CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN
of the
UNITED STATES DISTRICT COURT
for the
MIDDLE DISTRICT OF FLORIDA

Pursuant to
The Civil Justice Reform Act of 1990
28 U.S.C. Sections 471 and 472
December 1, 1993

MIDDLE DISTRICT OF FLORIDA
CIVIL JUSTICE REFORM ACT EXPENSE AND DELAY REDUCTION PLAN

I. *INTRODUCTION*

The Civil Justice Reform Act

In December of 1990, the Congress of the United States enacted the Judicial Improvements Act of 1990, Title I of which is the Civil Justice Reform Act of 1990 ("CJRA" or "the Act"), which mandated that each United States district court devise and implement a civil justice expense and delay reduction plan. To assist the court in developing this plan, the CJRA called for the Chief Judge of each district to appoint an Advisory Group consisting of experienced trial lawyers and representatives of the major categories of litigants before the court.

In March, 1991, then Chief Judge Susan H. Black appointed the Advisory Group for the Middle District of Florida. The Act charged the Advisory Group with the preparation of a thorough assessment of the district's civil and criminal dockets, the identification of trends in case filings and the resulting demands placed on the court's resources, and the determination of the principal causes of cost and delay in civil litigation in the district. Further, the Advisory Group was required to assess existing rules, measures, programs, and practices in this district which facilitate the fair and efficient adjudication of civil cases, and to develop recommendations, rules and other measures to improve litigation management to help insure the just, speedy and inexpensive resolution of civil disputes in this district. The recommendations were to be based upon existing successful practices wherever possible, giving due consideration to

the particular needs and circumstances of the Middle District, the litigants in this court and the litigants' attorneys.

The court is deeply indebted to the members of the Advisory Group who donated literally hundreds of hours of work and extensive travel time to assist in the preparation of this Plan. Their dedication to this effort has made it possible for the court to implement a plan that will serve the needs of this court, the attorneys, and the litigants who come before it.

The Advisory Group Report

The Advisory Group members examined workload and case management statistics, conducted judicial interviews and solicited the views of attorneys and the public through attorney questionnaires and at several public hearings.[1] They concluded that the Middle District of Florida has stayed reasonably abreast of its civil docket under the very difficult circumstances of the last three years during which the court experienced 52.2 months of judicial vacancies. On the other hand, they believe there is a trend toward increased delay in the civil docket,[2] identifying three primary causes of this trend.

First and foremost is the failure to promptly fill judicial vacancies. According to the Advisory Group, unfilled vacancies are probably the greatest single source of delay in the Middle District.[3]

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[1] For a summary of the methodology employed by the Advisory Group in preparing its report, see the *Report of the Civil Justice Advisory Group of the United States District Court for the Middle District of Florida*, June 30, 1993 [*Report*], Appendix B at 131.

[2] *Id.* at 42.

[3] *Id.* at 52.

Second, the Group found that because the criminal docket has tripled over the last decade,[4] the requirements of the Speedy Trial Act and Sentencing Guidelines have resulted in the virtual pre-emption of the federal civil justice system by the criminal docket. Furthermore, they report that they foresee no diminution in the demands of the criminal docket. On the contrary, they expect the demands to increase and the situation to worsen. Therefore, this factor can be expected to perpetuate the trend toward delay in civil cases even when the judicial vacancies are filled.

Third, the Advisory Group found that this pre-emption of the civil by the criminal docket has occurred at the same time that Congress has greatly expanded federal civil jurisdiction.[5] The Group concluded that the expansion of federal civil jurisdiction alone would have resulted in a tendency toward delay in the civil justice system, but, taken with the expansion of and priority to be accorded the criminal docket, has created a serious mismatch between judicial resources and judicial workload.

Finally, the Advisory Group emphasized that the conditions which have produced this trend toward delay, are not anomalous, but chronic. Congress continues to expand federal jurisdiction--both criminal and civil. Filling judicial vacancies remains problematic, with vacancies existing indefinitely. The Group concluded, therefore, that despite this court's best efforts, delay can be expected to worsen in the Middle District.

On the issue of whether there is excessive cost in the Middle District of Florida, the Advisory Group relied upon the subjective perceptions of the bar in the Middle

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[4] *Id.* at 26.

[5] *Id.* at 44. *See also id.* at 32-33.

District of Florida as reported both in attorney questionnaires and at a series of public hearings held throughout the district. They report that it was widely agreed that litigating in the federal courts is costly, and that it is more costly than in state court. Discovery abuse and inadequate case management are considered important causes of this excessive cost. Therefore, the Advisory Group concluded that excessive cost is a problem of modern civil litigation, and that the Middle District of Florida is no exception in this respect.[6]

II. *EXPENSE AND DELAY REDUCTION PROVISIONS*

A. *Consideration of The Six Principles and Six Techniques Prescribed by Statute*

The CJRA requires each district court, in consultation with its Advisory Group, to consider adopting the six principles and six techniques of litigation management enumerated in Sections 473(a) and (b) of the Act. The Advisory Group found that six of these measures were already in place in the district by local rule, and that one other is widely employed by the individual judges of the court.

