Mattos

UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

CHAMBERS OF
JOSEPH J. LONGOBARDI
CHIEF JUDGE

December 17, 1991

LOCKBOX 40
844 KING STREET
U.S. COURTHOUSE
WILMINGTON, DELAWARE 19801

Abel J. Mattos, Chief
Court Programs Branch, Administrative
Office of the U.S. Courts
Washington, DC 20544

Re: Civil Justice Reform Act

Dear Mr. Mattos:

The United States District Court for the District of Delaware is pleased to enclose with this letter the "Final Report from the Advisory Group" and the Court's own "Civil Justice Expense and Delay Reduction Plan." The Plan is effective December 23, 1991.

Very truly yours,

JJL/ab

Enclosure

FINAL REPORT
FROM
THE ADVISORY GROUP
APPOINTED PURSUANT TO
THE CIVIL JUSTICE REFORM ACT OF 1990

TO
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

OCTOBER 1, 1991

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PREFACE

The Civil Justice Reform Act of 1990 requires each United States District Court to implement a "civil justice expense and delay reduction plan". In March 1991, Chief Judge Joseph J. Longobardi appointed an advisory group (the "Advisory Group") to assist the United States District Court for the District of Delaware (the "Court") in developing and implementing such a plan. Judge Longobardi charged the Advisory Group with: (1) assessing the condition of the Court's civil and criminal dockets, (2) identifying principal causes of cost and delay in civil litigation, and (3) making recommendations to reduce or control excessive cost and delay in civil litigation. This constitutes the final report of the Advisory Group.

This report consists of four sections. Section I ("Introduction") contains (a) an explanation of the Civil Justice Reform Act; (b) a description of the Court; and (c) a summary of the Advisory Group's work in the preparation of this report. Section II ("Assessment of Conditions in the District") provides the Advisory Group's assessment of the Court's dockets and sources of excessive cost and delay in civil litigation. Section III ("Recommendations and Their Bases") sets forth the Advisory Group's proposals to facilitate the just and efficient resolution of civil disputes. Section IV ("A Proposed Plan") contains the Advisory Group's proposed civil justice expense and delay reduction plan.

I. INTRODUCTION

A. The Background and Goals of the Civil Justice Reform Act[1]

Congress has concluded that the costs of civil litigation generally are high and are increasing in both complex and routine cases.[2] High costs impede access to courts and make it more difficult for parties to obtain proper judicial relief.[3] In addition, Congress also has found that delay in the course of litigation inhibits the full and accurate determination of facts and interferes with the deliberate and prompt disposition of cases.[4]

These perceived problems led Congress to enact the Civil Justice Reform Act of 1990 (the "Act")[5]. Congress designed the Act specifically to provide a national framework for attacking sources of unreasonable cost and delay in the civil justice system.[6] The Report of the Senate Committee on the Judiciary describes the goal of the Act as "promot[ing] for all citizens - rich or poor, individual or corporation,

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[1] The Civil Justice Reform Act of 1990 is Title I of the Judicial Improvements Act of 1990, P.L. 101-650, 104 Stat. 5089 (1990). A copy of the Act is found in Appendix A.

[2] Congress defined "litigation transaction costs" as the total costs incurred by all parties to civil litigation, excluding any ultimate liability or settlement. S. Rep. No. 101-416, 101st Cong., 2d Sess. 6 (1990) [hereinafter cited as S. Rep.], reprinted in 1990 U.S. Code Cong. & Ad. News 6808; H.R. Rep. No. 101-732, 101st Cong., 2nd Sess. 9 (1990) [hereinafter cited as H. Rep.].

[3] See S. Rep., supra note 2, at 7, 1990 U.S. Code Cong. & Ad. News at 6809; H. Rep., supra note 2, at 9.

[4] See id.

[5] As described at pages 13 and 38, the Advisory Group has found that civil litigation in the Court generally does not suffer from excessive cost and delay.

[6] See S. Rep., supra note 2, at 2, 1990 U.S. Code Cong. & Ad. News at 6804; H. Rep., supra note 2, at 8.

plaintiff or defendant - the just, speedy and inexpensive resolution of civil disputes in our Nation's Federal courts."[7]

B. Civil Justice Expense and Delay Reduction Plans

While the Act sets forth a national strategy for attacking cost and delay, it provides for the implementation of that strategy through a policy of decentralization.[8] Specifically, the Act requires each district court to implement a "civil justice expense and delay reduction plan" (the "Plan").[9] 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 resolutions of civil disputes.[10] Most importantly, however, the Act requires courts to craft their Plans in accordance with the needs and demands of local conditions.[11]

The Act does not mandate the terms for a district court's Plan. It does, however, require all courts to consider incorporating six "principles"[12] and six "techniques"[13] of litigation management and cost and delay reduction.[14]

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[7] S. Rep., supra note 2, at 1, 1990 U.S. Code Cong. & Ad. News at 6804.

[8] See S. Rep., supra note 2, at 2, 1990 U.S. Code Cong. & Ad. News at 6804; H. Rep., supra note 2, at 8.

[9] 28 U.S.C. § 471.

[10] Id.

[11] See 28 U.S.C. § 472(b)(2); S. Rep., supra note 2, at 15, 1990 U.S. Code Cong. & Ad. News at 6818.

[12] 28 U.S.C. § 473(a).

[13] 28 U.S.C. § 473(b).

[14] As discussed at page 10, infra, the Act does require the Plans adopted by "Pilot Districts" to contain the "principles" set forth in § 473 (a) of the Act, but it does not require Pilot Districts to include the Act's six "techniques" of litigation management.

The Act's six "principles" of litigation management are:

(1) the systematic, differential treatment of cases that tailors the level of individualized case management to such criteria as case complexity, the amount of time reasonably needed to prepare the case, and the availability of resources required for the case;

(2) the control of the pretrial process through the early and ongoing involvement of a judicial officer in: (a) assessing and planning the progress of a case, (b) setting early and firm trial dates, such that the trial is scheduled to occur within 18 months after the filing of the complaint unless the judicial officer certifies that the complexity of the case and the ends of justice necessitate a later trial date, (c) controlling the extent of discovery and the time for completing discovery, and (d) setting deadlines for filing motions and a time framework for their disposition;

(3) the careful and deliberate monitoring of complex cases through discovery-case management conferences at which the presiding judicial officer: (a) explores settlement, (b) identifies or formulates principal issues, (c) prepares a discovery schedule, and (d) sets deadlines for filing motions and a time framework for their disposition;

(4) the encouragement of cost-effective discovery through voluntary exchange of information and through the use of cooperative discovery devices;

(5) the refusal to consider 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; and

(6) the authorization to refer appropriate cases to alternative dispute resolution programs that have been designated for use in the court or that the court may make available.

The six "techniques" of litigation management suggested by the Act are:

(1) requiring counsel for each party to present jointly a discovery-case management plan for the case at the initial pretrial conference;

(2) requiring each party to be represented at each pretrial conference by an attorney who has authority to bind that party regarding all matters previously identified by the court (and all reasonably related matters);

(3) requiring all requests for extensions of deadlines for completion of discovery or for postponement of the trial to be signed by the attorney and the party making the request;

(4) providing for a neutral evaluation program to occur early in the litigation;

(5) requiring that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

(6) such other techniques as the district court considers appropriate.

C. The Court

The District of Delaware encompasses the entire state of Delaware[15], for which the Court sits in Wilmington, Delaware. Congress has authorized four district judgeships for the Court,[16] as well as one magistrate judgeship. At present, the Court is comprised of two active judges, three judges on senior status[17] and one full-time magistrate judge. As described in Section II.D.1, infra, vacancies have existed in the four district judgeships during four of the last seven years.

The State of Delaware historically has served as the state of incorporation of many companies which conduct business nationwide and internationally. The Advisory Group believes that this status contributes to the unusually high proportion of complex cases in the Court's caseload.[18]

D. The Advisory Group

Congress found that there are many factors which affect cost and delay in civil litigation and the ability of the civil justice system to provide proper and timely relief for aggrieved parties.[19] The courts, litigants, litigants' attorneys, and others

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[15] 28 U.S.C. § 87.

[16] 28 U.S.C. § 133. The "authorized judgeships" do not include judges who have elected senior status.

[17] Judges on senior status are generally required to carry a caseload equal to or greater than the amount of work which an average judge in service would perform in three months. See 28 U.S.C. § 371(f).

[18] See, Section II.C.4., infra, at p. 32.

[19] See § 102(2) of the Act, 28 U.S.C. § 471 note.

share responsibility for these factors.[20]Accordingly, Congress decided that all members of the litigation community should contribute to the reform of the civil justice system. The Act requires each district court to appoint an "advisory group" to assist the court in developing its Plan.[21] The advisory groups must include attorneys and other persons who are representative of major categories of litigants in the court.[22] The district court must consider the recommendations of the advisory group before implementing its Plan.[23]

The Act specifically charges each advisory group with the following responsibilities:[24]

(1) determining the condition of the court's civil and criminal dockets;

(2) identifying trends in case filings and in the demands being placed on the court's resources;

(3) identifying the principal causes of cost and delay in civil litigation;

(4) examining the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts; and

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[20] Congress also found that the Executive Branch and Congress itself share responsibility for cost and delay in the civil justice system. See Section 102(2) of the Act, 28 U.S.C. § 471 note.

[21] 28 U.S.C. § 478.

[22] 28 U.S.C. § 478(b).

[23] 28 U.S.C. § 472(a).

[24] See 28 U.S.C §§ 472(b) and (c).

(5) recommending to the court a plan of measures, rules and programs to control cost and delay in civil litigation.

In fulfilling the requirements of the Act, advisory groups must take into account the particular needs and circumstances of their district court.

After its appointment by Chief Judge Longobardi, the Advisory Group[25] adopted as its primary mission the development of a plan which would recommend measures, rules, and programs to administer civil justice "fairly". The Advisory Group also decided that it would base its plan on existing, successful practices when possible.[26]

To complete its mission and fulfill the requirements of the Act, the Advisory Group held an organizational meeting on April 3, 1991 and formed subcommittees to make preliminary studies and report upon the operation of the Court and practices affecting that operation.[27] Those subcommittees have completed a series of tasks, including: (a) collecting empirical data concerning the Court's civil and criminal dockets, (b) performing statistical analyses of the Court's dockets, (c) conducting a survey of attorneys who represented parties in more than 200 cases[28], (d) interviewing the judicial officers of the Court[29], (e) reviewing existing rules and procedures applicable to civil litigation in the Court, (f) reviewing litigant and attorney

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[25] Appendix C identifies the members of the Court's Advisory Group. See Appendix C, at C-1-3.

[26] Appendix B contains a copy of the mission statement adopted by the Advisory Group. See Appendix B at B-1-2.

[27] Appendix D contains a list of the subcommittees. See Appendix D at D-1.

[28] Appendix E contains an explanation of the methods used for conducting the survey. See Appendix E, at E-11.

[29] Appendix E contains an outline of the issues addressed in the interviews. See Appendix E, at E-2-10.

practices, (g) analyzing the effects of particular types of civil litigation[30], and (h) assessing the impact of new legislation on the Court.[31] After the subcommittees had completed their preliminary reports, all subsequent proceedings of the Advisory Group were conducted as a committee of the whole. The benefits derived from the wide variety of views expressed in those proceedings were significant and substantial.

E. The Pilot Program

The Act directed the Judicial Conference of the United States to conduct a "pilot program" during the four year period beginning on January 1, 1991,[32] including the designation of ten district courts as "Pilot Districts".[33] By December 31, 1991, the Pilot Districts must review the reports from their respective advisory groups and adopt civil justice expense and delay reduction plans. The plans adopted must include schedules for effecting their components, which must evidence a good faith effort to make the plans fully operational as promptly as possible. A Pilot District also must transmit a copy of its plan to: (1) the judicial council of the circuit in which the pilot court sits, (2) the chief judge of each of the other district courts in the circuit, and (3) the Director of the Administrative Office.

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[30] The Advisory Group reviewed the effects of cases in the following categories: pro se and prisoner litigation, litigation involving the United States, state and local government litigation, and complex litigation.

[31] The Advisory Group generated its lists of tasks for the subcommittees from its understanding of the Act and from the series of studies suggested by the February 1991 memorandum entitled Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, distributed by the Judicial Conference of the United States.

[32] See § 105(a) of the Act, 28 U.S.C. § 471 note.

[33] See § 105(b) of the Act, 28 U.S.C. § 471 note.

On March 12, 1991, the Judicial Conference of the United States notified the Court that it had been selected as a Pilot District.[34] Although the Act does not dictate the terms of a district court's Plan, it does require that the plans adopted by Pilot Districts include the six "principles" of litigation management described in Section 473(a).[35]

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[34] The other district courts selected as "Pilot Districts" include: the Southern District of New York, the Northern District of Georgia, the Eastern District of Pennsylvania, the Southern District of Texas, the Southern District of California, the Western District of Tennessee, the Western District of Oklahoma, the Eastern District of Wisconsin, and the District of Utah.

[35] See § 105(b) of the Act, 28 U.S.C. §471 note.

II. ASSESSMENT OF CONDITIONS IN THE DISTRICT

The Advisory Group found that a multi-level analysis provided the best understanding of conditions in the District of Delaware. That analysis needed to include an understanding of the present state of affairs in the Court as well as an understanding of any trends in the Court. Anecdotal information provided by judges, lawyers and litigants has been useful in this respect. The Group recognized, however, that such information may reflect the more atypical circumstances in the processing of cases. Accordingly, the Advisory Group asked its special consultant, Dr. Danilo Yanich, to provide a current analysis of civil cases and civil case processing in the Court. The Group also asked Dr. Yanich to provide a separate analysis of any trends in the Court's activity.[36]

The findings and conclusions set forth below are based upon data gathered by the Advisory Group and upon Dr. Yanich's studies. Section A provides a summary of conclusions reached by the Advisory Group. Sections B through E provide a detailed description of the Group's findings.

A. Summary of Conclusions

1. Civil filings greatly exceed criminal filings in the Court. See Section II.C.1.

2. The number of civil filings remained relatively stable during the period from 1985 through 1990, but criminal filings increased dramatically during that period. See Section II.C.1.

[36] Dr. Yanich's analyses also include a comparison of the Court with the thirteen other United States District Courts for which Congress has authorized four judgeships (hereinafter "four-judge courts").

3. Prisoner cases typically comprise more than one-third of the civil caseload in the Court. See Sections II.B.1.and II.C.4.

4. Cases traditionally considered to be "complex" comprise an unusually high proportion of the civil docket. See Section II.B.1 and II.C.4.

5. Most of the Court's civil cases are original filings where subject matter jurisdiction is based upon a federal question. See Section II.B.2.

6. Almost three quarters of the civil cases are settled or dismissed prior to judgment. See Section II.B.3.

7. In 1990, the number of cases pending in the court increased by 21 percent and the ratio of cases pending to cases terminated increased by approximately 55 percent. Both numbers had remained relatively stable during the years 1985 through 1989. See Section II.C.2.

8. During the period from 1985 through 1990, there has been a slight increase in the median time for completion of civil cases. Prisoner cases take the longest time to process. The median processing time for Prisoner cases during the period was 463 days, while the median processing time for all other cases was 275 days. No particular phase of civil litigation seems to require an excessive amount of time. See Sections II.C.5 and II.B.5,6 and 7.

9. During the last six years, there has been a notable increase in the time required to complete criminal felony cases. The median rate

of change from year to year has been approximately 11 percent. See Section II.C.5.

10. Vacancies in the district judgeships have occurred repeatedly during the last six years. See Section II.D.1.

11. The judges of the Court on senior status currently manage caseloads substantially in excess of that required of such judges. See Section II.B.4.

12. In comparison with all four-judge courts and given the persistent vacancies in the Court's authorized judgeships, the Court has managed its dockets effectively. See Section II.C.

13. Further action can be taken to reduce the cost and timing of civil litigation without affecting adversely the fair administration of justice. See Section II.E.

B. Current Condition of the Civil Docket

The text and the nine graphs in this section offer current information about the Court's civil docket and case processing.[37] The information is derived from a study of 322 civil cases that were closed between January, 1990 and May, 1991[38]. The study used only closed cases, because one purpose of the research was to

[37] The term "Case Processing" refers to circumstances and events which routinely occur during the course of civil litigation in the Court, e.g., assignment of cases, filing and disposition of motions, conferences, etc.

[38] The study did not use the date of case filing as a criterion for selection. Accordingly, the sample was not biased in favor of shorter cases.

examine cases that had gone through the Court's processes. Pending cases, by definition, had not completed the process.[39]

1. Distribution of Cases in the Civil Docket

The study of the 322 cases showed that the distribution of civil cases [40] is relatively equal across Prisoner, Contract/Tort, and "Other" types of cases[41]. Prisoner cases, consisting, for the most part, of pro se Section 1983 and habeas corpus actions, represented 33 percent of the sample cases, and Contract/Tort and "Other" each constituted 30 percent. A consolidated group of Patent/Environmental/Antitrust cases ("PEAT") comprised about 7 percent of the sample cases. See Figure 1. If the Prisoner cases are excluded from the sample[42], then Contract/Tort cases and "Other" cases each comprise 45 percent of the civil docket, and PEAT cases account for 10 percent[43]. See Figure 2.

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[39] Appendix D contains a more complete description of the sample, the survey instrument and the data gathering techniques for this study. See **METHODS FOR ANALYZING THE CURRENT STATUS OF THE CIVIL DOCKET** in Appendix D at D-2.

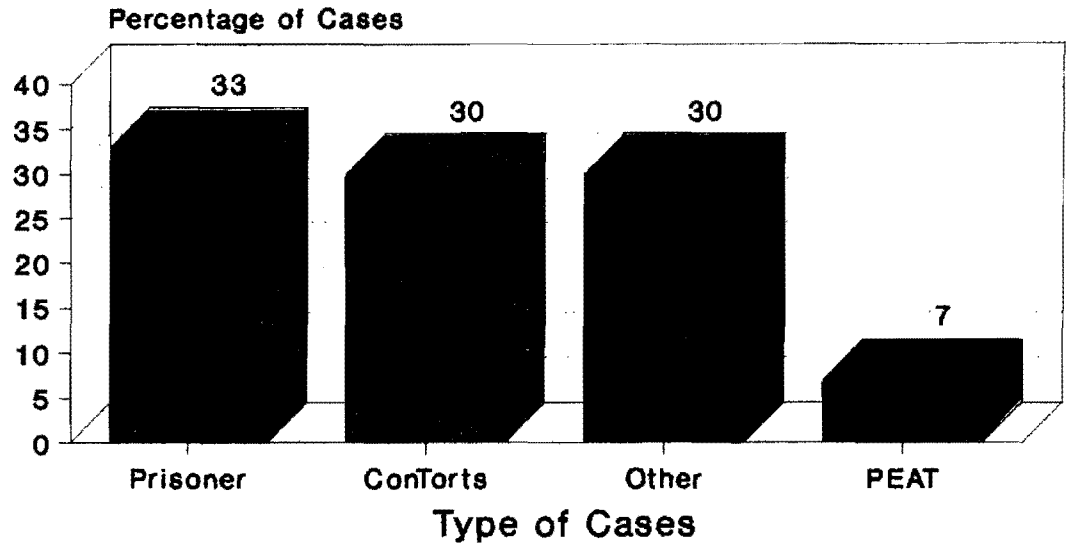
[40] Given the sample size, the Advisory Group believes that the characteristics of the sample as described in subsections 1a. through 1e. of Section II.B. provide a reasonably accurate description of the current civil docket.

[41] The Advisory Group aggregated the sample cases into four categories: "Prisoner", "Contract/Tort", "Patent/Environmental/Antitrust", and "Other", based on a preliminary review of the allegations of subject matter jurisdiction.

