M E M O R A N D U M

TO: All Members of the Judicial Council
Chief Judge Sloviter
Judge Becker
Judge Stapleton
Judge Mansmann
Judge Greenberg
Judge Hutchinson
Chief Judge Bechtle
Chief Judge Conaboy
Chief Judge Cohill
Chief Judge Longobardi

FROM: Chief District Judge John F. Gerry

DATE: December 19, 1991

RE: Civil Justice Expense and Delay Reduction Plan

We attach a copy of the Civil Justice Expense and Delay Reduction Plan unanimously adopted by the judges of the court on December 12, 1991, and a copy of our Advisory Expense and Delay Reduction Committee report, and hereby forward copies of same to all members of the Circuit Council of the United States Court of Appeals for the Third Circuit and to all Chief District Judges of the Third Circuit, in accordance with 28 U.S.C. § 472.

Civil Justice Expense and Delay Reduction Plan for Implementation of the Civil Justice Reform Act of 1990, in the District of New Jersey

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Adopted: December 19, 1991

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PLAN FOR IMPLEMENTATION OF THE CIVIL JUSTICE REFORM ACT OF 1990 IN THE DISTRICT OF NEW JERSEY

I. INTRODUCTION AND METHODOLOGY

In furtherance of its decision to become an Early Implementation Court pursuant to 28 U.S. Section 482(c) of the Civil Justice Reform Act of 1990, (the "Act") the United States District Court for the District of New Jersey adopts the following Civil Justice Expense and Delay Reduction Plan ("the Plan"). Pursuant to Standing Order filed January 31, 1991, Chief Judge John F. Gerry established the Civil Justice Expense and Delay Reduction Committee for the United States District Court for the District of New Jersey ("Advisory Committee").[1]

The Advisory Committee met for the first time on March 28, 1991. At that meeting, among other things, four subcommittees were established: alternative dispute resolution, limitations on discovery, governmental litigation and monitoring. Each subcommittee was asked to address a specific area.

The subcommittees met on a number of occasions, as did the entire Advisory Committee. Minutes of each subcommittee meeting were circulated within the entire Advisory Committee. This enabled the Advisory Committee as a whole to keep apprised of the work of

[1]The Standing Order appears in the Appendix at 1a, followed by the Act, reprinted at 3a et seq.

the subcommittees. Likewise, minutes of each meeting of the Advisory Committee were circulated.Oc[2]

The heart of the Plan is a proposal to amend the General Rules of this District Court. Proposed rule amendments were first addressed on a formal basis by the Governmental Litigation, Limitations of Discovery and Monitoring Subcommittees on May 8, 1991. Thereafter, all of the subcommittees gave consideration to the proposed amendments. The Advisory Committee met on June 11, 1991, at which time the proposals incorporated in this Plan were reviewed. On October 1, 1991, the Advisory Committee issued a Proposed Plan for this Court's consideration. The Court expresses its deep appreciation for the extensive effort of the Advisory Committee and its excellent product. That Proposed Plan has been carefully considered, supplemented, and in some respects amended, by the Judges of the Court. The results of the efforts of the Advisory Committee and the Court are set forth in the following Plan.

[2]Minutes of all meetings of the Advisory Committee and the subcommittees are on file permanently with the Clerk of the Court. The Court extends its particular thanks to the Honorable Ronald J. Hedges, United States Magistrate Judge, for serving as reporter for the Advisory Committee and taking responsibility for the preparation of all minutes.

II. ASSESSMENT OF THE DOCKETS

Consistent with Section 472(c) of Title 28 of the United States Code, the Advisory Committee made a thorough assessment of the state of the civil and criminal dockets of the District. In making that assessment, the Advisory Committee did the following:

A. determined the condition of the civil and criminal dockets;

B. identified trends in case filings and the demands being placed on the District's resources;

C. identified the principal causes of costs and delays in civil litigation; and

D. examined the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.[3]

The results of the assessment of the dockets are as follows:

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[3]The Advisory Committee, consistent with the mandate of the Act, considered newly enacted as well as contemplated legislation. Having done so, the Advisory Committee concluded that legislative matters were of such a complex and multidimensional nature that it would be inadvisable to make specific recommendations thereon to the Court. The Court agrees, but anticipates that the Advisory Committee and the Court will continue to monitor and assess the impact or potential impact of new legislation as it is proposed and/or enacted.

A. CONDITION OF THE CIVIL AND CRIMINAL DOCKETS.

1. Civil.

(a) As of June 30, 1991, the total number of pending civil cases was 5,255. Of this total, 740 were pending in which the United States was a party, prisoner cases numbered 520, and the remainder were private in nature.

(b) During the twelve-month period ending June 30, 1991, 5,466 civil cases were terminated. Of this total, 917 civil cases involved the United States, prisoner cases numbered 757, and the remainder were private in nature.

(c) For the twelve-month period ending June 30, 1991, the disposition rate of non-prisoner civil cases in the District, from the date of filing of a complaint, was as follows:

Total Number of Cases Disposed of	4,702 (100%)
Number of Cases disposed of Before Any Court Action	1,061 (22.6%)
Number of Cases Disposed of Before Pretrial	1,833 (38.9%)
Number of Cases Disposed of During or After Pretrial	1,590 (33.8%)
Number of Cases Tried to Disposition	218 (4.6%)

These figures reflect that only a small percentage of civil cases are disposed of at trial.

(d) Consistent with (c) above, the median time intervals for disposition of non-prisoner civil cases in the District from the filing of a complaint for the twelve-month period ending June 30, 1991, were as follows:

Median Time From Filing to Disposition	
All Civil Cases (4,702)	8 months
Cases Disposed of Before Court Action (1,061)	5 months
Cases Disposed of Before Pretrial (1,833)	5 months
Cases Disposed of During or After Pretrial (1,590)	15 months
Cases Disposed of by Trial to Completion (218)	20 months

These figures demonstrate that 95.4% of all non-prisoner civil cases terminated in the twelve-month period ending June 30, 1991 were disposed of well within the eighteen month period suggested by the Act (28 U.S.C. Section 473(a)(2)(B)) within which a case should be tried.