THE SIX STATUTORY PRINCIPLES OF CASE MANAGEMENT
§ 473(a)

(1) Systematic Differential Treatment of Civil Cases.

The Act requires the court to consider systematic, differential treatment of civil cases that tailors the level of individualized and case specific management practices 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.

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[6] *Id.* at 42-43.

This principle is already applied in the Middle District. Local Rule 3.05 presently provides that certain cases are to be diverted from a normal trial track. These cases include recovery cases, prisoner petitions, review of administrative decisions (largely social security cases), mortgage foreclosures, and habeas corpus petitions.

Diverted cases are treated differently from other civil cases and receive a form of expedited review. Prisoner petitions are handled by staff attorneys; social security and habeas corpus cases proceed directly to magistrate judges; and recovery and foreclosure cases are processed largely by the U.S. Attorney's office. The diversion of these cases requires less district judge involvement and allows them to be resolved more expeditiously.

The Advisory Group approved the court's present tracking system, and urged its further development which the court has provided for in its Plan.[7]

(2) **Early and Ongoing Control of the Pretrial Process Through Involvement of a Judicial Officer.**

The Act and the Advisory Group recommend the following: (a) early judicial involvement in assessing and planning the progress of the case; (b) setting early, firm trial dates to occur within 18 months of the filing of the complaint; (c) controlling the extent and timing of discovery; and (d) setting deadlines for the filing and disposition of motions.[8]

This principle is already applied in the Middle District. Local Rule 3.05(b) requires that a scheduling order be entered in every trial-track case. The district judge assigned to the case sends out an order containing a set of mandatory court

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[7] *Report*, Recommendation 7 at 69, and Exhibit B at 89.

[8] CJRA § 473(a)(2); *Report*, Exhibit B at 89.

interrogatories. The interrogatories solicit information regarding the nature of the case, the projected length of discovery and trial, the likelihood of settlement, and the desire of the parties for a preliminary pretrial conference. The parties are required to confer and report their answers to the court. Within 120 days of filing the complaint, and using the parties' answers as its guide, the court enters a scheduling order setting time limits for discovery, the filing of dispositive motions, the date of the pretrial and, perhaps, trial. Many judges hold preliminary pretrial conferences at which further planning is discussed.

(3) **Discovery-Case Management Conference in Complex and Other Appropriate Cases.**

The Advisory Group recommends such a conference be held in all trial-track cases.[9] The local rules permit but do not require such a conference. The court's new case management rule will continue this practice.

(4) **Cost Effective Discovery Through Voluntary Exchange of Information Among Litigants and Their Attorneys.**

The Advisory Group recommended this procedure. In view of the pendency of Fed. R. Civ. P. 26 which requires voluntary disclosure, and in view of the present uncertainty regarding whether Rule 26 will take effect in its presently proposed form, the court will defer further consideration of this recommendation until it is known whether the proposed amendment to Rule 26 will go into effect.

(5) **Certification of Good Faith Effort to Resolve Discovery Motions.**

Local Rule 3.01(g) already provides that before filing *any* motion in a civil case, the moving party shall confer with counsel for the opposing party and shall file a

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[9] *Report*, Exhibit B at 93.

statement certifying that the moving counsel has been unable to reach agreement on the resolution of the motion.

(6) **Authorization to Refer Appropriate Cases to Alternative Dispute and Resolution Programs.**

The Middle District of Florida was one of the first courts in the country to develop a court-annexed mandatory arbitration program. Chapter 8 of the Local Rules provides for automatic and mandatory referral to arbitration for certain types of cases. This includes any civil case filed which consists of a claim(s) not in excess of $150,000 (certain cases are excepted from mandatory arbitration, including, for example, civil rights cases). The parties in other cases may consent to voluntary arbitration.

Mediation has also been in place in the Middle District for some time. Chapter 9 of the Local Rules provides for mediation at a supervised settlement conference presided over by a qualified, certified and neutral mediator to promote conciliation, compromise and the ultimate settlement of a civil action. Mediation has enjoyed great success in the state courts of Florida during the last five years and the Advisory Group found enthusiasm for expanding its role in the federal courts.

THE SIX STATUTORY LITIGATION MANAGEMENT TECHNIQUES § 473(b)

(1) **The requirement for each party to jointly present a discovery-case management plan.**

Local Rule 3.05 already provides that upon receipt of the case, the district judge assigned to the case sends out an order containing a set of mandatory court interrogatories. The interrogatories solicit information regarding the nature of the case, the projected length of discovery and trial, the likelihood of settlement, and the desire of the parties for a preliminary pretrial conference. The parties are required to confer

and report their answers to the court. Within 120 days of the filing of the complaint, and using the parties' answers as its guide, the court sends out a scheduling order setting time limits for discovery, the filing of dispositive motions, the date of the pretrial and, perhaps, trial. When one is requested, or otherwise seems appropriate to the court in a complicated case, a preliminary pretrial conference is scheduled before either the district judge or the magistrate judge assigned to the case. A more detailed discovery and/or case management plan is then formulated at that hearing.

