allegations in the complaint, and a short statement each such witness' expected testimony;

(b) the identity of each expert witness expected to be called at trial;

(c) the existence and content of all contracts of insurance, including policy limits; and

(d) a concise but meaningful description of the defendant's version of the allegations contained in the complaint, including the factual basis for any affirmative defenses.

In appropriate cases, the defendant also will be ordered to disclose its description of how the accident incurred, including any issue of comparative fault.

Judge Rodovich's orders are attached as Exhibit D.

Modification. Each judge participating in an experimental program of mandatory disclosure shall be free to modify standard orders for general use from time to time as experience indicates is appropriate, consistent with the purposes of these experiments. Each judge retains the discretion to modify any disclosure order in a specific case upon any party's request or upon the court's own motion.

Report on Experiments. Not later than December 31, 1992, Judges Lee, Cosbey, Miller, Moody, Lozano, and Rodovich will report to the court and the Advisory Group with respect to their experiences under these experiments. Those reports will note the general degree of success with respect to reduction of expense and delay perceived under these approaches (including the degree of success in achieving compliance by the bar), will address the nature of cases to which the approaches appear to be well-suited or poorly suited, and make recommendations to the court concerning the advisability of adopting either approach or any variant thereof. The court will invite the Advisory Group's comments and determine, by May 1, 1993, whether a court-wide standardized mandatory early disclosure rule or order should be adopted.

CHAPTER 4. ALTERNATE DISPUTE RESOLUTION.

§ 4.01 Private Settlement Negotiations Encouraged.

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

Comment.

28 U.S.C. § 473(a)(6) directs the court to consider authorizing reference of appropriate cases to alternative dispute resolution programs that have been designated for use in a district court or that the court may make available, including mediation, minitrial, and summary jury trial. 28 U.S.C. § 473(a)(4) directs the court to consider "a neutral evaluation program for the presentation of legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation." The Advisory Group recommended that the court expand its use of some alternate dispute resolution procedures, such as early neutral evaluation and magistrate-led mediation. Advisory Group's Report, at 56.

As noted below, the court will expand the range of court-assisted settlement programs. The court notes, however, that it lacks the Advisory Group's apparently unanimous acclaim for alternate dispute resolution procedures. Several judges believe that such procedures, if indiscriminately used, may increase expense by requiring an additional layer of activity to the litigation process, perhaps forcing less wealthy parties to accept unwanted settlements instead of the day in court to which they are entitled.

Further, the court believes that private settlement discussions offer the best opportunity for reduction of delay and expense. Attorneys should not rely exclusively on settlement procedures offered by the court. No court-sponsored procedure is quicker or less expensive than settlement negotiations between counsel. Attorneys should not view private discussion of settlement as a sign of weakness on the part of the side opening the discussion. Attorneys should consider engaging in private settlement discussions even before, or immediately after, the scheduling order is entered. If private settlement discussions might be enhanced by staged discovery or by a court-hosted settlement conference before discovery is begun in earnest, counsel should so inform the court.

§ 4.02 Minitrials and Summary Jury Trials.

The court will make cautious use of minitrials and summary jury trials in cases in which the actual trial would be unusually expensive. The court will review the experiences with these devices in Pilot Districts over the next three years.

Comment.

The Seventh Circuit has concluded that federal trial courts have no authority to compel an unwilling party's participation in a summary jury trial. Strandell v. Jackson County, Ill., 838 F.2d 884 (7th Cir. 1987). Although 28 U.S.C. § 473(b)(6)

appears to vest the court with such authority if a civil justice expense and delay plan so provides, the advisability of establishing such a procedure depends largely upon the untested willingness of the district's litigants and attorneys to consent to such a procedure: establishment of such programs would not be cost-effective if litigants and attorneys decline voluntary participation.

The Advisory Group recommended caution in the use of mechanisms such as the summary jury trial and the mini-trial, while generally recommending expansion of other techniques such as early neutral evaluation programs and judicial mediation in settlement conferences. Advisory Group's Report, at 56-59.

The court agrees with the Advisory Group that even the consensual use of summary jury trials and minitrials generally should be limited to cases in which the actual trial would be unusually expensive, either because of its length or because of the stakes involved. Accord, R. Peckham, A Judicial Response to the Cost of Litigation, 37 RUTGERS L. REV. 253, 271 (1985). Legal literature generally echoes the advisory group's conclusion that these techniques are appropriate only when used with caution. See, e.g., C. Lambros, The Summary Jury Trial and Other Alternative Methods of Dispute Resolution, 103 F.R.D. 463 (1984); L. Robel, Caseload and Judging: Judicial Adaptations to Caseload, 1990 B.Y.U. L. REV. 3, 24-34 (1990); R. Posner, The Summary Jury Trial and Other Methods of Alternative Dispute Resolution: Some Cautionary Observations, 53 U. CHI. L. REV. 366 (1986).

The Civil Justice Reform Act mandates the establishment of such procedures by ten "Pilot Districts" for a period of three years. A review of the experiences with these programs in those districts will be helpful in assessing the usefulness and cost-effectiveness of minitrials and summary jury trials.

§ 4.03 Settlement Conferences

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

(b) Attendance by person with settlement authority. A judge conducting a settlement conference will consider requiring attendance by, or telephonic availability of, those persons with settlement authority.

Comment.

Subsection (a). This district has had more extensive experience with judicial mediation and early neutral evaluation than with minitrials and summary jury trials. Settlement conferences, conducted by a judge other than the judge who would try the case, are common in each of the district's divisions; indeed, some judges routinely order them without request from the parties. The Fort Wayne Division has a program of early neutral evaluation in place.

Consistent with the Advisory Group's recommendations, the court will continue to utilize judicially-hosted settlement conferences. Consistent with its past practices, the judges will continue to make themselves available for settlement conferences and order settlement conferences upon appropriate request or when deemed appropriate by a judge. Some attorneys, however, approach settlement conferences with a sole eye to learning the extent to which an existing settlement offer will have to be modified on the eve of trial. Settlement conferences are an inefficient use of judicial time, however, when participating attorneys view the settlement conference as an intermediate step in the settlement process rather than the occasion to make every effort at settlement. Accordingly, the court will consider formulation of a rule

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

Subsection (b). In accordance with the Advisory Group's recommendation, a judge conducting a settlement conference will consider requiring attendance by, or telephonic availability of, those persons with settlement authority. The court agrees with the advisory group's stated reasons for its recommendation on this issue. Advisory Group's Report, at 59-60.

§ 4.04 Early Neutral Evaluation.

The court will expand, on an experimental basis, the early neutral evaluation process now available in the Fort Wayne Division. Judge Miller will establish such a program for availability in his cases in the South Bend Division, and Judge Lozano will establish such a program for availability in his cases in the Hammond Division. Both programs will be voluntary. Judges Miller and Lozano will report to the court and the advisory group, by January 1, 1993, concerning their experience with the program.

Comment.

