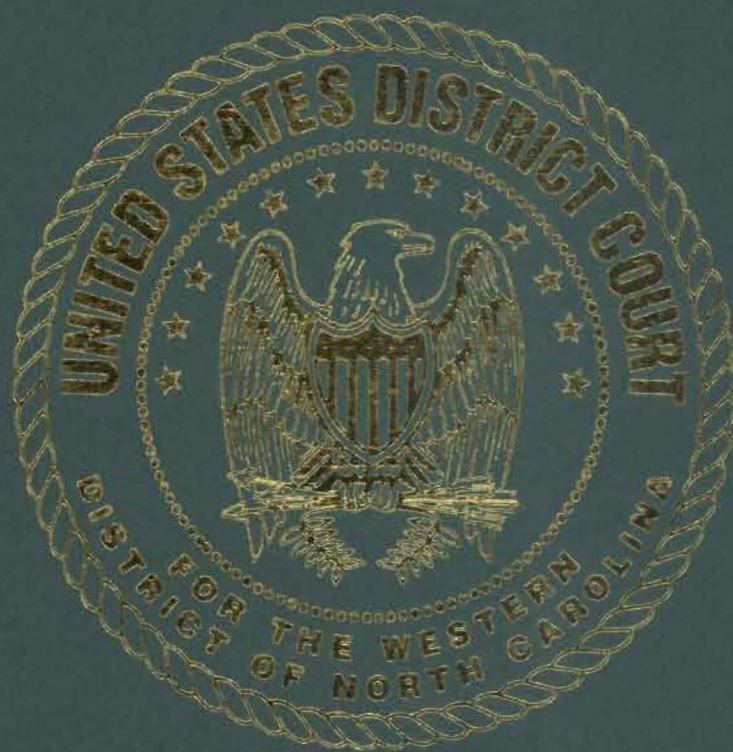


Report of the Advisory Group of the  
United States District Court for the Western District  
of North Carolina Appointed Under the  
Civil Justice Reform Act of 1990



July 9, 1993

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*Honorable Robert D. Potter, U.S. District Court Judge*  
*Honorable Graham C. Mullen, U.S. District Court Judge*  
*Honorable Woodrow W. Jones, Senior U.S. District Court Judge*  
*Honorable James B. McMillan, Senior U.S. District Court Judge*  
*Honorable Marvin R. Wooten, Chief U.S. Bankruptcy Judge*  
*Honorable George R. Hodges, U.S. Bankruptcy Judge*  
*Honorable J. Toliver Davis, Chief U.S. Magistrate Judge*  
*Honorable Carl Horn, U.S. Magistrate Judge*  
*Honorable H. Brent McKnight, U.S. Magistrate Judge*  
*Honorable Thomas J. McGraw, Clerk of Court*

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## **INTRODUCTION**

Effective December 1, 1990, Congress enacted the Civil Justice Reform Act of 1990, a copy of which is attached as Appendix B. The purpose of this Act was to address perceived problems of cost and delay in civil litigation in the United States District Courts. To that end, the Act required the appointment of Advisory Groups in each District. These groups were charged with the responsibility of recommending to the judges of each District a plan to reduce delay and expense of civil litigation within that District.

In February, 1991, the Honorable Richard L. Voorhees, Chief Judge of the United States District Court for the Western District of North Carolina, appointed the Advisory Group for the Western District.

In preparing this Report, the Group examined the status and history of civil and criminal litigation in the Western District, studied model plans, and reviewed plans from other Districts. The Group completed over two years of work in July, 1993, and the Report which follows is the product of its effort. The Group concluded that adoption of the expense and delay reduction plan recommended by this Report and the principles embodied in it will result in reducing delay and expense of civil litigation in the Western District. This can be accomplished without compromising (a) the independence or authority of either the judicial system or any individual judge, (b) the function of attorneys as advocates, or (c) the needs of citizens in a free society to seek justice through reasonable access to the federal court system.

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## **I. EXECUTIVE SUMMARY**

The Advisory Group's recommended Plan contains the following significant components:

- **Differentiated Case Management will be utilized through five case tracks:**
  - a. **expedited (six months from filing through completion);**
  - b. **standard (twelve months from filing through completion);**
  - c. **complex (twenty-four months from filing through completion);**
  - d. **administrative (three months from filing through completion);**
  - and,**
  - e. **mass torts (completion date as set by the Court).**
  
- **A Case Management Plan will be established which is unique for each case and which deals with discovery, alternative dispute resolution, settlement, and trial.**
  
- **An Initial Attorneys Conference will be held within fifteen (15) days of the filing of the last responsive pleading. The elements of a case management plan will be discussed. A brief report of the conference will be filed in the form of a certificate.**

- **An Initial Pretrial Conference will be held among counsel and the Judicial Officer within thirty (30) days of the filing of the Certificate of Initial Attorneys Conference. At that conference, a Case Management Plan will be adopted including an appropriate case track assignment.**
- **Discovery will be strictly controlled according to the terms of the Case Management Plan.**
- **Mandatory mediation and formal settlement conferences will be considered in each case, and may be required in any case in the discretion of the Court.**
- **Magistrate Judges will be included in the civil case assignment rotation with the District Court Judges. Litigants will retain the right to "opt out" of using a Magistrate Judge for trial.**

## **II. NARRATIVE DISCUSSION**

**This Report is divided into five parts. Parts I - IV of the Report feature an executive summary, a narrative discussion, a description of the Court, and an assessment of our District. These Parts address the specific matters required by the Act, including the bases for our recommendations, and follow generally the format for advisory groups recommended by the Judicial Conference.**

**The Plan recommended by the Group, included as Part V of the Report, contains statutory citations and commentary. A "clean" copy of the Plan without citations or commentary is attached to the Report as Appendix A.**

**Section One of the Plan, "Differentiated Case Management", establishes five case tracks as follows: expedited, standard, complex, administrative, and mass torts. The Plan establishes discovery and trial date parameters for each track and sets forth standards by which each case can be evaluated in order to be assigned to the proper track.**

**Section Two of the Plan, "Early and Ongoing Judicial Control of the Pretrial Process", stresses the need for early judicial involvement. This Section details the principal matters for consideration at the pretrial conference. It also emphasizes early consideration and use of settlement and alternative dispute resolution in the form of mandatory mediation. The recommendation of early judicial involvement was one of the most troublesome for the Group. We are well aware of the constraints that the criminal docket has placed on the time our judges have to devote to civil matters. However, we felt compelled to suggest a system which we think,**

in the long run, will ultimately be beneficial to the civil docket - that is a system which emphasizes greater judicial involvement in the initial stages of the litigation rather than during or after discovery has been completed. In fact, the Group feels that if the suggested procedure works as it should, a final pretrial conference may not be necessary, and settlements will increase or occur at an earlier stage in the litigation.

Section Three of the Plan, "Discovery Control/Motions Practice", further details the discovery limitations as defined by the tracking system. The Case Management Plan established at the Initial Pretrial Conference will define discovery parameters. Voluntary discovery is encouraged, as is the elimination of unnecessary paperwork.

Section Four of the Plan, "Alternative Dispute Resolution Program" (ADR), is the Group's recommendation for mandatory mediation. The format suggested is virtually identical to that which has been adopted for the State Courts of North Carolina. This Section provides that the parties may be required to participate in mandatory mediation. It should be noted that this is mediation, and not arbitration.

Section Five of the Plan, "Other Features", covers a number of miscellaneous matters. It points out that this Report does not deal with handling of *pro se* prisoner and social security cases. It also makes other recommendations which relate to the efficient handling of the Court's business, but are not necessary to the adoption or implementation of the Plan.

### **III. DESCRIPTION OF THE COURT**

#### **A. Number and Location of Divisions; Number of District Judgeships Authorized by 28 U.S.C. §133; Number of Magistrate Judgeships Authorized by the Judicial Conference.**

The Western District of North Carolina consists of five divisions located in Asheville, Bryson City, Charlotte, Shelby, and Statesville. There are three authorized district judgeships and three authorized magistrate judgeships. Currently, the actual sitting judges include three district court judges and three magistrate judges. There are no vacant district court judgeships.

Chief Judge Voorhees' chambers are in Asheville. Judge Voorhees is assigned 100% of the criminal and civil cases in the Asheville, Bryson City, and Shelby divisions plus all asbestos cases in the District. Judge Potter's chambers are in Charlotte, and he is assigned 50% of the criminal and 60% of the civil cases in the Charlotte Division, in addition to 50% of the criminal cases in the Statesville Division. Judge Mullen's chambers are also in Charlotte. He is assigned 50% of the criminal and 40% of the civil cases in the Charlotte Division as well as 50% of the criminal and 100% of the civil cases in the Statesville Division.

Judge Voorhees holds court in Asheville and travels to hold court in Bryson City and Shelby. Judge Mullen holds court in

**Charlotte and travels to hold court in Statesville. Judge Potter holds court in Charlotte.**

**There are two retired senior district court judges in the District. Judge Jones of Rutherfordton and Judge McMillan of Charlotte hold court on an infrequent basis, often handling recurring matters that arise in cases which they handled before retiring.**

**Chief Magistrate Judge Davis of Asheville holds court there for Asheville and Shelby Division cases and travels to hold court in Bryson City. Magistrate Judges Horn and McKnight of Charlotte hold court in Charlotte and travel to hold court in Statesville. Magistrate Judges Horn and McKnight took office during the Spring of 1993.**

**B. Special Statutory Status.**

**The United States District Court for the Western District of North Carolina holds no special statutory status pursuant to the Civil Justice Reform Act of 1990.**

#### **IV. ASSESSMENT OF CONDITIONS IN THE DISTRICT**

##### **A. Condition of the Docket**

- 1. Condition of the civil and criminal dockets.** A significant element causing delay in the final resolution of civil cases is the burgeoning criminal docket. In the twelve-month period ending June 30, 1992, the Western District of North Carolina ranked second in the United States both in the number of felony filings per judgeship and in the number of criminal cases assigned per judgeship. However, while the number of criminal matters has steadily increased in each judicial work year from 1986 (the year before the United States Sentencing Guidelines became effective) through 1992, the number of criminal trials has decreased over the same time period. This decrease is a function of two distinct components.

First, the United States Attorney's Office has steadily increased the number of criminal cases it is bringing to the Court. This increase is attributable to the "War on Drugs" initiatives of the federal government as well as the limitations of the State's criminal justice system. In North Carolina, a significant number of convicted felons are granted early release so as to avoid prison overcrowding. Often, felons released from the State system are brought before federal authorities



after commission of additional criminal acts. Moreover, the population of the State's correctional system has prompted local law enforcement officials to refer drug and gun related charges to the federal authorities in order to take advantage of the higher sentences and the absence of parole within the federal system.

Second, court time has increased exponentially in order to satisfy the prerequisites of the United States Sentencing Guidelines. Though the number of trials has decreased during the time period, actual time in court on criminal matters has not decreased. The sentencing procedure requirements have effectively trapped this District's judiciary in a criminal procedure bog. What was once court time reserved for disposing of civil matters has now been usurped by the post-conviction procedures mandated by the Guidelines.