(2) **Attorneys with authority to bind at pretrial conferences.**

Local Rule 3.06(d) already provides that the lead trial attorney for each party must attend all pretrial conferences.

(3) **Party signature on requests for extension of discovery deadline or trial date.**

The Advisory Group recommends a requirement for a certification that any request for continuance be furnished to (but not necessarily signed by) the party. The court will amend the local rules to require that motions to continue trial must be signed by the attorney of record who shall certify that the moving party has been informed of the motion and has consented to it.

(4) **Neutral evaluation program.**

The Middle District of Florida does not provide such a program and the Advisory Group does not recommend its adoption in view of the alternative dispute resolution techniques of arbitration and mediation already in place. The court agrees with this assessment.

(5) **Representatives with authority to settle at settlement conference.**

The Advisory Group found that most judges in the Middle District require this attendance already, but there is no requirement for it in the local rules. The court will continue this practice.

(6) **Additional features as the court directs.**

B. *Expense and Delay Reduction Provisions*

CHANGES IN THE LOCAL RULES

Based upon the foregoing and the specific recommendations of the Advisory Group, the court today adopts the following Expense and Delay Reduction Provisions.

1. Pursuant to Recommendation 12 of the Advisory Group Report, the court will amend Local Rule 1.07 to add as follows:

> **RULE 1.07 PREPARATION, SERVICE AND RETURN OF PROCESS; SERVICE OF PLEADINGS SUBSEQUENT TO ORIGINAL COMPLAINT**
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> (c) Service of a pleading or paper subsequent to the original complaint may be made by transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by Rule 5, Fed. R. Civ. P. Service by delivery after 5:00 p.m. shall be deemed to have been made on the next business day. Service by facsimile constitutes a method of hand delivery for the purpose of computing the time within which any response is required.

2. Pursuant to Recommendation 26 of the Advisory Group Report, the court will amend Local Rule 2.04 to add as follows:

> **RULE 2.04 DISCIPLINE**
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> (g) Attorneys and litigants should conduct themselves with civility and in a spirit of cooperation in order to reduce unnecessary cost and delay.

3. Pursuant to Recommendation 8 of the Advisory Group Report, the court will amend Local Rule 3.01 to add as follows:

RULE 3.01 MOTIONS; BRIEFS AND HEARINGS

(h) All dispositive motions must be so designated in the caption of the motion. All dispositive motions which are not decided within one hundred and eighty (180) days of the responsive filing (or the expiration of the time allowed for its filing under the local rules) shall be brought to the attention of the district judge by the movant by filing a "Notice To the Court" within ten days after the time for deciding the motion has expired. Movant shall file an additional "Notice To The Court" after the expiration of each and every additional thirty day period during which the motion remains undecided. Movant shall provide the Chief Judge of the Middle District with a copy of each and every "Notice To The Court" which movant is required to file under this rule.

4. Pursuant to Recommendation 11 of the Advisory Group Report, the court will amend Local Rule 3.01 to add as follows:

RULE 3.01 MOTIONS; BRIEFS AND HEARINGS

(i) The use of telephonic hearings and conferences is encouraged, whenever possible, particularly when counsel are located in different cities.

5. Pursuant to Recommendation 25 of the Advisory Group Report, the court will amend Local Rule 3.03 to add as follows:

RULE 3.03 WRITTEN INTERROGATORIES; FILING OF DISCOVERY MATERIAL; EXCHANGE OF DISCOVERY REQUEST BY COMPUTER DISK

(f) Litigants' counsel should utilize computer technology to the maximum extent possible in all phases of litigation *i.e.*, to serve interrogatories on opposing counsel with a copy of the questions on computer disk in addition to the required printed copy.

6. Pursuant to Recommendation 7 of the Advisory Group Report, the court will amend Local Rule 3.05 to add as follows:

RULE 3.05 CASE MANAGEMENT

(a) As soon as practicable after the filing of any civil action, the Clerk shall designate the case for future management on one of three tracks. The Clerk will notify the Plaintiff of such designation and the Plaintiff must then serve that notice upon all other parties. The presiding judge may thereafter direct at any time that a case be redesignated from one track to a different track.

(b) Cases shall be designated by the Clerk to their appropriate tracks as follows:

1) Track One Cases shall include, but shall not be limited to, all habeas corpus proceedings instituted under 28 USC §§ 2241 - 2255; all prisoner petitions instituted pro se under 42 USC § 1983; all suits brought under any law of the United States providing for judicial review of final decisions of administrative officers and agencies, including the Social Security Administration; all appeals from the Bankruptcy Court or motions to withdraw references to the Bankruptcy Court; actions brought by the United States, or by agencies of the United States, seeking to foreclose mortgages or recover student loans or veteran benefits, or to enforce a summons issued by the Internal Revenue Service; and other civil proceedings which, by their nature, do not require a trial.

