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M E M O R A N D U M

TO: All Members of the Advisory Group

FROM: Jerry Litvin

DATE: July 10, 1991

RE: Proposed Eastern District of Pennsylvania
Guidelines on Firm Trial Dates in Civil Cases

I am faxing to each of you my proposal for local guidelines on firm trial dates in civil cases. Clay Undercoffler and I have met (Dan Ryan was on trial) on this subject but because I am still on trial in Delaware County, we have not yet been able to finalize our recommendation. Thus, my draft of a proposal is being faxed so that you will have some idea of the thinking of one member of the subcommittee appointed to consider this subject.

I certainly hope that Clay, Dan and I will be able to confer later today or this evening and, hopefully, be in a position to submit a joint proposal for your consideration at tomorrow's meeting.

**PROPOSED EASTERN DISTRICT OF PENNSYLVANIA
GUIDELINES ON FIRM TRIAL DATES IN CIVIL CASES**

1. Every effort will be made to schedule firm trial dates for all civil cases.

2. In complex civil cases, i.e., those cases in which the complexity of the issues or the need for extensive discovery make it impractical to set a trial date within one year after the institution of suit, every effort will be made to schedule trial within 18 months after the Complaint has been served.

3. In all other civil cases, every effort will be made to schedule trial within 12 months after the Complaint has been served.

4. At the earliest practicable time after a discovery schedule has been established, and after conferring with counsel in the case regarding their availability as well as the availability of the parties and their witnesses, a date for trial will be set by the judge to whom the case is assigned.

5. After a trial date has been set, no continuance will be granted upon application of a party except for compelling reasons and unless (1) opposing counsel agree, or (2) the grounds for the continuance did not exist or were not known to the party applying for the continuance at the time the original trial date was set.

6. If, because of the demands of the judge's criminal docket or because of the longer-than-anticipated trial of a civil case, or because of some other emergency or unanticipated situation confronting the judge, it appears that it may or will be impossible

to begin the trial of the civil case on the date which had previously been set for trial, the following protocol will be followed:

a. Counsel in each such case will be advised immediately (i.e., as soon as practicable after the impediment to trial appears) by the judge or by the deputy clerk so that counsel, in turn, may advise their clients and witnesses;

b. If, at the time the impediment to trial appears, the judge to whom the case is assigned is then able to schedule a new trial date and all counsel expect to be available to begin trial on the alternate date without undue hardship or expense to the litigants, the case will be rescheduled to begin trial on the alternate date;

c. If counsel will not be available to begin trial on the alternate date, or if any party is unable to begin trial at that time without undue hardship or expense, and if another judge* of the district is or can be available to preside over the trial on the date originally set, the case will be reassigned to that judge for trial;

*Based on my discussion with Chief Judge Bechtle regarding his views on this subject (which were included in his presentation to the Advisory Group in May), it would probably be desirable to have an alternate judge assigned from a "master calendar" which will designate two judges each month who will be available to preside over trials where the judge assigned to the case is unable to do so.

d. If there is no other judge available to preside over the trial on the date originally set, but a magistrate judge can be available to preside over the trial on that date, and if all counsel stipulate that a magistrate judge may do so, the case will be reassigned to such a magistrate judge for trial;

e. If there is no magistrate judge available, or if all counsel will not stipulate that a magistrate judge may preside over the trial, the case will be tried on the date originally set under the court's arbitration program unless, upon application by one or more of the parties, the judge to whom the case is assigned concludes that arbitration of the case would impose undue hardship or cost to one or more of the parties or that the arbitration process would be unlikely to resolve the action without a trial de novo.