An early neutral evaluation program has been in place for some time in the Fort Wayne Division. The court also will experiment with expansion of early neutral evaluation into other divisions of the court. Judge Miller will experiment with an early neutral evaluation program in the South Bend Division, and Judge Lozano will experiment with such a program in the Hammond Division. Projecting a timetable for a program that entails soliciting attorney evaluators is challenging, but the judges hopes to have a program, modeled after the existing Fort Wayne program, in place by

March 1, 1992. Neither program will be mandatory. Judges Miller and Lozano will report to the court and the advisory group by January 1, 1993 concerning their experience with the program.

CHAPTER 5. MISCELLANEOUS MATTERS

§ 5.01 Rulings on Motions.

The court declines to adopt any formal deadline for ruling on motions, but each judge will attempt to resolve any motion within thirty days after the completion of briefing or the hearing on the motion, whichever is later.

Comment.

In accordance with the Advisory Group's recommendation, Advisory Group's Report, at 63-64, each judge will attempt to resolve any motion within thirty days after the completion of briefing or the hearing on the motion, whichever is later. The court strongly believes, however, that more formal limits on the time allotted to judicial resolution of a motion are inappropriate. Many (perhaps most) motions in many (perhaps most) cases can be, should be, and are disposed of within thirty days of the close of the briefing schedule. It cannot be said, though, that all motions can or should be resolved within that time.

Some types of motions, such as routine discovery motions and motions to amend the pleadings, may be resolved in a very brief time; as to those motions, even a thirty-day limit is more generous than ordinarily is necessary. The same may be said even of some dispositive motions, such as motions to dismiss for failure to state a claim or for want of subject-matter jurisdiction, in cases in which the governing law is reasonably well settled. Even as to motions such as these, however, a reasoned ruling within thirty days may not be possible if the judge is engaged in a thirty-day criminal trial.

Other motions, such as motions for class certification, motions to dismiss lengthy pro se complaints, or summary judgment motions in employment discrimination or other civil rights cases, may require review and interpretation of considerable materials. A fixed deadline would be difficult to meet with respect to such matters, particularly if a dispositive motion is to be granted; the Seventh Circuit requires a district court to give a careful statement of its reasons when a dispositive motion is granted. Indeed, such a deadline would be inconsistent with the Federal Rules of Civil Procedure; under Fed. R. Civ. P. 1, the just resolution of civil proceedings is no less important than their speedy and inexpensive resolution.

The court recognizes its obligation to provide as prompt a ruling as is feasible, consistent with the interests of reasoned justice. Accordingly, the judges of the court will adopt an internal presumption that all motions should be decided within thirty days of the close of the briefing schedule.

Even this timetable may result in motions being reported publicly as having been under advisement for an undue time. Under the reporting requirements of the Civil Justice Reform Act, each judge must report as pending all motions not decided within six months of filing. Complex cases may involve motions that require more than six months for full briefing, hearing, and resolution. Nonetheless, the court believes that a thirty-day "target date", if counted from the motion's readiness for ruling rather than from its filing, is reasonable.

While the principal responsibility for resolution of motions must lie with the judges, attorneys should give careful thought to the propriety of filing a motion, the scope of the argument to be raised in a motion, and the length of the brief that accompanies the motion. Attorneys also should be aware of their responsibility to accompany a dispositive motion with a brief, pursuant to District Rule 9.

§ 5.02 Pro Se Prisoner Litigation.

(a) Scheduling conferences. In all pro se prisoner civil rights cases filed after January 1, 1992, the judges will enter scheduling orders, conducting telephonic initial pretrial conferences where feasible to illuminate the issues and to determine reasonable deadlines. Strict adherence to the 120-day limit of Fed. R. Civ. P. 16(b) will not always be possible due to requests for counsel.

(b) Pre-filing screening. The court will continue to engage in screening of prisoner civil rights complaints sought to be filed in forma pauperis, and deny petitions for pauper status as to complaints that are frivolous within the meaning of Neitzke v. Williams, 490 U.S. 319 (1989).

Comment.

Subsection (a). The court generally agrees with the Advisory Group's recommendation that District Rule 21(b) should be modified so that pro se prisoner civil rights cases will not be exempted from the requirements of Fed. R. Civ. P. 16(b). The court notes, however, that some flexibility is necessary in light of the frequency with which plaintiffs in such cases request the court to provide counsel pursuant to 28 U.S.C. § 1915(d). Recognizing that the court cannot "appoint" counsel pursuant to § 1915(d), Mallard v. U.S. District Court, 109 S. Ct. 1814 (1989), and that counsel of the plaintiff's own choosing may be found in a sufficiently meritorious case in light of the attorney fee provisions of 42 U.S.C. § 1988, the court routinely directs plaintiffs seeking counsel under § 1915(d) to report to the court, within sixty days, of efforts to obtain counsel.

Conducting a pretrial conference with such a motion pending may a pointless task. The plaintiff, hoping that counsel

court later provides counsel to the plaintiff, the new attorney may have far different ideas concerning the reasonableness of deadlines previously selected.

Nonetheless, the court agrees with the Advisory Group that the provisions of Fed. R. Civ. P. 16(b) concerning the establishment of deadlines should apply to pro se prisoner cases, Advisory Group's Report, at 72, and will recommend an appropriate amendment of District Rule 21(b) to the district's rules advisory committee. In the meantime, nothing in District Rule 21(b) precludes the conduct of preliminary pretrial conference and the use of scheduling orders in pro se prisoner cases.

The court also agrees with the Advisory Group that the vagueness of some pro se complaints warrants the use of telephonic pretrial conferences rather than written status reports as the vehicle for obtaining the information necessary for establishing reasonable deadlines for amendments to the pleadings, completion of discovery, and the filing of dispositive motions. Advisory Group's Report, at 72. A defendant's attorney cannot be expected to make reasonable estimates of the time necessary for these tasks if the nature of the plaintiff's allegations cannot be determined. Judge Sharp recently has experimented with telephonic conferencing in these cases with favorable results. Accordingly, in all pro se prisoner civil rights cases filed after January 1, 1992, the court will enter a scheduling order within the spirit of Fed. R. Civ. P. 16(b) following a telephonic scheduling conference.

These provisions shall not apply to other pro se prisoner cases, such as those filed under 28 U.S.C. §§ 2254 and 2255.

Subsection (b). The Advisory Group expressed concern that the court may not be screening petitions to proceed in forma pauperis. Advisory Group's Report, at 73. The court is aware of its authority to deny petitions to proceed in forma pauperis if the tendered complaint is frivolous, that is, if either the legal theory or the factual contentions lack an arguable basis. Neitzke v. Williams, 490 U.S. 319 (1989). The court actively screens such petitions for frivolous claims in prisoner civil rights cases, and

its ability to do so has been enhanced by authorization to retain a pro se law clerk in recent years.