2) Track Two cases shall include all cases not designated as Track One Cases, and not within the definition of Track Three Cases as hereafter stated. Track Two Cases will normally consist of non-complex actions which will require a trial, either jury or non-jury, absent earlier settlement or disposition by summary judgment or some other means.

3) Track Three Cases shall include those cases involving class action or anti-trust claims, securities litigation, mass disaster or other complex tort cases, or those actions presenting factual or legal issues arising from the presence of multiple parties or multiple claims portending extensive discovery procedures or numerous legal issues such that the management techniques recommended in the Manual For Complex Litigation, Second, should be considered and applied as appropriate to the circumstances of the case. Track Three Cases shall also include any action so

imminently affecting the public interest (e.g. legislative redistricting, school desegregation, voting rights) as to warrant heightened judicial attention or expedited treatment.

(c) The following procedures shall apply depending upon the Track to which a case has been designated:

1) Track One Cases - -

(A) Government foreclosure or recovery cases, appeals from the Bankruptcy Court or motions to withdraw references to the Bankruptcy Court, and proceedings under 28 USC § 2255 will normally be managed by the presiding District Judge pursuant to notices or orders entered by the Judge, or by the Clerk under the court's direction, in each such case.

(B) Other Track One cases will normally be referred at the time of filing to the Magistrate Judges for management by them in accordance with other provisions of these local rules or standing orders entered in each Division of the court governing the duties and responsibilities of the Magistrate Judges. Such cases will then be managed by them pursuant to notices or orders entered by the Magistrate Judge, or by the Clerk under the court's direction, in each such case.

2) Track Two Cases - -

(A) All Rule 12, F. R. Civ. P., motions will be promptly considered by the court and will normally be decided within sixty (60) days after receipt of the last paper directed to the motion.

(B) Counsel and any unrepresented party shall meet within 60 days after service of the complaint upon any defendant, or the first appearance of any defendant, regardless of the pendency of any undecided motions, for the purpose of preparing and filing a Case Management Report in the form prescribed below. Unless the court orders otherwise, parties represented by counsel are permitted, but are not required, to attend the case

management meeting. The Case Management Report must be filed within 10 days after the meeting.

(C) The Case Management Report shall include:

(i) The date(s) and time(s) of the meetings of the parties and the identity of the persons present.

(ii) A date by which the parties have agreed to pre-discovery disclosures of core information, either voluntarily or as may be required by the Federal Rules of Civil Procedure or other provisions of these rules, and a detailed description of the information scheduled for disclosure.

(iii) A discovery plan which shall include a detailed description of the discovery each party intends to pursue (requests for admission, requests for production or inspection, written interrogatories, oral depositions), the time during which each form of discovery will be pursued, the proposed date for completion of discovery, and such other matters relating to discovery as the parties may agree upon (e.g., handling of confidential information, limits on the number or length of depositions, assertion of privileges).

(iv) A final date for the filing of all motions for leave to file third party claims or to join other parties and specification of a final date for the filing of any motions for summary judgment.

(v) A statement concerning the intent of the parties regarding alternative dispute resolution (settlement negotiations, court-annexed arbitration under Chapter Eight or court-annexed mediation under Chapter Nine of these rules), and specification of a date by which the parties will either report to the court concerning prospective settlement or apply for an order invoking arbitration or mediation.

(vi) A date by which the parties will be ready for a final pretrial conference and subsequent trial.

(vii) A statement assessing the need for a preliminary pretrial conference before entry of a Case Management and Scheduling Order.

(D) Upon receipt of the Case Management Report the court will either (i) schedule a preliminary pretrial conference to further discuss the content of the report and the subjects enumerated in Rule 16, F. R. Civ. P., before the entry of a Case Management and Scheduling Order, or (ii) enter a Case Management and Scheduling Order. The Case Management and Scheduling Order will establish a discovery plan and a schedule of dates including the dates of a final pretrial conference and trial (or specify dates after which a pretrial conference or trial may be scheduled on twenty [20] days' notice).

(E) It is the goal of the court that a trial will be conducted in all Track Two Cases within two years after the filing of the complaint, and that most such cases will be tried within one year after the filing of the complaint. A motion to amend any pleading or a motion for continuance of any pretrial conference, hearing, or trial is distinctly disfavored after entry of the Case Management and Scheduling Order.

3) Track Three Cases - -

(A) The provisions of subsections (c)(2)(A),(B) and (C)(i)-(vi) of this rule shall apply to all Track Three Cases.

(B) Upon receipt of the Case Management Report, if not sooner in some cases, the court will schedule and conduct a preliminary pretrial conference to discuss with the parties the content of the report and the subjects enumerated in Rule 16, F. R. Civ. P., before the entry of a Case Management and Scheduling Order.

(C) The Case Management and Scheduling Order will establish a discovery plan and will also schedule such additional preliminary pretrial conferences as may seem necessary as well as a final pretrial conference and trial (or specify dates after which a pretrial conference or trial may be scheduled on twenty [20] days' notice).

