MAT005

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

OFFICE OF THE CLERK
U.S.P.O. & COURTHOUSE
NEWARK, NEW JERSEY 07101

WILLIAM T. WALSH
CLERK

December 9, 1991

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REPLY TO: Newark

Abel Matos
Court Administration Division
Administrative Office of the
United States Courts
Washington, DC 20544

Dear Mr. Matos:

Enclosed are copies of the plan proposed by our Advisory Committee (which is also the report of that committee). Also enclosed is the actual plan, which is now being considered by the Court.

Sincerely,

WILLIAM T. WALSH
Clerk

WTW/ml

Enc.

Proposed Plan for Implementation of the Civil Justice Reform Act of 1990 in the District of New Jersey

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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

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

A number of questions were posed at subcommittee and Advisory Committee meetings. These were presented to the appropriate person for response. In most instances that person was the

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[1]The Standing Order appears in the Appendix at 1a.

A memorandum issued by the Administrative Office of the United States Courts and the Federal Judicial Center entitled, Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990 (Feb. 1991), appears in the Appendix at 3a. This memorandum is included in the Appendix for the convenient reference of the Court.

[2]Minutes of all meetings of the Advisory Committee and the subcommittees are on file permanently with the Clerk of the Court.

Clerk of the Court. Answers were circulated as appropriate among the subcommittees and the Advisory Committee.[3]

The heart of the Plan is a proposal to amend the General Rules. 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.

[3]Answers are reflected in either minutes or memoranda, all of which are on file permanently with the Clerk.

II. ASSESSMENT OF THE DOCKETS

Consistent with Section 472(c) of Title 28 of the United States Code, the Advisory Committee was to make 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.[4]

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

[4]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.

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 480, and the remainder were private in nature.

(c) For the twelve-month period ending June 30, 1990, the disposition rate of civil cases in the District, from the date of filing of a complaint, was as follows:

Total Number of Cases Disposed of (excludes land condemnation cases and prisoner petitions)	5,108 (100%)
Number of Cases disposed of Before Any Court Action	1,312 (25.7%)
Number of Cases Disposed of Before Pretrial	1,861 (36.4%)
Number of Cases Disposed of During or After Pretrial	1,703 (33.3%)
Number of Cases Tried to Disposition	232 (4.5)

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 civil cases in the District from the filing of a complaint for the twelve-month period ending June 30, 1990, were as follows:

Median Time From Filing to Disposition

All Civil Cases (5,108)	8 months
Cases Disposed of Before Court Action (1,312)	5 months
Cases Disposed of Before Pretrial (1,861)	5 months
Cases Disposed of During or After Pretrial (1,703)	14 months
Cases Disposed of by Trial to Completion (232)	23 months

These figures demonstrate that 95.5% of all civil cases terminated in the twelve-month period ending June 30, 1990 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 15th nationwide out of 94 judicial districts. The District did rank 81st nationally in the median disposition time of 23 months for cases tried to completion. However, this ranking is less signifi-

cant than that for all dispositions since only 4.5% of all terminated 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.[5] These three-year or older civil cases, by nature of statistical category, are as follows:

[5]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, 746 criminal cases were filed in the District, 654 were terminated and, as of June 30, 1991, 633 were pending. Of the cases filed, 598 were felonies and 148 were misdemeanors.

(b) During the twelve-month period ending June 30, 1991, criminal cases were instituted against 1,072 defendants. Of this number, 923 defendants were charged with felonies and 149 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

5,560 and criminal of 746) with a total of 6,306. Only two districts (Eastern Virginia and Northern Ohio) that ranked higher in total filings had a smaller complement of district judges.

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 14th nationwide in terms of weighted filings per district judge (532 per judge in District to national average of 448 per judge).

(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. The Advisory Committee attributes this great progress to the aggressive involvement of both magistrate judges (hereinafter "magistrates")[6] and district judges (hereinafter "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 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

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[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.

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 Civil Rule 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 is scheduled to commence in July 1991. Both are

expected to be completed during the summer of 1993. The new Newark courthouse has a completion date of September 1991.[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 by year end will certainly improve the District's ability to meet many of the challenges that still exist.

[7]This new construction, together with the allocation of three additional judgeships to New Jersey, should lead to better allocation of space and lesser caseloads per judge, thus reducing delay.

(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, one) 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. RECOMMENDED PLAN

A. OVERVIEW.

The Advisory Committee is of the opinion 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 Advisory Committee regrets the median length of cases tried to disposition of 23 months. However, less than 5% of the District's civil cases fall within this category. 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 relatively small number of cases which are three-years or older consume a disproportionate percentage of time of judicial officers and, when considered in the context of trends in criminal filings and in isolation from other civil cases, explains the approximately two year period from filing of a complaint to completion of litigation.

The Plan for Implementation suggested is intended 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 alternative dispute resolution ("ADR").