[42] Pro se prisoner cases generally do not follow the pattern of events which typically attend other civil cases. See L.R. 2.3, exempting such cases from the scheduling requirements of F.R.C.P. 16(b). Accordingly, to obtain a more accurate picture of the time to complete events in a more typical civil case, the study excluded such prisoner cases from the sample.

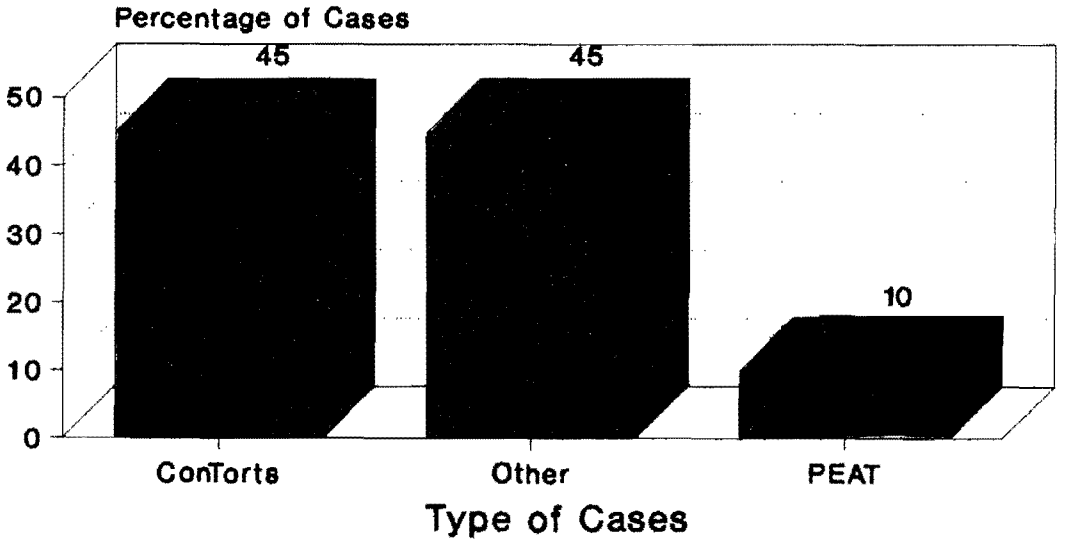
[43] See footnote 40.

FIGURE 1: DISTRIBUTION OF ALL CIVIL CASES
(FROM STUDY SAMPLE OF 322 CASES)



Source: D. Yanich, District Court Project, 1991. PEAT=Patent/Envir/Antitrust cases.

FIGURE 2: DISTRIBUTION OF NON-PRISONER CIVIL CASES
(FROM STUDY SAMPLE OF 213 CASES)

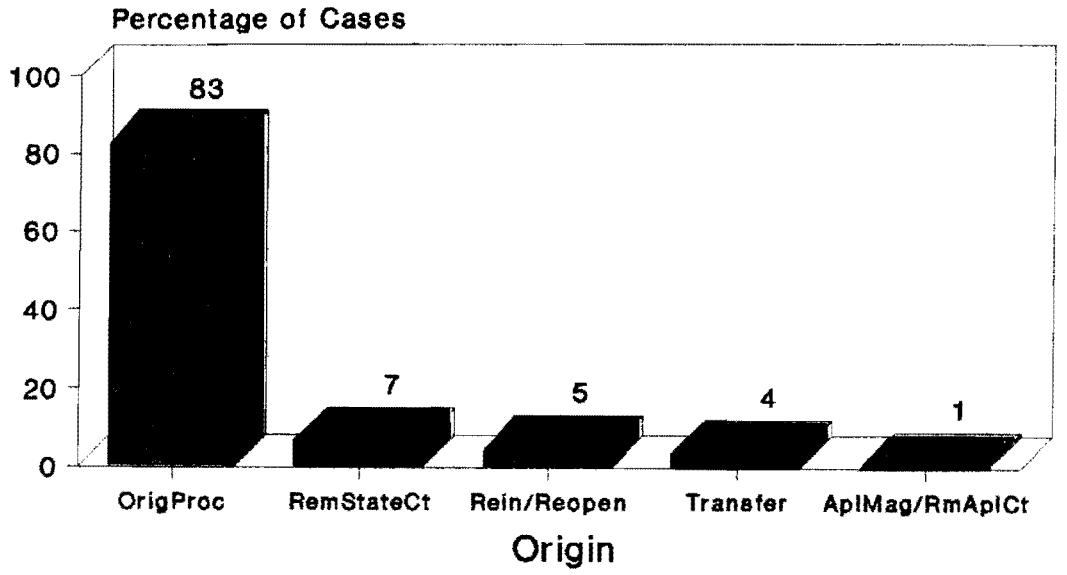


Source:D.Yanich, District Court Project 1991. This sample excludes 109 prisoner cases.PEAT=Patent/Envir/Antitrust cases.

2. Origin of Cases in the Civil Docket

The vast majority of the cases (83 percent) in the civil docket are original proceedings. Of the remaining cases, about 7 percent are removed from state court; 5 percent are reinstated or reopened cases; 4 percent are transferred from other courts; and, about 1 percent are appeals from the magistrate judge or remands from an appellate court. See Figure 3.

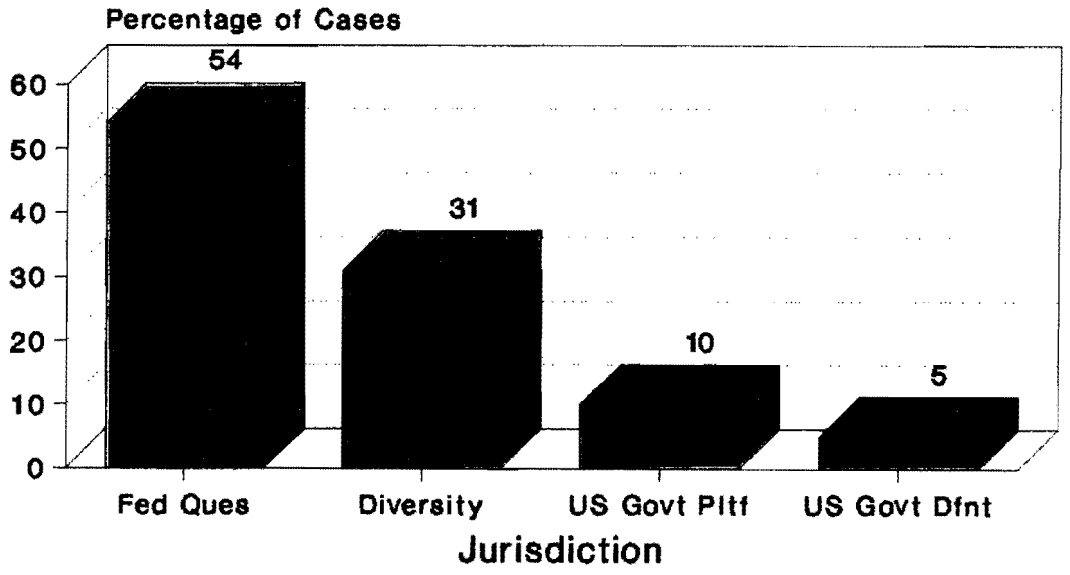
FIGURE 3: ORIGIN OF CASES
(FROM STUDY SAMPLE OF 213 CASES)



Source: D. Yanich, District Court Project, 1991.

More than half of the cases (54 percent) base subject matter jurisdiction on the existence of a federal question. Just under one-third (31 percent) of the cases are based upon diversity jurisdiction, and 15 percent of the cases base subject matter jurisdiction on the presence of the United States as a party. See Figure 4.

FIGURE 4: DISTRIBUTION OF CASES BY JURISDICTION (FROM STUDY SAMPLE OF 213 CASES)

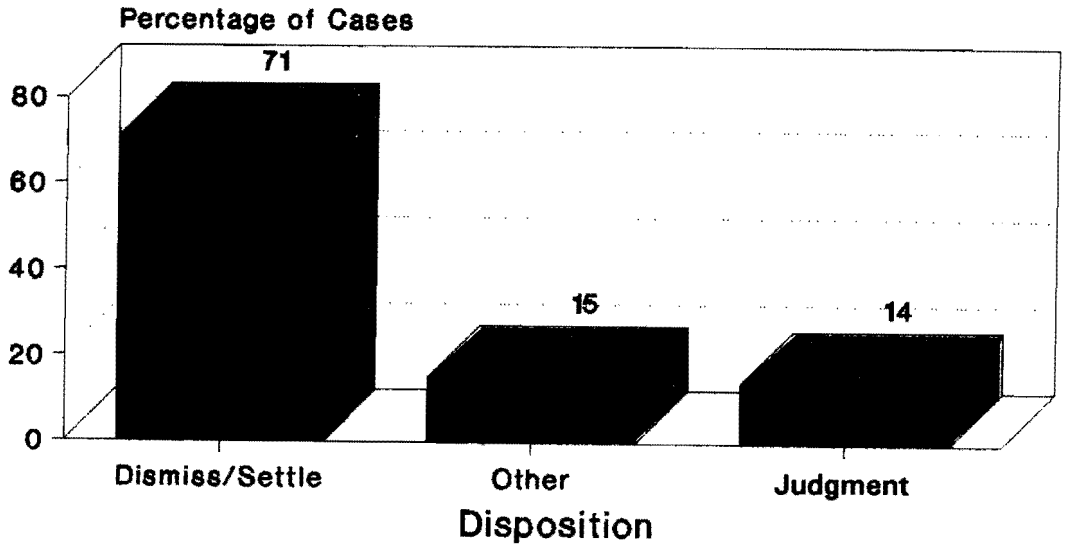


Source: D. Yanich, District Court Project, 1991

3. Disposition of Cases in the Civil Docket

Seven out of ten cases (71 percent) on the civil docket reach disposition through either settlement or dismissal prior to judgment. "Other" dispositions (which include transfers) and dispositions by judgment, are almost equally divided with 15 and 14 percent of the cases respectively. See Figure 5.

FIGURE 5: DISPOSITION OF CIVIL CASES
(FROM STUDY SAMPLE OF 213 CASES)



Source: D. Yanich, District Court Project, 1991. Note: Disposition was unknown for 10 cases.

14% go to judgment

4. Distribution of Cases Among Judges

The Court manages its civil docket through an "individual calendar" system. Under this system, the Clerk's office holds a civil case until an answer is filed or for 35 days after the filing of a complaint, whichever occurs first. Thereafter, the Clerk's office sends the case to the Chief Judge for assignment, which occurs at a weekly meeting of the judges. Each individual judge assumes responsibility for overseeing the progress of the particular cases assigned to that judge.[44]

The percentage of all civil cases assigned to District's judges ranges from 13 percent to 20 percent for each judge, including judges on senior status.[45] See Figure 6. The Chief Judge carries 20 percent of the caseload. The judges on senior status carry caseloads substantially exceeding the caseload required for such judges. As of March 31, 1991, the average caseload of the judges on senior status was 41.6 percent of the average caseload of the active judges. The median caseload of the judges on senior status was 35.2 percent of the median active-judge caseload.[46] The Advisory Group has concluded that it is unreasonable to expect the judges on senior status to continue to carry such a substantial caseload for the indefinite future.

The District's single magistrate judge is called upon to handle a substantial number of criminal, prisoner and administrative proceedings including: preliminary criminal proceedings, civil rights complaints and habeas corpus petitions filed by state

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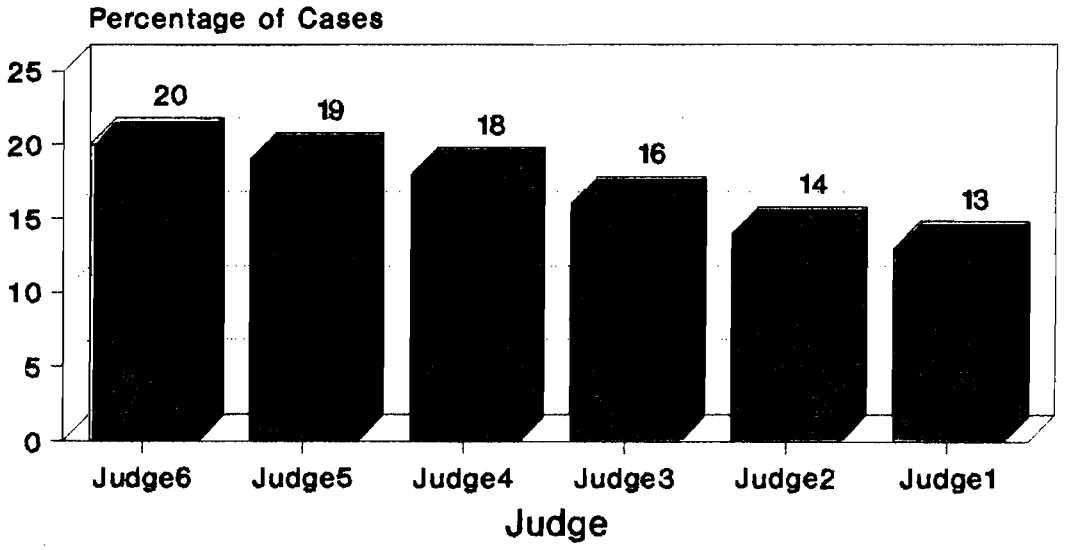
[44] In contrast, some courts utilize a "master calendar" system, where cases are not assigned initially to an individual judge, but rather remain in a general pool awaiting judicial action.

[45] The sample considered a distribution of the civil caseload -- excluding Prisoner cases -- to three judges on active status and three judges on senior status. The Court currently has only two judges on active status.

[46] The Clerk of the Court supplied the relevant data to the Advisory Group.

prisoners, and social security appeals filed with the Court.[47] Currently (and at the time of the sampling), the Court refers substantially all Prisoner cases[48] to the magistrate judge. From 1989 to 1990, the caseload of the magistrate judge increased by 12.8 percent from 732 matters to 826 matters. The magistrate judge has conducted an average of ten criminal non-jury trials per year since 1988. The number of civil trials she has conducted has been negligible.

FIGURE 6: DISTRIBUTION OF CASES AMONG JUDGES
(FROM STUDY SAMPLE OF 213 CASES)



Source: D. Yanich, District Court Project, 1991. Note: Judge was unspecified for 6 cases.

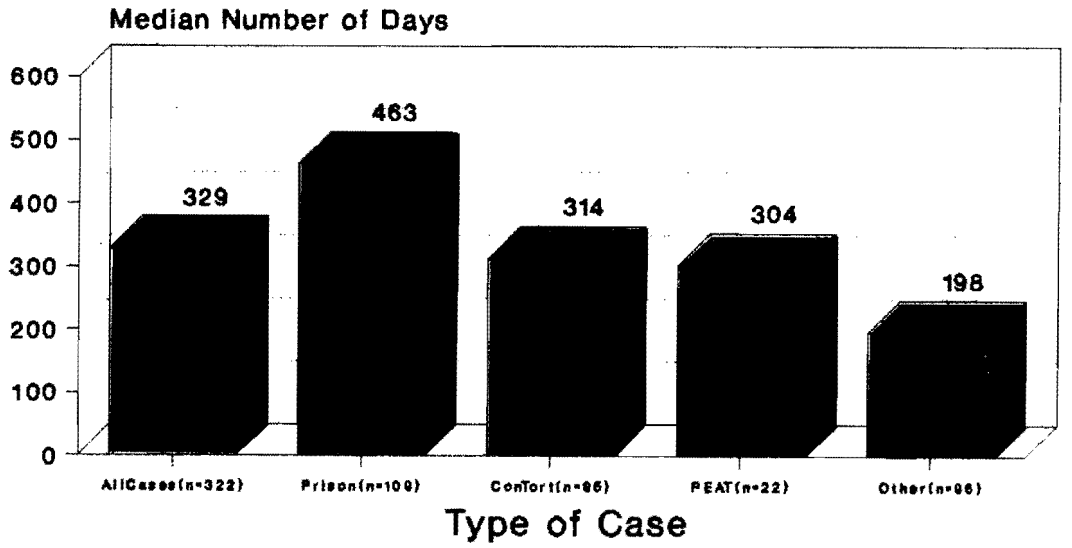
[47] Although the study did not specifically note cases referred to the magistrate judge, an understanding of the Court's docket requires an understanding of the duties currently performed by the magistrate judge.

[48] The group of "Prisoner cases" referred to the magistrate judge is comprised primarily of two types. In statistical year 1989, civil rights actions under 42 U.S.C. § 1983 accounted for 81 percent of the Prisoner cases handled by the magistrate judge, and habeas corpus petitions pursuant to 28 U.S.C. § 2254 accounted for the remainder. In statistical year 1990, civil rights actions accounted for 76 percent of the Prisoner cases, and habeas corpus petitions accounted for the rest. The Court's "statistical year" runs from July 1 to June 30.

5. Total Times for Processing Civil Litigation

A wide variation exists in the times taken to process, or "case age", of different types of civil cases. The median case age for all civil cases is 329 days.[49] Prisoner cases require, by far, the longest processing time with a median of 463 days. Excluding Prisoner cases, the median case age for all other cases is 275 days. Contract/Tort cases and PEAT cases have relatively equal case processing times of 314 days and 304 days, respectively. The "Other" category of cases required the least amount of processing time with a median case age of 198 days.[50] See Figure 7.

FIGURE 7: DISTRIBUTION OF CASE AGE BY TYPE OF CASE
(FROM STUDY SAMPLE OF 322 CASES)



Source: D. Yanich, District Court Project, 1991. Note: CaseAge is the time between open/close of case.

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[49] "Median case age" is defined as that point in the distribution of cases where half of the cases have a longer case age and half of the cases have a shorter case age.

[50] In addition, the Clerk of the Court has reported that as of June 30, 1991, Prisoner petitions constituted 24 percent of the cases pending that were older than three years. Patent cases accounted for 21 percent of the cases older than three years.

6. Phases of Civil Litigation

While total case age is helpful for understanding case processing, it is also useful to consider the phases through which a case typically moves. Information about the time it takes to complete particular phases of cases will assist in an understanding of the specific activities which may lead to excessive cost or delay in civil litigation.

The data collected[51] about the processing of various phases of civil litigation revealed the following[52]:

(a) The median time for the period from the entry of the scheduling order to the disposition or closing of the case was 294 days. See Figure 8, "SchOr/Close"

(b) The median time for the period from the filing of the last answer to the end of discovery was 249 days. See Figure 8, "LAns/EndDis".

(c) The median time for the period from the date of the scheduling order to the end of discovery was 188 days. See Figure 8, "SchOr/EndDis".

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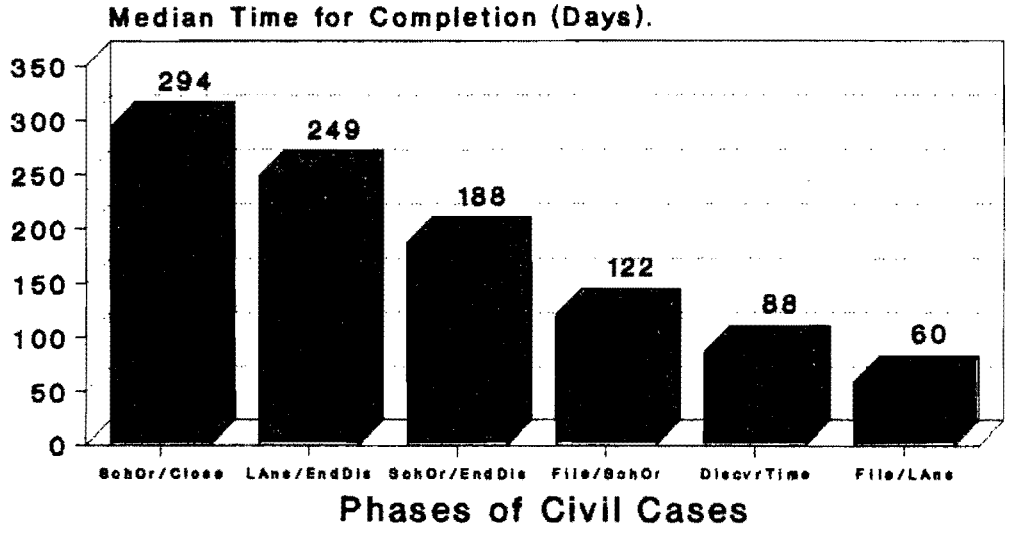
[51] The sample size for several of the phases studied was sufficiently small to lack any statistical significance. Nevertheless, the Advisory Group finds the data from these cases to be instructive, because: (1) they are not inconsistent with anecdotal evidence developed by the Advisory Group, and (2) they may indicate trends in case processing.