(D) It is the goal of the court that a trial will be conducted in all Track Three Cases within three years after the filing of the complaint, and that most such cases will be tried within two (2) years after the filing of the complaint or on an acutely accelerated schedule if the public interest requires. A motion to amend any pleading or to continue any pretrial conference, hearing or trial is severely disfavored because, in light of the need for special judicial attention, counsel should prosecute or defend a Track Three Case only if able to accommodate the scheduling demands.

7. Pursuant to § 473(b)(3) of the Act and Recommendation 10 of the Advisory Group Report, the court will amend Local Rule 3.09 to add as follows:

RULE 3.09 CONTINUANCES

(d) Motions to continue trial must be signed by the attorney of record who shall certify that the moving party has been informed of the motion and has consented to it.

8. Pursuant to Recommendation 2 of the Advisory Group Report, the court will adopt Local Rule 4.21 as follows:

RULE 4.21 PROCEEDINGS UNDER 42 U.S.C. SECTION 1983

A civil rights complaint filed on behalf of an inmate pursuant to 42 U.S.C. §1983 must:

(1) state that exhaustion of administrative remedies has been accomplished prior to the filing of the complaint, and

(2) attach a copy of the Department of Corrections grievance response(s) to the complaint to verify exhaustion.

9. Pursuant to Recommendation 13 of the Advisory Group Report, the court will amend Local Rule 8.02 to add as follows:

RULE 8.02 DEFINITION OF CASES TO BE ARBITRATED

(b) Mediation may be substituted for arbitration by the presiding Judge in any civil action subject to arbitration pursuant to this rule upon a determination for any reason that the case is susceptible to resolution through mediation.

OTHER ACTIONS TO BE TAKEN

10. Pursuant to Recommendation 17 of the Advisory Group Report, the court will secure the services of two visiting judges at all times for the Tampa division until its present judicial vacancies are filled.

11. Pursuant to Recommendation 18 of the Advisory Group Report, the court will encourage trial by magistrate judge at every case management conference or preliminary pretrial conference. Magistrate judges will set a date certain for trials to encourage consent by the parties.

12. Pursuant to Recommendation 19 of the Advisory Group Report, the court will request that the Judicial Council of the Eleventh Circuit exercise its authority under 28 U.S.C. § 158 to establish a bankruptcy appellate panel to handle bankruptcy appeals in this circuit.

13. Pursuant to Recommendation 20 of the Advisory Group Report, the court will complete the full computerization of all dockets as soon as possible.

C. *Recommendations to Congress or Others*

The Advisory Group recommends and the court endorses the following recommendations to Congress:

1. The Advisory Group (Recommendation 5) urges Congress to further limit diversity jurisdiction by (a) increasing the jurisdictional amount to $100,000.00, exclusive of interest and costs; (b) requiring damages meeting the jurisdictional test to be "compensatory damages"; and (c) prohibiting forum-state citizens from instituting original diversity cases against diverse defendants.

2. The Advisory Group (Recommendation 14) urges that Congress should immediately authorize the Middle District of Florida additional district judges, as justified by current case filings.

3. The Advisory Group (Recommendation 15) urges the adoption by Congress of the Judicial Nomination and Confirmation Reform Act of 1991, Senator Bob Graham's bill regarding judicial vacancies. The bill provides that the President shall submit a nomination to the Senate within 180 calendar days after the date on which a vacancy in the office of a judge occurs and that the Judiciary Committee must report the nomination to the Senate within 90 days after receiving the nomination. The bill requires that the Senate shall vote on the nomination within 30 days after receiving it.

4. The Advisory Group (Recommendation 16) urges that the Judicial Conference should direct the Judicial Resources Committee to revise the formula used for calculating the need for additional district and magistrate judges to one according greater weight to criminal cases than to civil cases.

5. The Advisory Group (Recommendation 27) urges Congress not to adopt legislation which would federalize all crimes committed with a handgun that travels in interstate commerce, and crimes of domestic violence.

6. The Advisory Group (Recommendation 29) urges that Congress refer all legislation having an impact upon the judicial system to the Congressional Budget Office for a fair and unbiased evaluation of the impact of such legislation upon the judicial branch of the United States government and the judicial branch of the state governments,

and that the report of such evaluation accompany proposed legislation at the appropriate stage in the legislative process to assure consideration of the report by the Congress.

7. The Advisory Group (Recommendation 30) urges that the Congress of the United States should provide that all bankruptcy court final orders are appealed directly to the appropriate circuit court of appeals.

8. The Advisory Group (Recommendation 31) urges that Congress should create an Article I court to review appeals from denial of social security benefits. Alternatively, Congress should provide that magistrates render final decisions for the district court in such cases with appeal to the appropriate circuit court of appeals.

III. *CONTRIBUTIONS TO BE MADE BY COURT, LITIGANTS, ATTORNEYS*

The court is satisfied that significant and meaningful contributions from all participants in the civil justice system are required by its Plan and that no one group has been singled out to make unreasonable sacrifices. *See* CJRA § 472(c)(3).