B. AMENDMENTS TO THE GENERAL RULES.

The Advisory Committee proposes the following amendments:

(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:

A. Scheduling Conferences - Generally

1. Rule 16 scheduling conferences shall be conducted, in the first instance, by the Magistrate, unless the judge otherwise directs. The first (or "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 (or "status") conferences as are consistent with the circumstances of the particular case and this General Rule and may revise any prior scheduling order for good cause.

3. At each conference each party 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 General Rule 40A.4(c) unless the Magistrate directs.

B. Initial Conferences - Generally

1. No less than 7 days prior to the initial conference, each party shall submit to the Magistrate and serve on all other parties a discovery memorandum, or the equivalent thereof as directed by the magistrate, which shall include, but need not be limited to, the following items:

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. the 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 General 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 mediation, appointment of a special master or other special procedure.

2. 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 or experts' reports);

e. a pretrial conference date; and

f. mediation, appointment or 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.

3. The Magistrate shall, after consultation with counsel, designate each non-arbitration case into either Track I or II. Each class action, antitrust, environmental, patent, trademark, multi-district or multi-party case shall presumptively be designated in Track II.

4. The Magistrate shall also advise each party of the provisions of General Rule 40A(3).

C. Initial Conferences - General Rule 47 Arbitration Cases

At the initial conference in cases assigned to arbitration pursuant to General Rule 47C the Magistrate shall enter a Scheduling Order as contemplated by Section B2 above except that no pretrial conference date shall be set. Only an initial conference shall be conducted prior to a demand for trial de novo pursuant to General Rule 47G unless a new party or cause of action is added or an unanticipated event occurs affecting the schedule set at the initial conference.

D. Track I Case Conferences

Track I cases are those which are not subject to General Rule 47 arbitration or which are not designated Track II. Track I cases are presumed to require infrequent judicial intervention.

A pretrial conference shall presumptively be conducted within one year of filing of an initial Answer in Track I cases.

Prior to any status conference in a Track I case 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:

1. phased discovery (i.e., liability from damages discovery);

2. bifurcation (i.e., liability from damages); and

3. limiting the number of interrogatories, depositions or the like;

4. providing for the early exchange of documents;

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

6. consent to some form of alternative dispute resolution.

Counsel shall submit the joint discovery plan, and any disputes with regard to same, to the Magistrate for consideration at the status conference.

E. Track II Case Conferences

Track II cases are those which, based on the pleadings or facts, appear to require frequent judicial intervention. Status conferences shall be presumptively scheduled on a regular basis.

Prior to any status conference in a Track II case the attorneys shall meet, in person, to agree on a joint discovery plan. Discussion of counsel shall include, but need not be limited to, the following:

1. phased discovery (i.e., class from merits discovery; liability from damages discovery);

2. bifurcation (i.e., liability from damages; patent invalidity and infringement from damages);

3. limiting the number of interrogatories, depositions or the like.

4. providing for the early exchange of documents;

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

6. consent to some form of alternative dispute resolution.

Counsel shall submit the joint discovery plan, and any disputes with regard to same, to the Magistrate for consideration at the status conference.

F. Discovery - Generally

1. All parties shall conduct discovery expeditiously and diligently.

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

3. Cases in which a party appears pro se shall not be subject to Section F2 above unless the Magistrate so directs. In such cases discovery or case management disputes shall be presented by formal motion consistent with Section G below.

G. Discovery - 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 good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Court and has 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 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 G4 below, the Magistrate may proceed to 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 heard formally in open Court or informally by telephone conference, at the discretion of the Magistrate. Any party who believes that a discovery motion requires formal 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 discovery motion or opposition thereto is filed.

H. 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 filed properly, the Clerk shall place the materials in the 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 39(f)(1) of the Civil Rules if needed or ordered.

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

> 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 in forma pauperis 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 prison account and, (ii) the greater amount on deposit in the prisoner 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 ____. 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:

> 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 such petition or motion is filed with the Clerk, unless an extension is granted for good cause shown, which 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.

(7) Revise General Rule 40A.4(b) by inserting, "and enter scheduling orders in accordance with Rule 16 of the Federal Rules of Civil Procedure and consistent with General Rule 15," after, "the Civil Rules."

(8) 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.

(9) 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 the District 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, if appropriate, administratively terminate the civil action pending completion of the alternative dispute resolution procedure.

(10) 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).

A party may request that an otherwise eligible case be excluded from compulsory arbitration if

(a) specific policy concerns exist which make formal adjudication, rather than arbitration, appropriate; or

(b) other good cause has been shown.

(11) Revise General Rule 47F by inserting, "within 30 days," in place of "promptly" (which shall be deleted) in the first sentence.