[52] The Advisory Group identified these particular phases for study, because it felt that they reflected typical, principal events in civil litigation. It should be noted that not all of the cases in the sample went through all of the phases. Accordingly, one cannot add the columns in Figure 8 to obtain a median total case processing time.

(d) The median time for the period from the filing of the complaint to the date of the scheduling order was 122 days. See Figure 8, "File/SchOr".

(e) The median time for the period from the filing of the complaint to the filing of the last answer was 60 days. See Figure 8, "File/LAns".[53]

FIGURE 8: TIME PERIODS FOR COMPLETION OF PARTICULAR PHASES OF CIVIL CASES (FROM STUDY SAMPLE)



Source:D. Yanich, District Court Project 1991. Note:These data reflect small samples which reduce their reliability.

[53] The Advisory Group attempted to collect data concerning the median time for the period from the "beginning" to the "end" of discovery. The "beginning" and the "end" of discovery are very difficult to determine from the Court's records. Due to time constraints, the paralegals who gathered the data for the study were instructed to leave blank the dates for the "beginning" and "end" of discovery if there was any question as to the correct information. Therefore, data in this category were reported for only 37 cases. Those cases reflected a median of 88 days for the discovery period. Because of the small size of the sample, the Advisory Group considers this information to be of very limited value.

7. Case-Dispositive Motions[54]

Case-dispositive motions can have an important impact on the cost and processing time of civil litigation. Accordingly, the Advisory Group examined the processing of such motions. The data indicated the following[55]:

(a) The median time for the period from the filing of the case-dispositive motion to the filing of the last brief on the motion was 49 days.[56] See Figure 9, "MotF/BriefF."

(b) The median time for the period from the filing of the last brief to the oral argument was 26 days. See Figure 9, "BriefF/OralArg."

(c) The median time for the period from oral argument until the decision on the motion by the court was 32 days. See Figure 9, "OralArg/MotDec."

(d) The median time for the period from the filing of the case dispositive motion until the court's decision was 100 days. See Figure 9, "MotF/MotDec."[57]

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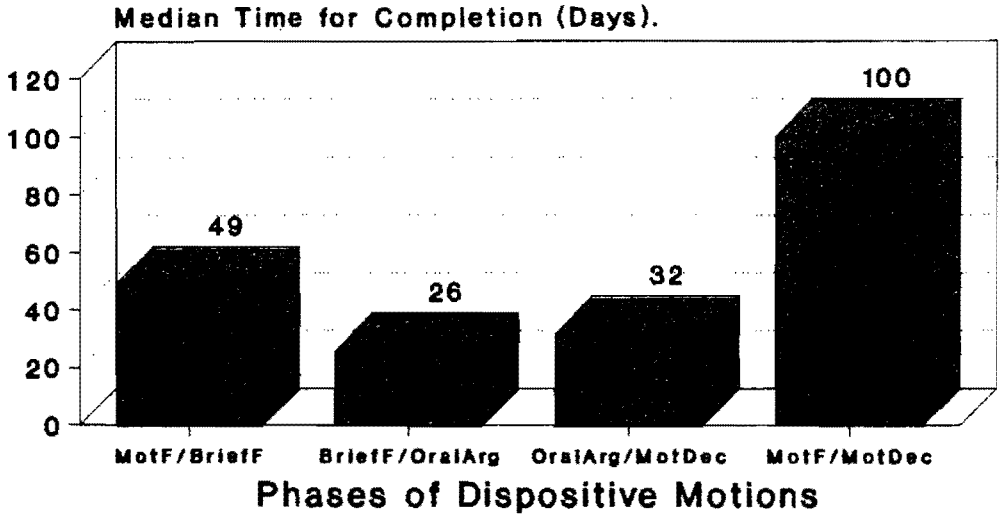
[54] "Case-dispositive Motions" include motions to dismiss, motions for judgment on the pleadings, and motions for summary judgment.

[55] See footnote 51.

[56] L.R. 3.1 does not require a party to file a supporting brief with a motion. The rule fixes a briefing schedule which may be modified by agreement of the parties, subject to approval by the Court.

[57] Because each case in the survey did not pass through all of the phases for which data was collected, the first three columns in Figure 9 cannot be added together to arrive at the median time from the filing of the motion until the court's decision.

FIGURE 9: TIME PERIODS FOR COMPLETION OF PHASES OF CASE DISPOSITIVE MOTIONS (FROM STUDY SAMPLE)



Source:D. Yanich,District Court Project, 1991. Note:These data reflect small samples which reduces their reliability.

C. Trends in the Court's Dockets and Demands on Resources[58]

The Advisory Group has used data from a number of sources to identify trends in the Court's dockets and in the use of Court resources. The sources include the Administrative Office of the United States Courts, a survey of attorneys conducted by the Advisory Group[59], interviews with the Court's judicial officers and the independent inquiries by the subcommittees.

1. Trends in Case Filings

During the period from 1985 through 1990, the median percentage for civil cases as a percentage of total case filings was 89 percent. In 1990, civil case filings comprised 87.5 percent of total case filings. The number of civil filings in the Court decreased slightly (4 percent) from 1985 to 1990, but the median rate of change in civil case filings from year to year was 3.6 percent. See Figure 10.

The Advisory Group has also noted several developments in particular types of cases and the processes employed in their disposition. For example, the number of Prisoner cases filed has increased every year since 1988, with a total increase of almost 52 percent. Case-dispositive motions (primarily motions for summary judgment) are the most common method used to resolve Prisoner cases. That method of resolution places great demands on the Court's resources, because it requires: (a)

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[58] The years identified in the text and graphs in Section II.C. reflect statistical years between July 1 and June 30. For purposes of context, Section C also contains comparisons of the Court's performance with the performance of other four-judge courts.

[59] See Appendix E, at E-11.

the tracking of motions and briefs; (b) the issuance of a Report and Recommendation by the magistrate judge; (c) the tracking of any objections by the parties to the magistrate judge's Report; (d) the issuance by the Court of an order or opinion adopting or rejecting the Report; and, (e) the conduct of an evidentiary hearing if the case may not be disposed of by motion.

The filings of appeals from the Bankruptcy Court increased by more than 500 percent from 1990 to 1991 (9 to 59), and cases brought under the Fair Debt Collection Practices Act[60] increased by almost 300 percent from 1989 to 1990 (12 to 47).[61] Fair Debt Collection cases are resolved in a prompt manner, but they generally require a trial. Accordingly, given the growing number of Fair Debt Collection cases and the corresponding number of trials, these cases impose an increasing and noteworthy demand on the Court's resources.

The trend in criminal filings has been quite different from the developments in civil filings. Between 1985 and 1990, criminal filings increased by 158 percent, and the median rate of change in criminal filings from year to year was 27.6 percent. See Figure 10. The increase in criminal cases is significant, because of statutory requirements that the Court give precedence to criminal actions over civil actions. Accordingly, although the actual number of criminal cases is a small percentage of the total filings, criminal filings may command the Court's attention to a greater extent than the numbers would suggest.

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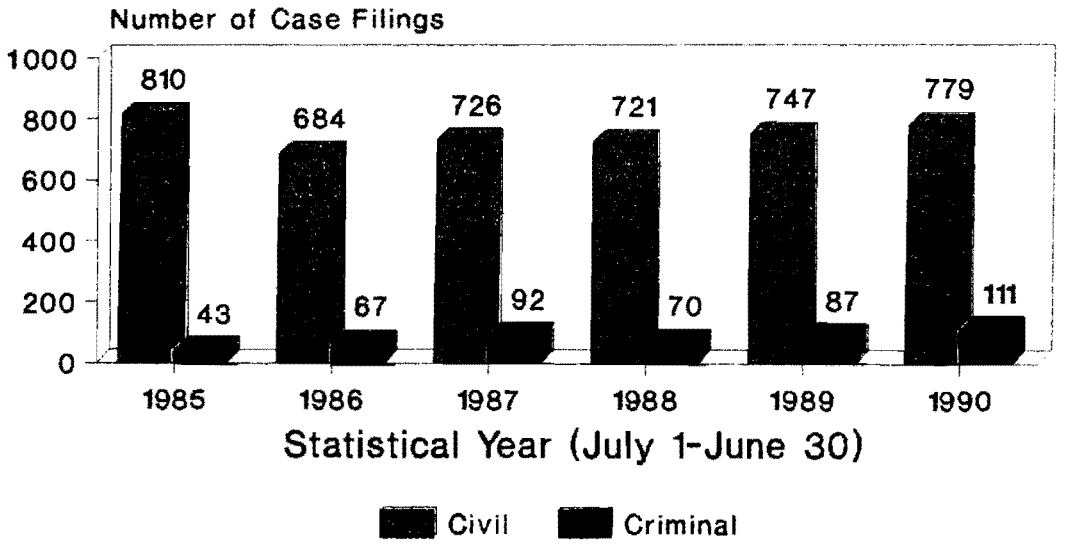
[60] 15 U.S.C. §1692 et seq.

[61] The Clerk of the Court provided this data.

FIGURE 10: CASE FILINGS IN U.S. DISTRICT COURT, DELAWARE, 1985 - 1990

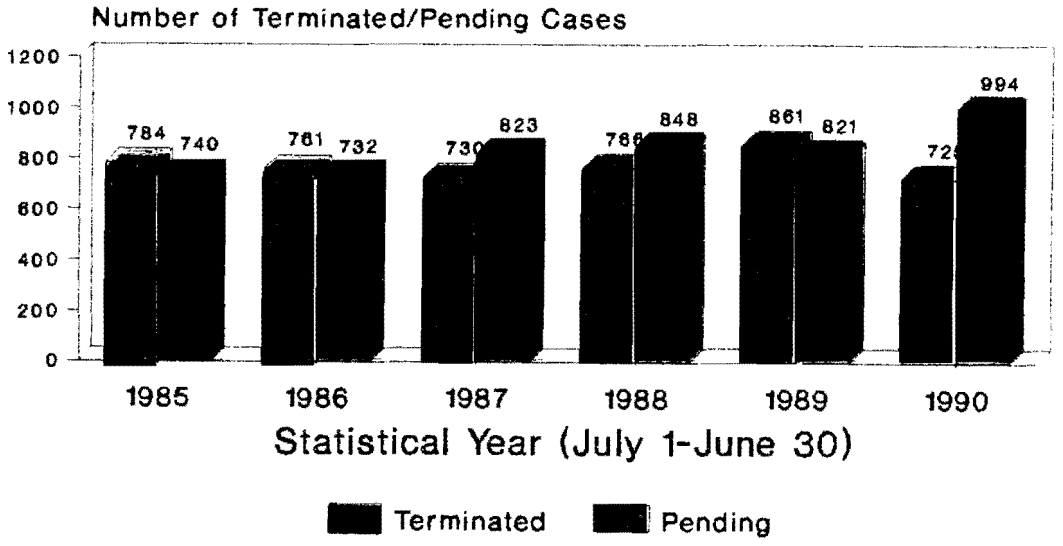


Source: D. Yanich, District Court Project, 1991.

2. Trends in Terminations and Pending Cases

One method to assess whether the Court is effectively managing its civil caseload is to compare the number of case terminations to pending cases. The number of cases terminated and the number of cases pending remained relatively even during most of the period from 1985 to 1990.[62] See Figure 11.

FIGURE 11: CASES TERMINATED/PENDING
U. S. DISTRICT COURT, DELAWARE, IN 1985 - 1990

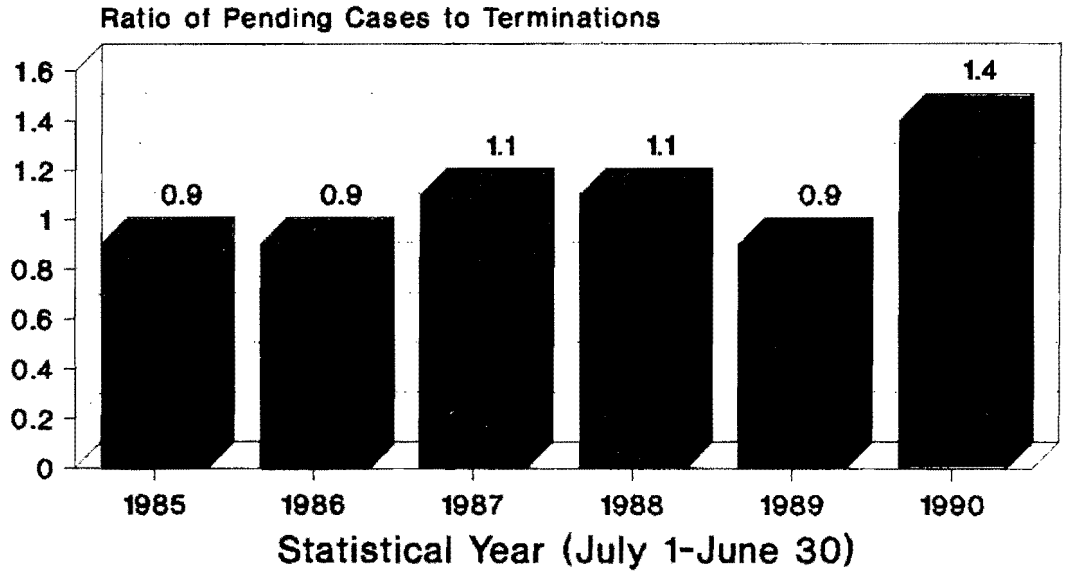


Source: D. Yanich, District Court Project, 1991.

[62] The median rate of change in the number of pending cases from year to year was -1 percent. The median rate of change in the number of cases terminated was -2.9 percent.

The ratio of pending cases to terminations also remained relatively constant.[63] In 1990, however, pending cases increased by 21 percent and terminations decreased by 16 percent. The ratio of pending cases to terminations jumped from an average of 0.98 during the period 1985-1989 to 1.4 in 1990. See Figure 12.

FIGURE 12: COMPARING RATIO OF PENDING/TERMINATIONS IN U. S. DISTRICT COURT, DELAWARE, 1985 - 1990



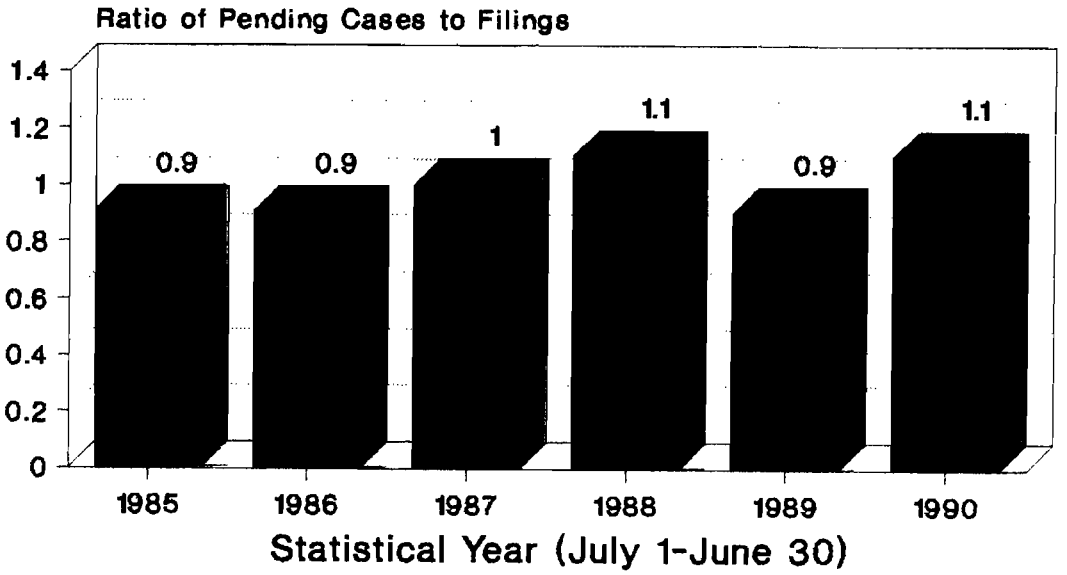
Source: D. Yanich, District Court Project, 1991.

[63] The ratios are determined by dividing pending cases by cases terminated.

3. Ratios of Pending Cases to Case Filings

Another method to gauge the activity of the Court is a comparison of the ratios of pending cases to case filings. Over the six-year period from 1985 through 1990, the Court maintained a ratio of pending cases to case filings of about one to one. See Figure 13. Among four-judge courts in 1990, the ratio ranged from a high of 1.9 (for every case filed 1.9 cases were pending) in the Northern District of New York to 0.8 in the Eastern District of Tennessee. The Court's ratio of 1.1 in 1990 placed it in the middle of the activity of four-judge courts. See Figure 2 in Appendix F.[64]

FIGURE 13: COMPARING RATIO OF PENDING/FILINGS IN U. S. DISTRICT COURT, DELAWARE, 1985 - 1990



Source: D. Yanich, District Court Project, 1991.

[64] Appendix F contains a series of figures which provide information about the Court in relation to all four-judge courts.

4. Caseload Mix

The numbers and ratios concerning case filings, pending cases, and terminations are indices of the Court's activity, but again they provide only part of the picture. Because different types of cases require the expenditure of different resources, the nature of the caseload mix is a critical factor in understanding the Court's dockets.[65] See Figure 14. Specifically, the data discloses that during the period 1985-1990, Prisoner cases rose from a low of 27 percent of all civil case filings in 1986 to a high of 38 percent in 1990. See Figure 14. In comparison to other four-judge courts, the Court ranked third in terms of the percentage of its civil case mix comprised of Prisoner cases. See Figure 3 in Appendix F. Further, the percentage of Contract/Tort cases declined during the last four years. They comprised 23 percent of the cases in 1990. See Figure 14. Among four-judge courts, only two courts had a smaller percentage of Contract/Tort cases in 1990. See Figure 4 in Appendix F. Finally, Patent/Copyright/Trademark/Antitrust cases ("PCTA") averaged 6.5 percent of civil case filings from 1985 to 1990. The highest percentage of PCTA cases was 7.5 percent in 1985, and the lowest was 5.3 percent in 1986. In 1990, the Court's percentage of PCTA cases (6.3 percent) was the highest of any four-judge court by a significant margin. See Figure 5, in Appendix F.