Based on data supplied by the Clerk of Court's Office, the number of civil filings (excluding *pro se* prisoner cases and social security claims) have remained relatively constant for the last several years. Likewise, the number of dispositions in civil matters has also remained relatively constant. However, the time interval between filing and disposition increased from twelve months to seventeen months in the period from 1986

1993, attached as Appendix C, requiring the postponement of civil jury trials due to insufficient funding by Congress. While Congress has recently enacted a supplemental appropriation to fund the courts through September, 1993, the interruption of funding will result in at least a five month delay in civil jury trials in this District, and throughout the Country. While this Group supports government action to protect our citizens, it is unreasonable and unrealistic to expect our judicial system without additional funds and personnel, to continue to process fairly the increased work resulting from vigorous law enforcement, prosecution, adherence to the United States Sentencing Guidelines, and the continued stress which new legislation places on the system.

2. **Principal causes of cost and delay in civil litigation in the Western District of North Carolina.** Cost and delay in civil litigation are not generally affected by the type of case filed, unless the particular matter is one which would be classified as "complex". Complex litigation takes more time, both for discovery and trial, and needs to be addressed by our District in a separate category with firmer controls.

The court procedures and rules in effect with respect to motions practice, jury utilization, and alternative dispute resolutions are all areas for improvement. Unfortunately, civil terms have been extremely difficult to predict because of the impact of the criminal docket. Without the ability to fix firm trial dates, delays continue to increase. The Group's report emphasizes greater Court participation and activity at the initial stages of the case with the belief that by timely focusing on the issues, utilizing settlement conferences, and mandatory mediation, earlier disposition of cases may be achieved.

The number of Judges in the District is currently inadequate to handle the criminal docket and still keep pace with civil matters. This could be addressed somewhat by greater use of Magistrate Judges, and this Report includes recommendations that Magistrate Judges be included in the regular civil case assignment rotation, and that litigants be required to "opt out" of using a Magistrate Judge should one be assigned to their particular case.

The Group notes that the emphasis of these recommendations is toward an earlier definition of issues and stricter controls and limitations on the uses of discovery. It is our hope that earlier judicial involvement and control will

**reduce delays occasioned by excessive discovery, thereby reducing the cost to clients as well as reducing the impact on the court system.**

**V. RECOMMENDATIONS AND THEIR BASES - THE PROPOSED EXPENSE AND DELAY REDUCTION PLAN WITH STATUTORY REFERENCES AND COMMENTARY**

While the Group's function is mandated by federal law, we also agree that it is in the public interest to examine ways to reduce expense and delay in our judicial process, both civil and criminal. To that end, periodic examinations of the operation of our civil system is appropriate and a task which the Group gladly undertook.

The Plan which we recommend is generally based on our analysis of this District, on various models gleaned from other jurisdictions, on the model Civil Justice Expense and Delay Reduction Plan authored by the Judicial Conference of the United States, and on our findings and experience. The Group concluded that neither the Model Plan nor any of the proposed plans from other jurisdictions were totally responsive to the federal civil litigation situation and needs of our District. Therefore, we incorporated in our proposed Plan portions of the Model Plan, ideas from other proposed plans, and proposals responsive to the unique characteristics of our District. We also note that our recommendation with respect to Alternative Dispute Resolution is patterned after part of the system now utilized by the State Courts of North Carolina. Combining approaches from each of these sources has resulted in a total Plan which will best achieve the goals of cost and delay reduction.

A proposed draft report was mailed to almost 500 individuals before the Group made its final recommendations to the Court. These individuals included attorneys from the Western District with three or more civil cases pending since

January 1, 1992, attorneys from outside the Western District who nonetheless have a significant number of civil cases pending with the Court, North Carolina Superior Court Judges from western North Carolina, and various citizens groups who have had an historic interest in the federal courts. The responses to the Group's recommendations were generally positive; specific suggestions by these respondents were considered before the Group completed this Report.

The Group evaluated the requirements of Section 473 of the Act in developing the proposed Plan. The Plan addresses each area identified in Section 473 of the Act. In cases where the Act suggested, but did not require certain approaches, the Group may or may not have recommended the suggested approach, but each approach was considered as required by the Act. Areas addressed by the Plan include, but are not limited to, systematic differential treatment of civil cases, early and ongoing control of the pretrial process through the involvement of a Judicial Officer, all identified discovery issues, deadlines for all filings, settlement discussions, formulation of issues, discovery schedules and case management plans, encouragement of voluntary exchange of information, conservation of judicial resources through appropriate certifications of good faith voluntary efforts, and alternative dispute resolution programs. In addition, the Group considered certain litigation management and cost and delay reduction techniques as set forth in subsection (b)(1) through (6) of Section 473. We acknowledged that the civil litigation in this District is not dominated by a particular type of case, but instead is represented by a relatively constant blend of civil matters; therefore, our system

should be designed to be responsive to this mix of civil cases. For that reason, we did not recommend special terms to deal with dominant litigation or assignment of a Judicial Officer to a particular civil area. We also took into account the diverse nature of our District, which ranges from the heavily urbanized Charlotte Division to the mountainous and sparsely populated Bryson City Division, and the case loads in each area. We recognize that it may be necessary for Judicial Officers to move from division to division more frequently than in the past in order to accommodate the particular needs of these divisions.

The Group also considered the needs of the litigants and their attorneys to have their cases heard in a timely fashion. To that end, we recommend the inclusion of the Magistrate Judges in the regular civil case assignment rotation in an effort to make more Judicial Officers available to hear civil matters. The Group also found that these needs could be enhanced by early involvement of the Judicial Officer, and we have attempted to incorporate that philosophy in our Plan. We also concluded that delay could be reduced by requiring attorneys to be present at pretrial conferences with authority to make binding commitments in identified areas. Further, concluding that requiring the involvement of the litigants personally during the pretrial process would simply add to expense and increase delay, we have minimized required litigant involvement.

## **SECTION ONE: DIFFERENTIATED CASE MANAGEMENT (DCM)**

*Statutory Requirements: The Civil Justice Reform Act requires that all courts consider incorporating into their plans a case management system based upon the "systematic, differential treatment of civil cases...". The Act calls for a system that "tailors the level of ... 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." 28 U.S.C. §473(a)(1).*

### **I. GENERAL PROVISIONS**

#### **A. Purpose.**

In developing our plan, we have considered each of the Advisory Group recommendations. We have considered each of the litigation management, cost and delay reduction principles, guidelines, and techniques specified in 28 U.S.C. §473.

The "Differentiated Case Management" ("DCM") system adopted by the Court is intended to permit the Court to manage its civil docket in the most effective manner, to reduce costs, and to avoid unnecessary delay without compromising the independence or the authority of either the judicial system or the individual Judge. The underlying principle of the DCM system is to make access to a fair and efficient court system available and affordable to all citizens.



**B. Definitions.**

**1. "Differentiated Case Management" ("DCM") is a system providing for management of cases based on case characteristics. This system operates on each case from filing through completion - that is, from the date a case enters the court system until the date of entry of judgment or the dispositive order. The system is marked by the following features: the Court reviews and screens civil case filings and appeals, and channels cases to processing "tracks" which provide an appropriate level of judicial, staff, and attorney attention; civil cases having similar characteristics are identified, grouped, and assigned to designated tracks; each track employs a Case Management Plan tailored to the general requirements of similarly situated cases; and provision is made for the initial track assignment to be adjusted to meet the special needs of any particular case.**

**2. "Judicial Officer" is either a United States District Judge, a United States Magistrate Judge, or a United States Bankruptcy Judge.**

**3. "Initial Attorneys Conference" ("IAC") is the first required conference in which counsel for all parties shall confer. During this conference counsel shall discuss and agree upon, if possible, the following matters: track assignments, whether the case is suitable for**

reference to ADR, the type and extent of discovery, the setting of a discovery cut-off date, deadline for filing motions, and the dates of anticipated hearings and trial.

4. **"Certificate of Initial Attorneys Conference"** is a document to be signed and filed by counsel for all parties confirming that the Initial Attorneys Conference has been held and setting forth the understandings of counsel both as to the matters required to be discussed and as to any other matters germane to the handling of the case.

5. **"Initial Pretrial Conference"** ("IPC") is the first required conference conducted by the Judicial Officer, preferably the trial judge. At this conference the track assignment, Alternative Dispute Resolution, and discovery are discussed. Discovery and motion deadlines and the dates of anticipated hearings are set.

6. **"Case Management Plan"** ("CMP") is the plan adopted by the Judicial Officer at the Initial Pretrial Conference. The CMP shall be filed forthwith. It shall include the determination of track assignments, whether the case is suitable for reference to ADR, the

type and extent of discovery, the setting of a discovery cut-off date, deadline for filing motions, and the dates of anticipated hearings.

7. **"Court"** is the United States District Judges, United States Bankruptcy Judges, the United States Magistrate Judges, and Clerk of Court personnel.

8. **"Dispositive Motion"** is a motion to dismiss pursuant to Civil Rule 12(b), motion for judgment on the pleadings pursuant to Civil Rule 12(c), motion for summary judgment pursuant to Civil Rule 56, or any other motion which, if granted, would result in the entry of judgment or dismissal, or dispose of any claims or defenses, or terminate the litigation.

9. **"Discovery cut-off"** is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded.

**C. Date of Application.**

This Plan is effective October 1, 1993. It will apply to all cases filed after that date and may, in the discretion of individual Judicial Officers, apply to earlier filed cases.

**D. Conflicts with Other Rules.**

If any provision of this Plan conflicts with any Local Rules adopted by the United States District Court for the Western District of North Carolina, then the provisions of this Plan shall control.

**II. TRACKS, EVALUATION, AND ASSIGNMENT OF CASES**

**A. Number and Types of Tracks.**

- 1. "Expedited" - Cases on the Expedited Track shall be completed within six (6) months or less after filing, and shall have a discovery cut-off no later than three (3) months after filing of the CMP. Discovery guidelines for this track include: no more than fifteen (15) single-part interrogatories per party, no more than one (1) fact witness deposition per party without prior approval of the Court or mutual consent of the parties, and such other discovery, if any, as may be provided for in the CMP.**
  
- 2. "Standard" - Cases on the Standard Track shall be completed within twelve (12) months or less after filing, and shall have a discovery cut-off no later than nine (9) months after filing of the CMP. Discovery guidelines for this track include: no more than twenty (20) single-part interrogatories per party, and no**

more than six (6) fact witness depositions per party without prior approval of the Court or mutual consent of the parties.

3. **"Complex"** - Cases on the Complex Tract shall have a presumptive case completion date of no more than twenty-four (24) months after filing and discovery limitations and cut-off shall be established in the CMP.
4. **"Administrative"** - Cases on the Administrative Track shall be referred by Clerk of Court personnel directly to a Magistrate Judge for determination or a memorandum and recommendation, and shall be completed within three (3) months of filing. A CMP is not ordinarily utilized in this track. Discovery guidelines for this track include no discovery without prior leave of Court. Such cases shall normally be determined on the pleadings or by motion.
5. **"Mass Torts"** - Cases on the Mass Torts Track shall be treated in accordance with a special CMP adopted by the Court.