(12) 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 a 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 suggested rule changes to be experimented with 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 differ-

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

ently 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. 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 nonarbitration civil actions can be pretried within one year of joinder of issue. The remaining actions (for example, class actions, patent cases and environmental matters) 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 be 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 has 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 Advisory Committee 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 meritorious in forma pauperis applications are submitted, the proposed amendment would require the Clerk to reject any nonconforming application.

The Advisory Committee did consider 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 Third Circuit Court of Appeals. 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, 600-01 (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.

Rule 29C: This amendment is intended to include the 45-day time limit considered by the Governmental Litigation Subcommittee.

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 direction 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.

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 Advisory Committee also recommends the following:

(1) The Court should recommend to the Judicial Conference that it support an amendment to Civil Rule 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 judges to deal with the remainder of their dockets. More flexible use of special masters should be encouraged.

(2) The Court should recommend 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 this new statistic 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 should consider adoption of a standardized format of report or reports to be issued by the Clerk on a monthly basis. This would facilitate comparison of dockets among the district judges and lead to uniformity of statistics within the District.

(4) The Clerk should issue reports on a monthly basis on the status of habeas proceedings and Social Security appeals. This would facilitate monitoring of these cases.

(5) The Court should pursue creation of at least two staff attorney positions within the Clerk's Office. These staff attorneys would be dedicated to processing Social Security appeals and habeas petitions. The Advisory Committee is of the opinion that staff attorneys would lead to the development of 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 should approve on an experimental basis a requirement that a plaintiff, on receipt of an answer or other responsive pleading, serve on a defendant all documents in the plaintiff's possession, custody or control which are relevant to the allegations of the complaint. This requirement, which would also apply to any other party seeking affirmative relief by way of counterclaim or cross-claim, is intended to expedite discovery and early identification of genuine issues.

(7) The Court should approve on an experimental basis the reference of designated complex civil actions to mediation and other civil actions to summary jury trials. This experiment should be commenced by the selection of two appropriate cases by each judge and magistrate.

(8) The Court should arrange for a presentation be made to it on the uses and forms of ADR. The Court should also request that the Association of the Federal Bar sponsor a seminar or seminars both to educate the Bar on ADR and to train attorneys to act as mediators.

IV. BASIS FOR RECOMMENDATIONS[9]

A. EFFICIENT USE OF JUDICIAL RESOURCES.

The Plan would implement early and ongoing judicial intervention by scheduling initial conferences under Civil Rule 16 within 60 days of filing of the initial answer. The Advisory Committee considered, but rejected, setting an initial conference date on the basis of the date of filing of a complaint. To do so would be inappropriate inasmuch as service need not be effected under Civil Rule 4(j) until 120 days after filing of a Complaint.

The Plan would utilize more effectively judicial resources by the creation of "tracks." The Plan suggests 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 are 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 by type

[9]This section of the Plan should be read in conjunction with the reasons for the proposed rule amendments set forth above at pages 24 to 29.

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

The Advisory Committee proposes, both in the interest of conservation of judicial resources and the resources of the parties, 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.

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

B. DISCOVERY.

The Plan would ensure that certain steps are taken to minimize expenses arising out of discovery disputes. First, attorneys should 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 considered the possibility of placing limits on discovery (for example, limiting the number of interrogatories and depositions). However, such limitations were deemed to be inappropriate in the first instance. The Advisory Committee is of the opinion that it is the obligation of attorneys to attempt to limit discovery prior to involvement of a judicial officer in doing so on an ad hoc basis.

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. In fact, the Plan proposes that attorneys have 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 being 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.

It is also recommended that the Court 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 Advisory Committee is very pleased with the success of arbitration under General Rule 47. See description above at page 6. Arbitration limits the involvement of judicial officers, diverts cases from the pretrial process, and allows parties to submit their disputes to a neutral individual.

The Plan would, in the first instance, expand compulsory arbitration. Rule 47C.3, which had been a rule of exclusion of cases from compulsory arbitration, would 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 would 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 Advisory Committee recommends 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, the Advisory Committee recommends that selected civil cases 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 this Advisory Committee shall remain in existence for seven years. 28 U.S.C. Section 482(b)(2). After adoption of a 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].

Subject to the approval of the Chief Judge, the Advisory Committee proposes to meet on a biannual basis and at such other times as may be necessary. The Advisory Committee has dissolved its subcommittees and has established an oversight subcommittee to meet regularly and to secure such information as may be appropriate for submission to the entire Advisory Committee and the Court.

VI. CONCLUSION

The intent of the Advisory Committee in drafting this Plan has been to present to the 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. We urge the Court to adopt the proposed procedural reforms of this Plan and to utilize the alternative dispute resolution mechanisms which these procedural reforms will make available.

Respectfully submitted,

GEORGE F. KUGLER, ESQ.
Chairman

DONALD A. ROBINSON, ESQ.
Vice-chairman

DATE: October 1, 1991

[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