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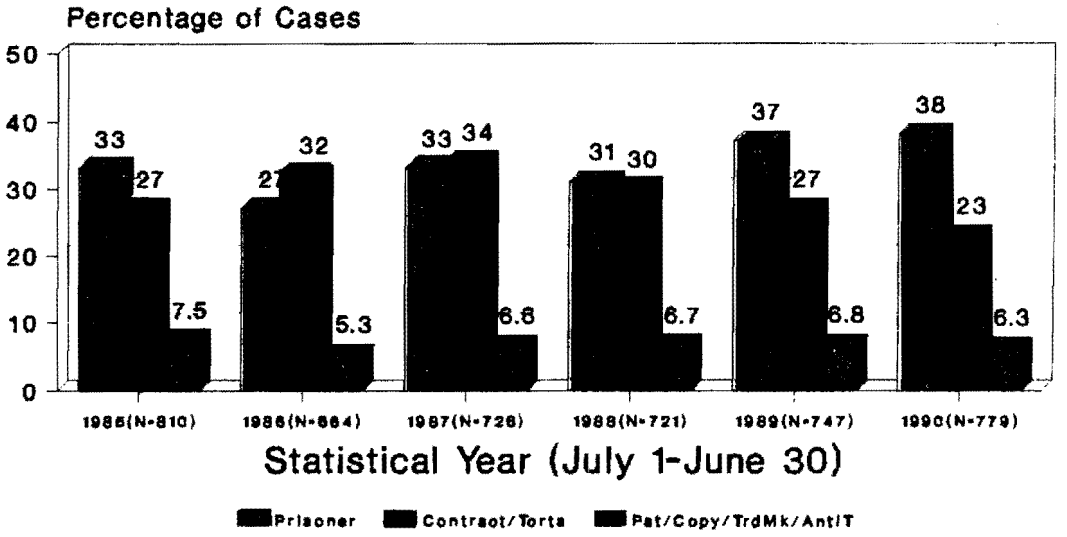
[65] For this section, the Advisory Group has considered three categories of cases: Prisoner cases, Contract/Tort cases, and Patent/Copyright/Trademark/Antitrust cases. The Advisory Group used these three categories because it was able to collect trends data in this format from the Administrative Office of the United States Courts. These types of cases comprised a majority of cases pending in the Court during the period 1985-1990.

FIGURE 14: COMPARING CASELOAD BY NATURE OF SUIT IN
U. S. DISTRICT COURT, DELAWARE, 1985 - 1990

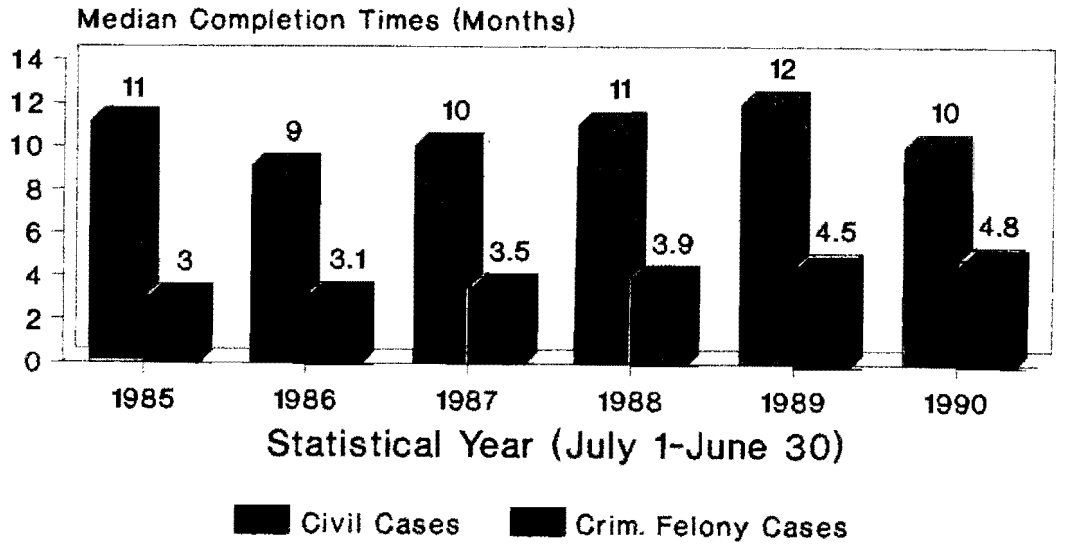


Source: D. Yanich, District Court Project, 1991. Note: Remaining cases for each year were in "other" category.

5. Trends in Case Processing Time

From 1986 to 1989, the completion time for civil cases rose steadily, (from 9 months to 12 months). The time decreased to 10 months in 1990. See Figure 15. With an 11 month median for completion time of civil cases, the Court falls squarely in the middle of the completion times in four-judge courts. The median completion times ranged from 7 months to 14 months. See Figure 6 in Appendix F.

FIGURE 15: COMPLETION TIMES OF CIVIL/CRIMINAL FELONY CASES
U. S. DISTRICT COURT, DELAWARE, 1985 - 1990

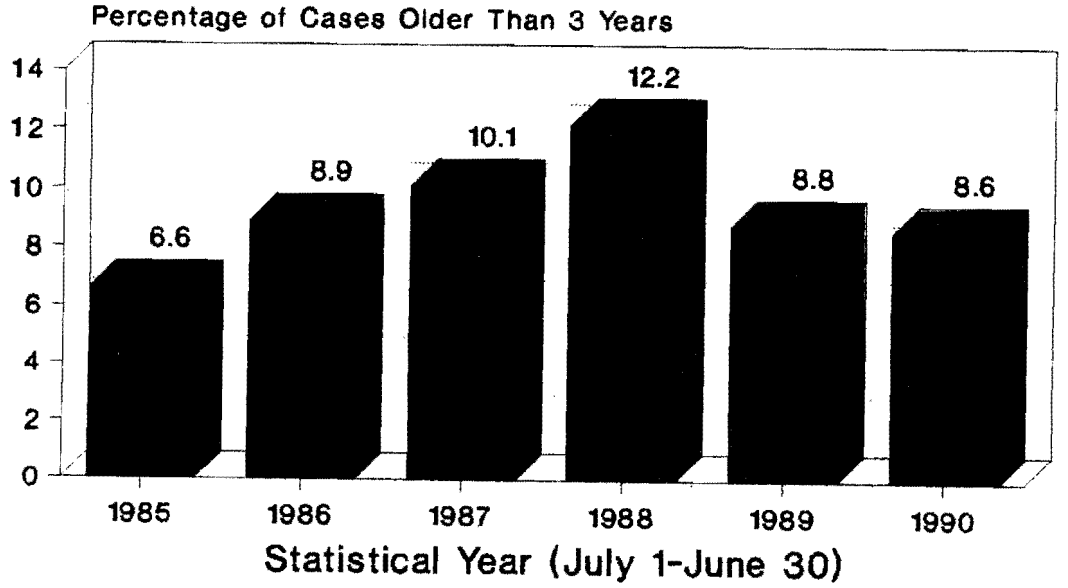


Source: D. Yanich, District Court Project, 1991.

From 1985 through 1988, the percentage of civil cases in the Court older than three years nearly doubled from 6.6 percent to 12.2 percent. That trend has not continued; in 1990, only 8.6 percent of pending civil cases were older than three years. See Figure 16. The Court's percentage of cases older than three years places it approximately in the middle of the four-judge Courts. See Figure 8 in Appendix F.

A steady increase occurred from 1985 to 1990 in the time required to complete[66] criminal felony cases in the Court. In 1985, the median completion time for a criminal felony case was 3 months. By 1990 the completion time had risen to a median of almost 4.8 months. See Figure 15. Even with that increase, however, the Court compared favorably with other four-judge courts. Only the Eastern District of Tennessee, which required 4.7 months to process a criminal felony case, disposed of those cases more quickly. See Figure 7 in Appendix F.

FIGURE 16: CASES OLDER THAN THREE YEARS
U. S. DISTRICT COURT, DELAWARE, 1985 - 1990



Source: D. Yanich, District Court Project, 1991.

[66] The data concerning the "time required to complete" a criminal felony case refers to the period from the time of filing to the time of disposition.

D. Trends in Court Resources

1. Judgeships

Two of the four district judgeships authorized for the Court are currently vacant. Vacancies in the authorized judgeships have been frequent during the last seven years. The result has been 13.3 vacant judgeship months in 1985, 5.4 vacant judgeship months in 1986, 11.2 vacant judgeship months in 1990 and 12.1 vacant judgeship months in 1991.[67] Over the seven year period, therefore, the Court has been without one of its four authorized judges for fifty percent of the time.

2. Supporting Personnel

The Office of the Clerk of the Court currently has seventeen authorized positions, all of which are filled. Although those positions reflect an increase in the number of personnel by twenty-two percent, individual staff members must still assume responsibilities for a variety of functions. As a result, the Clerk's Office is limited in its ability to perform the functions of the office or to provide case management resources to the judges.

Each judge of the Court currently is authorized to hire two law clerks and a secretary. Although the Chief Judge handles substantial administrative responsibilities in addition to his caseload, he has the same number of support staff as the other members of the Court. In addition, when a secretary is absent or when a particular judge needs extra secretarial help, a secretary familiar with the Court's practices often is not available.

The United States Probation Office plays a role at all stages of criminal proceedings. The probation officers handle pretrial supervision, presentence investigations, probation supervision, parole, supervised release and collateral

[67] Due to illness, the Court effectively lost an additional six judgeship months in calendar year 1989.

investigations for the Bureau of Prisons and other districts. The Probation Office has nine authorized officers and five clerical staff members. Five years ago, the office had four authorized officers and three clerical staff members. The Chief Probation Officer has attributed the increase in staff to the expanded number of drug prosecutions brought in the Court.

The average caseload per probation officer is 65 cases under supervision in addition to presentence responsibilities. The Advisory Group understands from speaking with the Chief Probation officer that the average caseload nationwide is 40-45 cases under supervision, without presentence responsibilities. In addition, it is estimated that the time for conducting presentence investigations and issuing presentence reports has increased by 30 percent since the sentencing guidelines went into effect in 1987.

3. Facilities

The Government Services Administration ("GSA") is currently conducting an evaluation of the Boggs Federal Building. The Advisory Group understands that GSA's study will determine the ability of the existing structure to accommodate the anticipated needs of the courts during the next ten years. The Advisory Group also understands that every support office associated with the Court submitted requests to GSA for additional space. Based upon its own investigation, the Advisory Group has concluded preliminarily that additional space will be necessary at least for a circuit judge's chambers and for expansion of computer facilities.

E. Assessment of Excessive Cost And Delay in Civil Litigation

1. Definitions and Conclusions Concerning "Excessive Cost and Delay"

The Advisory Group understands the purpose of the Act to be the elimination of "excessive" or "unnecessary" expense and delay in litigation. The

terms "excessive" or "unnecessary" when used in reference to the costs and timing of civil litigation are ambiguous at best. The Advisory Group believes that there are at least two useful definitions of these terms for purposes of this report. First, the costs and timing associated with civil litigation in a particular court might be considered "excessive" if they exceed the costs and timing associated with similar litigation in comparable courts. Second, even if court comparisons do not demonstrate noteworthy differences in cost or time, the expense and duration of litigation may be considered "excessive" (or "unnecessary") if they can be reduced without affecting adversely the fair administration of justice.

Under the first definition of "excessive", the Advisory Group has concluded that civil litigation in the Court does not suffer from excessive delay. This conclusion is based upon the data set forth above concerning processing times in the Court and the comparisons of activity in the Court with that in other four-judge courts.[68] There is no meaningful data, however, to determine whether the costs of civil litigation in the Court are "excessive" under the first definition of that term.

With respect to the second meaning of "excessive", the Advisory Group believes that the costs and timing associated with civil litigation in the Court can be reduced without affecting adversely the fair administration of justice. The next section of this report describes the factors which contribute to "excessive cost and delay" under the Advisory Group's second definition of "excessive". Section III describes the methods by which the Court can reduce such cost and delay.

The Advisory Group has not assumed that there is a direct correlation between a reduction in time and a reduction in costs. Quicker may not always mean less costly for a client. Indeed, the contrary is frequently the case. For example, compressing the timetable for litigation may result in costly discovery and a trial when the parties would eventually have reached a less costly settlement if they had had

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[68] See sections II.B.5-7, II.C.5, and Appendix F.

more time to develop a better understanding of the issues. Additionally, in multi-party litigation, the parties are often more likely to reach a settlement if they have sufficient time to apportion liability. On the other hand, long delays in case processing may provide the overly cautious attorney the time to take actions (particularly in taking expansive discovery) which only marginally assist the client's cause. Effective case management is the best means of dealing with the issues of cost and delay.

2. Factors Contributing to Excessive Cost and Delay[69]

The Act directs the Advisory Group to determine "the principal causes of cost and delay in civil litigation" [70]. The Advisory Group cannot identify with certainty the precise impact any particular action or condition has on the cost and timing of civil litigation. Based upon the work described in this report, however, the Advisory Group can provide a reasonable description of factors which contribute to excessive cost and delay. The findings in this subsection are based upon: (1) the responses to questionnaires distributed to the attorneys who had represented the parties in 213 cases in the Court[71]; (2) interviews with the Court's judicial officers, and (3) the investigations conducted by the subcommittees of the Advisory Group.

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[69] The terms "excessive cost and delay" in this section refer only to costs or delays which can be reduced without affecting adversely the fair administration of justice.

[70] 28 U.S.C. § 472 (c)(1)(C).

[71] Appendix E contains a copy of the questionnaire distributed to the attorneys. See Appendix E at E-18. Appendix E also contains descriptions of the methods used to construct the questionnaire and the methods used to analyze the responses received by the Advisory Group. See **SURVEY OF PARTIES' ATTORNEYS**, Appendix E at E-11. The 213 cases used to identify attorneys for this study are the same cases used to study the processing times of civil cases as reported in Sections II.B.6-7.

(a) Prisoner §1983 Cases and Habeas Corpus Petitions

More than one-third of the civil caseload in the Court routinely consists of Prisoner cases.[72] Claims brought under Section 1983 of the Civil Rights Act[73] comprise the majority of "Prisoner cases". The magistrate judge has estimated that she spends 25 to 50 percent of her time on civil rights claims brought by prisoners pro se ("pro se prisoner § 1983 cases"). The magistrate judge's permanent law clerk spends 100 percent of her time on such cases.[74]

The Advisory Group has found that the volume and method of processing pro se prisoner § 1983 cases and habeas corpus petitions leads to excessive delay. The Court refers substantially all of these cases to the magistrate judge. The referral order typically requires the magistrate judge to review the complaint under 28 U.S.C. §1915, to order the case docketed and the complaint served if it is not frivolous or malicious, to oversee pretrial proceedings, to entertain dispositive motions, to conduct evidentiary hearings, and to issue a report and recommendation. In light of the magistrate judge's other responsibilities, the volume of these cases makes the standard processing procedure overwhelming for the one magistrate judge authorized for the District of Delaware.

The Advisory Group has also found that the typical case processing activities required in pro se prisoner § 1983 cases contribute to excessive cost and delay. Such litigation typically proceeds as follows: When a prisoner files a complaint, defendants often move to dismiss pursuant to Federal Rule of Civil

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[72] See Section II.B.1.

[73] 42 U.S.C. §1983.

[74] A temporary law clerk assisted with the pro se prisoner § 1983 cases and habeas corpus petitions for six months ending on September 30, 1991.

Procedure 12(b)(6).[75] The magistrate judge does not frequently grant such motions, and the effect is to delay a disposition on the merits.

After the denial of the motion to dismiss, discovery then proceeds.[76] Problems with discovery by prisoners often frustrate the development of an understandable record. A clear factual record could provide the basis for prompt dispositions. In addition, the methods of discovery in pro se prisoner § 1983 cases can contribute to excessive cost and delay.[77]

After the completion of discovery, defendants typically move for summary judgment. The magistrate judge makes a recommendation as to whether summary judgment should be granted. If the magistrate judge does not recommend summary judgment, she then conducts pretrial scheduling and, in some cases, an evidentiary hearing. The same circumstances result if the reviewing judge rejects a recommendation of summary judgment and remands the case. Any subsequent findings made by the magistrate judge in an evidentiary hearing are subject to a review de novo. Accordingly, the reviewing judges may duplicate substantial portions of the magistrate judge's activity.

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[75] The Court reviewed prisoner complaints under 28 U.S.C. §1915 to screen them for claim sufficiency. To the extent that such screening involved the application of the standard for dismissal found in Federal Rule of Civil Procedure 12(b)(6), the Court's practice no longer appears appropriate. See Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed. 2d 338 (1989).

[76] If defendant accompanies a case dispositive motion with affidavits establishing a factual record, the magistrate judge typically must afford the prisoner a full opportunity to conduct discovery.

[77] The State of Delaware has hired an attorney to consult with prisoners on these matters. However, given the number of Prisoner cases, the Advisory Group believes that there is too much work for one person. The magistrate judge has been working with local bar-related groups to develop a list of attorneys who would assist with prisoner matters.

The volume and nature of habeas corpus petitions also contribute to excessive cost and delay. The Court refers to the magistrate judge substantially all of the habeas corpus petitions arising from convictions in state courts. Determining whether such petitions have merit requires a time consuming review by the magistrate judge of state court proceedings. The review may be difficult and time consuming because years often pass between the time of the state court proceedings and the habeas review, and the records of those proceedings are not readily available. Moreover, because habeas petitioners almost invariably act pro se, and their claims are not stated clearly, the magistrate judge spends a considerable amount of time trying to decipher the meaning of each petition.

(b) Pretrial Scheduling

The judge to whom a case is assigned has responsibility for overseeing all aspects of the case until its final disposition.[78] Pursuant to Federal Rule of Civil Procedure 16(b), the judge confers with the parties for the purpose of setting deadlines for the following activities: joinder of parties, amendment of pleadings, completion of discovery, filing and hearing motions, subsequent pretrial conferences, and trial. After the conference, the judge issues a scheduling order reflecting the decisions made during the conference. The judges of the Court do not employ uniform scheduling procedures or a uniform scheduling order. Nevertheless, the procedures and orders utilized seem to be effective in moving cases toward prompt completions. See Figure 7, supra at 21. Seventy percent of the attorneys surveyed, however, thought that the Court should adopt a uniform scheduling order "with variations between standard, complex and expedited cases". See Figure 4A in Appendix E.

The Advisory Group's survey reflects that the Court holds pretrial activities to a firm schedule in sixty percent of civil cases. Both judges and litigants' attorneys agree that establishing a firm pretrial schedule and trial date is an effective method of

[78] See page 19, supra, for a description of the "individual calendar" system of case management employed by the Court.

reducing excessive cost and delay. See, e.g., Figure 2 in Appendix E. The Advisory Group has also concluded from its investigations that scheduling orders are most effective when the judge regularly emphasizes that the timetable provided by the order will be enforced.

(c) Setting Trial Dates

The Act requires pilot courts to adopt the practice of setting firm trial dates so that trial is scheduled to occur within eighteen months after the filing of the complaint.[79] The Act does make an exception for cases in which a judicial officer certifies that circumstances justify a later trial date, such as complex cases.

The Court does not currently have a standard practice for the setting of trial dates. Some judges set the trial date at the scheduling conference held pursuant to Federal Rule of Civil Procedure 16(b), and other judges set the date at a later pretrial conference.

(d) Regulation of Discovery

Generally, the judges of the Court set and enforce deadlines for the completion of discovery. See Figure 1 in Appendix E. L.R. 4.1.B. limits a party to serving 50 interrogatories and 25 requests for admission prior to the scheduling conference held pursuant to Federal Rule of Civil Procedure 16(b). While the Court often incorporates those limits into the scheduling order for the case, the Court typically does not otherwise limit the scope, methods, amount or timing of particular discovery, unless a party so requests and demonstrates that such limits are necessary. In addition, the Court does not require any voluntary disclosure of information between the parties, although the Court routinely encourages such disclosure.

The Advisory Group did not find broad support for the creation of fixed rules to limit the method, amount or scope of discovery in particular types of cases. See

[79] 28 U. S.C. § 473(a)(2)(B).

Figures 2 and 4B in Appendix E. [80] Because substantially all civil litigation includes discovery, however, the Advisory Committee believes that requiring the early disclosure of basic information routinely sought can reduce excessive cost and delay in some cases.[81] For example, parties routinely seek information about persons having knowledge of the facts alleged in the other party's pleading. The Court could require the parties to identify such persons at the time of filing the pleading. This practice would eliminate the time and costs of drafting discovery and also eliminate the delay in waiting for responses to formal requests.

Local Rule 3.1.D requires a party filing any non-dispositive motion to accompany the motion with a certificate setting forth the dates, time spent and method of communication used in attempting to resolve the dispute with opposing counsel. In practice, the consultation requirement is effective in narrowing if not resolving many discovery disputes.

