

IN THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT OF ALABAMA  
CIVIL DIVISION

BIRMINGHAM DIFFERENTIAL CASE MANAGEMENT PLAN

ADOPTED 1990, REVISED 2008 and 2017

DEVELOPED BY  
THE COMMITTEE TO DEVELOP A MODEL CASE MANAGEMENT PLAN FOR THE  
COURTS OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA, CIVIL DIVISION, SITTING  
IN BIRMINGHAM

ALABAMA ADMINISTRATIVE OFFICE OF COURTS  
MONTGOMERY, ALABAMA

## SECTION I: INTRODUCTION

On September 8, 1989, Chief Justice Sonny Hornsby appointed a committee of judges, attorneys, and administrators to develop a model case management plan for use in the Circuit Court for the Tenth Judicial Circuit, Civil Division, sitting in Birmingham. The Committee's goal was to reduce a backlog of pending litigation.

The Committee adopted a case management plan called the "Birmingham Differential Case Management Plan" ("the Plan") that went into effect on October 1, 1990. The Plan called for the assignment of each case to a specific Circuit Judge who would be responsible for the management of the case until its disposition. The Plan has obtained great success.

There have been many changes in docket handling during the years the Plan has been in effect; as discussed below, the Alabama Courts have now converted to electronic filing and anticipate that additional changes will be necessary in the future. In order for the Plan to reflect the manner in which the civil docket is currently being handled, the Administrative Director of Courts and the Chief Justice have authorized the Presiding Judge to effectuate needed revisions.

The Committee is currently composed of Circuit Judge Robert S. Vance, Jr.; Circuit Judge Michael G. Graffeo; David Sawyer of the Circuit Clerk's Office; Michael Ermert, Mac M. Moorer and J. Scott Vowell of the Birmingham Bar Association; and Joseph L. Boohaker, Presiding Judge of the Tenth Judicial Circuit. The Committee has also considered the input of the Birmingham Bar Association's Civil Courts Procedures Committee in revising this document. It is anticipated that the Committee will continue to function, and to alter or amend the Plan, as circumstances require.

## SECTION II: PROGRAM STRUCTURE

When a new case is filed, it will be randomly assigned to an individual judge except for certain cases specifically assigned to the Presiding Circuit Judge, as discussed in Section IV below. All matters pertaining to a case will thereafter be handled by the judge to whom the case is assigned, including hearing all motions.

When all defendants that have not been dismissed from a case have either answered or otherwise appeared, or have been defaulted, the case will be assigned by the judge to one of four tracks; expedited (governed under the Alabama Rules for Expedited Actions), accelerated, standard, or complex. Track assignments are initially based on information in the complaint and the civil case information sheet. Attorneys will have the opportunity to ask the Court for a change in track assignment if they feel another track is more suited to the management needs of the case (except that any changes for expedited actions will be governed under the Alabama Rules for Expedited Actions).

This section of the report will address the policies and procedures for the differential case management program. Policies addressing service of process, default judgments, and motion practice are discussed first since these policies will be uniformly applied to all cases, regardless of track assignment.

### Service of Process

After service is perfected on a defendant, the Clerk's Office will enter the date of service into the record. If service is not perfected, the Clerk will make an appropriate entry on the docket sheet.

Each month, the Clerk's Office will generate a "No Service Report," which is an internal report that identifies defendants for which service of the summons and complaint have not been perfected in a timely manner. If a defendant has not been timely served, a computer-generated notice will be mailed to counsel for the plaintiff approximately 45 days after the filing of the complaint. This notice will inform the attorney that he or she has 75 days within which to serve the defendant or the Court will dismiss the action without prejudice as to the defendant upon whom service was not made; provided, however, that if the plaintiff shows good cause for the failure to serve the defendant, the Court shall extend the time for service for an appropriate period.

Additionally, the judge may issue an order establishing a deadline for perfecting service; in this event, the judge's order shall supersede any notice from the Clerk's Office.

### Default Judgments

As stated in Rule 12 of the Alabama Rules of Civil Procedure, each defendant has 30 days from the date of service to respond to the complaint by filing either an answer or a motion. Every month the Clerk's Office will generate a "No Answer Report," which is an internal report that identifies defendants that have not timely answered the complaints in pending cases.