The court also recognizes, however, that even a complaint that fails to state a claim upon which relief can be granted is not necessarily frivolous, see Neitzke v. Williams, 490 U.S. at 327-329, and many pro se prisoner complaints present substantial claims. Accordingly, the Seventh Circuit has held, with the support of the Supreme Court, that in a close case, the court should allow the claim to proceed at least to the point of requiring a response from the defendant or defendants. Williams v. Duckworth, 837 F.2d 304, 307 (7th Cir. 1988), aff'd, 490 U.S. 319 (1989); Jones v. Morris, 777 F.2d 1277, 1281 (7th Cir. 1985), cert. denied, 475 U.S. 1053 (1986). Under these standards, "screening" of in forma pauperis petitions can, and should, go only so far. Beyond that, recommending stricter "screening" of prisoner pauper cases as a method of reducing expense and delay is not dissimilar from recommending that summary judgments be granted more frequently.

The court engages in lesser screening of habeas corpus petitions brought under 28 U.S.C. § 2254. The filing fee for such petitions is but $5.00. Devoting judicial resources to screening such filings merely diverts those resources from other matters, and cases in which pauper status is denied are easily filed anew with the modest filing fee if the petitioner is persistent. Further, denial of pauper status for frivolity should be approached with even greater caution in such cases, which involve freedom rather than damage claims. It does not appear that § 2254 cases suffer from delay in disposition; the thirty-one cases of that sort filed in the first quarter of 1989 averaged 4.26 months from filing to judgment, with a mean life of 3 months.

The court notes that in addition to "screening" petitions for in forma pauperis status, the court has adopted a procedure for requiring plaintiffs to file partial filing fees. The court believes that this approach, which requires a plaintiff to acquire a financial stake in the lawsuit, has reduced frivolous claims and,

thus, reduced expense to the would-be defendants and delay to the remaining cases on the court's docket.

§ 5.03 Orders Governing Trial.

(a) No standard order. The court declines to adopt a uniform, district-wide order setting forth the deadlines and substantive requirements for various pretrial tasks such as trial briefs, requests for jury instructions, proposed findings of fact, requests for voir dire questions, etc.

(b) Revisions of existing orders. By February 1, 1992, each judge of the court will review and revise his existing order, deleting any provisions no longer deemed appropriate in light of the expense involved.

(c) Summary of orders. By April 1, 1992, the court will prepare a summary of orders then in use, identifying the differences on a judge-by-judge basis, and make copies of the summary available to attorneys with trial settings.

Comment.

Subsection (a). The Advisory Group indicated that the district's judges use different forms for their final pretrial orders. Advisory Group's Report, at 60. After discussion, the court disagrees. No judge directs the submission of a proposed pretrial order in any form different from the form prescribed by District Rule 21.

The court concedes variation in requirements concerning other pretrial submissions. Upon the setting of a trial date in a case, most judges of this court presently enter an individualized order setting forth the deadlines and substantive requirements for various pretrial tasks such as trial briefs, requests for jury

instructions, proposed findings of fact, requests for voir dire questions, and so on. The Advisory Group strongly recommended the simplification and standardization of these orders, asking that the judges craft a uniform, less onerous order. Advisory Group's Report, at 35-36, 39, 60-61. While recognizing the difficulties caused by varying orders, the court declines the request for uniformity.

The attorneys are the judge's best source of information concerning the case and the handling of the trial. Because the conduct of a trial necessarily differs from judge to judge, it is not surprising that each judge might look for differing information and might find a given format for presenting the information more useful than others. In short, the judges of this district seek different sorts and forms of necessary information from trial counsel.

Were the court to attempt to devise a uniform order governing such matters, the product of that attempt would not be less onerous than orders now in use; it would be over-inclusive. A uniform order would require counsel in all cases to meet the needs of all of the district's judges, but only one judge will try the case. An order tailored to the trial judge's needs inevitably will be less demanding than an order that seeks to produce all information other judges might seek.

Subsections (b) and (c). Although the court believes that a uniform order would increase, rather than reduce, expense, the court recognizes the legitimacy of the Advisory Group's complaints that the present orders may be onerous and that attorneys may be confused as to the requirements of each judge before whom they appear. Accordingly: by February 1, 1992, each judge of the court will review and revise his existing order, deleting any provisions no longer deemed appropriate in light of the expense involved; by April 1, 1992, the court will prepare a summary of orders then in use, identifying the differences on a judge-by-judge basis, and make copies of the summary available to attorneys with trial settings.

§ 5.04 Bankruptcy Appeals.

(a) Informal deadline. The court adopts, immediately, an internal, informal six-month deadline for resolution of bankruptcy appeals.

(b) No referral to magistrate judges. In light of presently existing law, the court declines to refer bankruptcy appeals to magistrate judges, even by consent.

Comment.

Subsection (a). The Advisory Group recommends the court's adoption of an internal, informal six-month deadline for decision on bankruptcy appeals; the United States Attorney further recommended, without the concurrence of the advisory group, that the court make such matters a priority for an additional magistrate judges for which the district achieves authorization. Advisory Group's Report, at 73-74.

The court agrees that an internal, informal six-month deadline for resolution of bankruptcy appeals is workable and desirable; the court will adopt such an informal deadline immediately.

Subsection (b). In Matter of Elcona Homes, 810 F.2d 136 (1987), the Seventh Circuit held bankruptcy appeals cannot be referred to magistrate judges without offending 28 U.S.C. § 158. The court does not view the grant of authority in 28 U.S.C. § 473(b)(6) as authorizing the court's plan to contravene existing statutes. The court believes the Judicial Conference should recommend to the Congress that magistrates be empowered to resolve bankruptcy appeals with the parties' consent. Under present law, however, the court must decline the recommendation to refer bankruptcy appeals to magistrate judges.

§ 5.05 Federal Debt Collection Procedures Act Cases

The court will consider the Advisory Group's recommendation of blanket reference to magistrate judges of proceedings under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq., as experience with such cases is gained in the coming months, and will report those experiences to the Advisory Group on or before October 1, 1992.

Comment.

The Advisory Group recommended that the court consider blanket reference, to the full extent possible under 28 U.S.C. § 636, to magistrate judges of proceedings under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq. Advisory Group's Report, at 73. The court has had too little experience with such cases to evaluate the recommendation. The court will consider the recommendation as it gains experience with such cases in the coming months and will report those experiences to the Advisory Group on or before October 1, 1992.

§ 5.06 Amendments to District Rules

The court will recommend various amendments to the district rules. No timetable can be established for any amendment to the civil rules, because any such amendment must be addressed in the first instance by the district's rules advisory committee.

(a) Stipulated extensions of time. The court will seek amendment of the district rules to formalize the practice, heretofore allowed by general order, of stipulated extensions of time to respond to a complaint or to a discovery request other than that covered by an order for standardized disclosure.

(b) Materials accompanying summary judgment motions. The court will seek amendment of the district rules to abolish the requirement that summary judgment motions and responses be accompanied by statements of facts not in dispute, proposed conclusions of law, and statements of disputed facts.

(c) Page limits. The court will consider a soon-to-be-proposed amendment of the district rule concerning page limits on briefs.

(d) Social security appeals. The court will consider any recommendation from the district's rules advisory committee for a district-wide rule establishing a process for handling social security appeals. In the meantime, each judge will, in all social security appeals filed after January 1, 1992, enter an order dispensing with the need for either party to move for summary judgment, requiring the plaintiff/appellant to file its brief within thirty days of the filing of the administrative record, requiring the Secretary to file a responsive brief within forty-five days of the filing of the plaintiff's brief, and allowing the plaintiff/appellant ten days within which to reply to the Secretary's brief.