(e) Consistent with (c) and (d) above, the median disposition time of 8 months for all civil cases terminated for the twelve-month period ending June 30, 1991 ranked the District 19th nationwide out of 94 judicial districts. The District did rank 63rd nationally in the median disposition time of 20 months for cases tried to completion. However, this ranking is less signifi-

cant than that for all dispositions since only 4.6% of all terminated non-prisoner civil cases fall into the "tried to completion" category.

(f) The arbitration program (governed by General Rule 47) was responsible for the disposition of 979 of the 5,466 (or 18%) civil cases disposed in the twelve-month period ending June 30, 1991. The success of the arbitration program is reflected by the following (for the twelve-month period ending June 30, 1991):

Number of Cases Placed in Arbitration	1,154
Total Cases Pending in Arbitration	1,016
Cases Closed Prior to Appointment or Arbitrator	697
Cases Arbitrated or Settled After Arbitrator Appointed	282
Requests for Trial De Novo	149
De Novo Requests Closed Before Trial	122
Cases Left for Trial or Tried to Completion	27

(g) As of June 30, 1991, 237 three-year or older civil cases were pending. This represents 4.5% of the pending civil case load.[4] These three-year or older civil cases, by nature of statistical category, are as follows:

[4]The District has the lowest percentage of pending three-year or older civil cases in the Third Circuit.

Pending Civil Cases That Were Three-Years Old on 6/30/91

Nature of Suit	Prsnr Civ Rgt	Oth Civ Rgt	Cpyrgt Patent Trdmrk	Anti-trust	P.I.	Cntrct
Newark (127)	13	18	9	2	10	24
Trenton (51)	14	8	1	1	11	8
Camden (59)	16	11	2	0	5	11
Total (237)	43 (18.1%)	37 (15.6%)	12 (5.1%)	3 (1.3%)	26 (11.0%)	43 (18.1%)

Nature of Suit	Asbsts	Labor	Sec Cmmdts	RICO	Envr	Othr
Newark (127)	3	8	12	5	9	14
Trenton (51)	2	0	3	0	1	2
Camden (59)	0	0	1	2	3	8
Total (237)	5 (2.1%)	8 (3.4%)	16 (6.7%)	7 (2.9%)	13 (5.5%)	24 (10.1%)

2. Criminal.

(a) During the twelve-month period ending June 30, 1991, 742 criminal cases were filed in the District, 621 were terminated and, as of June 30, 1991, 679 were pending. Of the cases filed, 576 were felonies and 166 were misdemeanors.

(b) During the twelve-month period ending June 30, 1991, criminal cases were instituted against 1,073 defendants. Of this number, 907 defendants were charged with felonies and 166 with misdemeanor offenses.

3. Ranking of the District.

For the twelve-month period ending June 30, 1991, the District ranked 7th nationwide in total case filings (civil of 5,561 and criminal of 742) with a total of 6,303.

B. TRENDS IN CASE FILINGS AND DEMANDS BEING PLACED ON THE RESOURCES OF THE DISTRICT.

1. Civil.

(a) For the twelve-month period ending June 30, 1991, civil case filings rose 2.3%. This is contrary to the national trend of a 6.0% decrease in civil filings. This increase also reverses last year's decline in civil filings in the District of 6.0%, which appears to have resulted from the increase in the amount in controversy requirement of 28 U.S.C. Section 1332(a) from $10,000 to $50,000 effective May 18, 1989.

(b) The moderate increase in civil filings reflected above can be misleading. While diversity cases have decreased, the District has incurred an increase in filings of complex cases. For example, patent actions increased by 3.0%, antitrust actions by 9.0%, labor-related actions by 6.5% and statutory actions (including civil RICO, banking-related and environmental matters) by 19.5%. This significant increase has resulted in the District being ranked 16th nationwide in terms of weighted filings per

district judge (438 per judge in District to national average of 386 per judge).[5]

(c) Over the past three years, the pending civil calendar has been reduced by 13%, from 5,945 to 5,255. Even more encouraging, the number of three-year or older cases in the District has been reduced by 34% in the last two years. This progress reflects the aggressive involvement of both magistrate judges ("magistrates")[6] and district judges in the settlement and scheduling process.

2. Criminal.

(a) While the District made progress with its civil calendar, its efforts have been hampered by the dramatic rise in criminal filings, especially drug prosecutions. Criminal filings increased nationwide 1% last year. In New Jersey criminal case filings rose 11%. More specifically, felony prosecutions in 1991 grew by 12% and by 41.4% in the last two years (from 423 cases in

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[5]These calculations were performed by the Administrative Office of the Courts, based upon the seventeen judgeships authorized in this District. As of June 30, 1991, however, the Court had only thirteen active judges and four vacancies. In reality, therefore, the weighted filings per active judge actually sitting is nearly 25% higher than the A.O. statistics would indicate.

[6]Magistrates in the District dealt with 11,821 civil matters for the twelve-month period ending June 30, 1991, ranking the District first nationwide in the number of matters dealt with by magistrates. These included 7,258 pretrial conferences and 4,563 nondispositive motions. These statistics demonstrate the central position of the magistrates in the management of civil cases and the need for their continued involvement.

1989 to 598 in 1991). As a result, there are currently 1,072 defendants in criminal cases. These figures represent the largest number of felony filings in the District since 1977. A review of criminal case filing trends also shows that, in the statistical year 1991, 129 drug cases were filed. This is a 51% increase over last year's record total, which increased 24% over the 1989 total. Drug prosecutions represent 22% of the District's criminal felony caseload and the number of felony drug defendants comprises 32% of all defendants. Cases charging immigration and weapons violations, many related to drug activity, rose more that 23% each. Fraud filings increased 10%, spurred in part by the savings and loan problem. Criminal cases charging banking law violations have increased 15.5%. More than 36% of all pending criminal cases involved drug offenses to some extent. In fact, almost 40% of the District's criminal calendar consists of drug or banking law prosecutions.