If the defendant has not filed an answer or other appropriate pleading within 40 days of service, counsel for the plaintiff will receive a "No Answer Notice," stating that the plaintiff has 30 days in which to apply for default judgment or the case will be dismissed. Additionally, the judge to whom the case has been assigned may enter an order establishing a deadline for the filing of a default judgment; in this event, the judge's order would supersede any notice from the Clerk's Office.

Any application for default judgment must be accompanied by an affidavit from the plaintiff (*not* the plaintiff's attorney) and/or other evidence attesting to the basis of the claims and relief sought, and the requisite filing fee. In those cases where damages are to be proven by an evidentiary hearing, the judge will notify counsel of the date and time for said hearing.

Any motion for entry of a default judgment by the Clerk or by the Court, under Rule 55(b)(1) or (2), respectively, must be accompanied by the appropriate filing fee. In this circuit, default

judgments have traditionally been entered by the Court rather than by the Clerk.

### Motion Practice

Any attorney desiring to have the Court consider a motion must file said motion with the Clerk's Office, electronically or by hard copy. Hard copy motions must contain an original signature of the movant or the movant's attorney. No pleading or motion shall be filed by facsimile. No copies shall be sent to the judge by facsimile unless specifically requested. The judge does not have the responsibility of filing motions.

Paper copies of any materials in support of motions, including briefs, in excess of 10 pages should be provided to the judge's chambers, unless the Court directs otherwise. Courtesy copies should be delivered no later than **2 business days** before the hearing.

Judges in the Birmingham Civil Courts prefer to receive materials electronically filed no less than 3 business days prior to a hearing date. Materials hand delivered to the judge's office should be delivered no less than 2 days prior to the hearing date.

Before filing any motion other than a dispositive motion, moving counsel shall contact the opposing counsel and determine if counsel will oppose the motion. All motions shall include, in the caption under the case number, a notation that the motion is either "Opposed" or "Unopposed."

If a party desires a hearing on the motion, the attorney must call the chambers of the judge assigned to hear the case before filing the motion to obtain a hearing date and time. All electronic filings, for which a hearing is needed or desired, are subject to this policy and should not be electronically filed without first obtaining a hearing date. Once the motion setting has been obtained, the attorney must put a "Notice of Hearing" on the motion, on the first page thereof, in prominent typeface.

If no hearing is requested, the attorney should place the statement "No Oral Argument Requested" on the motion, on the first page thereof, in prominent typeface. By law, some motions must be accompanied by a filing fee. Any such motion requiring the payment of a fee will not be accepted unless this fee is paid.

Proposed orders shall be submitted, even if also filed with or attached to a motion, to the Court's designated email address in the format preferred by the individual judge. Proposed orders shall not be submitted to the proposed order queue.

### Track Assignment

A case is determined to be ready for track assignment when all of the defendants that have not been

dismissed from a case have either appeared or have been defaulted. The judge shall make the track assignment and will set the first status conference for standard and complex cases.

Each Wednesday, the Clerk's Office will generate a "Ready Report," which is an internal report that identifies for every judge those cases on the docket that are ready to be assigned to a track. The judge will enter an order setting the track assignment and specifying the status conference date and time.

Except for actions governed by the Alabama Rules for Expedited Actions, each party has a period of 14 days from the date of the track assignment to file a motion for change of track assignment. After ruling on the motion, the judge's staff will provide notice to all parties.

#### Expedited Actions Track

If the parties have agreed to the assignment of the action to an expedited track pursuant to the Alabama Rules for Expedited Actions (whether originally or at a time allowed under such rules), the Court shall enter a scheduling order in compliance with such Rules.

#### Accelerated Track

For cases which the Court believes can be handled with efficiency but the parties have not consented to the Alabama Rules for Expedited Actions, the Court may assign to the accelerated track. Typical cases appropriate for the accelerated track include accounts, collection of bills and notes, commercial matters seeking liquidated damages, actions involving secured transactions, and District Court appeals. The goal for processing accelerated cases is six months.