Comment.

The Advisory Group's report addresses several matters not specified for discussion by the Civil Justice Reform Act. Pursuant to 28 U.S.C. § 473(b)(6), this plan addresses those matters, suggestions, and observations, as well. Among those suggestions were amendments to the district rules. No timetable can be established for any amendment to the district rules, because any such amendment must be addressed in the first instance by the district's rules advisory committee. See generally Fed. R. Civ. P. 83. The court

will, however, commend the proposed changes for the district advisory committee's consideration.

Subsection (a). The court agrees with the Advisory Group, see Advisory Group's Report, at 32-33, 70, that recognition of stipulated extensions of time to respond to a complaint or to a discovery request will save the expense of preparing motions and the delay of awaiting a response prior to granting the extension. The court will seek amendment of the district rules to formalize this practice, which heretofore has been allowed by general order.

The court recognizes that any such rule should not apply to the standardized disclosures some judges will require on an experimental basis and should not have the effect of modifying the deadline for completion of discovery.

Subsection (b). The court agrees with the Advisory Group that present District Rule 11, which requires the submission of statements of facts not in dispute, proposed conclusions of law, and statements of disputed facts, increases the expense of civil litigation in this district. Advisory Group's Report, at 33, 69-70. The court will seek amendment of the district rules to abolish this requirement.

The court does not understand the Advisory Group to have recommended any change on this topic beyond the District Rules' requirements for summary judgment motions. The judges will retain the discretion to require submission of proposed findings of fact and conclusions of law with respect to court trials.

Subsection (c). The court concurs with the Advisory Group that requests are routinely granted to file briefs in excess of the twenty-five page limit established by District Rule 12. Advisory Group's Report, at 33, 70. Although the court believes that shorter briefs generally assist in reducing delay, the court agrees that expense and delay may be addressed better by allowing slightly longer briefs while more stringently enforcing the page limit. Accordingly, the court will give serious consideration to the district rules advisory committee's recommendation for modification of District Rule 12 upon receipt of that recommendation.

Subsection (d). At present, the court decides social security appeals on cross-summary judgment motions filed after the record of proceedings is filed. Although social security appeals are exempt from its operation pursuant to District Rule 21(b)(1), some judges of the court impose deadlines for the filing of these summary judgment motions pursuant to Fed. R. Civ. P. 16(b). The Advisory Group's report recommends the "streamlining" of social security appeals by substituting an appellate briefing schedule for these cross-summary judgment motions. Advisory Group's Report, at 34, 71.

If District Rule 11 is modified to abolish the requirement of statements of undisputed and disputed facts, it is doubtful that substitution of a standardized briefing schedule will reduce the expense of litigating social security matters in this court. Nonetheless, recognizing the district's backlog of social security appeals, the essentially appellate nature of the district's social security caseload, and the beneficial effect of standard deadlines for the filing of materials necessary to submit the appeal for the court's resolution, the court agrees with the Advisory Group's recommendation that standard deadlines be adopted.

Accordingly, the court will consider any recommendation from the district's rules advisory committee for a district-wide rule establishing a process for handling social security appeals. In the meantime, each judge of the court will, in all social security appeals filed after January 1, 1992, enter an order dispensing with the need for either party to move for summary judgment, requiring the plaintiff/appellant to file its brief within thirty days of the filing of the administrative record, requiring the Secretary to file a responsive brief within forty-five days of the filing of the plaintiff's brief, and allowing the plaintiff/appellant ten days within which to reply to the Secretary's brief. The court recognizes its obligations toward unrepresented litigants pursuant to Lewis v. Faulkner, 689 F.2d 100 (7th Cir. 1982).

§ 5.07 Additional Resources.

(a) Additional magistrate judges. The court will seek authorization for two additional magistrate judges to establish a one-to-one ratio between district judges and magistrate judges.

(b) Full staffing of clerk's office. The court will seek full staffing of the clerk's office.

(c) Additional law clerk. The court will seek authorization for an additional law clerk for the Hammond Division.

Comment.

Subdivision (a). The court agrees with the Advisory Group, see Advisory Group's Report, at 77-79, that two additional magistrate judges are necessary for the optimal operation of a court intent on reducing expense and delay in civil litigation. Early and ongoing judicial involvement in supervising litigation bears a cost in judicial time. Judicial time spent in pretrial conferences produces benefits in the quality of justice and ultimate savings in judicial time; the additional time needed to reduce expense and delay in a given case may impact adversely on the attention judges can bring to bear on other cases.

Magistrate judges may conduct pretrial conferences and discovery proceedings by designation by the district judge, 28 U.S.C. § 636(b)(1)(A), allowing judicial control of the pretrial process to continue even in the face of extended criminal trials or increased caseloads. The district's three magistrate judges already are quite busy with their own calendars; only five districts had more consented cases than the 200 assigned to this district's three magistrates in 1990, and only two districts had more consented cases resolved by jury trial than the twenty-four in this district in 1990.

The need for an additional magistrate is especially great in the Hammond Division. As noted before, that division's overall

docket is such that the district judges were able to devote only a fourth of their trial time to civil cases in the year ending September 30, 1991. The division's magistrate already presides over more than a fourth of the division's pending civil cases through consents, and has little time in which to handle other matters by referral.

A 1:1 ratio between district and magistrate judges appears to offer the best hope for success in attacking expense and delay through active case management, and the court will seek authorization for two additional magistrate judgeships.

Subsection (b). The court also agrees with the Advisory Group, see Advisory Group's Report, at 79, that successful case management requires a full complement of clerical support. The Clerk's Office presently is "overstaffed" in the sense in which that word in used in light of present budgetary restrictions. A full clerk's office -- not an office "full" only when the appropriate number is reduced by a budget-imposed percentage -- is needed to ensure attorneys' awareness of the procedures being employed by, or under experimentation in, the court.

For example, early neutral evaluation proceedings require the solicitation of volunteer attorney evaluators, maintenance of the list, offering access to the list to attorneys in litigation, etc. If early mandatory disclosures are to provide benefit in conferences to be held after disclosure, persons in the Clerk's Office should be in telephonic contact with the attorneys involved to ascertain whether the mandatory disclosures occurred as scheduled. Arrangement of telephonic pretrial conferences in a category of cases that comprises thirty-eight percent of the South Bend Division's caseload, see § 5.02(a), will place an enormous burden on the clerk's office in that division. Enforcement of Rule 16(b) deadlines, and informal, internal deadlines for resolution of motions and social security appeals will require clerical personnel to monitor deadlines and matters under submission.

Accordingly, the court will seek authorization to replace existing personnel in the Clerk's Office as they leave and to hire additional clerks.