1. *By the Court*

The court has agreed to undertake a more formal tracking system, to increase its case management provisions, and to set limits on disposition time for motions. The court will assist the Advisory Group in fulfilling its statutory charge to monitor the effects of its recommendations and to report periodically on the status of the docket.

2. *By Litigants and Attorneys*

Attorneys will be required to make substantial changes in the way they approach the conduct of their cases and discovery. Attention will have to be focused on cases at

their inception. Attorneys will be required to actively develop discovery and case management plans and to attend case management and settlement conferences where required by the new tracking system.

3. *By Congress and the Executive Branch*

The Advisory Group has concluded that legislative and executive actions--or inaction in the case of judicial vacancies--have contributed greatly to the problems we now experience with cost and delay in civil litigation in the federal courts. Accordingly, the Advisory Group made several recommendations with respect to past and future legislation, as well as regarding the provision of judicial resources. The contributions requested from these two branches are among the most significant and far-reaching of all of those recommended by the Advisory Group. It is the court's firm conviction that very little progress can be made in reducing cost and delay in the civil justice system unless the legislative and executive branches address the issues raised by the Advisory Group in its recommendations.

IV. *IMPLEMENTATION SCHEDULE*

The Civil Justice Reform Act Expense and Delay Reduction Plan of the Middle District of Florida is adopted, effective December 1, 1993, and shall apply to all civil action cases filed on or after that date and may, in the discretion of the court, apply to civil action cases pending on that date. Further, the Civil Justice Reform Act Expense and Delay Reduction Plan is promulgated by this court pursuant to Title 28, United States Code, Sections 471 and 472, and this Plan, as it may be amended from time to

time, shall be maintained on file in the office of the Clerk of Court in each division of this district for public inspection. Finally, the Civil Justice Reform Act Expense and Delay Reduction Plan shall be published by the Clerk of Court to inform members of the bar and public of its adoption and to afford opportunity for public notice and comment.

V. *ANNUAL ASSESSMENT*

The Advisory Group will assist the court in its annual assessment of the condition of the court's civil and criminal dockets[10] with a view to determining appropriate additional actions that may be taken to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. The court and the Advisory Group will continue to perform this assessment each year until December, 1997.[11]

To support the court and the Advisory Group in the performance of this assessment mandate, the court will request the addition of one staff position to each of its three largest divisions (Tampa, Jacksonville and Orlando). These positions, required through December, 1997, will also be responsible for:

- providing case management, calendaring, courtroom and logistical support to the large number of visiting judges the court will continue to request to reduce civil case backlogs
- providing civil case screening and track management
- identifying additional alternative dispute resolution candidate cases

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[10] CJRA § 475.

[11] CJRA § 482(b)(2).

The court will adopt a CJRA Exit Questionnaire which will be analyzed and used as required to provide information necessary for the court and the Advisory Group to perform a meaningful assessment.

As no member of the Advisory Group may serve more than four years[12], the Chief Judge of the Middle District will appoint new members of the Advisory Group beginning in January, 1994. The Chief Judge will replace one-third of the Advisory Group in January of 1994, 1995 and 1996. The staggered terms will provide for continuity on the Advisory Group.

[12] CJRA § 478(c).

APPENDIX A

RECOMMENDATIONS NOT ADOPTED WITH RATIONALES

RECOMMENDATION 1: The court should adopt whatever measures necessary to insure that civil cases are tried regularly by the resident judges. If sufficient resources can be obtained under the Civil Justice Reform Act or otherwise, the Advisory Group urges the adoption of civil and criminal divisions.

RATIONALE: This recommendation has two aspects: the stated goal, in the first sentence, that civil cases be tried regularly by the resident judges (as distinguished from visiting judges); and the suggestion, in the second sentence, that civil and criminal divisions be adopted "if sufficient resources can be obtained."

Given the present state of understaffing in judgeships and the continuous delay in the filling of vacancies as they occur, both difficulties having been identified by the Advisory Group as chronic problems for the district, it is the judgment of the court that all is presently being done that can be done by the court to enable the resident judges of the district to try civil cases. Notably, the Advisory Group makes no specific recommendation here beyond the statement of the desired goal; and, accordingly, the court contemplates no specific action in response.

With regard to the establishment of separate civil and criminal divisions as one means of focusing attention on civil cases, the court notes that this recommendation is properly conditioned upon the provision of "sufficient resources." Clearly, the present resources of the district simply will not permit the establishment of separate civil and criminal divisions. To do so would, in fact, be counterproductive because the limited number of judges who could be assigned to handle only civil cases would be

overwhelmed by the pending civil motions, thereby exacerbating, not reducing, any delay in the administration of the civil docket.

The court will therefore defer taking any action on this recommendation at least until such time as additional judicial resources are provided and all vacancies have been filled.

RECOMMENDATION 3: The court should adopt a local rule which:

a. requires the defendant to file a special report in all *pro se* prisoner civil rights case filed pursuant to 42 U.S.C. § 1983, (but only in *pro se* cases), and

b. adopts a standardized form for such special report, based on the Federal Judicial Center's recommended Order Requiring Special Report.