All parties will receive an order from the assigned judge stating that their case has been assigned to the accelerated track. At its discretion, the Court may enter a setting for a status conference or an accelerated trial date.

**Discovery Limits:** To ensure the ability of the Court to move cases through the Court in an efficient and effective manner, cases assigned to the accelerated track will be subject to the following discovery limits:

No depositions will be allowed absent order of the Court. Additionally, a limit of 50 single-part paper discovery request items will be allowed for each party whether involving interrogatories, request for production, or request for admission. All discovery must comply with deadlines established by the Court's scheduling order.

#### Standard Track

Typical cases that may be classified within the standard track include, but are not limited to, automobile negligence, personal injury, property damage claims, and Federal Employees Liability Act (FELA) cases. The case-processing goal for standard cases is 12 months.

All parties will receive an order from the assigned judge stating that their case has been assigned to the standard track and setting a first status conference.

The discovery schedule in a standard case will be pursuant to the Court's scheduling order. A generic scheduling and trial setting order to be used in the Circuit Civil Division is attached as an appendix to the Plan. When the first status conference is held, the attorneys and the judge will typically determine a trial setting at that time. Attorneys shall bring their calendars to the conference and be prepared to set the trial date. It is anticipated that cases will go to trial approximately 30-60 days following the completion of discovery, unless otherwise ordered, with an overall goal of trial being set within 300 days from the date of the track assignment notice. During the status conference, the Court may also address the discovery schedule, consider discovery limits, and rule on any pending motions.

Discovery Limits: To meet the case-processing goal and to ensure that discovery is completed in a manner conducive to the timely disposition of the case, the following discovery limits for standard cases are set:

Discovery will be limited to six depositions per party. Additionally, each party will be limited to 100 single-part discovery request items whether involving interrogatories, requests for production, or requests for admission.

All discovery must comply with the deadlines established by the Court's scheduling order. A party may request relief from the discovery limitations in standard track cases.

Additional status conferences may be scheduled by the Court, as needed, to expedite discovery, limit the issues, and assure steady progress to disposition.

Final pre-trial conference: The judge may schedule a pre-trial conference following the completion of discovery to resolve any pending issues. Scheduling of the pre-trial conference will be coordinated with the parties and notice provided by the judge.

Trial notices will be mailed by the Circuit Clerk's Office at least 60 days before the trial date. If any judge sets a trial date after this period, the judge's staff will be responsible for providing notice of the trial date to all parties.

## Complex Track

Typical cases that may be classified within the complex track include professional malpractice cases, certain asbestos cases, securities litigation, class actions, major products liability, construction cases, and other cases which will require a disproportionate expenditure of judicial and litigant resources because of the complexity of issues raised. The case-processing goal for complex cases is 24 months.

All parties will receive an order from the assigned judge stating that their case has been assigned to the complex track and setting a first status conference.

**Discovery Limits:** To meet the case processing goal and to ensure that discovery is completed in a manner conducive to the timely disposition of the case, the following discovery limits for complex cases are hereby established:

The discovery schedule in a complex case will be pursuant to the Court's scheduling order. The scheduling order will provide any applicable limitation on the number and length of depositions during the discovery period. All discovery will be controlled by the scheduling order.

Additional status conferences may be scheduled by the Court, as needed, to expedite discovery, limit the issues, and assure steady progress to disposition.

**Final pre-trial conference:** The judge may schedule a pre-trial conference following the completion of discovery to resolve any pending issues. Scheduling of the pre-trial conference will be coordinated with the parties and notice provided by the judge.

**Trial Date Assignment:** The trial date may be set at the initial status conference, a subsequent conference, or otherwise by scheduling order. When a status conference is set, attorneys shall bring their calendars to every such conference and be prepared to set the trial date. It is anticipated that cases will go to trial approximately 60-90 days following the completion of discovery, unless otherwise ordered.

Trial notices will be mailed at least 60 days before the trial date. If any judge sets a trial date after this period, the judge's staff will be responsible for providing notice of the trial date to all parties.