Subsection (c). The Hammond Division is in need of an additional law clerk. Just as the South Bend Division houses an additional law clerk (the pro se law clerk) to meet the special needs of that division's caseload, the unique needs of the Hammond Division warrant another law clerk to further the goal of reduced delay. A large segment of the division's civil docket is assigned to the magistrate judge through consents; while performing the tasks of a district judge as to those cases, the magistrate judge has only one law clerk. Further, the district judges in Hammond devote a considerably greater portion of their bench time to criminal cases than do judges in the other divisions, requiring their law clerks to turn their attention from civil cases.

An additional law clerk assigned to the Hammond Division would help the judges give greater attention to matters such as social security appeals and would enhance the magistrate judge's ability to provide greater assistance in cases other than those assigned to him by consent.

Dated this 20th day of December, 1991.

/s/ Allen Sharp
Allen Sharp, Chief Judge

/s/ Robert A. Grant
Robert A. Grant, Senior Judge

/s/ William C. Lee
William C. Lee, Judge

/s/ James T. Moody
James T. Moody, Judge

/s/ Robert L. Miller, Jr.
Robert L. Miller, Jr., Judge

/s/ Rudy Lozano
Rudy Lozano, Judge

/s/ Andrew P. Rodovich
Andrew P. Rodovich,
Magistrate Judge

/s/ Robin D. Pierce
Robin D. Pierce,
Magistrate Judge

/s/ Roger B. Cosbey
Roger B. Cosbey,
Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

Plaintiff,	)	
	)	
v.	)	CIVIL NO. F
	)	
	)	
	)	
Defendant.	)	

ORDER

The parties to this lawsuit are ordered to answer the following interrogatories pursuant to the Rules attached hereto as Appendix I and the parties shall also produce for inspection and copying the following documents and things in accordance with the following schedule:

The Plaintiff shall serve the other parties with written responses to the interrogatories and produce the documents and things for inspection and copying within thirty (30) days and the other parties shall do likewise within forty-five (45) days of this Order.

INTERROGATORIES

1. Give the name, address and occupation of each person (including expert witnesses) who has knowledge or opinions pertaining to this case and for each person listed provide a summary of his or her knowledge or opinions and the grounds therefore.

2. Identify each cause of action and/or defense you are alleging and each and every fact and legal authority on which you

rely or of which you are aware which supports the cause of action/defense.

3. Set forth each and every form of damages/relief you are seeking and for each form listed provide:

a. the names, addresses and occupations of each person who has knowledge or opinions relating thereto and a summary of his or her knowledge of opinions and the grounds therefore; and

b. the amount of the damages and the method of calculation.

REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS

4. All documents, records, writings and things which show or tend to show any fact pertaining to any claims or defenses you are asserting.

Enter this _____ day of _____, 199_____.

_____
Judge/Magistrate Judge
United States District Court

APPENDIX I

Rules for Answering Interrogatories. The following rules shall be adhered to by all parties in answering the foregoing interrogatories:

(a) All interrogatories must be answered fully in writing in accordance with Rules 33 and 11 of the Federal Rules of Civil Procedure.

(b) All answers to interrogatories must be signed by the party. An attorney representing such a party may file the interrogatories without the party's signature if an affidavit from the attorney is filed simultaneously therewith stating that properly executed responses to interrogatories will be filed within 20 days. Such time may be extended by order of the court.

(c) In the event any question cannot be fully answered after the exercise of reasonable diligence, the party shall furnish as complete an answer as he/she/it can and explain in detail the reasons why he cannot give a full answer, and state what is needed to be done in order to be in a position to answer fully and estimate when he/she /it will be in that position.

(d) If there is more than one plaintiff or more than one defendant in a case, each interrogatory must be answered separately for each party unless the answer is the same for all.

(e) Each interrogatory shall be set forth immediately prior to the answer thereto.

(f) A party shall seasonably, and in no event more than 30 days after receipt of the information in question, supplement his response with respect to any question directly addressed to (A) the identity, address and telephone number of persons who may be called as witnesses at trial, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, the substance of facts and opinions to which he is expected to testify, and a summary of the grounds for each opinion.

(g) A party is also under a duty seasonably, and not more than 30 days after receipt of the information in question, to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, of (B) he knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

Plaintiff	)	
vs.	)	CAUSE NO. S9
Defendant	)	

ORDER ON DISCOVERY

Pursuant to § 3.03 of this court's Civil Justice Expense and Delay Reduction Plan and 28 U.S.C. § 473(b)(6), and in the interests of reducing cost and delay in the progress of this action, the court now enters the following order concerning the conduct of discovery in this cause.

A. Mandatory Pre-Discovery Disclosures

1. Content of Mandatory Disclosure. Before conducting any discovery, the parties shall exchange the following information without the requirement of formal interrogatory or request:

(a) the name and, if known, the address and telephone number of each individual likely to have information that bears significantly on the claims and defenses, identifying the subject(s) of the information possessed by that individual;

(b) a copy of, or a description by category and location, of all documents, data compilations, and tangible things in

the party's possession, custody, or control that are likely to bear significantly on any claim or defense;

(c) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Fed. R. Civ. P. 34 the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(d) identify for inspection and copying as under Fed. R. Civ. P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

2. Timing of Disclosure. Unless the court otherwise directs or the parties otherwise stipulate with the court's approval, these disclosures shall be made:

(a) by a plaintiff within thirty days after service of an answer to its complaint;

(b) by a defendant within thirty days after serving its answer to the complaint; and

(c) in any event, by any party that has appeared in the case within thirty days after receiving from another party a written demand for accelerated disclosure accompanied by the demanding party's disclosures.

3. Incomplete Investigation. A party is not excused from disclosure because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or (except with respect to a party that has not answered the complaint by the date of this order) because another party has not made its disclosures.

4. Limitation on Use. Recognizing that further investigation or discovery may be undertaken, the court will not consider the written pre-discovery disclosures required by this order to be served and filed (as distinct from the information disclosed or discovered thereby) for any purpose when considering a motion for summary judgment under Fed. R. Civ. P. 56.

5. No Pre-Disclosure Discovery Requests. Except with leave of court or upon agreement of the parties, a party may not seek discovery under Fed. R. Civ. P. 26-37 from any source before making the disclosures described above and may not seek discovery from another party before the date such disclosures have been made by, or are due from, such other party.

B. Disclosure of Expert Testimony

1. Scope of Expert Disclosure Requirement. In addition to the disclosures required in Part A of this order, each party shall disclose to every other party any evidence (other than the testimony of a treating physician) which the party may present at

trial under Rules 702, 703, or 705 of the Federal Rules of Evidence.

2. Content of Expert Disclosure. This disclosure shall be in the form of a written report prepared and signed by the witness that includes:

(a) a complete statement of all opinions to be expressed and the basis and reasons therefor;

(b) the data or other information relied upon in forming such opinions;

(c) any exhibits to be used as a summary or support for such opinions;

(d) the qualifications of the witness; and

(e) a listing of any other cases in which the witness has testified as an expert at trial or in deposition within the preceding four years.

3. Timing. This disclosure of expert testimony shall be made at least ninety days before the trial date, or by such date that the court may establish at a preliminary pretrial conference. If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under the preceding paragraph, disclosure shall be made within thirty days after the disclosure made by such other party.