RATIONALE: The court has elected not to follow this recommendation for two reasons: (1) the technique *was* employed in the Middle District of Florida some years ago without appreciable success; and (2) the recent implementation of the grievance procedure for inmates by the Florida Department of Corrections ("DOC"), and the amendment of Local Rule 4.21 regarding that procedure (pursuant to Recommendation 2 of the Advisory Group) should serve to achieve the same objective.

In the mid-1970's, the Middle District of Florida was among the first of several courts to experiment with this technique. Form orders were devised for entry upon the filing of *pro se* and *in forma pauperis* prisoner complaints directing the withholding of formal service of process, directing notification of the DOC by mail, and directing that the DOC make an investigation of the substance of the complaint followed by a report of the results of that investigation to the court before the filing of any motions or responsive pleadings. The thought was that such an investigation might lead the DOC

to take corrective action in many cases, thus obviating the prisoner's desire to litigate further; or, where the complaint related to a matter in which the DOC had already developed an extensive file or record (such as the provision of medical attention in cases claiming a deliberate indifference to known medical needs), the report could form the basis of prompt summary judgment proceedings. In either event the court would be saved the time otherwise consumed in reviewing the complaint for frivolity under 28 U.S.C. § 1915 or in passing on motions to dismiss under Rule 12.

In practice, however, this technique did not work. There was, in the first place, substantial and continuing resistance by the DOC and the Attorney General's office. Their position was -- often proved correct by experience -- that the investigation and report frequently required substantial time and expense in cases that could otherwise be disposed of on motion, thereby prolonging rather than reducing the time consumed by those cases. Also, dispensing with service of process and the motion practice seemed to serve as an incentive to the filing of such cases by some prisoners who quickly learned that all they had to do was submit a complaint in order to invoke a court-ordered investigation. The procedure ultimately became more trouble than it was worth and it was abandoned by the court in the late 1970's. No convincing case has been made that this practice should now be revived. On the contrary, the advent of the formal grievance machinery within the DOC and the requirement that the plaintiff-prisoner attach a copy of the results of that proceeding to his/her complaint would seem to accomplish the same objective, i.e., that the DOC has dealt with the substance of the complaint before it ripens into federal litigation.

RECOMMENDATION 4: Prisoner petitions brought pursuant to 42 U.S.C. § 1983 should be subject to mandatory arbitration at the institution at which the prisoner resides.

RATIONALE: The court has elected not to follow this recommendation for several reasons.

Normal civil litigation almost always has a settlement value, even when the claim is weak or the defense is strong, due to the desire of the parties to avoid both the risk and the cost of litigation. In the weaker cases this is sometimes called "nuisance value," and the court's mandatory arbitration program has been remarkably successful in bringing such cases to an early resolution with little or no judicial involvement. In prisoner litigation, however, the interests of the parties and the incentives to settle (or not to settle) are entirely different. Ordinarily, the settlement of a civil action will not invite other cases of like kind; but, obviously, in a prison environment, the state simply cannot afford to settle prisoner claims for their "nuisance value" because to do so would quickly invite the filing of large numbers of similar claims by other inmates. There is also the matter of logistics. As noted by the Advisory Group in its Report, arbitration hearings in such cases would have to be heard at the place of the plaintiff's confinement, not at the courthouse; and even if lawyers could be found in sufficient numbers who would undertake such pro bono service at their own expense, it is likely that they would be perceived by prison officials not as neutral practitioners but as lawyers having a special interest in prisoner affairs and prison conditions. Conversely, even if the arbitration awards were generally entered against the plaintiffs, they, as prisoners, would have little or no incentive to settle on that basis. A demand for trial *de novo* would almost certainly follow in every such instance because the motivating factors driving all too many prisoner complaints are the desire to harass the defendants and get a trip out of the institution and to the courthouse -- objectives not served by acceptance of an arbitration award, even one which would afford partial relief.

The court is sensitive to the fact that this technique was recommended by the Advisory Group on a trial or temporary basis; but, for the reasons stated above, the prospects of success are so dubious that the court is hesitant to expend the resources necessary to put such a program in effect even as an experiment, especially in the absence of any such suggestion by the DOC and/or those members of the bar regularly representing the defense in such litigation.

RECOMMENDATION 6: Pursuant to Local Rule 1.02, the court should temporarily reassign all pending and future cases in which the principal plaintiff resides in Hardee and Polk counties from the Tampa division to the Orlando division.

RATIONALE: This recommendation was made by the Advisory Group as a temporary measure until "the Tampa division receives its full complement of judges." While the Tampa division vacancies continue to languish in that condition as this Plan is being considered, it is probable that those vacancies will be filled by the time any shifting of Hardee and Polk counties would have any substantial, practical effect. This is true because of the lag time that would necessarily occur between the reassignment of Polk and Hardee cases and the scheduling of those cases in Orlando either for trial or for attention to pending motions. There is also the matter of identifying those cases in which substantial judicial labor has already occurred in the Tampa division such that a transfer to Orlando would result in an overlapping increase of judicial time devoted to the case.