**B. Evaluation.**

The Court shall consider and apply the following factors in assigning cases to a particular track:

**1. Expedited.**

- a. Legal Issues: Few and clear
- b. Required Discovery: Limited
- c. Number of Real Parties in Interest: Few
- d. Number of Fact Witnesses: Up to five (5)
- e. Expert Witnesses: None
- f. Likely Trial Days: Less than three (3)
- g. Suitability for ADR: High
- h. Character and Nature of Damage Claims:  
Usually a fixed amount

**2. Standard.**

- a. Legal Issues: More than a few, some settled
- b. Required Discovery: Routine
- c. Number of Real Parties in Interest: Up to five (5)
- d. Number of Fact Witnesses: Up to ten (10)
- e. Expert Witnesses: No more than three (3)
- f. Likely Trial Days: No more than ten (10)

- g. Suitability for ADR: Moderate to high**
- h. Character and Nature of Damage Claims: Routine**

**3. Complex.**

- a. Legal Issues: Numerous, complicated, and possibly unique**
- b. Required Discovery: Extensive**
- c. Number of Real Parties in Interest: More than five (5)**
- d. Number of Fact Witnesses: More than ten (10)**
- e. Expert Witnesses: More than three (3)**
- f. Likely Trial Days: More than ten (10)**
- g. Suitability for ADR: Moderate**
- h. Character and Nature of Damage Claims: Usually requiring expert testimony**

**4. Administrative.**

**Cases that, based on the Court's prior experience, are likely to result in default or consent judgments or can be resolved on the pleadings or by motion.**

**5. Mass Torts.**

Litigants are extensive in number or include class actions. Factors to be considered for this track shall be identified in accordance with a special CMP adopted by the Court.

**C. Assignment of Cases.**

Magistrate Judges shall be assigned as trial judges for civil cases in the same manner and to the same extent as District Court Judges, provided that any party may elect, in writing, to exercise the right to trial by a District Court Judge as protected by Article III of the United States Constitution and 28 U.S.C. §636. This provision is known as an "opt out" election.

***III. COMMENTARY***

The Group finds no excessive delay in the disposition of civil litigation in the Western District of North Carolina. However, delays associated with the impact of the criminal docket require innovative case management on the civil docket. The Group has examined court statistics, interviewed Judicial Officers in the District, consulted with Bar officials, and considered the views of its members. Based on this information, the Group concludes that the proposed DCM system will enable the District to achieve a reduction in cost and delay associated with civil litigation. Specifically, the Group recommends an expedited track to allow litigants to enter and leave the litigation process in no more than six months. The 1991 Judicial Workload Profile indicates that the average disposition time for cases from filing to judgment is seventeen (17) months. See Appendix E, Page 11. The expedited



**track will allow a number of civil cases to be disposed of in less than half of the time it currently takes. This will reduce delay and cost to litigants.**

**The Group further recommends greater reliance by the Court on the use of Magistrate Judges in the disposition of civil cases. In doing so, the Court will make a significant contribution to reducing cost and delay. Litigants' attorneys may contribute to reductions in cost and delay by narrowing issues and qualifying their cases for the expedited track.**

**The Certificate of Initial Attorneys Conference will be generally as shown on the attached Appendix F. Such forms will be available in the Clerks' offices.**

**In most cases it should take no more than ninety (90) days from the filing of a complaint to the completion of the IPC.**

**The Group relied upon the Model Plan of the Judicial Conference in formulating its DCM system recommendations in Section One.**

## **SECTION TWO: EARLY AND ONGOING JUDICIAL CONTROL OF THE PRETRIAL PROCESS**

*Statutory Requirements: The Civil Justice Reform Act requires that all courts consider incorporating into their expense and delay reduction plans various procedures relating to the pretrial management of cases. Each court must consider adopting the following guidelines, principles, and techniques set forth in 28 U.S.C. §473:*

- 1. The "early and ongoing control of the pretrial process through involvement of a Judicial Officer...." 28 U.S.C. §473(a)(2). Such judicial involvement includes a district judge and magistrate judge: 1) assessing and planning the progress of a case; 2) setting early, firm trial dates; 3) controlling the extent of discovery and the time for completion of discovery; and 4) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.*
- 2. The monitoring of complex and any other appropriate cases through a discovery-case management conference or a series of conferences at which a Judicial Officer: 1) explores the parties' receptivity to settlement; 2) identifies the principal issues in contention; 3) prepares a discovery schedule and plan; and 4) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition. 28 U.S.C. §473(a)(3).*
- 3. Encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices. 28 U.S.C. §473(a)(4).*
- 4. 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. 28 U.S.C. §473(a)(5).*
- 5. 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. 28 U.S.C. §473(b)(1).*
- 6. 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. 28 U.S.C. §473(b)(2).*
- 7. 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. 28 U.S.C. §473(b)(3).*

**I. PLANNING THE PROGRESS OF THE CASE.**

**A. Pretrial Activity: Early Assessment/Pretrial Case Management.**

- 1. Initial Attorneys Conference (IAC).** The IAC is to be held within fifteen (15) days of the filing of the last required responsive pleading. Within five (5) days after the IAC, counsel shall sign and file the Certificate of Initial Attorneys Conference.
- 2. Initial Pretrial Conference (IPC).** The IPC is to be held within thirty (30) days after the filing of the Certificate of Initial Attorneys Conference. The Judicial Officer to whom a civil case is assigned shall manage the pretrial activity of the case through direct involvement in the establishment, supervision, and enforcement of an order setting a plan for discovery and a schedule for disposition of each case. The Judicial Officer shall convene and conduct the IPC as contemplated by proposed Rule 16, Federal Rules of Civil Procedure, and undertake the following:

  - a. Rule on such pending motions as are ripe for disposition, including motions filed with pleadings, and**

**schedule for disposition other pending or anticipated motions;**

- b. Inquire as to the possibility of settlement;**
- c. Determine whether the case is appropriate ADR;**
- d. Evaluate and assign the case to an appropriate DCM track or identify the case as an exception to the DCM system;**
- e. Inquire as to anticipated dispositive motions;**
- f. Fix parameters for discovery by setting the number of depositions and interrogatories, sequence of discovery, and discovery schedule tailored to each specific case;**
- g. Establish an appropriate schedule for designating expert witnesses, consistent with the discovery schedule, to provide sufficient time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;**
- h. Approve any consent order which may be presented by counsel for the parties relating to subsections I. A. and B, unless the Court finds the terms of the proposed consent order to be unreasonable;**
- i. Enter a pretrial order setting a realistic trial date, adopting the CMP, and including orders with respect to**

matters set forth in this subsection and covered by current pretrial orders utilized in this District; and

- j. Establish a deadline for all parties to "opt out" of trial by a Magistrate Judge.

**B. Setting Early and Firm Trial Dates.**

Consistent with the concept of individualized case management adopted by the Plan, the Judicial Officer presiding at the IPC shall set an appropriate trial date consistent with the track system set forth as follows:

1. "Expedited" - Cases on the Expedited Track shall be completed within six (6) months or less after filing.
2. "Standard" - Cases on the Standard Track shall be completed within twelve (12) months or less after filing.
3. "Complex" - Cases on the Complex Track shall have a presumptive case completion date of no more than twenty-four (24) months after filing.
4. "Administrative" - Cases on the Administrative Track shall be completed within three (3) months of filing.

- 1. Authority to bind on specific topics. Participating attorneys will be required to have authority to bind their clients on the following matters at the IPC and any other pretrial conferences:**
  - a. Whether any issue exists concerning jurisdiction over the subject matter or the person, or concerning venue;**
  - b. Whether all parties have been properly designated and served;**
  - c. Whether all counsel have filed appearances;**
  - d. Whether any issue exists concerning joinder of parties or claims;**
  - e. Whether any party contemplates adding further parties;**
  - f. The factual bases and legal theories for the claims and the defenses involved in the case;**
  - g. The type and extent of damages being sought;**
  - h. Whether any question exists concerning appointment of a guardian ad litem, next friend, administrator, executor, receiver, or trustee;**
  - i. The extent of discovery undertaken to date;**
  - j. The extent and timing of anticipated discovery, including, in appropriate cases, a proposed schedule for depositions, requests for production or admissions,**

- interrogatories, and the identification of all documents and information which the parties will voluntarily produce;**
- k. Identification of anticipated witnesses or persons then known to have pertinent information;**
  - l. Whether any discovery disputes are anticipated;**
  - m. The time reasonably expected to be required for completion of all discovery;**
  - n. The existence and prospect of any pretrial motions, including dispositive motions;**
  - o. Whether a trial by jury has been demanded in a timely fashion;**
  - p. Whether it would be useful to separate claims, defenses, or issues for trial or discovery;**
  - q. Whether related actions in any court are pending or contemplated;**
  - r. The estimated time required for trial;**
  - s. Whether special verdicts will be needed at trial and, if so, the issues verdict forms will have to address;**
  - t. A report on settlement prospects, including the prospect of disposition without trial through any process, the status of settlement negotiations, and the advisability of**

a formal mediation or settlement conference either before or at the completion of discovery;

- u. The advisability of court ordered mediation or early neutral evaluation proceedings, where available;
- v. The advisability of a court appointed expert or master to aid in administration or settlement efforts; and
- w. Whether the parties object to trial by a Magistrate Judge.

2. **Additional matters by specific order.** By specific order, a Judicial Officer may also require participation in a settlement conference immediately after the IPC. The Judicial Officer may also require consideration of any other matters that appear likely to further the just, speedy, and inexpensive resolution of the case, including notification to the parties of the estimated fees and expenses likely to be incurred if the matter proceeds to trial.

3. **Attendance of party.** In addition to attendance by counsel, the Judicial Officer may require the attendance or availability of the parties.



## **II. FINAL PRETRIAL CONFERENCE**

### **A. Scheduling.**

It is not anticipated that a final pretrial conference will be necessary, and it is not mandatory. However, a final pretrial conference may be held no more than thirty (30) days before trial if ordered by the Court *ex mero motu* or upon motion of counsel.

### **B. Individuals Attending.**

*Statutory Requirements: The Civil Justice Reform Act requires each court to consider incorporating into its plan "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." 28 U.S.C. §473(b)(2). The rationale behind this provision is straightforward. The final pretrial conference cannot be meaningful unless the court and the parties reach agreement on the issues presented, the approximate length of the trial, the number of witnesses called, etc. Therefore lead counsel with authority to bind must be present.*

Lead trial counsel, or court approved designee for each party with authority to bind the party, shall be present.

## **III. COMMENTARY**

Section Two identifies a number of matters for which the attorneys should have authority to bind their clients at pretrial conferences. However, with respect to government attorneys at pretrial conferences the Senate Report<sup>1</sup> states: "For those districts that choose to adopt such a requirement, it will be necessary to provide some form of an exemption for Department of

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<sup>1</sup>Senate Report 101-416 at 58.

Justice (and, perhaps, other government) attorneys. Absent such an exemption, this requirement -- despite the Attorney General's delegation of specific authorization through the offices of United States Attorneys and Assistant Attorneys General -- might be construed to mandate that Department attorneys undertake actions not authorized by the Attorney General. For example, [a] pretrial conference on discovery could raise issues of attorney-client privilege, which frequently require decisions by high-ranking Department officials after consultation with the affected agencies. The need for an exemption under such circumstances is clear."