(b) The United States Attorney for the District has received the following allocations of Assistant United States Attorneys within the past four years:

1988 - Ten AUSAs to prosecute violent crime and narcotics offenses (authorized by Public Law 100-690; funded by Public Law 101-64).

1989 - One AUSA for financial institution fraud (authorized Public Law 101-73; funded by Public Laws 101-62 and 101-64).

1990 - Two AUSAs for narcotics; eight AUSAs for criminal financial institution fraud; two AUSAs for civil

financial institution fraud (Public Laws 101-515 and 101-647).

1991 - Two AUSAs for financial institution fraud and four AUSAs for financial institution bank fraud allocated to the District by the Department of Justice.

This increase in staffing is consistent with the increase in the criminal caseload and filings of statutory actions referred to above.

C. **PRINCIPAL CAUSES OF COSTS AND DELAYS IN CIVIL LITIGATION.**

(1) A four-month potential delay is "built in" to all civil cases by Fed. R. Civ. P. 4(j). This allows a plaintiff 120 days from filing of a complaint to effect service and allows service after that time for "good cause." This is not intended to be a criticism of Rule 4(j), which serves a salutary purpose, but is intended to be a comment on an institutional delay. Another institutional source of delay which deserves comment is the liberality shown in granting extensions of time to answer or otherwise plead.

(2) Costs (both in terms of the resources of the parties and the District) in civil cases often arise from discovery disputes. Discovery disputes, in addition to giving rise to costs, also create delays in civil cases.

(3) Costs and delays in complex cases (e.g., patent actions, class actions and environmental matters) are often the

unavoidable result of the nature of the case. Actions on patents, for example, often lead to legally and factually complicated issues of patent invalidity, patent infringement, and damages. These issues, by their very nature, generate substantial discovery and other costs. As another example, civil cases brought by current property owners against predecessors in title for the expense of environmental clean-ups are often delayed until the extent of contamination is decided by a regulatory agency such as USEPA or NJDEP and until the agency approves a clean-up plan. Environmental litigation also gives rise, more often than not, to joinder of multiple parties and collateral litigation over insurance coverage.

(4) Delays in commencement of civil trials, again more often than not, arise from the heavy criminal caseload of the District. Consistent with a criminal defendant's constitutional right to a speedy trial and the Speedy Trial Act, trials of criminal cases must be given priority. Unfortunately, criminal felony cases tend to be multi-defendant and lengthy, thus exacerbating delay in civil trials.

(5) Two district judges are quartered in courtrooms previously occupied by bankruptcy judges and a third district judge sat almost three years without a courtroom, resulting in four judges sharing three existing courtrooms in one vicinage. There is a lack of ample petit jury assembly rooms, particularly at Trenton and Camden, and the space assigned to the Clerk's Office

at each location is inadequate. The construction of annexes in Camden and Trenton should alleviate these problems. Construction of the Trenton Annex started in May 1991 and construction of the Camden Annex began in July 1991. Both are expected to be completed during the summer of 1993. The new Martin Luther King, Jr. Federal Courthouse in Newark is nearing completion, and should be fully operational, early in 1992.[7]

(6) Financial restraints over the last half decade have affected every facet of operation, particularly the Gramm-Rudman legislation that curtailed staffing levels within every court support agency to 92% of the staffing allocation formula. The lack of sufficient personnel not only affected productivity but morale as well, all of which was detrimental to the District's effectiveness. The fiscal year 1991 operational budget for the Court was initially funded at 60% of its initial request, although some supplemental funding in selected line items has marginally elevated this percentage. This funding is earmarked for general office and automation equipment and various supplies and services. The installation of electronic civil docketing, financial, accounting and procurement systems in the Clerk's office and the installation of computer-assisted legal research in all Chambers, however, has

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[7] These additional facilities should increase the productability of the Court and allow, inter alia, the expansion of services to litigants and attorneys, including alternative dispute resolution ("ADR") programs.

improved the District's ability to meet many of the challenges that still exist.

7. Many judicial districts have the benefit of a cadre of senior judges who are active and who contribute to reduction of both civil and criminal dockets. Unfortunately, the District has an atypically small number of senior judges (in fact, two) when compared with judicial districts of comparable size. This is yet another factor in the size of the civil and criminal caseloads carried by our judges.

III. THE PLAN

A. OVERVIEW.

The Advisory Committee and the Court believe that the state of the civil docket of the District is satisfactory and that the District is in substantial compliance with the Act. Although any number of three-year or older cases is regretted, only a small number of such cases exist. The median length of cases tried to completion is 20 months (down from 23 months in previous years but still a statistic that should be improved). However, less than 5% of the District's civil cases fall within this category. Regrettably, the cases which are three years or older, although a relatively small number, consume a disproportionate percentage of the time of judicial officers. These problems with the civil docket must be balanced with what appears to be a trend toward greater criminal filings, particularly in drug and multi-defendant criminal cases.

The Plan is designed to resolve the problems described above in four ways:

(1) utilize judicial resources more effectively;

(2) implement early and ongoing intervention in case management by judicial officers;

(3) involve the parties and the responsible attorneys; and

(4) expand the availability of ADR.

B. AMENDMENTS TO THE GENERAL RULES.

The Court hereby initiates the process for formal amendment of the following General Rules:

(1) Revise General Rule 1A by inserting, "consistent with the Civil Justice Act of 1990," into the first sentence and after, "shall be construed."

(2) Revise General Rule 1B by inclusion of a new definition, which shall read as follows:

> Governmental Party means the United States of America, any State, Commonwealth or territory, any county, municipal or public entity, or any agency, department, unit, official or employee thereof.

(3) Revise General Rule 1 by inclusion of a new subsection C which shall read as follows:

> The Chief Judge may, after recommendation by the Lawyer's Advisory Committee and with the approval of the Court, authorize the relaxation, dispensation or modification of any Rule on a temporary basis. The effective period of any such authorization shall not exceed one year.