4. Post-Disclosure Expert Depositions. After any report required by Part B of this order has been provided, a party may depose any person who has been identified as an expert whose

opinions may be presented at trial. When depositions are sought pursuant to these provisions, leave of court to take an expert's deposition pursuant to Fed. R. Civ. P. 26(b)(4)(A)(ii) shall be deemed to have been granted.

C. Form of Disclosure

1. Signature Required. The disclosures required in Parts A and B of this order shall be made in writing and signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the disclosure and state the party's address.

2. Certificate of Signer. The signature of the attorney or party shall constitute a certification that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the disclosure is complete as of the time it is made.

3. Method of Disclosure; Filing. If feasible, counsel shall meet to exchange disclosures required by Part A; otherwise, disclosures shall be served as provided by Fed. R. Civ. P. 5. Unless otherwise ordered, disclosures shall be promptly filed with the court.

D. Supplementation of Disclosures and Discovery Responses

1. Supplementing Disclosure. A party is under a duty seasonably to supplement its disclosures under Parts A and B, or

correct the disclosure or response to include information thereafter acquired, if the party learns that the information disclosed is not complete and correct. This duty also applies to information disclosed during the deposition of an expert whose opinions the party may present at trial; any additions or changes with respect to information provided in an expert's deposition shall be disclosed at least thirty days before trial.

2. Supplementing Responses to Discovery Requests. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission, or correct the disclosure or response to include information thereafter acquired, if the party learns that the response is not complete and correct.

E. Motions to Compel or for Protective Order

1. Duty to Confer. Motions to compel or for protective order shall not be filed unless accompanied by the certificate required by District Rule 13 concerning personal or telephonic attempts to resolve the discovery dispute.

2. Protective Orders. The provisions of Fed. R. Civ. P. 26(c) concerning protective orders shall apply to the disclosure requirements established by this order, as well as to discovery requests.

3. Motion to Compel Mandatory Disclosure. If a party fails to make a disclosure required by Part A or Part B, any other

party may move to compel disclosure and for appropriate sanctions under Fed. R. Civ. P. 37(a).

4. Exclusion of Evidence for Failure to Disclose. A party that without substantial justification fails to disclose information as required by Parts A, B, and D of this order shall not, unless such failure is harmless, be permitted to present as substantive evidence at trial or on a motion under Fed. R. Civ. P. 56 any evidence not so disclosed, and, if such evidence is presented by an adverse party, the adverse party shall be permitted to disclose at the trial or hearing the fact of such failure to disclose. In addition or in lieu thereof, the court, on motion after affording an opportunity to be heard, may impose other appropriate sanctions which, in addition to requiring payment of reasonable expenses including attorney fees caused by the failure, may preclude the party from conducting discovery and may include any of the actions authorized under subparagraphs (A), (B), and (C) of Fed. R. Civ. P. 37(b)(2).

SO ORDERED.

ENTERED: _____

_____
Robert L. Miller, Jr., Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

DANIEL W. ATCHLEY b/n/f RUTH ATCHLEY, his mother and natural guardian, et al.,	)	
Plaintiffs,	)	
vs.	)	CIVIL NO. H91-310
NORFOLK & WESTERN RAILWAY COMPANY, et al.,	)	
Defendants.	)	

ORDER REGARDING DISCOVERY

The Court, being in receipt of the Joint Report of Counsel in this matter, hereby issues the following orders concerning discovery.

1) In cases where insurance is involved, all defendants are ordered to file a declaration sheet indicating coverage within twenty (20) days of entering appearance with the court, with copies to all parties. If a copy of the policy is required, this can be addressed through discovery procedures.

2) In cases involving personal injuries, all parties shall exchange all medical records, work records, and specials in their files (including those in possession of insurance adjusters) within twenty (20) days of this order. FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE COURT STRIKING THESE EXHIBITS OR TESTIMONY REGARDING THESE EXHIBITS.

ATTACHMENT "C"

3) In cases involving personal injuries, Plaintiffs, Cross-Claimants, Counterclaimants, Third Party Plaintiffs and *pro se* plaintiffs shall deliver to or make available to counsel for Defendants, Cross-Defendants, Counterdefendants, Third Party Defendants and/or *pro se* Defendants within twenty (20) days of this Order, medical and work authorizations to obtain copies of all medical and work records. In the event a special reason exists to justify nonproduction of said authorizations, a motion must be filed with the Court within ten (10) days seeking relief. The Court may order sanctions when ruling on motions for relief from the order to supply medical and work record authorizations. Copies of any and all records obtained by authorizations shall be supplied to all counsel or *pro se* parties for inspection and/or copying within ten (10) days of receipt of said records. FAILURE TO SUPPLY OR MAKE AVAILABLE MEDICAL AND WORK AUTHORIZATIONS MAY RESULT IN THE COURT STRIKING ANY REFERENCE TO MEDICAL OR WORK RECORDS WHICH WERE NOT AVAILABLE TO OPPOSING COUNSEL AND COULD HAVE BEEN MADE AVAILABLE BY WAY OF AUTHORIZATIONS. FAILURE OF THE DEFENDANTS, CROSS-DEFENDANTS, COUNTERDEFENDANTS, THIRD PARTY DEFENDANTS AND/OR *PRO SE* DEFENDANTS TO PROVIDE COPIES OF THE RECORDS OBTAINED BY WAY OF AUTHORIZATIONS FOR INSPECTION OR COPYING BY ANY OR ALL PARTIES MAY RESULT IN THE COURT STRIKING ANY REFERENCE BY DEFENDANTS, CROSS-DEFENDANTS, COUNTERDEFENDANTS, THIRD PARTY DEFENDANTS AND/OR *PRO SE* DEFENDANTS TO SAID RECORDS.

Information obtained by medical or work authorizations may only be disclosed (with the exception of trial evidence) to the attorneys

involved in this case, their parties or representatives, insurance companies or experts. Said information, with the exception mentioned above, is ordered to be kept confidential. Violations of the confidentiality order may result in sanctions. Medical and/or work authorizations submitted pursuant to this Order is only for the purpose of obtaining medical and or work records. It is not intended to be used for talking or conferring with doctors, medical personnel, representatives of medical institutions or places of employment.

4) Disclosure of Expert Testimony

(A) In addition to any other order of discovery required by this Court, each party shall disclose to every other party any evidence that the party may present at trial under Rule 702, 703, or 705 of the Federal Rules of Evidence. This disclosure shall be in the form of a written report prepared and signed by the witness which includes a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information relied on in forming such opinions; any exhibits to be used as a summary of or in support of such opinions; the qualifications of the witness; and a listing of any other cases in which the witness has testified as an expert at trial or in deposition within the preceding four (4) years.

(B) The information referred to in ¶ 4(A) shall be submitted by Plaintiffs, Cross-Claimants, Counterclaimants, Third Party Plaintiffs and *pro se* plaintiffs for their experts at least 105 days prior to this Court's first trial setting on this matter.