(e) Alternate Methods of Dispute Resolution

Although the Court encourages settlements, it appears that the Court's role in initiating and conducting settlement discussions may be too limited.[82] The Advisory Group's survey indicates that the Court conducted or facilitated settlement discussions in less than one-third of the cases where the respondent deemed such action to be applicable. See Figure 1 in Appendix E. Seventy-nine percent of the survey respondents recommended court-initiated settlement discussions as a method

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[80] Generally, the members of the Court also did not support such fixed regulations.

[81] The Advisory Group notes that the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States recently distributed for public comment a proposed amendment to Federal Rule of Civil Procedure 26, which would require litigants to disclose basic information without request. This report does not address the proposals made by the Standing Committee.

[82] The Advisory Group recognizes the concern that involvement in settlement discussions which do not succeed may affect a judge's ability to participate in the trial of that matter. The magistrate judge may be an effective resource in such settlement discussions.

of reducing excessive cost and delay. See Figure 4B in Appendix E. In addition, sixty percent of the attorneys surveyed recommended that the Court should require litigants with binding settlement authority to attend settlement conferences. See Figure 4B in Appendix E.

In light of the Court's prompt disposition of cases, the Court has not adopted any mandatory ADR program.[83] The Advisory Group's investigation found that forms of ADR other than settlement discussions are seldom used in the Court. See Figures 1 and 5 in Appendix E.

Although the Advisory Group believes that ADR may reduce excessive cost and delay in certain instances, it also may add another layer of proceedings to a particular case and thereby increase costs and processing times. Accordingly, given the Court's current record of prompt dispositions, it should be careful not to compromise existing procedures which effectively control excessive cost and delay.

(f) Regulation of Motions

The Local Rules require all motions, unless made during hearing or trial, to be in writing.[84] The Local Rules do not require a supporting brief to accompany the motion.[85] In many cases there is nothing preventing a party from filing its motion and supporting brief at the same time. Simultaneous briefing can reduce the time taken to resolve motions.

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[83] In addition to settlement conferences, the Advisory Group understands alternative dispute resolution methods to include arbitration, mediation, mini-trials, summary jury trials, and early neutral evaluation of claims.

[84] See Local Rule 3.1.B.

[85] Local Rule 3.1.C requires the opening brief to be filed within 10 days from the filing of the motion, and the answering brief to be filed no later than 10 days thereafter, unless the parties stipulae to another schedule that is approved by the Court.

The Advisory Group also found general support for limiting the number of pages in briefs filed in support of or opposition to motions. See Figure 2 in Appendix E. Local Rule 3.2.C.(5) provides that argument in an opening or answering brief shall not exceed 50 pages, and, in the case of a reply brief, argument shall not exceed 25 pages. In contrast to the Court's Local Rule, the Delaware Superior Court requires most motions to be filed with a memorandum not exceeding five pages in length, and also restricts memoranda in opposition to five pages. The Advisory Group believes that in many cases restrictions more stringent than the page limits set forth in Local Rule 3.2.C.(5) will assist in reducing excessive cost and delay.

(g) Distribution of Routine Notices

Under the "individual calendar" system of case management, the judges have assumed responsibility for sending routine notices of such things as scheduling conferences and overdue briefs. The Advisory Group has concluded that creating an administrative mechanism which would distribute such notices could automatically reduce file handling and save time.

(h) Requests for Extension of Deadlines

The Advisory Group is concerned that some attorneys may too readily request and expect extensions of deadlines without having or providing an adequate explanation of the background and reasons for the request. The Court is reluctant to deny extensions when all attorneys have stipulated to the request, when the request is not clearly an abuse of the process, or when the extension will not affect the trial date. For the most part, extensions that would postpone a scheduled trial date are not generally granted. Nevertheless, extensions of time do prolong the litigation process for clients, and delay may increase the cost of litigation.

(i) Court Resources

The Advisory Group found unanimous agreement on at least one point: filling the vacancies in the judgeships authorized for the Court will reduce excessive delay in civil litigation. In fact, failure to fill those vacancies promptly will contribute to an increase in delay. The increased number of filings in the Court, the dramatic increase in criminal filings, the unusually large percentage of complex cases and the greater number of pending cases only bolster the latter conclusion.

In addition, the Advisory Group found that the diversity of tasks which the Clerk's staff must assume prohibits staff members from developing expertise in new subjects. The development of such expertise is necessary to keep abreast of advances in computers and automation which may save time and money.

The Advisory Group has also noted that the courtrooms in the Boggs Federal Building are not equipped with computers and other electronic equipment which could reduce costs and time associated with activities in court. For example, computers might facilitate the seating of juries and the registering of strikes, as well as the use of exhibits at trial.

(j) Jury Instructions

The Court does not currently have model jury instructions. Typically, each judge has sets of charges, but those charges vary among members of the Court. Model instructions for standard issues would save costs and time in drafting instructions for each case, as well as reduce the Court's time in reviewing proposed instructions.

(k) Practices of Litigants and Attorneys

The Advisory Group has received opinions about a number of attorney practices which may contribute to excessive cost and delay. Those practices include: unduly long written and oral presentations by attorneys, the overuse of discovery, the use of discovery as a tactic rather than as a method of gathering information, and a

lack of communication between opposing counsel. The Advisory Group believes that the circumstances affecting cost and delay as discussed in this report address many of the issues suggested by these opinions.

(l) Assessments by Congress of the Impact of New Legislation

There is no doubt that Congress and the Executive Branch can help eliminate needless cost and delay in the civil justice system. For example, private litigants may bring suit under new federal statutes when the statute does not clearly create a private cause of action. In that situation, the parties and the courts devote substantial resources in addressing the issue of the private litigant's right to bring such a suit. The time and money spent on that issue could be avoided, if Congress was to clearly express its intention with respect to whether the legislation was intended to provide a private cause of action.

In addition, Congress must recognize that the identification of rights and obligations in new legislation generally will result in litigation to enforce those rights and obligations. Such litigation will almost invariably result in an increase in the courts' workload and the cost and delay of litigation. For example, the members of the Court predicted that the Americans with Disabilities Act of 1990 will produce an increase in filings because it expanded protection to include not only government entities but private enterprise as well.

(m) Continuing Legal Education

Under current practice, a lawyer who passes the Delaware State Bar examination is qualified for admission to the Court. The Delaware Bar examination, however, concentrates on state law practice and procedure. Further, no continuing legal education program of the Delaware Bar specifically addresses civil practice in the District Court. Accordingly, excessive cost and delay may result from a lack of familiarity with the procedures that are peculiar to this Court.

III. RECOMMENDATIONS AND THEIR BASES

The Advisory Group has found that problems of excessive cost and delay in the Court are limited. Nevertheless, the Advisory Group has concluded that certain actions by the participants in civil litigation will facilitate the control of excessive cost and delay. Subsection A below contains the Advisory Group's recommendations and explanations of how they would reduce excessive cost and delay. Pursuant to Section 472(c)(3) of the Act, Subsection B describes how the recommended actions would include contributions by the Court, the litigants and litigants' attorneys. Subsection C explains how the recommendations take into account the six principles of litigation management required by sections 473 and 105(b) of the Act.

A. Recommendations

1. The Advisory Group recommends that the Court employ appropriate means to encourage Congress and the Executive Branch to fill vacant judgeships in the Court. Such means could include enlisting the assistance of the local bar and making certain that the appropriate members of Congress receive a copy of this report. This recommendation addresses the conditions described in Section II.D.1.

The Court has often been required to operate without its full complement of authorized judges. Filling the judicial vacancies will permit individual judges to manage their assigned cases more closely and efficiently and to devote the time required for the high proportion of complex cases filed in the District, because the Court's caseload will be distributed among a greater number of judges.

2. The Advisory Group recommends that the Court adopt, publish and periodically revise a set of Internal Operating Procedures which would provide guidance with respect to the usual and customary practices of the Court to its members, support staff, lawyers and litigants. Among the subjects that may be appropriate for inclusion in such procedures are the following: (1) use of courtrooms,

assignment of ~~civil actions~~ and proceedings, assignment of criminal cases, assignment of cases and duties to the Magistrate Judge, duties of the Chief Judge, assignment of cases to judges on senior status, judges' meetings, functions of the Clerk of the Court, judges' staff and floater secretary, and such other matters as the Court deems appropriate.

Many lawyers, and particularly lawyers admitted pro hac vice, may have no real understanding of how the Court operates and may not be aware that individual judges employ different procedures in dealing with the same phase of cases. For example, one judge may have the practice of fixing a firm trial date at the time of the initial Rule 16 conference, while another judge does not fix a trial date until the pretrial conference. Knowledge of these individual practices would assist lawyers in the efficient preparation of their case, reducing the cost and delay associated with surprise.

3. The Advisory Group recommends that the Court retain the "individual calendar" system of case management. This report describes the "individual calendar" system in Section II.B.4.

Based upon its survey, interviews and analyses, the Advisory Group believes that case management by a judge aids in the reduction of excessive cost and delay. Early assignment of a case to a judge heightens the judge's responsibility for case management. Individual assignment also assists continuity in management of the case by providing an opportunity to develop a plan for the entire case at an early stage. In addition, the system makes it easier for the Court to monitor the progress of a case by giving that responsibility to one judge.

4. (a) The Advisory Group recommends that, as a test program for possible application to other types of cases, the Court adopt an interim local rule for personal injury cases which would require parties to accompany their initial pleadings with the disclosure of certain information. The local rule would require the

disclosure of the information without a formal discovery request from an opposing party. The information required to accompany a party's initial pleading should include: (i) the names, addresses and telephone numbers of each person with knowledge of facts relating to the litigation, (ii) the names, addresses and telephone numbers of all persons interviewed in connection with the litigation, (iii) the names, addresses and telephone numbers of each person who conducted an interview identified in section (ii), (iv) a general description of documents in the possession, custody or control of the party which are reasonably likely to bear significantly on the claims or defenses asserted, (v) an identification of all expert witnesses presently retained by the party or whom the party expects to retain, together with the dates of any written opinion proposed by the expert, (vi) a brief description of any insurance coverage applicable to the litigation. This recommendation addresses the conditions described in Section II.E.2.(d).

(b) The Advisory Group also recommends that the Court adopt an interim local rule which would require parties who put their physical condition at issue in litigation to submit a medical authorization. This recommendation also addresses the conditions described in Section II.E.2.(d).

The recommended procedures will expedite the discovery process, avoid the expense of attorneys formulating and serving discovery requests on these issues, and eliminate the time currently authorized for providing such information in response to formal discovery requests. The Advisory Group realizes that the required disclosure of information may not be useful in all cases. Accordingly, the Advisory Group has limited its recommendation.

5. The Advisory Group recommends that, within the "individual calendar" system of case management, the Court adopt uniform scheduling procedures and orders for use at conferences held pursuant to Federal Rule of Civil Procedure 16(b). The uniform scheduling procedures and orders should provide generally for variations among expedited, standard and complex cases, and the Court

should be permitted to make exceptions when it finds that the circumstances so warrant. This recommendation addresses the conditions described in Section II.E.2.(b).

The judges of the Court do not use the same scheduling procedures or the same form of scheduling order. Some judges send out a proposed Rule 16 Order for the parties to accept or modify by agreement. In other instances, a telephone conference is held, and in still other instances the judge requires counsel to attend the Rule 16 conference in person. Uniform scheduling procedures and orders would identify the topics to be covered in the scheduling conference as well as the typical time limits for certain events, e.g., the completion of discovery. Such information about the management of a case would assist parties in assessing their claims and in preparing for the initial scheduling conference. Standardized scheduling orders also would facilitate the sending of routine notices by the Clerk's office. See Recommendation 15 below.

6. (a) The Advisory Group recommends that the Court adopt the following procedures for determining which cases are "complex": (1) any party seeking a determination of complexity under 28 U.S.C. § 473(a)(2)(B) should file a Notice of Intent within forty-five days after service of the Complaint and a short Statement of Complex Case setting forth the grounds for the determination of complexity within fifteen days thereafter; (2) all other parties should file a short response within fifteen days thereafter;[86] and (3) within fifteen days after the responses, the Court should hold a conference for determining whether the case is complex.

(b) The Advisory Group recommends that the Court consider the following factors in making its determination of complexity: (1) the type of action; (2) the number of parties, and their capacities; (3) the factual and legal issues raised by the pleadings; (4) the technical complexity of the factual issues; (5) the

[86] For each procedure governing a "complex" case and in which the United States is a defendant, the United States should be permitted an additional forty days for this procedure, consistent with Fed. R. Civ. P. 12(a).

retroactivity of the circumstances giving rise to the claims and defenses; (6) the volume and nature of documents subject to discovery; (7) the amount of third-party and foreign discovery necessary; (8) the number of deposition witnesses and their locations; (9) the need for expert testimony; and (10) the nature of the issues to be determined pretrial. These recommendations address the requirements of 28 U.S.C. § 473(a)(2)(B).

These recommendations will assist in the control of excessive cost and delay by aiding the Court in determining which cases are truly complex, thus requiring a longer case-processing schedule and an extended trial date. and closer scrutiny

7. The Advisory Group recommends that in any case determined to be complex under 28 U.S.C. § 473(a)(2)(B), the Court adopt standard procedures requiring: (1) the parties to file quarterly reports concerning the status of discovery and any motions or other procedural matters which are pending or anticipated, and (2) the scheduling of biannual conferences to discuss the issues in contention, monitor the progress of discovery, determine or schedule pending matters and explore settlement. This recommendation addresses the requirement of 28 U.S.C. § 473(a)(3).

Section 473(a)(3) requires "careful and deliberate monitoring" of complex cases through discovery-case management conferences. This recommendation will aid in the control of excessive cost and delay by ensuring regular communications between the Court and the parties for the purpose of effective management of complex cases.

8. The Advisory Group recommends that in any case determined to be complex under 28 U.S.C. § 473(a)(2)(B), the Court should consider utilization of the following procedures: (a) separate trials of certain issues, or the staged resolution of issues; (b) the setting of an early date for joinder of parties and amendments to the pleadings; (c) the use of the Magistrate Judge or a Special Master to monitor

discovery and resolve disputes; (d) limitations on discovery (e.g., the number of depositions, or the sequence of discovery), without court order; (e) the scheduling of expert discovery; (f) limitations or restrictions on the use of expert testimony; (g) limitations on the length of time for presentation of evidence or on the number of witnesses or documents that may be presented at trial; and (h) the use of a state-of-the-art courtroom. This recommendation addresses the requirements of 28 U.S.C. § 473(a)(3).

Section 473(a)(3) requires the Court to consider the management of complex cases. This recommendation will aid in the control of excessive cost and delay by providing a number of case management techniques for possible use.

9. The Advisory Group recommends that the Court retain and enforce Local Rule 3.1.D. This recommendation addresses the conditions described in Section II.E.2.(d).

Local Rule 3.1.D. has been effective in reducing excessive cost and delay in civil litigation by encouraging parties to resolve discovery disputes informally. The rule has been generally effective in limiting the costs and time attendant to the drafting, filing, and processing of discovery motions.

10. The Advisory Group recommends that the Court adopt a local rule requiring parties to file briefs in support of motions at the time the motions are filed. This recommendation addresses the conditions described in Section II.E.2.(f).

The recommended procedure will decrease the amount of time required for the disposition of motions.

11. In connection with scheduling conferences pursuant to Federal Rule of Civil Procedure 16(b), the Advisory Group recommends that the Court adopt a local rule requiring that briefing practices, including the number of pages in briefs

filed in support of or opposition to a motion be addressed. This recommendation addresses the conditions described in Section II.E.2.(f).

The recommended rule would aid in the control of excessive cost and delay by: (1) causing parties to sharpen their presentation of issues, (2) providing an incentive to exclude from briefs extraneous or marginal issues, and (3) reducing the amount of time required for parties or the Court to read briefs.

12. The Advisory Group recommends that the Court adopt a local rule which would require counsel to certify to the Court that they have conferred prior to the Rule 16 conference to discuss settlement. This recommendation addresses the conditions described in Section II.E.2.(e).

The recommended meeting and certification procedure will assist in the reduction of excessive cost and delay by ensuring that the parties have discussed settlement. The procedure also will demonstrate to the parties that the Court remains interested in settlement discussions.

13. With respect to any request for an extension of a deadline set in a pretrial scheduling order, the Advisory Group recommends that the Court adopt a local rule that would (a) require the applicant to identify each prior request for an extension of a deadline in the particular case, (b) require the applicant to explain the reasons for the request, and (c) require that the request be signed by counsel and supported by a client's affidavit, or that the request be accompanied by a certification that counsel has sent a copy of the request to the client. This recommendation addresses the conditions described in Section II.E.2.(h).

The recommended procedure will encourage counsel to apply for extensions only for good cause. The recommended procedure also will discourage any notion that the Court will grant extensions as a routine matter.

14. The Advisory Group recommends that the Court adopt a local rule requiring trial dates to be set so that trial is scheduled to occur within 12 months, if practicable, and no later than 18 months after the filing of the complaint. The rule also should provide for exceptions if a judicial officer certifies that either (a) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice, or (2) the trial cannot reasonably held within such time because of the complexity of the case or the number or complexity of pending criminal cases. This recommendation addresses the requirements of § 473(a)(2) of the Act.

Sections 473 (a)(2)(B) and 105(a) of the Act require pilot districts to adopt the practice of setting trial dates within 18 months after the filing of the complaint.

15. The Advisory Group recommends that the Court adopt an internal operating procedure which would permit the Clerk of the Court to distribute routine notices to parties. This recommendation addresses the conditions described in Section II.E.2.(g).

This procedure would provide a judge's staff with additional time to focus on more substantive issues such as motions, trials, opinions, and case management.

16. The Advisory Group recommends that the Court develop and adopt model jury instructions for standard (non-complex) issues. This recommendation addresses the conditions described in Section II.E.2.(j).

Standard jury instructions will lead to savings in cost and time by reducing the need for counsel or the Court to draft instructions in every case, and by reducing the Court's time in reviewing proposed instructions submitted by counsel. Having model jury instructions available also will assist attorneys and clients in understanding the issues of law in their cases.

17. With respect to the processing of prisoner § 1983 cases and habeas corpus petitions, the Advisory Group recommends the following:

(a) The Court should adopt a master scheduling order for these cases which would: (i) require defendants to file a responsive pleading, if necessary, within 60 days of service of the complaint; (ii) require defendants to accompany their response to the complaint with a production of all relevant documents and an affidavit establishing that defendant has conducted a thorough search for relevant documents and that the documents produced are the only documents in defendant's custody pertinent to the action, (iii) require that briefs in support of any motion accompany the filing of the motion, and (iv) require affidavits of fact, if appropriate, to be submitted with motions.

(b) The Court should adopt the practice of returning the management of a case to the judge originally assigned to the case, if the magistrate judge does not recommend granting a case dispositive motion or if the assigned judge does not accept the magistrate judge's recommendation to grant a case dispositive motion.

(c) The judges of the Court should retain responsibility for all habeas corpus petitions and social security cases currently referred to the magistrate judge. If the Court cannot implement this recommendation, then the Court should not continue to refer all prisoner § 1983 cases and habeas corpus petitions to the magistrate judge. Rather, the Court should divide some of the prisoner § 1983 cases and habeas corpus petitions among the Article III judges and the magistrate judge.

(d) An additional law clerk should be provided for the magistrate judge.

(e) The Court should consider establishing a panel of lawyers to serve as appointed counsel to in forma pauperis petitioners in both prisoner § 1983 and habeas corpus proceedings.

Recommendations (a) through (e) address the conditions described in Section II.E.2.(a). Recommendations (a) and (e) will aid the development of facts at an early stage. Recommendation (b) will eliminate duplication of functions by the magistrate judge and the other judges of the Court. Recommendations (c) and (d) will provide the time necessary for the magistrate judge to address the overwhelming number of prisoner § 1983 cases and habeas corpus claims. Recommendation (e) will result in prisoner petitions that are more coherent, and thus take less time to process, although the efforts of the magistrate judge to obtain volunteer assistance from the Bar have thus far been unsuccessful.