Although the Report contains no express exemption for government attorneys, it acknowledges the provisions of 28 U.S.C. §473(c) as being applicable to pretrial conferences. While the Group does not engage in statutory construction, it urges the government to assure that its counsel are vested with as much binding authority as is feasible at all pretrial conferences. The Group further recommends that the Court, in recognition of the special circumstances of government attorneys, specify that "government parties" be represented by a "knowledgeable delegate".

Generally, the current practice in the Western District is for Judicial Officers to have greater involvement in the case toward the end of the litigation process. The Group finds that cost and delay could be reduced if there were early and ongoing judicial control of the pretrial process. Therefore, the Group recommends that the Judicial Officer assigned to the case preside over the IPC within thirty (30) days after the Certificate of Initial Attorneys Conference has been filed. The Group anticipates a number of actions being taken at the IPC by the Judicial Officer, the most important of which will be the setting of a realistic and firm trial date. The Group recommends that all cases be ordered either to mediation or to a settlement conference.

Judicial Officers will contribute to reducing cost and delay by being involved in case management early in the litigation process. Litigants will

**contribute by giving their attorneys binding authority with respect to issues to be resolved during the IPC. Attorneys will contribute in being prepared to resolve issues at an earlier point in the litigation. The foregoing should result in discovery of settlement possibilities at an earlier stage of the litigation. Earlier settlements will reduce cost and delay.**

**In formulating Section Two of the proposed Plan, the Group considered the principles and techniques for litigation management and cost and delay reduction listed in 28 U.S.C. §473(b). The proposed Plan requires that counsel for each party be present at the IPC with authority to bind their clients on a comprehensive list of issues. The Group contemplates cases to be ordered for settlement conference if they are not ordered to mediation.**

**While the Group relied on the Model Plan for many of its recommendations in Section Two, much of what is to be accomplished during the IPC was developed from the experience of the Group. The theory of North Carolina Rule of Civil Procedure 26(f)(1) was also incorporated in this Section.**

## **SECTION THREE: DISCOVERY CONTROL; MOTIONS PRACTICE**

*Statutory Requirements: See Page 30, #1.*

### **I. CONTROLLING THE EXTENT AND TIMING OF DISCOVERY**

#### **A. Setting Discovery Deadlines.**

##### **1. DCM Tracks**

- a. "Expedited" - shall have a discovery cut-off no later than three (3) months after filing of the CMP.
- b. "Standard" - shall have a discovery cut-off no later than nine (9) months after filing of the CMP.
- c. "Complex" - shall have the discovery cut-off established in the CMP.
- d. "Administrative" - Discovery guidelines for this track include no discovery without prior leave of Court.
- e. "Mass Torts" - Discovery in cases on the Mass Torts Track shall be treated in accordance with a special CMP adopted by the Court.

2. Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery cut-off date so as to comply with the CMP. Discovery requests that seek responses or schedule depositions after the discovery cut-off are

not enforceable except by order of the Court for good cause shown. Notwithstanding the foregoing, a party seeking discovery will not be deemed to be in violation of the discovery cut-off if all parties consent to delay furnishing the requested discovery until after the cut-off date. For example, a deposition should be allowed to be concluded if it were commenced prior to the cut-off date and adjourned because it could not reasonably be resumed until an agreed date beyond the discovery cut-off. However, the parties may not, by stipulation and without the consent of the Court, extend the discovery cut-off to a date later than ten (10) days before trial.

**B. Attorney/Party Signatures for Requests to Extend Discovery Deadlines [28 U.S.C. §473(b)(3)].**

Attorneys may, by motion, request the Court to allow more discovery time. Signatures of parties will not be required.

**C. Limits on Use of Discovery (Interrogatories, Depositions, etc.) [28 U.S.C. §473(a)(2)(C)].**

Discovery Guidelines shall be set in the CMP and shall conform to the guidelines for the DCM case track as set forth in SECTION ONE, II. A. and B. and in SECTION THREE I. A.

**D. Methods of Resolving Discovery Disputes/Certification of Efforts to Resolve Disputes [28 U.S.C. §473(a)(5)].**

Every motion or other application relating to discovery must include certification by counsel that the parties have made a reasonable, good faith effort to resolve the discovery dispute to which the motion or application pertains.

**E. Pre-Discovery Disclosure of Core Information/Other Cooperative Discovery Devices [28 U.S.C. §473(a)(4)].**

Identification of all discovery, including documents and information which the parties will voluntarily produce without the necessity of formal discovery, will be provided no later than the date of the IPC.

**II. MOTIONS PRACTICE**

*Statutory Requirements: Section 473(a)(2)(D) of title 28, United States Code, requires the district courts to consider "setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition."*

**A. Motions Practice in the Context of the Discovery - Case Management Process.**

All motions, except motions *in limine* and motions to continue, shall be filed no later than thirty (30) days following the date set for completion of discovery.

**B. Form and Length of Motions.**

1. Each party opposing a motion may serve and file a memorandum in opposition within twenty (20) calendar days after service of the motion.
  
2. The moving party may serve and file a reply memorandum in support of its motion within ten (10) calendar days after service of the memorandum in opposition.
  
3. Motions will be decided without oral argument unless a motion for oral argument is granted by the Court. The Judicial Officer may grant or deny the requested relief for failure of any party to attend the hearing.
  
4. Motions which,
  - a. are filed prior to the filing of the last responsive pleading and
  - b. have the effect of tolling the progress of the case pending disposition of such motions (for example, Rule 12(b)(6) motions filed prior to and separately from an answer)shall be ruled on by the Court within thirty (30) days.

5. Attorneys must sign all motions, including motions to continue. Signatures of the parties will not be required.

**C. Status Reports.**

In any civil case where a motion or bench trial has been under advisement by the Court for a period in excess of sixty (60) days, the Clerk of Court shall, in writing, advise the Judicial Officer to whom the case is assigned of the status of the motion. The Clerk of Court shall supply a copy of status reports to the parties affected.

**III. COMMENTARY**

The CJRA Advisory Group for the Western District of North Carolina unanimously opposes the adoption of proposed Rule 26 of the Federal Rules of Civil Procedure. It is the opinion of the Advisory Group that proposed Rule 26 will add to the expense of litigation, cause further delay, prejudice litigants, and compromise attorneys' effectiveness as advocates.

The Group recommends tying discovery time limits with the DCM tracks. Cost and delay will be reduced by strict time limits that set the dates for discovery cut-off and trial. Whether or not this Section achieves cost and delay reduction will depend greatly upon the adherence to, and enforcement of, pretrial orders.

The recommended Plan will reduce the cost of the discovery process by requiring early disclosure of core information and by requiring counsel to



**sign a statement indicating their good faith effort to resolve discovery disputes before bringing those matters to the Court. Other cost savings will arise from a reduction in the number of briefs and memoranda normally associated with motions. The proposed Plan makes the filing of memoranda and briefs voluntary. Memoranda in opposition to a motion will be filed first with reply memoranda to follow. This Plan also allows for all motions, except motions for summary judgment, to be filed without a hearing, thus enabling the Court to rule expeditiously. This approach should reduce the costs litigants incur when their attorneys have to make added court appearances.**

**The Group considered 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 as suggested in 28 U.S.C. §273(b)(3). However, it is the opinion of the Group that this requirement is not necessary. The Group utilized the Model Plan in formulating this Section of its proposed Plan.**

## **SECTION FOUR: ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR)**

*Statutory Requirements: The Civil Justice Reform Act requires each court to consider incorporating into its plan "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, mini-trial, and summary jury trial." 28 U.S.C. §473(a)(6). In another provision, 28 U.S.C. §473(b)(4), the statute directs each court to consider adopting 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 non-binding conference conducted early in the litigation."*

### **I. ALTERNATIVE DISPUTE RESOLUTION COURT MEDIATED SETTLEMENT PROGRAM (ADR)**

#### **A. Order for Mediated Settlement Conference.**

- 1. Order by the Judicial Officer.** The Judicial Officer may, by written order, require parties and their representatives to attend a pretrial mediated settlement conference in any civil action except *habeas corpus* proceedings or other actions for extraordinary writs, appeals from rulings of administrative agencies, forfeitures of seized property, and bankruptcy appeals.
  
- 2. Content of Order.** The Court's order shall (1) require the mediated settlement conference to be held in the case, (2) establish a deadline for the completion of the conference, (3) make a tentative appointment of a certified mediator or other mediator acceptable to the Court, (4) state the rate of

compensation of the tentatively appointed mediator, (5) state clearly that the parties have the right to select their own mediator as provided by subsection B below, and (6) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the Court. The order shall be on a form prepared and distributed by the Clerk of the United States District Court.

3. **Motion to Dispense with or Defer Mediated Settlement Conference.** A party may move, within ten (10) days after the Court's order, to dispense with or defer the conference. Such motion shall state the reasons the relief is sought. For good cause shown, the Judicial Officer or Clerk may grant the motion.
  
4. **Petition for Court Ordered Mediated Settlement Conference.** In cases not ordered to mediated settlement conference, any or all parties may petition the Judicial Officer to order such a conference. Such motion shall state the reasons why the order shall be allowed and shall be served on non-moving parties. Objections may be filed in writing with the Judicial Officer within ten (10) days after the date of the service of the motion.

Thereafter, the Judicial Officer shall rule upon the motion without a hearing and notify the parties or their attorneys of the ruling.

5. **Exemption from Mediated Settlement Conference.** In order to evaluate the program of mediated settlement conference, the Judicial Officer shall exempt from such conferences a random sample of cases so as to create a control group to be used for comparative analysis.

**B. Appointment of Mediator.**

1. **By Agreement of Parties.** The parties may stipulate to a mediator within fourteen (14) days after the Court's order. The mediator selected shall be either:
  - a. A certified mediator; or
  - b. A mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and the Judicial Officer, is otherwise qualified by training or experience to mediate all or some of the issues in the action.

- 2. Notification to Court.** Within seven (7) days after the parties select a mediator by agreement, the Plaintiff, or the Plaintiff's attorney shall notify the Court and the mediator tentatively named by the Court of the name, address and telephone number of the mediator selected by agreement. Notification to the Court shall also include a statement of the training and experience or certification of the mediator selected. The notice shall be on a form prepared and distributed by the Clerk of the United States District Court.
  
- 3. Appointment by Judicial Officer.** The Judicial Officer shall appoint certified mediators or other mediators satisfactory to the Judicial Officer.
  
- 4. Disqualification of Mediator.** Any party may move the Judicial Officer for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, an order shall be entered appointing a replacement mediator pursuant to this subsection. Nothing in this provision shall preclude mediators from disqualifying themselves.

**C. The Mediated Conference.**

- 1. Where Conference is to be Held.** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the courthouse or other neutral public or community building in the division where the case is pending. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice to all attorneys and unrepresented parties of the time and location of the conference.
- 2. When Conference is to be Held.** Except for good cause found by the Judicial Officer, the mediated settlement conference shall begin no earlier than 120 days after the filing of the last required pleading and no later than sixty (60) days after the Court's order. It shall be completed within thirty (30) days after it has begun.
- 3. Recesses.** The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.
- 4. The Mediated Settlement Conference is not to Delay Other Proceedings.** The Mediated Settlement Conference shall not be

cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions or the trial of the case, except by order of the Judicial Officer.