(C) Depositions by Defendants, Cross-Defendants, Counter-defendants, Third Party Defendants, and *pro se* Defendants of experts referred to in ¶ 4(A) shall be completed at least eighty-five (85) days prior to this Court's first trial setting on this matter.

(D) The information referred to in ¶ 4(A) shall be submitted by Defendants, Cross-Defendants, Counterdefendants, Third Party Defendants, and *pro se* Defendants for their experts at least sixty-five (65) days prior to this Court's first trial setting on this matter.

(E) Depositions by Plaintiffs, Cross-Claimants, Counter-claimants, Third Party Plaintiffs and/or *pro se* plaintiffs of experts referred to in ¶ 4(D) shall be completed at least forty-five (45) days prior to this Court's first trial setting on this matter.

(F) The information referred to in ¶ 4(A) for purposes of any party's rebuttal experts shall be submitted to all counsel at least forty (40) days prior to this Court's first trial setting on this matter.

(G) Depositions of rebuttal experts shall be completed at least thirty (30) days prior to this Courts first trial setting on this matter.

Failure to comply with the Court's Orders in ¶¶ 4(A)-4(G) may result in this Court's striking of an expert and/or experts' testimony. This Court WARNS counsel to abide by this Order. It is the Court's intent to avoid "sandbagging" and/or surprise experts at the last minute. This Court also suggests that all discovery

regarding experts be exchanged and/or completed prior to the final pretrial conference so that a more meaningful settlement conference may be addressed by the Court.

ENTER: _____

_____
RUDY LOZANO, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

MAFALDA BROWN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL NO. 91-352
	)	
OAKLEY TRANSPORT, INC., et al.,	)	
	)	
Defendants.	)	

JOINT REPORT OF COUNSEL
PRIOR TO PRE-TRIAL CONFERENCE

This Court, in accordance with all relevant Rules of Civil Procedure, including but not limited to Rule 11 and Rule 16(f), in an effort to facilitate discovery and exchange of relevant information necessary for an amicable settlement, hereby submits the following joint report to be completed by the counsel for the parties and any parties appearing *pro se*.

A. APPEARANCE.

Have all parties who are not proceeding *pro se* retained local counsel pursuant to N.D. Ind. General Rule 1(d)? _____

Has Defendant's counsel filed his formal written appearance for such Defendant pursuant to N.D. Ind. General Rule 2(a)? _____

B. **JURISDICTION AND VENUE**

What is the jurisdictional basis (statutory or otherwise) for this cause of action? _____

_____.

Is the aforementioned jurisdiction agreed upon by the parties? _____.

If not, has the Defendant filed an appropriate motion pursuant to Fed. R. Civ. P. 12(b)(1)? _____

Is the venue in this district or division agreed upon by the parties? _____

If not, has the Defendant filed a timely motion pursuant to Fed. R. Civ. P. 12(b)(3)? _____

C. **SERVICE**

Have all parties to this action been properly served? _____

If not, has the Defendant filed a timely motion pursuant to Fed. R. Civ. P. 12(b)(2), (3), (4) or (5)? _____

D. **CAUSE OF ACTION**.

What is the nature of the Plaintiff's claim? Specifically, set out what Plaintiff feels Defendant or Defendants did wrong (list acts of negligence, if any), why Plaintiff feels he should collect damages,

and what damages Plaintiff feels he is entitled to, and why.

What is the nature of the Defendant's defense claim and/or counterclaims for an affirmative defense? Specifically set out why Plaintiff should not prevail in this litigation (list acts of negligence, if any). If Defendant disagrees as to the nature and extent of damages, specifically set out why.

Have any cross-claims, third-party claims or an amended complaint been filed in this cause?

If so, briefly describe the nature of the same. Specifically set out the basis of the cross-claims, third-party claims or amended complaint. List acts of negligence, if any.

Describe the factual and legal issues involved in this cause.

_____

_____

_____

What type and what amount of damages or other relief in being sought? Set injuries and/or damages out specifically. _____

_____

_____

_____

_____

Has any party filed a motion pursuant to either Rule 12(b)(6) or Rule 56 of the Federal Rules of Civil Procedure? _____

If not, is such a motion anticipated of filing? _____

If such a motion has been filed, has it been fully and timely briefed pursuant to N.D. Ind. General Rule 9 or 11? _____

E. DISCOVERY

1) All parties, including Plaintiffs, Defendants, Cross-Claimants, Cross-Defendants, Counterclaimants, Counterdefendants, Third Party Plaintiffs, Third Party Defendants, and *pro se* parties

to the action, should separately list each and every specific witness and/or possible witness who has knowledge or information relative to any aspect of this case, and include with his or her list a summary of the knowledge the witness may possess which is relevant to the case. **(Attach the lists with summaries to this Joint Report.)**

2) In cases where insurance is involved, all defendants are ordered to file a declaration sheet indicating coverage within twenty (20) days of entering appearance with the court, with copies to all parties. If a copy of the policy is required, this can be addressed through discovery procedures.

3) In cases involving personal injuries, all parties shall exchange all medical records, work records, and specials in their files (including those in possession of insurance adjusters) within twenty (20) days of this order. FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE COURT STRIKING THESE EXHIBITS OR TESTIMONY REGARDING THESE EXHIBITS.

4) In cases involving personal injuries, Plaintiffs, Cross-Claimants, Counterclaimants, Third Party Plaintiffs and *pro se* plaintiffs shall deliver to or make available to counsel for Defendants, Cross-Defendants, Counterdefendants, Third Party Defendants and/or *pro se* Defendants within twenty (20) days of this Order, medical and work authorizations to obtain copies of all medical

and work records. In the event a special reason exists to justify nonproduction of said authorizations, a motion must be filed with the Court within ten (10) days seeking relief. The Court may order sanctions when ruling on motions for relief from the order to supply medical and work record authorizations. Copies of any and all records obtained by authorizations shall be supplied to all counsel or *pro se* parties for inspection and/or copying within ten (10) days of receipt of said records. FAILURE TO SUPPLY OR MAKE AVAILABLE MEDICAL AND WORK AUTHORIZATIONS MAY RESULT IN THE COURT STRIKING ANY REFERENCE TO MEDICAL OR WORK RECORDS WHICH WERE NOT AVAILABLE TO OPPOSING COUNSEL AND COULD HAVE BEEN MADE AVAILABLE BY WAY OF AUTHORIZATIONS. FAILURE OF THE DEFENDANTS, CROSS-DEFENDANTS, COUNTERDEFENDANTS, THIRD PARTY DEFENDANTS AND/OR *PRO SE* DEFENDANTS TO PROVIDE COPIES OF THE RECORDS OBTAINED BY WAY OF AUTHORIZATIONS FOR INSPECTION OR COPYING BY ANY OR ALL PARTIES MAY RESULT IN THE COURT STRIKING ANY REFERENCE BY DEFENDANTS, CROSS-DEFENDANTS, COUNTERDEFENDANTS, THIRD PARTY DEFENDANTS AND/OR *PRO SE* DEFENDANTS TO SAID RECORDS.