18. The Advisory Group recommends that the Court encourage the Department of Correction of the State of Delaware to explore the adoption of new procedures in its correctional facilities for the resolution of prisoner complaints. In addition, the Court should encourage the State of Delaware to provide additional paralegals to assist the Attorney General in developing clear factual records in Prisoner cases. This recommendation arises from the unusually high percentage of the Court's caseload comprised of Prisoner cases. See sections II.B.I. and II.C.4.

Cost and delay in the Court may be avoided if the state correctional system can adopt new procedures to ameliorate circumstances which contribute to prisoner filings with the Court. Cost and delay also will be reduced if the State assists promptly in the development of a clear factual record.

19. The Advisory Group recommends that the Court encourage better communications between Congress and the judiciary with respect to the impact of new legislation on the civil and criminal justice system. This recommendation addresses the conditions described in Section II.E.2.(l).

Better communication between Congress and the Courts can reduce excessive cost and delay by eliminating ambiguities in legislation which may lead to

litigation. Enhanced communications also will help Congress identify the need for additional resources caused by new legislation.

20. The Advisory Group recommends that the Court seek to have courtrooms provided with computer and other electronic equipment which would facilitate efficient presentations by parties. This recommendation addresses the issues described in Section II.E.2.(i).

21. The Advisory Group recommends that the Court encourage legal education programs with respect to the particular practices and procedures used in the Court. This recommendation addresses the conditions described in Section II.E.2.(m).

The recommended education programs will reduce the cost and delay which arise from a lack of familiarity with the Court's practices.

22. The Advisory Group recommends that a third law clerk be authorized for the Chief Judge and a "floater" secretary be employed for the assistance of the members of the Court who are temporarily without secretarial assistance or whose work requires the temporary use of an additional secretary. This recommendation addresses the conditions described in Section II.D.2.

In two respects, the assistance available to the Court's judges is limited. First, the Chief Judge, who must devote substantial time to administrative matters, can efficiently use the assistance of a third law clerk to assure the prompt handling of his assigned cases. Second, because each judge relies exclusively upon a single secretary, the individual's absence for even a few days limits the judge's capacity to publish opinions that require careful drafting through successive revisions or to maintain an effective schedule for processing cases.

B. Contributions of the Court, Litigants and Litigants' Attorneys

Section 473(c)(2) of the Act directs each Advisory Group to ensure that its recommendations include significant contributions to be made by the court, litigants and litigants' attorneys. Set forth below is a description of the contributions which the Advisory Group's recommendations would require from the litigation community.

The contributions which the Advisory Group's recommendations would require from the Court include the adoption and implementation of rules and practices to enhance case management. (Recommendations 2-17). The recommendations also would require significant interaction between the Court, other branches of government and the bar. (Recommendations 18, 19 and 22). The Advisory Group believes that such interaction could improve the resources available for civil litigation as well as address circumstances which may lead unnecessarily to civil litigation.

The Advisory Group recommendations would require certain litigants to assist counsel at an early stage in providing to the Court basic information concerning the Claim. (Recommendation 4). The recommendations also would require litigants to participate in -- or at least have knowledge of -- requests by the litigant's counsel to modify pretrial scheduling orders. (Recommendation 13).

The recommendations of the Advisory Group would require litigants' attorneys to implement and to adapt to new procedures and practices. The attorneys must adapt to new methods of pretrial case-management. (Recommendations 4-8, 10-13) and methods for resolution of disputes. (Recommendation 12). Finally, the recommendations may involve the bar in efforts to improve the resources available for civil litigation in the Court. (Recommendations 1, 17(e), 19, 21 and 22).

C. The Relationship Between the Recommendations and §473 of the Act

1. Section 473(a)

Pilot Districts must include in their plans the six "principles" of litigation management set forth in §473(a) of the Act.[87] The following paragraphs explain how the District of Delaware Advisory Group's recommendations address those requirements.

Section 473(a)(1) requires a Pilot District to provide for systematic, differential treatment of civil cases. Pilot Districts must tailor the level of case management to the particular circumstances of the case and to the resources of the court. The actions recommended by the Advisory Group that would address this requirement include: (i) the filling of the judicial vacancies (Recommendation 1), (ii) the maintenance of the "individual calendar" system of case management (Recommendation 3), (iii) the adoption of uniform scheduling orders which also provide for variation when the circumstances warrant (Recommendation 5), (iv) the adoption of procedures for complex cases (Recommendations 6-8), and (v) the adoption of procedures for processing prisoner, civil rights cases (Recommendations 17 and 18).

Section 473(a)(2) of the Act requires a Pilot District to implement a program for the early and ongoing control of the pretrial process through the involvement of a judicial officer. The judicial officer should assess and plan the progress of the case, set early and firm trial dates, control discovery, and efficiently manage motion practice. The actions recommended by the Advisory Group that would fulfill this requirement include: (i) the maintenance of the "individual calendar" system (Recommendation 3), (ii) the adoption of uniform scheduling orders (Recommendation 5), (iii) the setting of trial dates so that trial is scheduled to occur

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[87] See Section I.E.

no later than eighteen months after the filing of the complaint, unless a judicial officer certifies existence of exceptional circumstances (Recommendation 14), (iv) the retention of local rule 3.1.D. (Recommendation 9), (v) requiring that briefs relating to a motion accompany the filing of the motion (Recommendation 10), and (vi) providing a mechanism in the context of the Rule 16 conference for limiting the number of pages in a brief filed in support of or opposition to a motion in appropriate cases (Recommendation 11).

Section 473(a)(3) of the Act requires careful and deliberate management of complex cases by means of conferences involving the parties and judicial officers. The recommendations which deal with this requirement include: (i) the adoption of standard procedures for determining "complexity" (Recommendation 6) and (ii) the adoption of standard procedures for processing complex cases (Recommendations 7 and 8).

Section 473(a)(4) of the Act directs a Pilot District to encourage the voluntary exchange of information among litigants and their attorneys. The judges of the Court currently invite parties to make such exchanges. The exchange of information would also be fostered by adoption of a local rule requiring parties in a personal injury case to provide certain information and medical authorizations with the filing of initial pleadings (Recommendation 4).

Section 473(a)(5) prohibits a court's consideration of discovery motions unless the moving party provides a certification of good faith efforts to reach agreement with the opposing party. Local Rule 3.1.D. fulfills this requirement (Recommendation 9).

Section 473(a)(6) of the Act requires a Pilot District's plan to include authorization to refer appropriate cases to alternative dispute resolution programs that have been designated for use in the Court or that the Court may make available.

(Recommendation 12), which requires parties to conduct settlement discussions, provides a program of alternative dispute resolution.

2. Section 473(b)

The Act also requires courts to consider the six "techniques" of litigation management set forth in Section 473(b) of the Act.[88] The Act does not require pilot districts to adopt the six techniques.

Several members of the Court currently use the techniques described in § 473(b). Recommendation 13, which provides a procedure for obtaining extensions of the deadlines set in pretrial scheduling orders, is consistent with the technique suggested by § 473(b)(3). The Advisory Group has concluded that adoption of the other techniques described in § 473(b) is not currently necessary because that might detract from the Court's efforts to implement the other recommendations the Advisory Group has made.

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[88] See, Section I.B.

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of 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; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement 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 discussion at the conference and all reasonably related matters;

"(3) 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;

"(4) a neutral evaluation program for the presentation of the 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;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) 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 the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer— Reports.

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

Reports.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 479. Information on litigation management and cost and delay reduction

Reports

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

Government publications

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

Records.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

28 USC 471 note.

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

28 USC 471 note.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

Reports.

(3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans..... 471".

SEC. 104. DEMONSTRATION PROGRAM. 28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM. 28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

SEC. 106. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

APPENDIX B

MISSION OF THE DISTRICT OF DELAWARE ADVISORY GROUP

The mission of this Group is to develop a Civil Justice Expense and Delay Reduction Plan for the District of Delaware by October 1, 1991. The Plan shall recommend measures, rules, and programs to administer justice fairly, to facilitate efficient adjudication of civil cases, to monitor discovery, to improve litigation management, and to ensure just, speedy and inexpensive resolutions of civil disputes. The Plan shall be based on existing successful practices when possible.

In developing the Plan, the Group shall consider the particular needs and circumstances of the Court, the litigants in this Court, and the litigants' attorneys. To carry out this mission, the following steps are contemplated:

1. Prepare a thorough assessment of the District's civil and the criminal docket, to the extent it impacts upon the civil docket.
2. Identify trends in case filings and the demands placed on the Court's resources.
3. Examine the impact of federal legislation on the costs and delays of civil litigation.
4. Solicit the views of the Court, litigants and attorneys on the principal causes of cost and delay in civil litigation.
5. Identify the principal causes of cost and delay in civil litigation.

6. Assess existing rules, measures, programs, and practices in this District which facilitate fair and efficient adjudication of civil cases.

7. Evaluate existing rules, measures, programs and practices in other Districts or other Courts which facilitate fair and efficient adjudication of civil cases.

8. Tailor other rules, measures, programs, or practices to meet the needs of this District.

9. Examine the six principles and six management techniques set forth in §473 and, if possible, incorporate them into the final plan.

10. Recommend measures for federal legislators to consider for reducing the costs and delays of civil litigation.

11. Solicit comment on the Plan from the Court, attorneys, and litigants before finalization.

12. Recommend steps for implementation of the Plan by the Court.

APPENDIX C

CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

CHAIRPERSON

Henry N. Herndon, Jr., Esquire
Morris, James, Hitchens & Williams

REPORTER

Patrick Johnston, Esquire
Assistant Professor of Law
Widener University School of Law

SPECIAL CONSULTANT

Dr. Danilo Yanich
College of Urban Affairs and
Public Policy
University of Delaware

VICE CHAIRPERSON

Mary Pat Trostle, Esquire
White & Williams

MEMBERS

Gary W. Aber, Esquire
Heiman, Aber & Goldlust

Victor F. Battaglia, Sr., Esquire
Biggs & Battaglia

Jack B. Blumenfeld, Esquire
Morris, Nichols, Arsht & Tunnell

The Honorable William C. Carpenter, Jr.
United States Attorney

Michael F. Foster, Esquire
State Solicitor
Department of Justice
State of Delaware

Richard K. Herrmann, Esquire
Bayard, Handelman & Murdoch

Kent A. Jordan, Esquire (Alternate)
Assistant United States Attorney

Kathi A. Karsnitz, Esquire
Young, Conaway, Stargatt & Taylor

The Honorable Joshua W. Martin III
Vice President and General Counsel
Diamond State Telephone Company

F. Michael Parkowski, Esquire
Parkowski, Noble & Guerke

Richard Allen Paul, Esquire
E.I. du Pont de Nemours & Co.

John J. Polk, Esquire (Alternate)
Deputy Attorney General
Department of Justice
State of Delaware

Robert H. Richards, III, Esquire
Richards, Layton & Finger

Bruce M. Stargatt, Esquire
Young, Conaway, Stargatt & Taylor

Pamela S. Tikellis, Esquire
Greenfield & Chimicles

EX OFFICIO MEMBERS

The Honorable Joseph J. Longobardi
Chief Judge
U.S. District Court for the District of Delaware

The Honorable Joseph J. Farnan
District Judge
U.S. District Court for the District of Delaware

The Honorable Sue L. Robinson
Magistrate Judge
U.S. District Court for the District of Delaware

John R. McAllister, Jr.
Clerk of the Court
U.S. District Court for the District of Delaware

SPECIAL ASSISTANT TO THE CHAIRPERSON

Bruce C. Doeg, Esquire
Morris, James, Hitchens & Williams

APPENDIX D

OPERATING PROCEDURES OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

I. ORGANIZATION OF ADVISORY GROUP

The Advisory Group formed subcommittes to study each of the topics identified below.

Subcommittees

1) Statistical Assessment of Dockets

2) Trends in Demands on the Court's Resources

3) Existing Court Procedures

4) Litigant and Attorney Practices

5) Pro Se Litigation and Prisoner Petitions

6) Litigation Involving the United States

7) State and Local Government Litigation

8) Complex Litigation

9) Impact of New Legislation on Civil Litigation

II. METHODS FOR ANALYZING THE CURRENT STATUS OF THE CIVIL DOCKET

The following paragraphs describe the sample, the survey instrument, and the data gathering techniques used to provide the information for Section II.B of the report from the Advisory Group.

The Sample

The study derived the sample in the following manner. The entire universe of closed cases between January 1990 and May 1991 included 850 cases. The study drew a random sample of 400 cases on which to gather data. During the data gathering phase, it was found that, due to case consolidations, cases opened only for statistical purposes, and missing data, information was available on 322 of the 400 cases. Among the 322 cases were 109 Prisoner cases.

Types of Cases Comprising the Entire Sample

The Advisory Group defined four types of cases for the entire sample: Prisoner cases; Contract/Tort cases; Patent, Environmental, Antitrust cases ("PEAT"), and all other cases. Prisoner cases accounted for 109 of the 322 cases.

Types of Cases Comprising the Case Processing Sample

In order to examine the processing of civil cases on the docket, the study considered only the Contract/Tort, Other, and PEAT cases. Prisoner cases do not go through many of the phases (discovery, motions, etc.) that normally occur in other civil cases, and so the study did not include

Prisoner cases in the analysis of the actual processing times of cases. The study did record filing dates and closing dates for the Prisoner cases. Excluding the 109 prisoner cases left a "case processing" sample of 213 cases.

The Survey Instrument

The survey instrument applied to the 213 cases reflected the collective thoughts of members of the Statistical Assessment subcommittee of the Advisory Group, as well as input from the Court, the staff of the Clerk of the Court and other Advisory Group members.

The study designed the survey instrument to extract the following information about each case: nature of the suit, type of case, jurisdiction, origin, disposition, judge, plaintiff, defendant, plaintiff's attorney, defendant's attorney, and time periods for certain routine phases of a civil case.

Data Gathering

The data were gathered with the generous help of the staff of the Clerk of the Court and eight paralegal professionals from local law firms.

APPENDIX E

SURVEY OF JUDICIAL AND LAWYER OBSERVATIONS AND PRACTICES

I. SURVEY OF THE DISTRICT COURT JUDGES AND THE MAGISTRATE JUDGE

The Interviews

The Advisory Group initially engaged in an informal panel discussion with the District Court judges to obtain information and suggestions to guide its tasks of assessing the condition of the Court and making recommendations.

The Advisory Group later conducted individual interviews of the three judges on regular status,[1] the three judges on senior status, and the magistrate judge to obtain information on their individual case management practices as well as their individual views on excessive cost and delay in district court practice. This information is incorporated throughout this report.

The Instrument

The Questionnaire used in the judge interviews contained questions on six topics: general questions regarding cost and delay, case management, discovery practices, complex cases, prisoner petitions, and alternate methods of dispute resolution. The questionnaire used in the interview of the magistrate judge focused on three topics: prisoner petitions, the functions of the magistrate judge and general

[1] Judge Roth has since moved to her new position on the Circuit Court.

questions on cost and delay in district court. Because each questionnaire was used primarily as a vehicle to conduct discussion, the interviews were not limited to the topics and questions listed on the questionnaires. A copy of these questionnaires follows.

A. QUESTIONS FOR COURT RE: COST AND DELAY IN DISTRICT COURT

I. General

1. In your view, what are the principal causes of expense and/or delay in the conduct of civil litigation?

2. Are there any trends in the types of cases that are before you that affect or will affect expense and/or delay?

3. What is the most time-consuming aspect of your docket?

   a. What would assist you in handling this aspect of your docket?

II. Case Management

1. Should the Court adopt a uniform scheduling order? Should this order be varied for different categories of cases (i.e., standard, complex, expedited)?

2. Are Rule 16 conferences an effective case management tool?

3. Do you find that a case management order is an effective case management device?

4. Pretrial Conferences

a. What is your practice with respect to holding pretrial conferences?

b. What criteria do you apply in deciding not to hold a pretrial conference?

c. What particular types of cases are particularly amenable to disposition at or about the time of a pretrial conference?

5. Motion Practice

a. Do you permit oral presentations?

b. What criteria do you use in granting oral argument?

c. Do you permit letter memoranda?

d. Do you set page limitations on briefs less that those specified in the Local Rules?

e. Should briefs on motions be limited to a standard number of pages? If so, how many pages?

f. Should any category of cases be exempt from this page limit?

g. Should this page limit apply to case dispositive motions?

h. Can you estimate in what percentage of your cases you grant the relief requested in a motion that is totally or substantially dispositive of the case?

i. Do you make oral rulings on motions?

6. Do you think it would be helpful to place all "ready" cases on a central trial list for the next available judge?

7. Do you routinely bifurcate trials (i.e., separating liability and damage issues)?

8. When is bifurcation helpful?

9. In your experience, do particular categories of cases benefit from a "hands off" approach of judicial management (as opposed to extensive judicial involvement in areas such as framing issues and encouraging settlement)?

10. Do particular categories benefit from a "hands on" approach?

11. When presiding over a jury trial, what is your practice with respect to:

    a. The number of days per week that the trial is convened?

    b. Hearing motions in other cases while the trial is underway?

    c. Holding conferences in other cases while the trial is underway?

    d. Sitting consecutive days?

    e. Sitting full days?

    f. Interruptions of several days or weeks to handle other trials or matters?

    g. Ruling from the bench?

    h. An average timetable for issuing written findings and conclusions?

12. Do you believe the clerk's office should send out the following notices:

Yes	No		
( )	( )	a.	Routine notices (e.g., scheduling notices such as Rule 16 notice).
( )	( )	b.	Notices of overdue papers of briefs

( ) ( ) c. Discovery reminders (e.g., time for discovery is now half over)

( ) ( ) d. Notice under local Rule 5.2 (i.e., to show cause why no action has been taken for three months)

13. What is your practice regarding extensions of time to respond to complaints or motions?

14. What procedures have you found most effective in enforcing time limits?

III. Discovery

1. What categories of cases, if any, generate a disproportionate number of discovery disputes?

2. Should the range of discovery devices available to litigants be limited by the category of case?

3. Should the number of interrogatory questions and/or requests for admissions be restricted in particular categories of cases (beyond the limitations already found in Local Rule 4.1(B)(1), that is, 50 written interrogatories and 25 requests for admissions)?

4. Should the number of depositions be restricted in particular categories of cases?

5. Do you think that the use of standard interrogatories in particular categories of cases would be useful (e.g., some courts require asbestos plaintiffs to answer standard exposure and injury interrogatories at the outset of the case; RICO case statements; Delaware Superior Court Form 30 Interrogatories in personal injury cases)?

6. In what particular categories of cases do you think such a device would be useful?

7. Describe your procedures and practices regarding controlling the scope and volume of discovery.

8. Do you use Rule 26(f) discovery conferences?

IV. Complex Cases

1. What criteria would you employ to determine that a civil case is complex and why? In the course of identifying such criteria, if you deem it appropriate, please use the following categories as examples of factors which may lead to complexity:

   [ ] Type of action, (e.g., class action, derivative action).

   [ ] Nature and number of parties.

   [ ] Type of claim or claims.

   [ ] Substance of the questions presented (e.g., tax, patent, RICO, takeover).

   [ ] Potential discovery necessary.

   [ ] Pretrial motion practice.

   [ ] Susceptibility to alternative dispute resolution.

   [ ] Susceptibility to settlement.

   [ ] Potential effectiveness of judicial intervention.

   [ ] Potential need for case-management conferences.

   [ ] Jury trial.

   [ ] Bench trial.

[ ] Other, please explain.