**D. Duties of Parties, Representatives, and Attorneys.**

1. **Attendance.** The following persons shall physically attend a mediated settlement conference:
  - a. All individual parties; or an officer, director or employee having authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and to recommend settlement to the appropriate decision making body of the agency;
  - b. The party's principal counsel of record, if any; and,
  - c. For any insured party against whom a claim is made, a representative of the insurance carrier who is not such carrier's outside counsel and who has full authority to settle the claim.
  
2. **Finalizing Agreement.** Upon reaching agreement, the parties shall reduce the agreement to writing and sign it along with their counsel. By stipulation of the parties and at their

expense, the agreement may be electronically or stenographically recorded. A consent judgment or one or more voluntary dismissals shall be filed with the Court by such persons as the parties shall designate.

3. **Payment of Mediator's Fee.** The parties shall pay the mediator's fee as provided by subsection G, below.

**E. Sanctions for Failure to Attend.**

If a person fails to attend a duly ordered mediated settlement conference without good cause, a Judicial Officer may impose upon the person whose attendance is required under subsection D.1.a., above, or his principal, any lawful sanction, (including, but not limited to the payment of attorneys fees, mediator fees, and expenses incurred by persons attending the conference), contempt, or any other sanction authorized by Rule 37(b) of the Rules of Civil Procedure.

**F. Authority and Duties of Mediators.**

1. **Authority of Mediator.** The mediator shall at all times be in control of the conference and the procedures to be followed.



**2. General Duties of Mediator.** The mediator shall define and describe the following to the parties at the beginning of the conference:

- a. The process of mediation;
- b. The differences between mediation and other forms of conflict resolution;
- c. The costs of the mediated settlement conference;
- d. The facts that the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;
- e. The circumstances under which the mediator may meet alone with either of the parties or with any other person;
- f. Whether and under what conditions communications with the mediator will be held in confidence during the conference;
- g. The inadmissibility of conduct and statements as provided by Rule 408 of the Federal Rules of Evidence.
- h. The duties and responsibilities of the mediator and the parties; and,
- i. The fact that any agreement reached will be by mutual consent of the parties.

3. **Private Consultation.** The mediator may meet and consult privately with any party or parties or their counsel during the conference. Pre-conference communications concerning procedure or other matters may be allowed at the discretion of the mediator.
4. **Disclosure.** The mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or partiality.
5. **Failure of Mediation.** The mediator shall timely determine when mediation is not viable, that an impasse exists, or that mediation should end.
6. **Reporting Results of Conference.** The mediator shall report to the Court in writing whether or not an agreement was reached by the parties. If an agreement were reached, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file such judgment or dismissal. The Clerk of Court may require the mediator to provide statistical data for evaluation of the mediated settlement conference program on forms provided by the Clerk's office.

**G. Compensation of the Mediator.**

- 1. By Agreement.** When the mediator is stipulated to by the parties, compensation shall be as agreed among the parties and the mediator.
  
- 2. By Court Order.** When the mediator is appointed by the court, the mediator shall be compensated by the parties at a standard rate set by the Court for all court appointed mediators in the District or, for good cause shown, the appointing Judicial Officer may modify the rate.
  
- 3. Indigent Cases.** No party found to be indigent by the Court for the purposes of this Plan shall be required to pay a court appointed mediator. Any party may apply to the Judicial Officer for a finding of indigence and to be relieved of its obligation to pay its share of the mediator's compensation. Said motion shall be heard subsequent to the completion of the conference or, if the parties do not settle their case, subsequent to the trial of the action. The Judicial Officer may take into consideration the outcome of the action and whether a judgment was rendered in the movant's favor. The Judicial Officer shall enter an order granting or denying the party's request.

**4. Payment of Compensation by Parties.** Unless otherwise agreed to by the parties or ordered by the Court, costs of the mediated settlement conference shall be paid: one share by the plaintiffs, one share by the defendants and one share by third-party defendants. Parties obligated to pay a share of the costs shall pay them equally. Payment shall be due upon completion of the conference.

**H. Mediator Certification.**

Any person certified as a mediator pursuant to the Rules promulgated by the Supreme Court of North Carolina may be certified by the District Court Judge to act as a mediator in any appropriate case, provided that the person has been admitted to practice before the Court for at least five years and pays all administrative fees established by the Court. Only certified mediators who have agreed to mediate indigent cases without compensation shall be appointed.

**II. *COMMENTARY***

As stated in the Commentary following Section Two, the Group contemplates the Court waiving the agency representative attendance requirement upon a showing of good cause by the Government or upon consent of the parties. "Party's principal counsel of record" means counsel knowledgeable of the case and having the confidence of the party. It is the

consensus of the Group that mediators must take indigent cases if they wish to serve as court appointed mediators. If an indigent party secures a recovery, that party's portion of the mediation fee will be paid from its recovery. The Group contemplates that costs of the mediators' case preparation time and hearing time will be included in the Court's order (see subsection G. 2.) as compensated time. It is the consensus of the Group that the Court can accept attorneys from outside the Western District of North Carolina as mediators. (See subsection B. 1. b.)

The Group reviewed various types of techniques including binding arbitration, non-binding arbitration, mini-trials, summary jury trials, voluntary settlement conferences (with and without the presence of a Judicial Officer), mediation, and mandatory mediated settlement conferences. The recommendation of mandatory mediated settlement conferences is based on the system used by the North Carolina Courts modified to accommodate the federal court. The Group notes that the rules used by the North Carolina Courts, on which this recommendation is based, are presently under review and that several changes, based on experience, are under consideration. This Court may wish to consider any such changes when and if they are adopted. Further, the Group finds that this ADR technique costs the least in terms of court personnel and additional appropriations needed to implement it. Based on information from attorneys who have engaged in successful mediation, the Group concludes that mandatory mediated settlement conferences have a great potential for reducing cost and delay. The Group anticipates fewer

**cases will be tried and that more litigants will have their disputes resolved earlier in the litigation process, thus effecting a reduction in cost and delay to them.**

**This ADR technique is recommended in compliance with 28 U.S.C. §273(b)(5).**

## **SECTION FIVE: OTHER FEATURES**

*Statutory Requirements: The Civil Justice Reform Act provides that an expense and delay reduction plan may include "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." 28 U.S.C. §473(b)(6).*

### **I. PRO SE PRISONER AND SOCIAL SECURITY CASES**

This Report excludes from consideration *pro se* prisoner and social security cases.

With respect to *pro se* prisoner cases, the Group finds that current practice should control these cases. *Pro se* prisoner cases, both *habeas corpus* petitions and civil rights claims, compose a significant portion of the Court's civil case load. However, most of these cases do not go to trial. Instead, they usually conclude with a final order granting a dispositive motion. The Court's current practice recognizes this exceptional nature of *pro se* prisoner cases. Without hearing, the Judicial Officer handling a civil rights case issues an early pretrial order that governs discovery and dispositive motions and that sets a fast track for resolution of the case. In *habeas* cases, the lack of any need for discovery and motions means the Judicial Officer rarely enters a pretrial order.

Changing the current practice regarding *pro se* prisoner cases would only create additional delay and expense. For example, requiring attendance of the prisoner at initial pretrial conferences, mandatory hearings, or mandatory settlement conferences would necessitate compelling the prisoner's attendance by writ and placing custody of the prisoner with the Court during the hearing. The

resulting delay and expense would not serve any useful purpose since most of such cases end in pretrial dismissal.

For these reasons, the Group has not included recommendations for revised handling of *pro se* prisoner cases -- 28 U.S.C.A. Sections 2254 and 2255 and 42 U.S.C.A. Sections 1981, 1983, and 1985 -- within its Report or proposed Plan. Instead, the Group anticipates that the Court's current practice and authority regarding these cases would continue.

## **II. FAXED FILINGS**

It is the understanding of the Group that the rules of the Judicial Conference generally do not permit this District to allow filing by facsimile machines. The Group finds that allowing filing by facsimile machines would reduce delay in the disposition of civil cases and therefore, recommends that the Court urge the Judicial Conference to allow faxed filings in this District.

## **III. TELEPHONE CONFERENCES**

The Group recommends that the Court hold IPCs, motions hearings, and other conferences by telephone when requested provided that this practice will reduce expense or delay.

## **IV. COURT TECHNOLOGY COMMITTEE**

The Group recognizes that advances in technology may bring about new equipment that will enable the Court to reduce cost and delay further in the



disposition of civil litigation. Therefore, the Group recommends that the Court appoint a standing committee to keep it informed on new available technologies.

## **V. LOCAL RULES**

The Group recommends the Local Rules of the Western District of North Carolina be amended to incorporate the Court's expense and delay reduction plan.

## **VI. ADDITIONAL COURT PERSONNEL**

The Group recommends the addition of two additional District judgeships and two additional Magistrate judgeships forthwith. Further, the Group recommends that additional deputy clerks of court be hired to reach and maintain a 100% allotment as established by the Administrative Office of the Courts. Specifically, the Group recommends the addition of six deputy clerks of court immediately and additional deputy clerks as new judgeships are established in order to maintain a 100% allotment.

## **VII. COMMENTARY**

The recommendations in Section Five are other features that the District Court should consider in an effort to reduce cost and delay in the disposition of cases in its civil docket. 28 U.S.C. §473(b)(6).

We are unable to make any realistic determination of the extent to which costs and delays could be reduced by better assessment of the impact of new legislation. However, in our discussions and examination of current legislation, it is obvious that some federal oversight would be in order. If Congress continues to enact new legislation which will place increasing demands on both the civil and

**APPENDIX A:**

**Proposed Expense and Delay**

**Reduction Plan**

# **PROPOSED CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN UNDER THE CIVIL JUSTICE REFORM ACT OF 1990**

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**CJRA ADVISORY GROUP FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA**

**PROPOSED CIVIL JUSTICE EXPENSE AND DELAY REDUCTION  
PLAN UNDER THE CIVIL JUSTICE REFORM ACT OF 1990**

**SECTION ONE: DIFFERENTIATED CASE  
MANAGEMENT (DCM)**

**I. GENERAL PROVISIONS**

**A. Purpose.**

In developing our plan, we have considered each of the Advisory Group recommendations. We have considered each of the litigation management, cost and delay reduction principles, guidelines, and techniques specified in 28 U.S.C. §473.

The "Differentiated Case Management" ("DCM") system adopted by the Court is intended to permit the Court to manage its civil docket in the most effective manner, to reduce costs, and to avoid unnecessary delay without compromising the independence or the authority of either the judicial system or the individual Judge. The underlying principle of the DCM system is to make access to a fair and efficient court system available and affordable to all citizens.

**B. Definitions.**

1. "Differentiated Case Management" ("DCM") is a system providing for management of cases based on case characteristics. This system operates on each case from filing through completion - that is, from the date a case enters the court system until the date of entry of judgment or the dispositive order. The system is marked by the following features: the Court reviews and screens civil case filings and appeals, and channels cases to processing "tracks" which provide an appropriate level of judicial, staff, and attorney attention; civil cases having similar characteristics are identified, grouped, and assigned to designated tracks; each

track employs a Case Management Plan tailored to the general requirements of similarly situated cases; and provision is made for the initial track assignment to be adjusted to meet the special needs of any particular case.