The relatively small number of cases involved, the considerations noted above and the clerical burden of transferring the cases back and forth within a relatively short period of time has persuaded the court that this recommendation is not likely to produce sufficient benefit to justify the cost of its implementation.

RECOMMENDATION 9: The court should adopt a local rule providing for "motion calendar" day at which non-dispositive motions pending over thirty days could be brought to the attention of the magistrate.

RATIONALE: The commentary of the Advisory Group following this recommendation expressly notes that "there was little evidence that there is any significant backlog of motions pending before the magistrate judges," yet there was "enthusiasm among the bar to 'get before' the magistrate judge on motions..."

It seems to the court that the recommendation of a procedure whereby pending motions could be brought to the attention of the magistrate judge is quite different from a natural desire by the bar, as advocates, to "get before" a judicial officer -- implying the presentation of oral argument.

In either case, the court is not persuaded that the recommendation has merit. Given the complete automation of the civil docket, the magistrate judges (and the district judges to whom they are responsible in each case) can, and do on a daily basis, instantly retrieve lists of all pending motions by date of submission, and an opportunity for counsel to call pending motions to the attention of the magistrate judge would be a superfluous waste of time. On the other hand, conveying to counsel the right to oral argument based entirely upon the length of time a motion has been pending, and regardless of the magistrate judge's desire for oral elaboration, would serve only to increase (not reduce) the cost of the litigation to the parties without achieving any demonstrated likelihood of an earlier disposition. The court elects not to follow this recommendation.

RECOMMENDATION 21: The Middle District should urge the Northern and Southern Districts to adopt reciprocal attorney admissions among the three federal districts in the State of Florida.

RATIONALE: The attorney admission requirements of the Middle District are more easily met than those of our sister districts in Florida. Any member of the Florida bar -- which means any member of the bars of the Northern and Southern Districts -- is already eligible for admission in this district by simply paying the modest fee, certifying that (s)he has read the rules of the court and taking the prescribed oath. It is less than clear to the court, therefore, how reciprocity in admission requirements would reduce cost and delay *in the Middle District*. The subject is essentially moot in any event because it has been discussed by -- and the views of the bar have been brought forcefully to the attention of -- the judges of all three districts at the State meetings regularly conducted at the annual Judicial Conference of the Eleventh Circuit for the last several years. For this court to now make any formal request of either the Northern or Southern Districts that those courts amend their local rules in the manner recommended would be an unwarranted, and no doubt an unwelcome intrusion into the administrative affairs of those courts. We, therefore, decline to adopt this recommendation.

RECOMMENDATION 24: The court should adopt a local rule establishing a duty to disclose core information early in every case. The parties should be required to exchange core information prior to any other formal discovery activity. Core case information refers generally to:

1) The name and address of each witness which the party believes in good faith has factual or expert knowledge bearing on the issues in the case, setting forth as to each witness a brief general statement of the type of information known by the witness. The party will not be bound by the list so provided, but the court may consider the good faith of the party in

preparing such list in making later discretionary ruling involving case management.

2) A list of all types of documents (or other tangible things) then known to exist which the party will rely upon in presenting the case, or if a specific item cannot be identified, a list of the types of items believed to exist which the party expects to discover and rely on by the time of trial. The list will not be binding, but each party is expected to exercise good faith in preparing the list.

3) A list of all applicable insurance agreements under which any person carrying on an insurance business may be liable to satisfy part or all of a judgement which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgement, stating where these agreements may be inspected and copies.

RATIONALE: In view of the pendency of Fed. R. Civ. P. 26 which will address this concept and in view of the present uncertainty regarding whether Rule 26 will take effect in its presently proposed form, the court will defer further consideration of this until it is known whether the proposed amendment to Rule 26 will go into effect.

RECOMMENDATION 28: Congress should provide that ERISA actions and all future federal statutory causes of action may be brought in either state or federal court, and that removal on the basis of a federal question not be permitted. Congress should review all existing federal causes of action which have exclusively federal jurisdiction to determine whether concurrent jurisdiction should be granted to the state courts.

RATIONALE: While the court fully agrees with the apparent sense of this recommendation -- that the state courts should be given concurrent jurisdiction of federal statutory causes of action whenever possible, and that removal on the basis of federal question jurisdiction not be permitted in such cases -- it nevertheless feels constrained to reject this recommendation because of its breadth. To say that "ERISA actions and all future federal statutory causes of action" should be maintainable in state court is a policy decision which, in our judgment, cannot be made in such a sweeping, all-inclusive

manner before any consideration is given to the specific subject addressed by the federal legislation in question. There are some areas, ERISA being among them, in which Congress might well decide that federal interests and the desirability of national uniformity in the decisional law under the statute dictate that jurisdiction should lie exclusively in the federal courts. In any event, that type of policy decision lies exclusively within the province of the legislative branch, Congress; and the court, for that reason and the other considerations just stated, declines to adopt this recommendation.