(4) Delete General Rule 15 and replace it with a new General Rule 15, which shall read as follows:

Rule 16 Case Management and Discovery

A. Scheduling Conferences -- Generally

1. Conferences pursuant to Rule 16 of the Civil Rules shall be conducted, in the first instance, by the Magistrate, unless the Judge otherwise directs. The initial conference shall be scheduled within 60 days of filing of an initial answer, unless deferred by the Magistrate due to the pendency of a dispositive or other motion.

2. The Magistrate may conduct such further conferences as are consistent with the circumstances of the particular case and this Rule and may revise any prior scheduling order for good cause.

3. At each conference each party not appearing pro se shall be represented by an attorney who shall have full authority to bind that party in all pretrial matters.

4. The Magistrate may, at any time he or she deems appropriate or at the request of a party, conduct a settlement conference. At each such conference attorneys shall ensure that parties are available, either in person or by telephone, and as the Magistrate directs, except that a governmental party may be represented by a knowledgeable delegate.

5. Conferences shall not be conducted in those civil cases described in Rule 40A.4(c) unless the Magistrate so directs.

B. Initial Conferences -- Generally

1. Prior to the initial conference the attorneys shall confer, either in person or by telephone, to agree on a joint discovery plan. Discussion of counsel shall include, but need not be limited to, the following:

a. phased discovery (e.g., liability from damages discovery);

b. bifurcation (e.g., liability from damages; statute of limitations before other issues);

c. limiting the number of interrogatories, depositions or other discovery;

d. providing for the early exchange of documents;

e. dates for filing of dispositive motions and for trial; and

f. consent to some form of alternative dispute resolution.

2. No less than 7 days prior to the initial conference, counsel shall submit the joint discovery plan, and any disputes regarding the same, to the Magistrate for consideration at the initial conference. That plan, or any party's discovery memorandum in case agreement is not achieved, shall address the issues itemized in Section B.1 above and shall include:

a. a description of all discovery conducted to date;

b. a description of all discovery problems encountered to date, the efforts undertaken to remedy these problems, and the suggested resolution of the problems;

c. a description of further discovery needs;

d. an estimate of the time needed to complete discovery;

e. a statement regarding whether expert testimony will be necessary, and the anticipated schedule for retention of experts and submission of their reports;

f. a statement regarding whether there should be any limitation placed upon use of any discovery device and, if so, the reasons the limitation is sought;

g. a description of any special discovery needs (e.g., videotape, telephone depositions, or problems with out-of-state witnesses or documents);

h. if the case is to be arbitrated under Rule 47C, and any party contends that arbitration would be inappropriate, a statement setting forth the reasons for that contention; and

i. a statement whether the case is one which might be resolved in whole or in part by voluntary arbitration, mediation, appointment of a special master or other special procedure.

3. The Magistrate shall, after consultation with counsel, enter a scheduling order which may include, but need not be limited to, the following:

a. dates by which parties must move to amend pleadings or add new parties;

b. dates for submission of experts' reports;

c. dates for completion of fact and expert discovery;

d. dates for filing of dispositive motions after due consideration whether such motions may be brought at an

early stage of proceedings (i.e., before completion of fact discovery or submission of experts' reports);

e. a pretrial conference date; and

f. any designation of the case for arbitration, mediation, appointment of a special master or other special procedure.

The scheduling order may further include such limitations on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs.

4. The Magistrate shall, after consultation with the parties, designate each non-arbitration case either Track I or II. Each class action, antitrust, securities, environmental, patent, trademark, or multi-district case shall presumptively be designated Track II.

5. The Magistrate shall also advise each party of the provisions of Rule 40A.3.

6. In a civil action arising under 28 U.S.C. Sections 1961-1968, the Judge or Magistrate may require a RICO case statement to be filed and served in the form set forth in Appendix C.

C. Initial Conferences -- General Rule 47 Arbitration Cases

At the initial conference in cases assigned to arbitration pursuant to Rule 47C the Magistrate shall enter a scheduling order as contemplated by section B.3 above except that no pretrial date shall be set. Only the initial conference shall be conducted prior to a demand for trial de novo pursuant to Rule 47G, except that the Magistrate may conduct one or more additional conferences if a new party or claim is added, or an unanticipated event occurs affecting the schedule set at the initial conference.

D. Subsequent Conferences -- Track I and Track II Cases

Track I cases are those which are not subject to Rule 47 arbitration or which are not designated Track II. Track I cases are presumed to require infrequent conferences or other judicial intervention after the initial conference. A pretrial conference shall presumptively be conducted within one year of filing of an initial answer in Track I cases. Track II cases are those which, based on the pleadings or facts appear to require frequent conferences or other judicial intervention. Status conferences shall presumptively be scheduled on a regular basis.

E. Discovery and Case Management -- Generally

1. All parties shall conduct discovery expeditiously and diligently.

2. Counsel shall confer to resolve any discovery or case management dispute. Any such dispute not resolved shall be presented by telephone conference call or letter to the Magistrate. This presentation shall precede any formal motion.

3. Cases in which a party appears pro se shall not be subject to Section E.2 above unless the Magistrate so directs. In such cases discovery or case management disputes shall be presented by formal motion consistent with Section F below.

F. Discovery and Case Management -- Motions

1. Discovery or case management motions must be accompanied by an affidavit certifying that the moving party has conferred with the opposing party in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Court and that the parties have been unable to reach agreement. The affidavit shall also set forth the date and method of communication used in attempting to reach agreement.

2. Discovery motions shall have annexed thereto copies of only those pertinent portions of depositions, interrogatories, demands for admission and responses, etc., which are the subject matter of the motion.

3. General Rule 12C shall apply to discovery and case management motions, except that the following schedule shall be followed. No such motion shall be heard unless the appropriate papers are received at the Clerk's Office, at the place of allocation of the case, at least twenty-four (24) days prior to the date noticed for argument. No opposition shall be considered unless appropriate answering papers are received at the Clerk's Office, at the place of allocation of the case, and a copy thereof delivered to the Magistrate to whom the motion is assigned at least fourteen (14) days prior

to the date originally noticed for argument, unless the Magistrate otherwise directs. No reply papers shall be allowed except with the permission of the Magistrate. Unless oral argument is to be heard under Section F.4 below, the Magistrate may decide the motion on the basis of the papers received when the deadline for submitting opposition has expired.