2. **"Judicial Officer"** is either a United States District Judge, a United States Magistrate Judge, or a United States Bankruptcy Judge.
3. **"Initial Attorneys Conference" ("IAC")** is the first required conference in which counsel for all parties shall confer. During this conference counsel shall discuss and agree upon, if possible, the following matters: track assignments, whether the case is suitable for reference to ADR, the type and extent of discovery, the setting of a discovery cut-off date, deadline for filing motions, and the dates of anticipated hearings and trial.
4. **"Certificate of Initial Attorneys Conference"** is a document to be signed and filed by counsel for all parties confirming that the Initial Attorneys Conference has been held and setting forth the understandings of counsel both as to the matters required to be discussed and as to any other matters germane to the handling of the case.
5. **"Initial Pretrial Conference" ("IPC")** is the first required conference conducted by the Judicial Officer, preferably the trial judge. At this conference the track assignment, Alternative Dispute Resolution, and discovery are discussed. Discovery and motion deadlines and the dates of anticipated hearings are set.
6. **"Case Management Plan" ("CMP")** is the plan adopted by the Judicial Officer at the Initial Pretrial Conference. The CMP shall be filed forthwith. It shall include the determination of track assignments, whether the case is suitable for reference to ADR, the type and extent of discovery, the setting of a discovery cut-off date, deadline for filing motions, and the dates of anticipated hearings.
7. **"Court"** is the United States District Judges, United States Bankruptcy Judges, the United States Magistrate Judges, and Clerk of Court personnel.

8. **"Dispositive Motion"** is a motion to dismiss pursuant to Civil Rule 12(b), motion for judgment on the pleadings pursuant to Civil Rule 12(c), motion for summary judgment pursuant to Civil Rule 56, or any other motion which, if granted, would result in the entry of judgment or dismissal, dispose of any claims or defenses, or terminate the litigation.
9. **"Discovery cut-off"** is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded.

**C. Date of Application.**

This Plan is effective October 1, 1993. It will apply to all cases filed after that date and may, in the discretion of individual Judicial Officers, apply to earlier filed cases.

**D. Conflicts with Other Rules.**

If any provision in this Plan conflicts with any Local Rules adopted by the United States District Court for the Western District of North Carolina, then the Rules in this Plan shall control.

**II. TRACKS, EVALUATION, AND ASSIGNMENT OF CASES**

**A. Number and Types of Tracks.**

1. **"Expedited"** - Cases on the Expedited Track shall be completed within six (6) months or less after filing, and shall have a discovery cut-off no later than three (3) months after filing of the CMP. Discovery guidelines for this track include: no more than fifteen (15) single-part interrogatories per party, no more than one (1) fact witness deposition per party without prior approval of the Court or mutual consent of the parties, and such other discovery, if any, as may be provided for in the CMP.
2. **"Standard"** - Cases on the Standard Track shall be completed within twelve (12) months or less after filing, and shall have a discovery cut-off no later than nine (9) months after filing of the CMP. Discovery guidelines for this track include: no more than twenty (20) single-part interrogatories per party and no



more than six (6) fact witness depositions per party without prior approval of the Court or mutual consent of the parties.

3. **"Complex"** - Cases on the Complex Track shall have a presumptive case completion date of no more than twenty-four (24) months after filing and discovery limitations and cut-off shall be established in the CMP.
4. **"Administrative"** - Cases on the Administrative Track shall be referred by Clerk of Court personnel directly to a Magistrate Judge for disposition or a memorandum and recommendation, and shall be completed within three (3) months of filing. A CMP is not ordinarily utilized in this track. Discovery guidelines for this track include no discovery without prior leave of Court. Such cases shall normally be determined on the pleadings or by motion.
5. **"Mass Torts"** - Cases on the Mass Torts Track shall be treated in accordance with a special CMP adopted by the Court.

**B. Evaluation.**

The Court shall consider and apply the following factors in assigning cases to a particular track:

1. **Expedited.**
  - a. Legal Issues: Few and clear
  - b. Required Discovery: Limited
  - c. Number of Real Parties in Interest: Few
  - d. Number of Fact Witnesses: Up to five (5)
  - e. Expert Witnesses: None
  - f. Likely Trial Days: Less than three (3)
  - g. Suitability for ADR: High
  - h. Character and Nature of Damage Claims:  
Usually a fixed amount
2. **Standard.**
  - a. Legal Issues: More than a few, some settled
  - b. Required Discovery: Routine
  - c. Number of Real Parties in Interest: Up to five (5)
  - d. Number of Fact Witnesses: Up to ten (10)
  - e. Expert Witnesses: No more than three (3)

- f. Likely Trial Days: No more than ten (10)
- g. Suitability for ADR: Moderate to high
- h. Character and Nature of Damage Claims: Routine

**3. Complex.**

- a. Legal Issues: Numerous, complicated, and possibly unique
- b. Required Discovery: Extensive
- c. Number of Real Parties in Interest: More than five (5)
- d. Number of Fact Witnesses: More than ten (10)
- e. Expert Witnesses: More than three (3)
- f. Likely Trial Days: More than ten (10)
- g. Suitability for ADR: Moderate
- h. Character and Nature of Damage Claims: Usually requiring expert testimony

**4. Administrative.**

Cases that, based on the Court's prior experience, are likely to result in default or consent judgments or can be resolved on the pleadings or by motion.

**5. Mass Torts.**

Litigants are extensive in number or include class actions. Factors to be considered for this track shall be identified in accordance with a special CMP adopted by the Court.

**C. Assignment of Cases.**

Magistrate Judges shall be assigned as trial judges for civil cases in the same manner and to the same extent as District Court Judges, provided that any party may elect, in writing, to exercise the right to trial by a District Court Judge as protected by Article III of the United States Constitution and 28 U.S.C. §636. This provision is known as an "opt out" election.

## **SECTION TWO: EARLY AND ONGOING JUDICIAL CONTROL OF THE PRETRIAL PROCESS**

### **I. PLANNING THE PROGRESS OF THE CASE.**

#### **A. Pretrial Activity: Early Assessment/Pretrial Case Management.**

- 1. Initial Attorneys Conference (IAC).** The IAC is to be held within fifteen (15) days of the filing of the last required responsive pleading. Within five (5) days after the IAC, counsel shall sign and file the Certificate of Initial Attorneys Conference.
- 2. Initial Pretrial Conference (IPC).** The IPC is to be held within thirty (30) days after the filing of the Certificate of Initial Attorneys Conference. The Judicial Officer to whom a civil case is assigned shall manage the pretrial activity of the case through direct involvement in the establishment, supervision, and enforcement of an order setting a plan for discovery and a schedule for disposition of each case. The Judicial Officer shall convene and conduct the IPC as contemplated by proposed Rule 16, Federal Rules of Civil Procedure, and undertake the following:
  - a.** Rule on such pending motions as are ripe for disposition, including motions filed with pleadings, and schedule for disposition other pending or anticipated motions;
  - b.** Inquire as to the possibility of settlement;
  - c.** Determine whether the case is appropriate for ADR;
  - d.** Evaluate and assign the case to an appropriate DCM track or identify the case as an exception to the DCM system;
  - e.** Inquire as to anticipated dispositive motions;
  - f.** Fix parameters for discovery by setting the number of depositions and interrogatories, sequence of discovery, and discovery schedule tailored to each specific case;

- g. Establish an appropriate schedule for designating expert witnesses, consistent with the discovery schedule, to provide sufficient time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;
- h. Approve any consent order which may be presented by counsel for the parties relating to this subsections I.A. and B., unless the Court finds the terms of the proposed consent order to be unreasonable;
- i. Enter a pretrial order setting a realistic trial date, and adopting the CMP, and including orders with respect to matters set forth in this subsection and covered by current pretrial orders utilized in this District; and
- j. Establish a deadline for all parties to "opt out" of trial by a Magistrate Judge.

**B. Setting Early and Firm Trial Dates.**

Consistent with the concept of individualized case management adopted by the Plan, the Judicial Officer presiding at the IPC shall set an appropriate trial date consistent with the track system set forth as follows:

1. "Expedited" - Cases on the Expedited Track shall be completed within six (6) months or less after filing.
2. "Standard" - Cases on the Standard Track shall be completed within twelve (12) months or less after filing.
3. "Complex" - Cases on the Complex Tract shall have a presumptive case completion date of no more than twenty-four (24) months after filing.
4. "Administrative" - Cases on the Administrative Track shall be completed within three (3) months of filing.
5. "Mass Torts" - Cases on the Mass Torts Track shall be completed on a date set after consultation with attorneys of record.

**C. Settlement Conferences.**

- 1. Mandatory Consideration.** The Judicial Officer to whom a case is assigned shall consider, both at the time of the IPC and at any subsequent conference, the advisability of requiring the parties to participate in a settlement conference to be convened by the Court. Any party may also file a request for a settlement conference.
- 2. Mandatory Attendance by Representatives With Full Authority to Effect Settlement.** Each party, or representative of each party with authority to participate in settlement negotiations and effect a complete compromise of the case, shall be required to attend the settlement conference.
- 3. Mandatory Settlement Conference.** If an order for mandatory mediation has not been entered pursuant to Section Four of the Plan, then a settlement conference pursuant to this Section shall be mandatory unless waived by the Court upon a showing of good cause. Attendance by attorneys (or parties in pro se cases) is required.
- 4. Presiding Judicial Officer.** Any Judicial Officer of the District, including the Judicial Officer to whom the case is assigned for disposition, may preside over a settlement conference convened by the Court.

**D. Representation by Attorney with Authority to Bind At the IPC and Interim Pretrial Conferences.**

- 1. Authority to bind on specific topics.** Participating attorneys will be required to have authority to bind their clients on the following matters at the IPC and any other pretrial conferences:
  - a. Whether any issue exists concerning jurisdiction over the subject matter or the person, or concerning venue;
  - b. Whether all parties have been properly designated and served;
  - c. Whether all counsel have filed appearances;
  - d. Whether any issue exists concerning joinder of parties or claims;
  - e. Whether any party contemplates adding further parties;

- f. The factual bases and legal theories for the claims and the defenses involved in the case;
- g. The type and extent of damages being sought;
- h. Whether any question exists concerning appointment of a guardian ad litem, next friend, administrator, executor, receiver, or trustee;
- i. The extent of discovery undertaken to date;
- j. The extent and timing of anticipated discovery, including, in appropriate cases, a proposed schedule for depositions, requests for production or admissions, interrogatories, and the identification of all documents and information which the parties will voluntarily produce;
- k. Identification of anticipated witnesses or persons then known to have pertinent information;
- l. Whether any discovery disputes are anticipated;
- m. The time reasonably expected to be required for completion of all discovery;
- n. The existence and prospect of any pretrial motions, including dispositive motions;
- o. Whether a trial by jury has been demanded in a timely fashion;
- p. Whether it would be useful to separate claims, defenses, or issues for trial or discovery;
- q. Whether related actions in any court are pending or contemplated;
- r. The estimated time required for trial;
- s. Whether special verdicts will be needed at trial and, if so, the issues verdict forms will have to address;
- t. A report on settlement prospects, including the prospect of disposition without trial through any process, the status of settlement negotiations, and the advisability of a formal mediation or settlement conference either before or at the completion of discovery;
- u. The advisability of court ordered mediation or early neutral evaluation proceedings, where available;
- v. The advisability of a court appointed expert or master to aid in administration or settlement efforts; and
- w. Whether the parties object to trial by a Magistrate Judge.