_____

_____

_____

V. Prisoner Petitions

1. How should the Court deal with the tremendous volume of prisoner petitions?

2. Should the Magistrate handle solely prisoner petitions?

3. Should the Judges take back a number of these cases from the Magistrate?

VI. Alternate Dispute Resolution

1. Should the Court adopt some form mandatory arbitration?

2. Do you currently suggest voluntary arbitration in certain types of cases?

3. What criteria do you use in deciding to suggest arbitration?

4. What criteria do you use in deciding to suggest mediation?

5. Have you ever made use of a mini trial?

6. What other forms of alternate dispute resolution have you employed?

7. Is there a particular set of circumstances where you would typically recommend a form of ADR? If so, what circumstances and what form of ADR?

8. Describe your role in exploring settlement possibilities. What categories of types of cases benefit the most from judicial involvement in settlement?

B. QUESTIONS FOR THE MAGISTRATE JUDGE REGARDING COST AND DELAY IN DISTRICT COURT

I. Prisoner Petitions

1. What are the most common prisoner grievances?

2. What form of review does the State currently have for prisoner grievances?

3. What procedures might the State implement to review prisoner complaints that may reduce the number of 1983 actions?

4. What practices are used in other districts to handle prisoner petitions?

5. What is the Court's current practice in handling prisoner petition cases?

6. What are the most time-consuming aspects of determining prisoner petitions?

7. To what extent can law clerks, masters, or appointed counsel participate in the process?

8. How do you identify whether and when counsel should be appointed in prisoner petition cases?

9. What are the legal constraints in the determination of prisoner petitions?

10. Should hearings be held at the prison?

11. What is your opinion of these possible recommendations of the Advisory Council?

    a. Require submission by the petitioner and the State of a verified documentary record of all material pertinent to the petition.

    b. Encourage judges to take back some prisoner petition cases.

    c. Encourage the Attorney General's office to take a more active role in defining and developing the issues presented in the petitions.

    d. Set up panel of attorneys to frame issues and develop the applicable record in 1983 cases.

    e. Utilize "materiality" hearings to review the facts in prisoner petitions.

    f. Encourage the State to implement a more efficient correctional system hearing process.

    g. Provide a petition form which offers more guidance to the prisoners.

    h. Hire a "special master" to assist the Magistrate in some capacity.

12. What other recommendations do you have as to how the Court should deal with the volume of prisoner petitions?

II. Other Functions of the Magistrate

1. Should a magistrate handle solely prisoner petitions?

2. In what other ways should the magistrate be used?

III. General

1. In your view, what are the principle causes of expense and delay in the District Court?

II. SURVEY OF PARTIES' ATTORNEYS

The following paragraphs describe the Advisory Group's rationale for conducting a survey of litigants' attorneys, the sample surveyed and the survey instrument.

The Rationale

The analyses of 213 cases described in section II is helpful in understanding current, general conditions of the Court's docket. The Advisory Group concluded that it should survey the attorneys of record in each case. The Advisory Group believed that such a survey would help it understand the context of each case as well as to identify possible sources of excessive cost and delay that could not be determined from looking at the court record for the case.

The Sample

The Advisory Group identified the attorneys of record in each of the 213 cases that comprised the docket sample identified in Section II. above. Some attorneys were responsible for more than one case in the sample. Although the survey accounted for each of the 213 cases, the responses represented 146 attorneys. The Advisory Group received responses for 100% of the cases.

The Survey Instrument

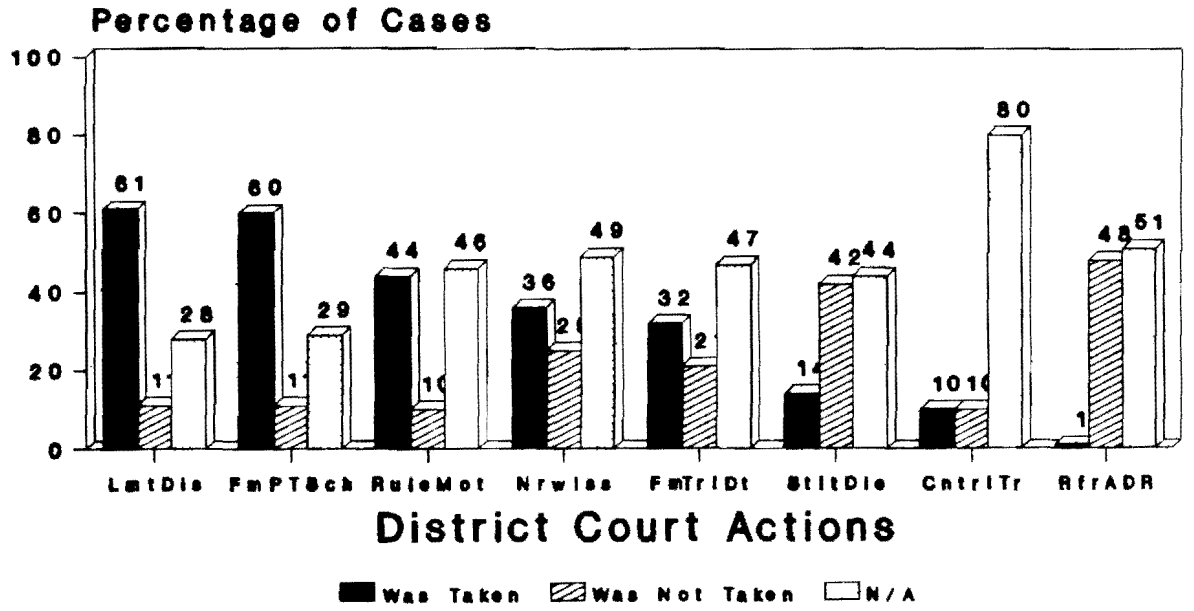
The survey questionnaire consisted of three parts. Part one consisted of questions relating to court practices, attorney practices, fees, times and suggestions for change in the context of the specific case among the 213 cases on which the attorney worked. The second part called for the attorney's general opinions about court practices, attorney practices and cost and delay in civil litigation. The second part of the questionnaire was not addressed to the circumstances of any particular case. The third part of the questionnaire sought information about the costs of litigation.

The Clerk of the Court mailed the questionnaires to the attorneys of record. After the mailings, members of the Advisory Group made telephone calls to the attorneys to ensure an adequate response rate.

The Survey Results

The following graphs represent some of the data collected through the survey:

FIGURE 1: ACTIONS TAKEN BY THE DISTRICT COURT IN THE SUBJECT CASE OF THE SURVEY



Source:D. Yanich, District Court,1991
Note: N/A category shows cases that were not applicable.

LmtDis = Set and enforced time limits on allowable discovery.

FmPTSch = Held pretrial activities to a firm schedule.

RuleMot = Ruled promptly on pretrial motions.

Nrwlss = Narrowed issues through conferences and other methods.

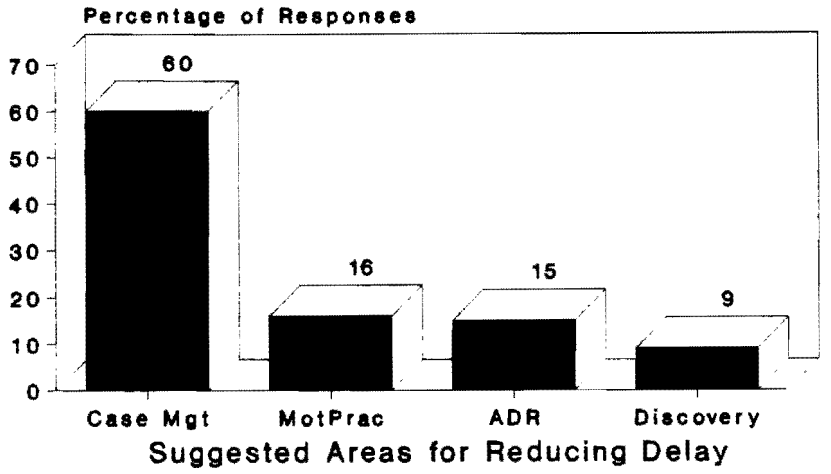
FmTrlDt = Set an early and firm trial date.

StltDis = Conducted or facilitated settlement discussions.

CntrlTr = Exerted firm control over trial.

RfrADR = Referred the case to alternative dispute resolution, such as mediation or arbitration.

FIGURE 2: AREAS SUGGESTED BY ATTORNEYS FOR REDUCING DELAY IN THE DISTRICT COURT



Source: D. Yanich, District Court Proj.,
Note: These reflect 165 responses from 73 attorneys.

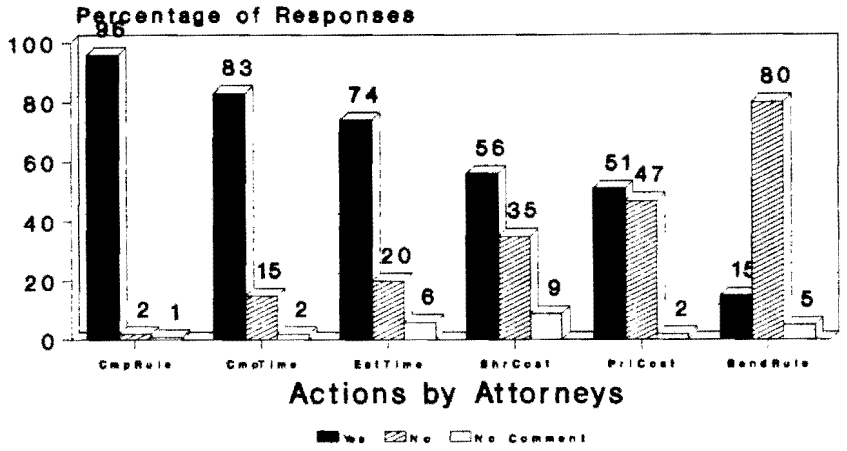
Case Mgt = Establish a schedule for disposition at an early point in litigation and require adherence to the schedule.

Motion Practice = Except in complex case, limit the extent of formal briefing, adopt a page limit on briefs, provide prompt decions on motions.

ADR = Expand the use of ADR through a mandatory arbitration process and increased judicial involvement in the settlement process.

Discovery = Use judicial involement to limit the amount, scope and duration of the discovery process.

FIGURE 3: ACTIONS GENERALLY TAKEN BY ATTORNEYS



Source: D. Yanich, District Court Project, 1991.

CmpRule = Comply with the local rules.

CmpTime = Comply with time limits of the District Court.

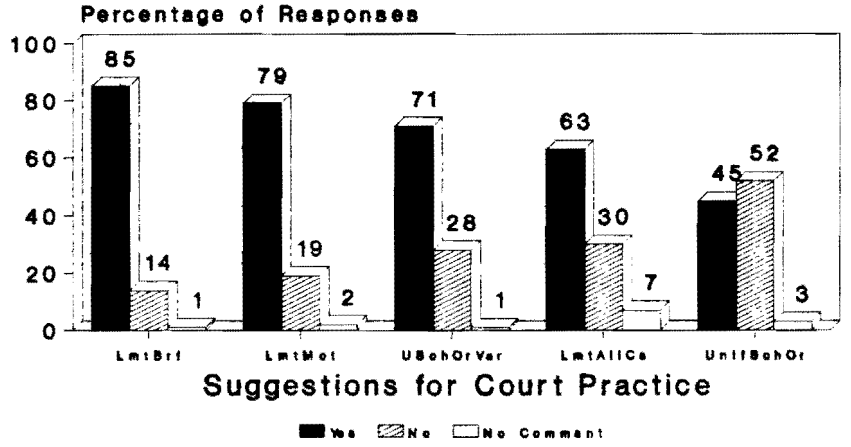
EstTime = Estimate the time the case will take.

ShrCost = Share this cost estimate with the client.

PrlCost = Prepare a preliminary cost estimate.

BendRule = Bend or ignore local rules regularly.

FIGURE 4A: ATTORNEY SUGGESTIONS FOR COURT PRACTICE



Source: D. Yanich, District Court 1991.

LmtBrf = Limit pages of briefs accompanying motions.

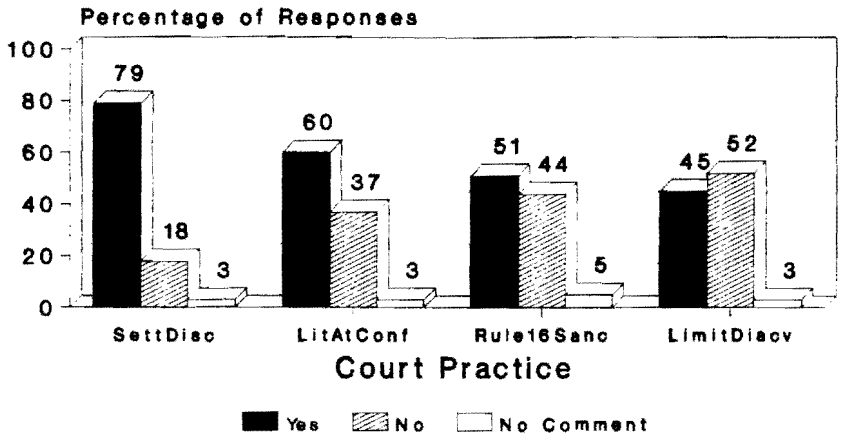
LmtMot = Limit pages of case dispositive motions.

USchOrVar = Adopt uniform scheduling order with variations

LmtAllCs = Limit pages of motions for all cases.

UnifSchOr = Adopt uniform scheduling order.

FIGURE 4B: ATTORNEY SUGGESTIONS FOR COURT PRACTICE



Source: D. Yanich, District Court Project, 1991.

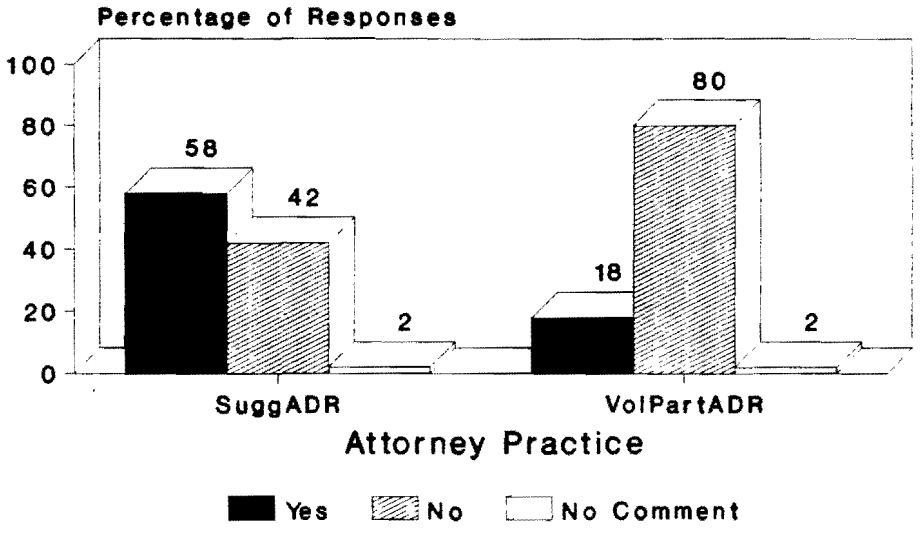
SettDisc = Initiate settlement discussions.

LitAtConf = Require litigants to attend the settlement conference.

Rule16Sanc = Utilize Rule 16 sanctions.

LimitDisv = Limit the duration and scope of discovery.

FIGURE 5: USE OF ALTERNATE METHODS
OF DISPUTE RESOLUTION BY ATTORNEYS



Source: D. Yanich, District Court Proj., 1991.

Sugg ADR = Suggested participation in ADR to client.

Vol Part ADR = Voluntarily participated in ADR program.

DISTRICT OF DELAWARE ADVISORY COUNCIL

PART I: ATTORNEY QUESTIONNAIRE

Please respond to the first 8 questions based on your experience in:

_____ [Name of Specific Case Inserted] _____

A. Case Management In This Case

1. "Case management" refers to oversight and supervision of litigation by a judge or magistrate or by routine Court procedures such as standard scheduling orders. Some civil cases are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motions practice, substantial Court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged by the Court, with the pace and course of litigation left to counsel and with Court intervention only when requested.

   How would you characterize the level of case management by the Court in this case? Please circle one.

   a. Intensive

   b. High

   c. Moderate

   d. Low

   e. Minimal

   f. None

   g. I'm not sure

2. Listed below are several case management actions that could have been taken by the Court in the litigation of this case. For each listed action, please circle one number to indicate whether or not the Court took such action in this case.

	Was Taken	Was Not Taken	Not Sure	Not Applicable
Hold pretrial activities to a firm schedule.	1	2	3	4
Set and enforce time limits on allowable discovery.	1	2	3	4
Narrow issues through conferences or other methods.	1	2	3	4
Rule promptly on pretrial motions.	1	2	3	4
Refer the case to alternative dispute resolution, such as mediation or arbitration.	1	2	3	4
Set an early and firm trial date.	1	2	3	4
Conduct or facilitate settlement discussions.	1	2	3	4
Exert firm control over trial.	1	2	3	4
Other:				
_____	1	2	3	4

B. Timeliness Of Litigation In This Case

3. Our records indicate this case took about ____ days from filing (date) to disposition (date). Please circle the one answer below that reflects the duration of the case for your client.

   a. The duration given above is correct for my client.

   b. The duration given above is not correct for my client. My client was in this case for approximately _____ months.

   c. I don't recall the duration of this case for my client.

4. How long should this case have taken from filing to disposition under circumstances in which the Court, all counsel, and all parties acted reasonably and expeditiously, and there were no obstacles to final disposition such as a backlog of pending cases?

   (Please estimate how many days.) _____

5. If the case actually took longer than you believed reasonable, please indicate what factors contributed to the delay:

Yes	No		
__	__	a.	Excessive case management by the Court.
__	__	b.	Inadequate case management by the Court.
__	__	c.	Dilatory actions by counsel.
__	__	d.	Dilatory actions by the litigants.
__	__	e.	Court's failure to rule promptly on motions.
__	__	f.	Backlog of cases on Court's calendar.
__	__	g.	Unnecessary discovery.
__	__	h.	Failure to complete discovery within the time fixed by scheduling order.
__	__	i.	Too much time allowed for discovery.

__ __ j. Unnecessary delay entering or failure to enter a scheduling order.

__ __ k. Parties' failure to adhere to the scheduling order.

__ __ l. Unnecessary motions.

__ __ m. Trial date not set at early stage of proceedings.

__ __ n. Rescheduling of trial.

__ __ o. Too much time allowed until trial.

__ __ p. Too much time allowed for trial.

__ __ q. Delay in entry of judgment.

__ __ r. Other._____

_____

6. What suggestions or comments do you have for reducing the delays connected with the disposition of civil cases in this district?

_____

_____

_____

_____

C. Final Outcome Of This Case

7. Was this case appealed?

Yes ___ No ___

8. If yes, what was the holding of the Court of Appeals?

a. affirmed

b. reversed

c. affirmed in part, reversed in part

PART II: GENERAL QUESTIONS

Please limit your response to practice in the District of Delaware.

A. Case Management

1. Before accepting a case, do you commonly estimate the time each case is likely to take and assess your firm's available attorney time and resources?

Yes ___ No ___

2. Do you commonly prepare a preliminary cost analysis of each case including the projected cost to bring the case and the expected return from the case to your client?

Yes ___ No ___

3. Do you commonly discuss or share this preliminary cost analysis with your client?

Yes ___ No ___

4. In your experience, do attorneys typically comply with time limits in the District Court?

Yes ___ No ___

5. In your experience, do attorneys typically comply with the local rules of the District Court?

Yes ___ No ___

6. In your experience, are any local rules ignored or bent with regularity?

Yes ___ No ___

6a. If yes, what rules?

_____

_____

B. Court Practice

1. Should briefs accompanying motions be limited in length?

Yes ___ No ___

2. Should a page limit be applied to case dispositive motions?

Yes ___ No ___

3. Should this page limitation apply to all types of cases?

Yes ___ No ___

3a. If not, what type of cases should be excluded? (Circle one or more.)

a. patent
b. antitrust
c. environmental
d. contract
e. torts
f. other_____

4. Should the Court adopt a uniform scheduling order?

Yes ___ No ___

4a. Should the Court adopt a uniform scheduling order with variations between standard, complex and expedited cases?