### SECTION III: OTHER PROCEDURES

#### Deposition Scheduling

In the event there is a dispute over the order in which depositions are to be taken, a defendant issuing a deposition notice contemporaneously with the defendant's first responsive motion or pleading shall be entitled to conduct a party plaintiff's deposition first. Otherwise, the party who issued a deposition notice first should be permitted to conduct that deposition prior to any other

depositions being taken. The attorneys are encouraged to work among themselves, without the need for Court intervention, if changes in deposition scheduling become necessary.

With respect to Rule 30(b)(6) of the Alabama Rules of Civil Procedure, if corporate representatives are not located within the State of Alabama, a party being asked to tender such representatives for deposition will be expected to produce only one such representative in Jefferson County, Alabama absent agreement of the parties to the contrary, or unless otherwise ordered. Any further depositions of additional corporate representatives would be expected to be held at the deponent's location. Should the party for whom the representative will be testifying reasonably question the Court's personal jurisdiction, this party may object to producing a witness in Jefferson County until the issue is resolved.

#### Mediation or Settlement Conference

Parties to all civil cases are encouraged to consider mediation at any point during the pendency of the case. However, parties are reminded that the Court is not required to continue a case during the pendency of mediation. A party is deemed to appear at a mediation session if the following persons are physically present or, if so authorized by the judge, are reasonably available to authorize settlement during the mediation: (1) the party, or its representative (including counsel), if such representative (including counsel) has full authority to settle without further consultation; or (2) a representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle up to the amount of the plaintiffs last demand or policy limits, whichever is less, without further consultation. Willful failure of a party to attend or participate in the mediation should be reported to the Court.

Discussions during mediation are confidential. The judge does not rule on disputes arising in the course of mediation and the mediation proceedings are not part of the record of the case.

In addition, a settlement conference may be set at the request of either party and the Court will set any requirements or procedures for such conference.

#### Motions to Withdraw

Once an attorney has appeared as counsel for a party, *he or she may not withdraw from the action merely by filing a "notice of withdrawal,"* but must file a motion seeking permission of the Court to do so, explicitly stating the grounds therefore. Any motion to withdraw which, if granted, would leave a party unrepresented by counsel **must** include a certification that the moving attorney has served a copy of the motion on his or her client and has informed the client of the right to promptly file an objection with the Court. Such motion shall also be served at least ten (10) days before any scheduled hearing. The motion **must** also include the notation, "Future notice to (name of party) is to be made at the following address: (state last known address of the party)." The Court may make such exceptions to these requirements as appropriate to the circumstances.

### Electronic Filing

The AOC has implemented electronic filing for State Courts in Alabama. Jefferson County has adopted electronic filing for its Civil Courts. The current electronic filing system does not significantly differ from the paper filing system, aside from the actual mechanics of filing. The various administrative procedures promulgated by the Alabama Supreme Court, as well as any new or existing rules of civil procedure, are to be given precedence and complied with fully if in conflict with any of the practices and procedures set forth herein.

### SECTION IV: ROLE OF THE PRESIDING JUDGE IN CIVIL CASES

The position of Presiding Judge carries with it both administrative and judicial responsibilities. The Presiding Judge annually assigns the judges to their positions and also has responsibility for the Court Administrator and his or her staff, the Court Referees, and other Court personnel. The Presiding Judge works with the Jefferson County Commission, the Alabama Administrative Office of Courts, and the Chief Justice in securing funding to keep the Courts operating efficiently. The Presiding Judge works with the county on issues of Court security. The Presiding Judge, the Court Administrator, and the District Attorney set the annual trial dockets and designate weeks for jury trials. The Presiding Judge has duties concerning the summoning of jurors and welcoming them to jury service. The Presiding Judge is a spokesperson for the Courts, keeping the legal community and the public informed about the status of the Courts and any issues of significance which may arise.

With regard to judicial duties, certain cases are more efficiently handled by the Presiding Judge; these include unemployment compensation appeals, workers' compensation "best interest" settlements, ad valorem tax appeals, and drug condemnation cases. These categories of cases are assigned to the Presiding Judge's docket (designated as a separate "P-J" docket) and are not integrated into the regular civil docket. The Presiding Judge periodically reviews these assignments since the case load varies from time to time.