**2. Additional matters by specific order.** By specific order, a Judicial Officer may also require participation in a settlement conference immediately after the IPC. The Judicial Officer may also require consideration of any other matters that appear

likely to further the just, speedy, and inexpensive resolution of the case, including notification to the parties of the estimated fees and expenses likely to be incurred if the matter proceeds to trial.

3. **Attendance of party.** In addition to attendance by counsel, the Judicial Officer may require the attendance or availability of the parties.

## **II. FINAL PRETRIAL CONFERENCE**

### **A. Scheduling.**

It is not anticipated that a final pretrial conference will be necessary, and it is not mandatory. However, a final pretrial conference may be held no more than thirty (30) days before trial if ordered by the Court *ex mero motu* or upon motion of counsel.

### **B. Individuals Attending.**

Lead trial counsel, or court approved designee for each party with authority to bind the party, shall be present.

## **SECTION THREE: DISCOVERY CONTROL; MOTIONS PRACTICE**

### **I. CONTROLLING THE EXTENT AND TIMING OF DISCOVERY**

#### **A. Setting Discovery Deadlines.**

##### **1. DCM Tracks**

- a. "Expedited" - shall have a discovery cut-off no later than three (3) months after filing of the CMP.
- b. "Standard" - shall have a discovery cut-off no later than nine (9) months after filing of the CMP.
- c. "Complex" - shall have the discovery cut-off established in the CMP.

- d. "Administrative" - Discovery guidelines for this track include no discovery without prior leave of Court.
  - e. "Mass Torts" - Discovery in cases on the Mass Torts Track shall be treated in accordance with a special CMP adopted by the Court.
2. Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery cut-off date so as to comply with the CMP. Discovery requests that seek responses or schedule depositions after the discovery cut-off are not enforceable except by order of the Court for good cause shown. Notwithstanding the foregoing, a party seeking discovery will not be deemed to be in violation of the discovery cut-off if all parties consent to delay furnishing the requested discovery until after the cut-off date. For example, a deposition should be allowed to be concluded if it were commenced prior to the cut-off date and adjourned because it could not reasonably be resumed until an agreed date beyond the discovery cut-off. However, the parties may not, by stipulation and without the consent of the Court, extend the discovery cut-off to a date later than ten (10) days before trial.

**B. Attorney/Party Signatures for Requests to Extend Discovery Deadlines**

Attorneys may, by motion, request the Court to allow more discovery time. Signatures of parties will not be required.

**C. Limits on Use of Discovery (Interrogatories, Depositions, etc.)**

Discovery Guidelines shall be set in the CMP and shall conform to the guidelines for the DCM case track as set forth in SECTION ONE, II. A. and B. and SECTION THREE, I. A.

**D. Methods of Resolving Discovery Disputes/Certification of Efforts to Resolve Disputes .**

Every motion or other application relating to discovery must include certification by counsel that the parties have made a reasonable, good faith effort to resolve the discovery dispute to which the motion or application pertains.



**E. Pre-Discovery Disclosure of Core Information/Other Cooperative Discovery Devices.**

Identification of all discovery, including documents and information which the parties will voluntarily produce without the necessity of formal discovery, will be provided no later than the date of the IPC.

**II. MOTIONS PRACTICE**

**A. Motions Practice in the Context of the Discovery - Case Management Process.**

All motions, except motions *in limine* and motions to continue, shall be filed no later than thirty (30) days following the date set for completion of discovery.

**B. Form and Length of Motions.**

1. Each party opposing a motion may serve and file a memorandum in opposition within twenty (20) calendar days after service of the motion.
2. The moving party may serve and file a reply memorandum in support of its motion within ten (10) calendar days after service of the memorandum in opposition.
3. Motions will be decided without oral argument unless a motion for oral argument is granted by the Court. The Judicial Officer may grant or deny the requested relief for failure of any party to attend the hearing.
4. Motions which,
  - a. are filed prior to the filing of the last responsive pleading and
  - b. have the effect of tolling the progress of the case pending disposition of such motions (for example, Rule 12(b)(6) motions filed prior to and separately from an answer)

shall be ruled on by the Court within thirty (30) days.

5. Attorneys must sign all motions, including motions to continue. Signatures of the parties will not be required.

**C. Status Reports.**

In any civil case where a motion or bench trial has been under advisement by the Court for a period in excess of sixty (60) days, the Clerk of Court shall, in writing, advise the Judicial Officer to whom the case is assigned of the status of the motion. The Clerk of Court shall supply a copy of status reports to the parties affected.

## **SECTION FOUR: ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR)**

### **I. ALTERNATIVE DISPUTE RESOLUTION COURT MEDIATED SETTLEMENT PROGRAM (ADR)**

**A. Order for Mediated Settlement Conference.**

1. **Order by the Judicial Officer.** The Judicial Officer may, by written order, require parties and their representatives to attend a pre-trial mediated settlement conference in any civil action except *habeas corpus* proceedings or other actions for extraordinary writs; appeals from rulings of administrative agencies, forfeitures of seized property, and bankruptcy appeals.
2. **Content of Order.** The Court's order shall (1) require the mediated settlement conference to be held in the case, (2) establish a deadline for the completion of the conference, (3) make a tentative appointment of a certified mediator or other mediator acceptable to the Court, (4) state the rate of compensation of the tentatively appointed mediator, (5) state clearly that the parties have the right to select their own mediator as provided by subsection B below, and (6) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the Court. The order shall be on a form prepared and distributed by the Clerk of the United States District Court.

4. **Disclosure.** The mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or partiality.
5. **Failure of Mediation.** The mediator shall timely determine when mediation is not viable, that an impasse exists, or that mediation should end.
6. **Reporting Results of Conference.** The mediator shall report to the Court in writing whether or not an agreement was reached by the parties. If an agreement were reached, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file such judgment or dismissal. The Clerk of Court may require the mediator to provide statistical data for evaluation of the mediated settlement conference program on forms provided by the Clerk's office.

**G. Compensation of the Mediator.**

1. **By Agreement.** When the mediator is stipulated to by the parties, compensation shall be as agreed among the parties and the mediator.
2. **By Court Order.** When the mediator is appointed by the court, the mediator shall be compensated by the parties at a standard rate set by the Court for all court appointed mediators in the District or, for good cause shown, the appointing Judicial Officer may modify the rate.
3. **Indigent Cases.** No party found to be indigent by the Court for the purposes of this Plan shall be required to pay a court appointed mediator. Any party may apply to the Judicial Officer for a finding of indigence and to be relieved of its obligation to pay its share of the mediator's compensation. Said motion shall be heard subsequent to the completion of the conference or, if the parties do not settle their case, subsequent to the trial of the action. The Judicial Officer may take into consideration the outcome of the action and whether a judgment was rendered in the movant's favor. The Judicial Officer shall enter an order granting or denying the party's request.

4. **Payment of Compensation by Parties.** Unless otherwise agreed to by the parties or ordered by the Court, costs of the mediated settlement conference shall be paid: one share by the plaintiffs, one share by the defendants and one share by third-party defendants. Parties obligated to pay a share of the costs shall pay them equally. Payment shall be due upon completion of the conference.

**H. Mediator Certification.**

Any person certified as a mediator pursuant to the Rules promulgated by the Supreme Court of North Carolina may be certified by the District Court Judge to act as a mediator in any appropriate case, provided that the person has been admitted to practice before the Court for at least five years and pays all administrative fees established by the Court. Only certified mediators who have agreed to mediate indigent cases without compensation shall be appointed.

## **SECTION FIVE: OTHER FEATURES**

**I. *PRO SE* PRISONER AND SOCIAL SECURITY CASES**

This Plan excludes from consideration *pro se* prisoner and social security cases.

**II. FAXED FILINGS**

Filing by facsimile machines will be allowed as approved by the Judicial Conference of the United States.

**III. TELEPHONE CONFERENCES**

Initial pretrial conferences, motions hearings, and other conferences are authorized to be held by telephone in the discretion of the Judicial Officer, provided that this practice will reduce expense or delay.

#### **IV. COURT TECHNOLOGY COMMITTEE**

A Court Technology Committee will be established to serve as a standing committee of the Western District. It shall keep the Court informed regarding new available technologies which would promote efficiency and assist in reducing cost and delay in the judicial system. The Chief Judge shall appoint members to said committee to serve discretionary terms.

#### **V. LOCAL RULES**

All Local Rules of the Western District of North Carolina shall be amended to incorporate this Plan.

#### **VI. ADDITIONAL COURT PERSONNEL**

The Court will work toward the addition of two additional District judgeships and two additional Magistrate judgeships. The Court will urge the Administrative Office of the Court to allow the hiring of additional deputy clerks of court to reach and maintain a 100% staff allotment.

**APPENDIX B:**

**Civil Justice Reform Act of 1990**

1       **TITLE I—CIVIL JUSTICE EXPENSE**  
2       **AND DELAY REDUCTION PLANS**

3       **SEC. 101. SHORT TITLE:**

4       This title may be cited as the “Civil Justice Reform  
5 Act of 1990”.

6       **SEC. 102. FINDINGS.**

7       The Congress finds that:

8           (1) The problems of cost and delay in civil liti-  
9 gation in any United States district court must be ad-  
10 dressed in the context of the full range of demands  
11 made on the district court’s resources by both civil  
12 and criminal matters.

13           (2) The courts, the litigants, the litigants’ attor-  
14 neys, and the Congress and the executive branch,  
15 share responsibility for cost and delay in civil litiga-  
16 tion and its impact on access to the courts, adjudica-  
17 tion of cases on the merits, and the ability of the  
18 civil justice system to provide proper and timely ju-  
19 dicial relief for aggrieved parties.

20           (3) The solutions to problems of cost and delay  
21 must include significant contributions by the courts,  
22 the litigants, the litigants’ attorneys, and by the Con-  
23 gress and the executive branch.

24           (4) In identifying, developing, and implement-  
25 ing solutions to problems of cost and delay in civil

1 litigation. it is necessary to achieve a method of con-  
2 sultation so that individual judicial officers, litigants,  
3 and litigants' attorneys who have developed tech-  
4 niques for litigation management and cost and delay  
5 reduction can effectively and promptly communicate  
6 those techniques to all participants in the civil justice  
7 system.

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

12 (A) the differential treatment of cases that  
13 provides for individualized and specific man-  
14 agement according to their needs, complexity,  
15 duration, and probable litigation careers;

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

20 (C) regular communication between a judi-  
21 cial officer and attorneys during the pretrial  
22 process; and

23 (D) utilization of alternative dispute resolu-  
24 tion programs in appropriate cases.



1 (6) Because the increasing volume and com-  
 2 plexity of civil and criminal cases imposes increas-  
 3 ingly heavy workload burdens on judicial officers,  
 4 clerks of court, and other court personnel, it is nec-  
 5 essary to create an effective administrative structure  
 6 to ensure ongoing consultation and communication  
 7 regarding effective litigation management and cost  
 8 and delay reduction principles and techniques.