4. No oral argument shall be heard except as permitted expressly by the Magistrate assigned to hear the motion. In the event oral argument is required, the parties shall be notified by the Court. Oral argument may be conducted in open Court or by telephone conference, at the discretion of the Magistrate. Any party who believes that a motion requires oral argument shall request it in the notice of motion or in response to the notice of motion, and so notify the Court in writing at the time the motion or opposition thereto is filed.

G. Discovery -- Materials

1. Transcripts of depositions, interrogatories and answers thereto, requests for production of documents and responses thereto, and requests for admissions and answers thereto shall not be filed except when needed in a particular pretrial proceeding or upon order of the Court. However, all such papers must be served on other counsel or parties entitled thereto under Rule 5 of the Civil Rules.

2. In those instances when such discovery materials are properly filed, the Clerk shall place them in the open case file unless otherwise ordered.

3. The party obtaining any material through discovery is responsible for its preservation and delivery to the Court if needed or ordered. It shall be the duty of the party taking a deposition to make certain that the officer before whom it was taken has delivered it to that party for preservation and to the Court as required by Rule 30(f)(1) of the Civil Rules if needed or ordered.

(5.) Revise General Rule 29B to read as follows:

> B. If the petition or motion is presented <u>in forma pauperis</u> it shall include an affidavit (attached to the back of the form) setting forth information which establishes that the petitioner or movant is unable to pay the fees and costs of the proceedings. Whenever a federal, state, or local prisoner submits a civil rights complaint, petition for writ of habeas corpus, or motion for relief under 28 U.S.C. Section 2255 and seeks <u>in forma pauperis</u> status, the

prisoner shall also submit an affidavit setting forth information which establishes that the prisoner is unable to pay the fees and costs of the proceedings, and shall further submit a certification signed by an authorized officer of the institution certifying (i) the amount presently on deposit in the prisoner's prison account and, (ii) the greatest amount on deposit in the prisoner's prison account during the six-month period prior to the date of the certification. The affidavit and certification shall be in the forms attached to and made a part of these rules as Appendix P. The Clerk shall reject any complaint, petition, or motion which is not in full compliance with this requirement.

(6.) Revise General Rule 29C to read as follows:

If the prison account of any prisoner exceeds $200, the petitioner or movant shall not be considered eligible to proceed in forma pauperis.

(7.) Add General Rule 29D to read as follows:

The respondent shall file and serve his answer to the petition or motion not later than forty-five (45) days from the date on which an order directing such a response is filed with the Clerk, unless an extension is granted for good cause shown. The answer shall include the respondent's legal argument in opposition to the petition or motion. The respondent shall also file, by the same date, a certified copy of all briefs, appendices, opinions, process, pleadings, transcripts and orders filed in the underlying criminal proceeding or such of these as may be material to the questions presented by the petition or motion.

(8.) Revise General Rule 40A.4(b) by adding ", including scheduling orders in accordance with Rule 16 and Civil Rule 16." as a concluding clause.

(9.) Delete the first sentence of General Rule 47C.2 and replace it with the following sentence:

> At any time prior to the commencement of a plenary trial, the parties may consent to the arbitration of any civil action, regardless of the amount in controversy, and may also consent to participation in any other form of alternative dispute resolution.

(10.) Revise the Guidelines for Arbitration (Appendix M, General Rules) by inclusion of a new subsection "X," which shall read as follows:

> General Rule 47C.2 provides for arbitration by consent. It is the intent of the Court, by inclusion of this consent provision, to encourage parties to choose a particular form of alternative dispute resolution. Parties may agree to participate in the arbitration process prescribed in General Rule 47D and E or may participate in other forms of alternative dispute resolution such as, by way of example only, mediation, mini-trials or summary jury trials. Any such agreement between the parties must, however, be presented to a Judge or Magistrate for approval, who shall consider it with due regard for the calendar and resources of the Court. Should the parties agree on some form of alternative dispute resolution the District Judge may administratively terminate the civil action pending completion of the alternative dispute resolution procedure.

(11.) Revise General Rule 47C.3 to read as follows:

> No civil action shall be designated or processed for compulsory arbitration if the claim therein is
>
> (a) based on an alleged violation of a right secured by the Constitution of the United States; or
>
> (b) jurisdictionally based, in whole or in part, on (i) 28 U.S.C. Section 1346(a)(1) (tax

refund actions) or (ii) 42 U.S.C. Section 405(g) (Social Security actions).

Upon filing its initial pleading a party may request that an otherwise eligible case not be designated or processed for compulsory arbitration if either circumstances encompassed within Rule 47D.6 are present or other specific policy concerns exist which make formal adjudication, rather than arbitration, appropriate.

(12.) Revise General Rule 47F by striking the first sentence and in erting as to first two sentences the following:

Within thirty days after the hearing is concluded, the arbitrator shall file with the Clerk a written award, accompanied by a written statement or summary setting forth the basis for the award which shall be received by the Clerk but not filed.

(12A.) Revise Section VIII of the Appendix M (Guidelines for Arbitration) to insert into the second sentence before the concluding phrase ("to the arbitrator and counsel") the following:

and the arbitrator's written statement or summary setting forth the basis for the award.

(13.) Revise General Rule 47G by inclusion of a new subsection "4," which shall read as follows:

The Magistrate shall conduct a pretrial conference within sixty (60) days of filing of a demand for a trial de novo.

The reasons for these proposed amendments are as follows:

Rule 1A: The suggested amendment to this rule is technical in nature and incorporates the Act by reference.[8]

Rule 1B: The inclusion of definition for "governmental party" is necessitated by the use of that phrase in proposed rule 15A.4.

Rule 1C: The purpose of this amendment is to include an explicit authorization within the General Rules enabling experimental rule changes on a temporary basis.