Information obtained by medical or work authorizations may only be disclosed (with the exception of trial evidence) to the attorneys involved in this case, their parties or representatives, insurance companies or experts. Said information, with the exception mentioned above, is ordered to be kept confidential. Violations of the confidentiality order may result in sanctions. Medical and/or work authorizations submitted pursuant to this Order is only for the purpose of obtaining medical and or work records. It is not intended

to be used for talking or conferring with doctors, medical personnel, representatives of medical institutions or places of employment.

5) Disclosure of Expert Testimony

(A) In addition to any other order of discovery required by this Court, each party shall disclose to every other party any evidence that the party may present at trial under Rule 702, 703, or 705 of the Federal Rules of Evidence. This disclosure shall be in the form of a written report prepared and signed by the witness which includes a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information relied on in forming such opinions; any exhibits to be used as a summary of or in support of such opinions; the qualifications of the witness; and a listing of any other cases in which the witness has testified as an expert at trial or in deposition within the preceding four (4) years.

(B) The information referred to in ¶ 5(A) shall be submitted by Plaintiffs, Cross-Claimants, Counterclaimants, Third Party Plaintiffs and *pro se* plaintiffs for their experts at least 105 days prior to this Court's first trial setting on this matter.

(C) Depositions by Defendants, Cross-Defendants, Counter-defendants, Third Party Defendants, and *pro se* Defendants of experts referred to in ¶ 5(A) shall be completed at least eighty-five (85) days prior to this Court's first trial setting on this matter.

(D) The information referred to in ¶ 5(A) shall be submitted by Defendants, Cross-Defendants, Counterdefendants, Third

Party Defendants, and *pro se* Defendants for their experts at least sixty-five (65) days prior to this Court's first trial setting on this matter.

(E) Depositions by Plaintiffs, Cross-Claimants, Counter-claimants, Third Party Plaintiffs and/or *pro se* plaintiffs of experts referred to in ¶ 5(D) shall be completed at least forty-five (45) days prior to this Court's first trial setting on this matter.

(F) The information referred to in ¶ 5(A) for purposes of any party's rebuttal experts shall be submitted to all counsel at least forty (40) days prior to this Court's first trial setting on this matter.

(G) Depositions of rebuttal experts shall be completed at least thirty (30) days prior to this Courts first trial setting on this matter.

Failure to comply with the Court's Orders in ¶¶ 5(A)- 5(G) may result in this Court's striking of an expert and/or experts' testimony. This Court WARNS counsel to abide by this Order. It is the Court's intent to avoid "sandbagging" and/or surprise experts at the last minute. This Court also suggests that all discovery regarding experts be exchanged and/or completed prior to the final pretrial conference so that a more meaningful settlement conference may be addressed by the Court.

Has discovery been initiated? _____

Have any discovery disputes developed? _____

If so, describe the existing or anticipated problems. _____

_____

_____

_____

_____

_____

_____

_____

Have any discovery motions been filed pursuant to Fed. R. Civ. P. 37(a)? _____

If not, is such a motion anticipated for filing? _____

Have the parties conducted the discovery conference required by N.D. Ind. General Rule 13 as to any and all motions related to discovery? _____

How long do the parties feel they need for discovery? _____

F. SETTLEMENT

Have the parties begun settlement negotiations? _____

If so, what is the likelihood of settlement in this cause?

_____

Would a settlement conference conducted by this Court at the close of discovery aid in the disposition of this cause? _____

G. **MOTIONS**.

Aside from those already listed in this report, are there any other motions pending or anticipated for filing? _____

If so, what are they? _____

_____

Are any of these motions unopposed of record (i.e., without a response brief being filed in opposition thereto pursuant to N.D. Ind. General Rule 9 or 11)? _____

If so, describe the same: _____

_____

_____

Have all motions, routine in nature or uncontested, been filed with an accompanying tendered form of order in the number and manner required by N.D. Ind. General Rule 7(d)? _____

H. **TRIAL**.

Has there been a jury demand made in this case? _____

If so, will the demand be challenged? _____

Estimated number of trial days: _____

COMMENTS

(The parties may use this portion of the report to apprise this Court of any additional matters regarding this case which require its attention at this stage in the proceedings.) _____

In compliance with the prior order of this Court, the undersigned now represent that they personally met on the _____ day of _____, 19____; that they have complied with this Court's orders and with the local and federal Rules of Civil Procedure; and that this report constitutes a thorough and accurate record of the same.

Dated: _____

_____ _____

Plaintiff or counsel | Typewritten name

Defendant or counsel | Typewritten name

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

Plaintiff	)	
v.	)	CIVIL NO. H
Defendant	)	

ORDER

Consistent with the requirements of the Civil Justice Reform Act, the United States District Court for the Northern District of Indiana has adopted a plan designed to decrease the cost of litigation and to expedite the disposition of civil cases. Pursuant to that plan, this court has been designated to experiment with the mandatory disclosure of discovery materials instead of the more formalized method of conducting discovery under the Federal Rules of Civil Procedure.

This matter is set for a preliminary pretrial conference on _____ at _____ __.M. Within 20 days of the receipt of this Order, the plaintiff shall provide the following information to each defendant:

1. The name, address, and telephone number of each person known or reasonably believed to have information relating to the allegations contained in the complaint.

2. A short statement of the expected testimony of each such witness (i.e., this witness saw the defendant run a red light).

3. The identity of each expert witness (including medical witnesses) expected to be called at trial.

4. A short statement of the expected testimony of each expert witness.

5. A list of all medical expenses incurred by the plaintiff(s) to date including:

   A. Which expenses have been paid;

   B. Who made the payments;

   C. Whether the plaintiff has been put on notice of any subrogation liens.

6. An itemization of all claimed lost wages.

7. A concise, but meaningful, description of how the accident occurred including the specific allegations of negligence.

The plaintiff shall further provide the defendant with copies of all photographs, medical bills, and other documents supporting the foregoing information consistent with Federal Rule of Civil Procedure 26(b).

Within 20 days of the receipt of the foregoing information, the defendant shall provide the plaintiff with the following information:

1. The name, address, and telephone number of each person known or reasonably believed to have information relating to the allegations contained in the complaint or any affirmative defense.

2. A short statement of the expected testimony of each such witness (i.e., this witness saw the plaintiff run a red light)

4. The existence and content of all contracts of insurance including policy limits.

5. A concise, but meaningful, description of how the accident occurred including any specific allegations of comparative negligence or any other affirmative defense.

The defendant shall further provide the plaintiff with copies of all photographs and other documents supporting the foregoing information consistent with Federal Rule of Civil Procedure 26(b).

It is expected that by providing all of the foregoing information, the parties will eliminate or significantly reduce the need for filing interrogatories and requests for production. Therefore, a party is not required to respond to any pending discovery requests which extend beyond the scope of this Order until after the preliminary pretrial conference. After the required information has been exchanged by the parties, meaningful deadlines for completing discovery and filing dispositive motions can be discussed at the preliminary pretrial conference so that trial dates may be assigned.

ENTERED this _____ day of _____, 199__

_____
Andrew P. Rodovich
United States Magistrate Judge

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