Yes ___ No ___

5. Should the Court utilize sanctions under Rule 16(f) to a greater extent for failure to comply with a scheduling or pretrial order, failure to appear at a scheduling or pretrial conference, or failure to prepare or participate in good faith in a pretrial conference?

Yes ___ No ___

6. Should the Court initiate settlement discussions?

Yes ___ No ___

6a. If so, in what situation should the Court do so?

_____

_____

_____

7. Should the Court require litigants with binding settlement authority to attend settlement conferences?

Yes ___ No ___

8. Are there any specific situations where this practice would be helpful?

Yes ___ No ___

8a. If yes, please list.

_____

_____

C. Discovery

1. Should discovery be limited in certain types of cases?

Yes ___ No ___

1a. If yes, what types? (Please circle.)

a. 1983
b. Antitrust
l. Fraud
m. Labor

c.	Asbestos	n.	Motor Vehicle
d.	Bankruptcy	o.	Patent, Trademark, Copyright
e.	Banks & Banking	p.	Personal Injury
f.	Civil Rights	q.	Prisoner
g.	Commerce Rights: ICC Rates	r.	RICO
h.	Contract	s.	Securities
i.	ERISA	t.	Other_____
j.	Environmental		_____
k.	Forfeiture	u.	All cases

2. Should discovery be routinely bifurcated (i.e., liability then damage discovery) in certain types of cases?

Yes ___ No ___

2a. If yes, what types? (Please circle.)

a.	1983	l.	Fraud
b.	Antitrust	m.	Labor
c.	Asbestos	n.	Motor Vehicle
d.	Bankruptcy	o.	Patent, Trademark, Copyright
e.	Banks & Banking	p.	Personal Injury
f.	Civil Rights	q.	Prisoner
g.	Commerce Rights: ICC Rates	r.	RICO

h.	Contract	s.	Securities
i.	ERISA	t.	Other_____
j.	Environmental		_____
k.	Forfeiture		_____
		u.	All cases

3. Should certain discovery be filed with the pleadings or in District Court (e.g., Superior Court Form 30 Interrogatories in personal injury cases; medical authorizations)?

Yes ___ No ___

3a. If yes, what type of discovery in what type of cases?

_____

_____

D. Alternate Dispute Resolution

1. Do you commonly advise the client about the use of alternate dispute resolution mechanisms?

Yes ___ No ___

1a. Do you increasingly advise the client about the use of alternate dispute resolution mechanisms?

Yes ___ No ___

2. In your experience, what characteristics of a case make it particularly amenable to alternate dispute resolution mechanisms? (Circle as many as applicable.)

a. low number of parties
b. parties are individuals
c. parties are businesses
d. simplicity of issues
e. low dollar amount
f. high dollar amount
g. primarily factual issues
g. primarily legal issues
h. highly contentious suit
i. noncontentious suit
j. primarily money damages
k. primarily equitable remedy
l. no perceived advantage of jury trial
m. other_____

_____

3. Have you ever participated in voluntary arbitration, mediation or a mini trial in a matter originally filed in District Court?

Yes ___ No ___

3a. If yes, please circle which procedure:

a. arbitration
b. mediation
c. mini trial

For Questions 4-8a, if you have had more than one experience with ADR, please give numbers: e.g., Yes 3 No 2 (Court suggested procedure in 3 cases and did not in 2.)

4. Did the Court suggest this procedure?

Yes ___ No ___

5. Did a litigant or the litigant's attorney suggest this procedure?

Yes ___ No ___

6. Did this procedure result in settlement?

Yes ___ No ___

7. Was your client satisfied with the outcome?

Yes ___ No ___

7a. If not, why?

_____

_____

8. Were you satisfied with the outcome?

Yes ___ No ___

8a. If not, why?

_____

_____

9. Should the District Court adopt some form of mandatory arbitration or mediation?

Yes ___ No ___

9a. If yes, what form? (Circle one or both.)

a. arbitration

b. mediation

10. Should mandatory arbitration or mediation be limited by case type?

Yes ___ No ___ No mandatory arbitration or mediation _____

10a. If yes, what type of case should not be subject to mandatory arbitration or mediation?

a.	1983	l.	Fraud
b.	Antitrust	m.	Labor
c.	Asbestos	n.	Motor Vehicle
d.	Bankruptcy	o.	Patent, Trademark, Copyright
e.	Banks & Banking	p.	Personal Injury
f.	Civil Rights	q.	Prisoner
g.	Commerce Rights ICC Rates	r.	RICO
h.	Contract	s.	Securities
i.	ERISA	t.	Other_____
j.	Environmental		_____
k.	Forfeiture		_____

11. Should mandatory arbitration and mediation be limited by dollar amount?

Yes ___ No ___ No mandatory arbitration or mediation _____

11a. If yes, what amount (diversity jurisdiction is $ 50,000)?

$ _____

PART III: COST QUESTIONNAIRE

Part of the task of the District of Delaware Advisory Group is to gather information relating to the cost of the case. We recognize that this is a sensitive issue. Therefore, to preserve the confidentiality of this information, please detach this last section and mail it in separately from the rest of the questionnaire.

A. Costs Of Litigation In The Specific Case Listed in Part I

1. What type of action was this case? (Please circle.)

a.	1983	l.	Fraud
b.	Antitrust	m.	Labor
c.	Asbestos	n.	Motor Vehicle
d.	Bankruptcy	o.	Patent, Trademark, Copyright
e.	Banks & Banking	p.	Personal Injury
f.	Civil Rights	q.	Prisoner
g.	Commerce Rights: ICC Rates	r.	RICO
h.	Contract	s.	Securities
i.	ERISA	t.	Other_____
j.	Environmental		_____
k.	Forfeiture		_____

2. What was the estimated or approximate dollar amount at stake?
$ _____

3. Please estimate the total fees and costs incurred by your client in bringing this case: $ _____

4. What type of fee arrangement did you have in this case? (Please circle one.)

   a. hourly rate
   b. hourly rate with maximum
   c. combination of hourly rate and other factors
   d. combination of reduced rate and other factors
   e. fixed fee
   f. contingency
   g. other (Please describe.)_____

   _____

5. What might the litigants, counsel, or the Court have done differently to reduce the cost to your client and what amount could have been saved? Please be as specific as you can without disclosing the identity of the case, client or Judge.

   Examples:

   1) Because the trial date was moved three times at the last minute, I was forced to prepare two additional times at an extra cost of $ 10,000 to my client.

   2) Because the opposing attorney refused to cooperate in discovery, I was forced to move to compel at an additional cost of $ 1,000 to my client.

   3) Because my client refused to settle, we went through a full trial only to obtain the same amount as the settlement offer. This resulted in an additional cost of $ 30,000 to my client.

   (If you need additional space, please attach additional sheets.)

_____

_____

_____

6. What suggestions or comments do you have for reducing the costs associated with civil litigation in this district?

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

EFFECTIVE DECEMBER 23, 1991

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

IN RE: ADOPTION OF A COST)
AND DELAY REDUCTION PLAN)

CIVIL ADMINISTRATIVE ORDER

On March 12, 1991, the Judicial Conference of the United States notified the United States District Court for the District of Delaware that it had been selected as a Pilot District under the terms and conditions of the Civil Justice Reform Act of 1990. P.L. 101-650, 104 Stat. 5089 (1990).

Thereafter, the Chief Judge of this District, with the advice of members of the Court, appointed an Advisory Group to (a) collect empirical data concerning the Court's civil and criminal dockets; (b) perform statistical analyses of the Court's dockets; (c) conduct a survey of attorneys who have represented parties in cases filed in this Court; (d) interview the judicial officers of the Court; (e) review existing rules and procedures applicable to civil litigation in the Court; (f) analyze the effects of particular types of civil litigation; (g) assess the impact of new legislation on the Court; and (h) prepare a report of its findings (the "Report") and make recommendations for a plan to reduce the costs and time in civil litigation while administering justice fairly in The United States District Court for the District of Delaware.

On October 1, 1991, the Advisory Group presented the Report along with its recommendations for such a Plan.

NOW, THEREFORE, after a review of the Report and recommendations of the Advisory Group,

IT IS ORDERED that:

The following Plan, designed to administer civil justice fairly and to reduce costs and time in civil litigation, is adopted by the United States District Court for the District of Delaware. The Plan shall forthwith be considered implemented as of this 23rd day of December, 1991, subject to modification as may hereafter be adopted pursuant to suggestions and requests of the committee composed of the Chief Judges of each district court within the Third Circuit and the Chief Judge of the Third Circuit Court of Appeals (the "Circuit Committee"), the Judicial Conference of the United States (the "Judicial Conference") and such other amendments as may be adopted by the Court to implement and promote the purposes of this Plan.

Copies of the Plan shall be forthwith forwarded to The Honorable Dolores K. Sloviter, Chief Judge of the United States Court of Appeals for the Third Circuit; The Honorable John F. Gerry, Chief Judge of the United States District Court for the District of New Jersey; The Honorable Louis C. Bechtle, Chief Judge of the United States District Court for the Eastern District of Pennsylvania; The Honorable Richard P. Conaboy, Chief Judge of the United States District Court for the Middle District of Pennsylvania; The Honorable Maurice B. Cohill, Jr., Chief Judge of the United States District Court for the Western District of Pennsylvania; The Honorable Stanley S. Brotman, Acting Chief Judge of the United States District Court for the District of the Virgin Islands; the Judicial Council of the United States Court of Appeals for the Third Circuit; and, the Honorable L. Ralph Mecham, Director of the Administrative Office of the United States Courts.

THE ADOPTED PLAN

1. The Court shall adopt, with due consideration of the need for drafting, public notice and formal approval, interim Local Rules which shall incorporate the substance of what follows:

(a) A Rule shall require certain mandatory discovery by all parties involved in litigation which could be characterized as personal injury, medical

malpractice, employment discrimination or a civil action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). 18 U.S.C. § 1961 et seq. (1990).

Under this Rule, a party must include the following information with its initial pleading: (i) the names, addresses and telephone numbers of each person with knowledge of facts relating to the litigation; (ii) the names, addresses and telephone numbers of all persons interviewed in connection with the litigation; (iii) the names, addresses and telephone numbers of each person who conducted any interview; (iv) a general description of documents in the possession, custody or control of the party which are reasonably likely to bear significantly on the claims or defenses asserted; (v) an identification of all expert witnesses presently retained by the party or whom the party expects to retain, together with the dates of any written opinions proposed by the experts; and (vi) a brief description of any insurance coverage applicable to the litigation. This Rule would require disclosure of such information without a formal discovery request from an opposing party.

This Rule addresses the conditions described in Section II.E.2.(d) of the Report, adopts Section III.A.4.(a) of the Recommendations of the Report ("Recommendations"), and adopts Section IV.A.1 of the Advisory Group's Proposed Plan (the "Proposed Plan").

(b) A Rule shall provide guidelines for determining whether a given case is complex.

Under this Rule, (i) any party seeking a determination of complexity under 28 U.S.C. 473(a)(2)(B) must file a Notice of Intent with the complaint or answer and a short statement setting forth the grounds for the determination of complexity; (ii) all other parties must file a short response within fifteen days thereafter or with a responsive pleading; and (iii) at the time of the Rule 16 scheduling conference, the Court shall determine whether the case is complex.

In making its determination of complexity, the Court may consider the following: (i) the type of action; (ii) the number of parties and their capacities; (iii) the factual and legal issues raised by the pleadings; (iv) the technical complexity of the factual issues; (v) the retroactivity of the circumstances giving rise to the claims and defenses; (vi) the volume and nature of documents subject to discovery; (vii) the amount of third-party and foreign discovery necessary; (viii) the number of deposition witnesses and their locations; (ix) the need for expert testimony; and (x) the nature of the issues to be determined pretrial.

This Rule addresses the requirements of 28 U.S.C. §473(a)(2)(B), adopts Recommendations 6(a), 6(b) and 8, and adopts Section IV.A.2 of the Proposed Plan.

(c) A Rule shall provide guidelines for the use of case management techniques in cases determined to be complex.

Under this Rule the Court may: (i) order separate trials of certain issues or the staged resolution of issues; (ii) set an early date for joinder of parties and amendments to the pleadings; (iii) make use of the Magistrate-Judge or a Special Master to monitor discovery and resolve disputes; (iv) limit discovery (e.g., the

number of depositions or the sequence of discovery) without court order; (v) set the schedule of expert discovery; (vi) limit or restrict the use of expert testimony; (vii) limit the length of time for presentation of evidence or the number of witnesses or documents that may be presented at trial; and (viii) use a state-of-the-art courtroom.

This Rule shall also provide the following procedures: (i) the parties shall file reports concerning the status of discovery and any motions or other procedural matters which are pending or anticipated as required by the presiding judge; and (ii) conferences shall be scheduled, as appropriate, by the presiding judge to discuss the issues in contention, monitor the progress of discovery, determine or schedule pending matters, and explore settlement.

This Rule addresses the requirements of 28 U.S.C. §473(a)(2)(b) and (3), adopts Recommendations 6, 7 and 8, and adopts Section IV.A.2 of the Proposed Plan.

(d) A Rule shall describe a Rule 16 scheduling procedure.

This Rule shall provide a scheduling procedure containing variations among expedited, standard and complex cases. This Rule shall also provide for a scheduling order which will include the following standard items among its provisions: (1) a date for termination of discovery; (2) dates for filing various motions, such as motions to join other parties, motions to amend pleadings, case dispositive motions; (3) a date for a pretrial conference, if appropriate; and (4) a date for trial, if appropriate. The Rule shall permit the Court to make exceptions when it finds that the circumstances so warrant.

The Rule shall also require counsel to certify to the Court that they have conferred prior to the Rule 16 conference to discuss settlement. The Rule shall also identify the matters that would be discussed at the conference including: (i) the possibility of settlement; (ii) whether the matter could be resolved by voluntary mediation or binding arbitration; (iii) the briefing practices to be employed in the case, including what matters are or are not to be briefed and the length of briefs; and (iv) the date by which the case is to be tried.

This Rule addresses the conditions described in Section II.E.2.(b) of the Report, adopts Recommendations 11, 12 and 14, and adopts Section IV.A.3.(b) and (c) of the Proposed Plan.

(e) A Rule shall address procedures in connection with requests for extensions of any deadline set in a scheduling or other order or statutorily imposed deadline.

This Rule shall (i) require the applicant to identify each prior request for an extension of a deadline in the particular case; (ii) require the applicant to explain the reasons for the request; (iii) require any other information or certification requested by the presiding judge; and (iv) require that the request be signed by counsel and supported by a client's affidavit or that the request be accompanied by a certification that counsel has sent a copy of the request to the client.

This Rule addresses the conditions described in Section II.E.2.(h) of the Report, adopts Recommendation 13, and adopts Section IV.A.5 of the Proposed Plan.

(f) The Court shall retain and enforce Local Rule 3.1.C but amend it to require parties to file briefs in support of motions at the time the motions are filed.

This Rule addresses the conditions of Section II.E.2.(d) of the Report, adopts Recommendations 9 and 10, and adopts Section IV.A.4 of the Proposed Plan.

2. The Court shall adopt, with due consideration of the need for drafting, public notice and formal approval, a master scheduling order for the processing of prisoner section 1983 cases and habeas corpus petitions which would (a) require defendants to file a responsive pleading, if necessary, within forty-five (45) days of service of the complaint; (b) require defendants to accompany their response to the complaint with a production of all relevant documents and an affidavit establishing that defendant has conducted a thorough search for relevant documents and that the documents produced are the only documents in defendant's custody pertinent to the action; (c) require that briefs in support of any motion accompany the filing of the motion; (d) require affidavits of fact, if appropriate, to be submitted with motions; and (e) require notice to parties that if reference is made to any matter outside the pleadings the dispositive motion may be considered one for summary judgment. The Court should adopt the practice of returning the management of a case to the Judge originally assigned to the case if the Magistrate-Judge does not recommend granting a case dispositive motion or if the assigned Judge does not accept the Magistrate-Judge's recommendation to grant a case dispositive motion.

This Rule addresses the conditions described in Section II.E.2.(a) of the Report, adopts Recommendations 17(a) and 17(b), and adopts Section IV.A.6 of the Proposed Plan.

3. As a matter of internal operation, the Court shall adopt the following procedures:

(a) The Judges of the Court should retain responsibility for all habeas corpus petitions and social security cases currently referred to the Magistrate-Judge. If the Court cannot implement this recommendation, then the Court should not continue to refer all prisoner section 1983 cases and habeas corpus petitions to the Magistrate-Judge. Rather, the Court should divide some of the prisoner section 1983 cases and habeas corpus petitions among the Article III Judges and the Magistrate-Judge.

This procedure addresses the conditions described in Section II.E.2.(a) of the Report and adopts Section III.A.17.(c) of the Proposed Plan.

(b) The courtroom clerks shall be trained to participate in case management through a series of adopted procedures starting with the duty to provide routine notices with regard to at least the following: (i) notices under Local Rule 5.2 (inactivity for 3 months); (ii) periodic notices during discovery; (iii) notices when briefs are more than five (5) days late; (iv) Rules to Show Cause for failure to serve process; (v) notices requesting default or stipulations for extensions of time to answer; and (vi) notices for Rule 16 conferences.

This procedure addresses the conditions described in Section II.E.2.(g) of the Report and adopts Recommendation 15.

4. The Court shall initiate and with continuing effort proceed to:

(a) Encourage the Congress to specify with respect to regulatory legislation it enacts whether it is or is not intended to afford a private remedy.

This action adopts Recommendation 19 and adopts Section C.4 of the Proposed Plan.

(b) Encourage the Congress to evaluate the impact upon the Judicial Branch of new or amended legislation, identify the courts whose caseloads are anticipated to be increased by such legislation and provide additional resources to those courts to accommodate that increase.

This action adopts Recommendation 19 and adopts Section C.4 of the Proposed Plan.

(c) Develop and adopt model jury instructions for standard charges in all cases (i.e., burden of proof) and, to the extent practicable, in non-complex cases.

This action adopts Recommendation 16 and adopts Section C.5 of the Proposed Plan.

(d) Conduct further study of the costs, potential use and effects upon the court, lawyers and litigants of an electronic courtroom.

This action adopts Recommendation 20 and adopts Section C.6 of the Proposed Plan.

(e) Conduct a legal education program for members of the Bar in conjunction with the Delaware State Bar Association that addresses the Court's practices and procedures, particularly those resulting from the adoption of a plan under the Civil Justice Reform Act.

This action adopts Recommendation 21 and adopts Section C.7 of the Proposed Plan.

(f) Seek authorization for a third law clerk to provide additional assistance to the Chief Judge whose available time for judicial responsibilities is limited by his administrative duties.

This action adopts Recommendation 22 and adopts Section C.8 of the Proposed Plan.

(g) Seek authorization for an additional "floater" secretary to be available to members of the Court during the absence of the regularly assigned secretaries and to assist the Court as circumstances may require, the schedule of assignment to be arranged by the Chief Judge of the Court.

This action adopts Recommendation 22 and adopts Section C.9 of the Proposed Plan.

(h) Seek authorization for an additional law clerk to assist the Magistrate-Judge with respect to pro se prisoner section 1983 petitions in identifying the specific issues addressed by the complaint, summarizing the evidence applicable to these issues and providing such other assistance as the Court may request in processing any action.

This action adopts Recommendation 17(d) and adopts Section C.10 of the Proposed Plan.

(i) The Court should consider establishing a panel of lawyers to serve as appointed counsel to in forma pauperis petitions in both prisoner section 1983 and habeas corpus proceedings.

This action adopts Recommendation 17(d).

Chief Judge Joseph J. Longobardi

Judge Joseph J. Farnan, Jr.

Judge Sue L. Robinson