Rule 15: This revision is intended to reflect existing practices and to incorporate certain procedures recommended by the Act. The "efficient utilization of judicial resources" goal of the Act is met by continued utilization of magistrates to conduct scheduling conferences. The goal of "early and ongoing control" by judicial officers is met by scheduling initial conferences within 60 days of filing of an answer, with the understanding that the pendency of certain motions may obviate the need for a conference within that time.

The above goals, together with the concern of the Act for "differentiated case management," is met by recognition that arbitration and non-arbitration cases are already treated differently in the District. Proposed Rule 15 would continue this different treatment by incorporating specifically the concept that only an initial conference be conducted in arbitration cases.

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8. The Advisory Committee and the Court considered -- and rejected -- a proposed amendment which would have emphasized the availability of monetary or other sanctions for discovery or other litigation abuse.

Initial conferences in such cases should be conducted early and there should be minimal use of judicial resources.

The concern for differentiated case management is addressed further by creation of two litigation "tracks." The proposed tracks recognize that many non-arbitration civil actions can be pretried within one year of joinder of issue. The remaining actions (for example, class actions, patent cases, environmental matters, etc.) require more time before pretrial. The proposed rule recognizes this and also recognizes that complicated cases call for more regular and involved judicial management.

The proposed rule would also involve litigants and attorneys consistent with the Act. This will be done in several ways. The litigant and the attorney must recognize that the latter, when he appears at a scheduling conference, must have binding authority in all pretrial matters. The existing obligation of attorneys to submit "discovery memoranda" prior to the initial conference is continued. Moreover, attorneys would be required to confer, either in person or by telephone, before status conferences in an attempt to resolve any disputes and agree on a discovery plan. Litigants would be involved by providing expressly that they must be available for settlement conferences conducted by the Court. However, in recognition of the size and divisions of authority within "governmental parties," the proposed rule provides that these may be represented by "knowledgeable delegates."

The Act suggests that dates for trial and the like be calculated from filing of the Complaint. The Advisory Committee instead opted for the date of filing of the initial Answer as a

"trigger" date. This is because service of process need not be completed until 120 days after filing of the Complaint. Civil Rule 4(j). The Court has adopted this suggestion.

The Advisory Committee and the Court both considered whether to incorporate a specific date by which a pretrial order must be entered and by which a trial must be conducted. Both have been rejected. Given the heavy criminal calendar of the District it would be a disservice both to litigants and attorneys to set an allegedly "absolute" trial date when it is well known that judges must, consistent with the Speedy Trial Act, often delay civil trials due to criminal ones. Fixed dates would be artificial and an unnecessary burden for both the Court and the parties to work against.

Rule 29B: This amendment is intended to clarify that prisoners who seek in forma pauperis status in any civil case must submit an appropriate affidavit and certification in a form approved by the Court. To further ensure that valid in forma pauperis applications are submitted, the proposed amendment would require the Clerk to reject any nonconforming application.

The Advisory Committee considered a partial filing fee requirement for prisoners who seek in forma pauperis status. Partial filing fees have been approved (albeit in principle only) by the United States Court of Appeals for the Third Circuit. Jones v. Zimmerman, 752 F.2d 76, 78-79 (3d Cir. 1985); Bullock v. Suomela, 710 F.2d 102, 103 (3d Cir. 1983); see Walker v. People Express Airlines, Inc., 886 F.2d 598, 600-601 (3d Cir. 1989).

The Advisory Committee chose not to recommend a partial filing fee at this time for several reasons. First, the administration of the fee might prove to be unduly burdensome. Second, the financial information available currently from state prison facilities is insufficient. Third, there is no reason to conclude that a partial filing fee requirement would improve the civil docket of the District. The Judges of the Court, and particularly its ex-officio members on the Advisory Committee, also considered the use of a partial filing fee and reject it for the same reasons.

Rule 29C: This increase reflects the recently increased filing fee of $120 for a civil complaint.

Rule 29D: This amendment is intended to include the 45-day time limit recommended by the Governmental Litigation Subcommittee and adopted by the Court.

Rule 40A.4(b): This is a technical amendment intended to incorporate reference to entry of scheduling orders and General Rule 15.

Rule 47C.2: General Rule 47C.2 now authorizes parties to consent to arbitration. This amendment would expand the rule to authorize parties to participate in any other form of ADR.

Guidelines for Arbitration: This amendment to the Guidelines is intended to express the intent of the Court to expand the availability of ADR and to authorize the administrative termination of cases which go into ADR.

Rule 47C.3: This amendment is intended to expand compulsory arbitration to the fullest extent possible and, having done so, to leave to the discretion of the magistrate the exclusion of cases

which, for reasons such as public policy, should not be placed in compulsory arbitration.

Rule 47F: This amendment would set a time limit by which arbitrators should file awards. Such a time limit would be consistent with the intent of the Court to make arbitration a speedy process yet would afford arbitrators an appropriate period within which to prepare an award. A statement or summary of the basis for the award will assist counsel in evaluating the settlement potential of the case and whether to request a trial de novo.

Rule 47G: This amendment would set a date by which a pretrial conference should be conducted after a demand for trial de novo has been filed. Again, this is consistent with the expeditious nature of the arbitration process.

C. OTHER RECOMMENDATIONS:

The Court adopts and endorses the following additional recommendations of the Advisory Committee.

(1) The Court recommends to the Judicial Conference of the United States that it support an amendment to Fed. R. Civ. P. 53(b) to allow greater use of masters in discovery matters.

Rule 53(b) now provides that references to special masters are to be "the exception and not the rule ...." See Apex Fountain Sales, Inc. v. Kleinfeld, 818 F.2d 1089, 1096-97 (3d Cir. 1987). Judges in the District, accordingly, have appointed special masters to oversee discovery in only a limited number of complex cases and on an exceptional basis. However, the Advisory Committee is of the opinion that the designation of special masters serves the interests of both the Court and the parties by allowing complicated and protracted discovery disputes to be resolved expeditiously and by freeing the magistrates and district judges to deal with the remainder of their dockets. More flexible use of special masters should be encouraged.

(2) The Court recommends to the Statistical Branch of the Administrative Office that it develop a "median disposition time" statistic for individual categories of cases. This recommendation arises out of the concern that median disposition time as now reported in the annual reports of the Administrative Office is "skewed" by limited categories of cases which consume substantial judicial resources and require extended time periods for disposition. Development of these new statistics on a nationwide basis will enable a more accurate comparison among district courts

to be made and will also enable these categories of cases to be identified and concentrated on.

(3) The Court will implement a standardized format of report or reports to be issued by the Clerk on a monthly basis. This will facilitate comparison of dockets among the district judges and lead to uniformity of statistics within the District.

(4) The Clerk shall issue reports on a monthly basis on the status of habeas corpus proceedings and Social Security appeals, to facilitate monitoring of these cases.

(5) The Court recommends the creation of two staff attorney positions within the Clerk's Office. These staff attorneys would be dedicated to processing Social Security appeals and habeas corpus petitions. Such staff attorneys would develop institutional expertise in the review and resolution of these cases, thus resulting in more efficient use of judicial resources and speedier dispositions.

(6) The Court approves, on an experimental basis, the reference of designated complex civil actions to mediation and other civil actions to summary jury trials. This experiment will be commenced early in 1992 by the selection of two appropriate cases in each category by each judge and magistrate.

(7) The Court will arrange for a presentation to be made to its district judges, magistrates and selected staff on the uses and forms of ADR. The Court will also request that the Association of the Federal Bar of the District of New Jersey sponsor a seminar or seminars both to educate the Bar on ADR and to train attorneys to act as mediators.

IV. BASIS FOR CERTAIN PROVISIONS OF THE PLAN[9]

A. EFFICIENT USE OF JUDICIAL RESOURCES.

The Plan will implement early and ongoing judicial intervention by scheduling initial conferences under Civil Rule 16 within 60 days of filing of the initial answer. This is more workable than setting an initial conference date triggered by the date of filing of a complaint. The latter would be inappropriate inasmuch as service need not be effected under Fed. R. Civ. P. 4(j) until 120 days after filing of a Complaint.

The Plan will utilize more effectively judicial resources by the creation of "tracks." The Plan creates two tracks for civil actions not in arbitration. Track I will consist of all civil actions which do not qualify for Rule 47 arbitration but appear capable of completion of discovery and execution of a final pretrial order within one year of filing of an initial answer. Conferences are expected to be infrequent in Track I cases.

Track II cases are those which are complex and lengthy. Certain types of cases will presumptively be in Track II. Judicial officers will designate cases in Track II (as opposed to Track I) at the initial conference. Since cases will be segregated into

[9]This section of the Plan should be read in conjunction with the reasons for the GeneralRule amendments set forth above at pages 25 through 29.

tracks, presumptively complex cases have been identified for enhanced judicial scrutiny on a regular basis.

In the interest of conserving the resources of both the Court and parties, Revised General Rule 15A.1 authorizes the magistrate to defer the initial conference if a motion is pending. Such a motion (for example, to dismiss a Complaint or to transfer venue) might make an initial conference superfluous.

Consistent with the Advisory Committee's recommendation, the Court will continue the current practice of the District pursuant to which certain classes of civil cases are not usually conferenced. These include habeas corpus proceedings (see General Rule 30), Social Security review proceedings (see General Rule 46) and pro se actions. Most actions in which pro se litigants are either plaintiffs or defendants are best dealt with on written submission.

B. DISCOVERY.

The Plan will ensure that certain steps are taken to minimize expenses arising out of discovery disputes. First, attorneys must confer among themselves in an attempt to resolve any discovery dispute. Second, if the attorneys cannot resolve the dispute, the dispute should be brought to the attention of a magistrate either by telephone conference call or letter. Only

after these steps are taken may a party file a formal discovery motion.

The Advisory Committee and the Court both considered the possibility of placing limits on discovery (for example, limiting the number of interrogatories and depositions). However, such uniform limitations are inappropriate. It is the obligation of attorneys in each case, based upon its own particular characteristics, to attempt to limit discovery prior to involvement of a judicial officer.

C. ROLE OF ATTORNEYS.

Attorneys must play an important role in this Plan. The role of attorneys may be summarized as one of conferring among themselves and with the Court. In the first instance, attorneys must submit for initial conferences in all civil actions a discovery memorandum which will inform the magistrate of the status of the case and of the expected need for discovery. On the basis of this memorandum the magistrate, after consultation with the parties, will be in a position to issue a pretrial scheduling order.

Attorneys who appear at conferences are expected to be fully prepared to deal with all scheduling matters, including having binding authority to enter into Scheduling Orders with the magistrate. This requirement for binding authority is expected to

minimize the need to relax scheduling orders after they are entered and is further expected to minimize subsequent discovery disputes.

The role of the attorney is heightened in all nonarbitration cases. In such cases the attorneys must confer prior to any conference after the initial scheduling conference. The purpose of this requirement is to encourage attorneys to resolve scheduling and/or discovery issues before these are presented to the magistrate.

The Court will continue the current practice of conducting a single conference in Rule 47 arbitration cases and of scheduling conferences flexibly in cases which will now be designated either Track I or II.

D. ALTERNATIVE DISPUTE RESOLUTION.

The Plan proposes a major expansion in the use and availability of ADR in the District. The Court is justifiably pleased with the success of arbitration under General Rule 47. See description above at page 7. Arbitration limits the involvement of judicial officers, diverts cases from the standard pretrial process, and allows parties to submit their disputes promptly to a neutral individual.

The Plan will, in the first instance, expand compulsory arbitration. Rule 47C.3, which had been a rule of exclusion of cases from compulsory arbitration, will become one of inclusion.

Given the experience of the District with compulsory arbitration the Advisory Committee is confident that, with the assistance of the judges and magistrates in the selection of appropriate cases for arbitration, an expanded arbitration program will be successful.

Rule 47C.2 will be expanded to permit parties to participate in any available form of ADR, including mediation, summary jury trials and mini-trials. In conjunction with this expansion, and recognizing that education will be the key to success of ADR, the Court adopts the Advisory Committee's recommendation that appropriate seminars be conducted for both the Court and the Bar. Likewise, in recognition of the experimental nature of certain forms of ADR in the District, selected civil cases will be diverted to mediation or summary jury trial so that the Court and the Bar can assess the strengths and weaknesses of these forms.

V. FUTURE ROLE OF THE ADVISORY COMMITTEE

The Civil Justice Reform Act provides that the Advisory Committee remain in existence for seven years. 28 U.S.C. Section 482(b)(2). After adoption of its Plan, in consultation with the Advisory Committee, the Court must

> 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 costs and delay in civil litigation and to improve the litigation management practices of the Court. [28 U.S.C. Section 475].

Upon submission of its proposed Plan, the Advisory Committee dissolved its subcommittees and established an oversight subcommittee to meet regularly and to secure such information as might be appropriate for submission to the entire Advisory Committee and the Court. The Court welcomes and will make use of the services of the oversight subcommittee and the entire Advisory Committee in the future.

VI. CONCLUSION

The Plan set forth above provides to this Court a comprehensive means by which to reduce expense and delay within the District to the benefit of all participants in the civil justice process. The Court pledges its efforts to put the Plan into practice and calls upon attorneys and litigants to do likewise. Working together we can achieve the goals of the Plan and the Civil Justice Reform Act of 1990.

Respectfully submitted,

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BY: _____
The Honorable John F. Gerry
Chief Judge

[APPENDIX FOLLOWS]

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

IN RE: ESTABLISHMENT OF THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION ADVISORY COMMITTEE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

STANDING ORDER

Pursuant to and under the authority of the Civil Justice Reform Act of 1990, more particularly Title I, 28 U.S. Code, Chapter 23, Section 472, there is hereby established the Civil Justice Expense and Delay Reduction Advisory Committee for the United States District Court for the District of New Jersey (Advisory Committee);

The Advisory Committee shall exercise those responsibilities and perform those functions in such manner and for such term as are provided under Sections 472, 473, 475 and 478 of the Act;

The following persons, pursuant to Section 478, are hereby appointed members of the Advisory Committee for the terms designated, subject to their continuing willingness to so serve:

Hon. George F. Kugler, Jr. - Chair	3 years
Donald A. Robinson - Vice Chair	3 years
Dr. John J. Petillo	3 years
Hon. Martin L. Haines	3 years
Allyn Z. Lite, Esquire	3 years
Frank E. Lawatsch, Jr., Esquire	2 years
Melville D. Miller, Jr., Esquire	2 years
William B. McGuire, Esquire	2 years
Justin B. Walder, Esquire	2 years
Hon. Jack M. Sabatino	2 years
Annamay T. Sheppard, Esquire	1 year
Paul D. McLemore, Esquire	1 year

Ronald J. Cracas, Esquire	1 year
Cynthia M. Jacob, Esquire	1 year
Hon. Michael Chertoff	Without Term
Anne Auerback	1 year
Kenneth Ward	1 year

The Clerk or his designee will serve as secretary, attend its meetings and provide to the Advisory Committee all resources necessary to the execution of its responsibilities. He shall promptly provide each member with a copy of the Act.

United States District Judges Dickinson R. Debevoise and John W. Bissell and Magistrate Judge Ronald J. Hedges shall be ex-officio, non-voting members of the Advisory Committee and may attend such meetings for which the members have extended invitation.

Upon the application of the Chairperson, the Chief Judge shall designate a reporter to the Advisory Committee, pursuant to Section 178(e) of the Act.

The Chair shall preside at all meetings for which adequate notice shall be provided and shall be responsible for the initiation and oversight of Advisory Committee activity and the rendition of its recommendations and report pursuant to Section 472 of the Act in such time as to permit qualification as an early implementation court under § 481(c), except to the extent such duties are delegated to the Vice Chair.

This ORDER is effective immediately this 31st day of January, 1991.

JOHN F. GERRY, CHIEF JUDGE

Public Law 101-650
101st Congress

An Act

To provide for the appointment of additional Federal circuit and district judges, and for other purposes.

Dec. 1, 1990
[H.R. 5316]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".

Judicial Improvements Act of 1990.
Courts.
28 USC 1 note.
Civil Justice Reform Act of 1990.

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

28 USC 1 note.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

28 USC 471 note.

The Congress makes the following findings:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

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(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. 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.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

Reports.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(a) 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 principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(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.

United States District Court

DISTRICT OF

V.

APPLICATION TO PROCEED IN FORMA PAUPERIS, SUPPORTING DOCUMENTATION AND ORDER

CASE NUMBER:

I, _____, declare that I am the *(check appropriate box)*

☐ petitioner/plaintiff ☐ movant (filing 28 U.S.C. 2255 motion)

☐ respondent/defendant ☐ _____ *other*

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

In further support of this application, I answer the following questions.

1. Are you presently employed? Yes ☐ No ☐
   a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer. (list both gross and net salary)

   b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or other form of self-employment Yes ☐ No ☐
   b. Rent payments, interest or dividends? Yes ☐ No ☐
   c. Pensions, annuities or life insurance payments? Yes ☐ No ☐
   d. Gifts or inheritances? Yes ☐ No ☐
   e. Any other sources? Yes ☐ No ☐

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in checking or savings accounts?
   Yes ☐ No ☐ (Include any funds in prison accounts.)
   If the answer is "yes," state the total value of the items owned.

4. Do you own or have any interest in any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?
   Yes ☐ No ☐
   If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ _____
(Date) Signature of Applicant

CERTIFICATE

(Prisoner Accounts Only)

I certify that the applicant named herein has the sum of $ _____ on account to his credit at the _____ institution where he is confined. I further certify that the applicant likewise has the following securities to his credit according to the records of said institution: _____

I further certify that during the last six months the applicant's average balance was $ _____

_____
Authorized Officer of Institution

ORDER OF COURT

The application is hereby denied

_____ _____
United States Judge *Date*

The application is hereby granted. Let the applicant proceed without prepayment of cost or fees or the necessity of giving security therefor.

_____ _____
United States Judge or Magistrate *Date*