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

10 (a) **CIVIL JUSTICE EXPENSE AND DELAY REDUCTION**  
 11 **PLANS.**—Title 28, United States Code, is amended by in-  
 12 serring after chapter 21 the following new chapter:

13 **“CHAPTER 23—CIVIL JUSTICE EXPENSE AND**  
 14 **DELAY REDUCTION PLANS**

“Sec.

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

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

“473. Content of civil justice expense and delay reduction plans.

“474. Review of district court action.

“475. Periodic district court assessment.

“476. Enhancement of judicial information dissemination.

“477. Model civil justice expense and delay reduction plan.

“478. Advisory groups.

“479. Information on litigation management and cost and delay reduction.

“480. Training programs.

“481. Automated case information.

“482. Definitions.

15 **“§ 471. Requirement for a district court civil justice expense**  
 16 **and delay reduction plan**

17 **“There shall be implemented by each United States**  
 18 **district court, in accordance with this title, a civil justice**

1 expense and delay reduction plan. The plan may be a plan  
2 developed by such district court or a model plan developed  
3 by the Judicial Conference of the United States. The pur-  
4 poses of each plan are to facilitate deliberate adjudication  
5 of civil cases on the merits, monitor discovery, improve  
6 litigation management, and ensure just, speedy, and inex-  
7 pensive resolutions of civil disputes.

8 **“§ 472. Development and implementation of a civil justice ex-**  
9 **pense and delay reduction plan**

10 **“(a) The civil justice expense and delay reduction**  
11 **plan implemented by a district court shall be developed or**  
12 **selected, as the case may be, after consideration of the rec-**  
13 **ommendations of an advisory group appointed in accord-**  
14 **ance with section 478 of this title.**

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

18 **“(1) an assessment of the matters referred to in**  
19 **subsection (c)(1);**

20 **“(2) the basis for its recommendation that the**  
21 **district court develop a plan or select a model plan;**

22 **“(3) recommended measures, rules and pro-**  
23 **grams; and**

1           “(4) an explanation of the manner in which the  
2           recommended plan complies with section 473 of this  
3           title.

4           “(c)(1) In developing its recommendations, the advi-  
5           sory group of a district court shall promptly complete a  
6           thorough assessment of the state of the court’s civil and  
7           criminal dockets. In performing the assessment for a dis-  
8           trict court, the advisory group shall—

9           “(A) determine the condition of the civil and  
10           criminal dockets;

11           “(B) identify trends in case filings and in the  
12           demands being placed on the court’s resources;

13           “(C) identify the principal causes of cost and  
14           delay in civil litigation, giving consideration to such  
15           potential causes as court procedures and the ways in  
16           which litigants and their attorneys approach and con-  
17           duct litigation; and

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

21           “(2) In developing its recommendations, the advisory  
22           group of a district court shall take into account the particu-  
23           lar needs and circumstances of the district court, litigants  
24           in such court, and the litigants’ attorneys.

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

6       “(d) The chief judge of the district court shall trans-  
7 mit a copy of the plan implemented in accordance with  
8 subsection (a) and the report prepared in accordance with  
9 subsection (b) of this section to—

10           “(1) the Director of the Administrative Office  
11 of the United States Courts;

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

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

16       “§ 473. Content of civil justice expense and delay reduction  
17 plans

18       “(a) In formulating the provisions of its civil justice  
19 expense and delay reduction plan, each United States dis-  
20 trict court, in consultation with an advisory group appoint-  
21 ed under section 478 of this title, shall consider and may  
22 include the following principles and guidelines of litigation  
23 management and cost and delay reduction:

24           “(1) systematic, differential treatment of civil  
25 cases that tailors the level of individualized and case

1 specific management to such criteria as case com-  
2 plexity, the amount of time reasonably needed to  
3 prepare the case for trial, and the judicial and other  
4 resources required and available for the preparation  
5 and disposition of the case;

6 “(2) early and ongoing control of the pretrial  
7 process through involvement of a judicial officer  
8 in—

9 “(A) assessing and planning the progress  
10 of a case;

11 “(B) setting early, firm trial dates, such  
12 that the trial is scheduled to occur within eight-  
13 een months of the filing of the complaint,  
14 unless a judicial officer certifies that—

15 “(i) the demands of the case and its  
16 complexity make such a trial date incom-  
17 patible with serving the ends of justice; or

18 “(ii) the trial cannot reasonably be  
19 held within such time because of the com-  
20 plexity of the case or the number or com-  
21 plexity of pending criminal cases;

22 “(C) controlling the extent of discovery  
23 and the time for completion of discovery, and  
24 ensuring compliance with appropriate requested  
25 discovery in a timely fashion; and

1           “(D) setting, at the earliest practicable  
2           time, deadlines for filing motions and a time  
3           framework for their disposition:

4           “(3) for all cases that the court or an individual  
5           judicial officer determines are complex and any  
6           other appropriate cases, careful and deliberate moni-  
7           toring through a discovery-case management confer-  
8           ence or a series of such conferences at which the  
9           presiding judicial officer—

10           “(A) explores the parties’ receptivity to,  
11           and the propriety of, settlement or proceeding  
12           with the litigation;

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

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

23           “(i) identify and limit the volume of  
24           discovery available to avoid unnecessary or

1 unduly burdensome or expensive discov-  
2 ery; and

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

5 "(D) sets, at the earliest practicable time,  
6 deadlines for filing motions and a time frame-  
7 work for their disposition;

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

12 "(5) conservation of judicial resources by pro-  
13 hibiting the consideration of discovery motions  
14 unless accompanied by a certification that the  
15 moving party has made a reasonable and good faith  
16 effort to reach agreement with opposing counsel on  
17 the matters set forth in the motion; and

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

20 "(A) have been designated for use in a dis-  
21 trict court; or

22 "(B) the court may make available, includ-  
23 ing mediation, minitrial, and summary jury trial.

24 "(b) In formulating the provisions of its civil justice  
25 expense and delay reduction plan, each United States dis-

1    district court, in consultation with an advisory group appoint-  
2    ed under section 478 of this title, shall consider and may  
3    include the following litigation management and cost and  
4    delay reduction techniques:

5           “(1) a requirement that counsel for each party  
6           to a case jointly present a discovery-case manage-  
7           ment plan for the case at the initial pretrial confer-  
8           ence, or explain the reasons for their failure to do so;

9           “(2) a requirement that each party be represent-  
10          ed at each pretrial conference by an attorney who  
11          has the authority to bind that party regarding all mat-  
12          ters previously identified by the court for discussion  
13          at the conference and all reasonably related matters;

14          “(3) a requirement that all requests for exten-  
15          sions of deadlines for completion of discovery or for  
16          postponement of the trial be signed by the attorney  
17          and the party making the request;

18          “(4) a neutral evaluation program for the pres-  
19          entation of the legal and factual basis of a case to a  
20          neutral court representative selected by the court at a  
21          nonbinding conference conducted early in the litiga-  
22          tion;

23          “(5) a requirement that, upon notice by the  
24          court, representatives of the parties with authority to  
25          bind them in settlement discussions be present or



1 available by telephone during any settlement confer-  
2 ence; and

3 “(6) such other features as the district court  
4 considers appropriate after considering the recom-  
5 mendations of the advisory group referred to in sec-  
6 tion 472(a) of this title.

7 “(c) Nothing in a civil justice expense and delay re-  
8 duction plan relating to the settlement authority provisions  
9 of this section shall alter or conflict with the authority of  
10 the Attorney General to conduct litigation on behalf of the  
11 United States, or any delegation of the Attorney General.

12 “§ 474. Review of district court action

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

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

18 “(B) make such suggestions for additional ac-  
19 tions or modified actions of that district court as the  
20 committee considers appropriate for reducing cost  
21 and delay in civil litigation in the district court.

22 “(2) The chief judge of a court of appeals and the  
23 chief judge of a district court may designate another judge  
24 of such court to perform the chief judge’s responsibilities  
25 under paragraph (1) of this subsection.

1       “(b) The Judicial Conference of the United States—

2               “(1) shall review each plan and report submit-  
3       ted by a district court pursuant to section 472(d) of  
4       this title; and

5               “(2) may request the district court to take addi-  
6       tional action if the Judicial Conference determines  
7       that such court has not adequately responded to the  
8       conditions relevant to the civil and criminal dockets  
9       of the court or to the recommendations of the district  
10       court’s advisory group.

11   “§ 475. Periodic district court assessment

12       “After developing or selecting a civil justice expense  
13       and delay reduction plan, each United States district court  
14       shall assess annually the condition of the court’s civil and  
15       criminal dockets with a view to determining appropriate  
16       additional actions that may be taken by the court to reduce  
17       cost and delay in civil litigation and to improve the litiga-  
18       tion management practices of the court. In performing such  
19       assessment, the court shall consult with an advisory group  
20       appointed in accordance with section 478 of this title.

21   “§ 476. Enhancement of judicial information dissemination

22       “(a) The Director of the Administrative Office of the  
23       United States Courts shall prepare a semiannual report,  
24       available to the public, that discloses for each judicial offi-  
25       cer—

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

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

7 and

8           “(3) the number and names of cases that have  
9 not been terminated within three years of filing.

10          “(b) To ensure uniformity of reporting, the standards  
11 for categorization or characterization of judicial actions to  
12 be prescribed in accordance with section 481 of this title  
13 shall apply to the semiannual report prepared under sub-  
14 section (a).

15          “§ 477. Model civil justice expense and delay reduction plan

16          “(a)(1) Based on the plans developed and implement-  
17 ed by the United States district courts designated as Early  
18 Implementation District Courts pursuant to section 103(c)  
19 of the Civil Justice Reform Act of 1990, the Judicial Con-  
20 ference of the United States may develop one or more  
21 model civil justice expense and delay reduction plans. Any  
22 such model plan shall be accompanied by a report explain-  
23 ing the manner in which the plan complies with section  
24 473 of this title.

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

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

11       “§ 478. Advisory groups

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

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

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



1 Judicial Conference shall transmit copies of the report to  
2 the United States district courts and to the Committees on  
3 the Judiciary of the Senate and the House of Representa-  
4 tives.

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

7               “(1) study ways to improve litigation manage-  
8 ment and dispute resolution services in the district  
9 courts; and

10              “(2) make recommendations to the district  
11 courts on ways to improve such services.

12       “(c)(1) The Judicial Conference of the United States  
13 shall prepare, periodically revise, and transmit to the  
14 United States district courts a Manual for Litigation Man-  
15 agement and Cost and Delay Reduction. The Director of  
16 the Federal Judicial Center and the Director of the Admin-  
17 istrative Office of the United States Courts may make rec-  
18 ommendations regarding the preparation of and any subse-  
19 quent revisions to the Manual.

20       “(2) The Manual shall be developed after careful  
21 evaluation of the plans implemented under section 472 of  
22 this title, the demonstration program conducted under sec-  
23 tion 104 of the Civil Justice Reform Act of 1990, and the  
24 pilot program conducted under section 105 of the Civil  
25 Justice Reform Act of 1990.

1           “(3) The Manual shall contain a description and anal-  
2 ysis of the litigation management, cost and delay reduction  
3 principles and techniques, and alternative dispute resolu-  
4 tion programs considered most effective by the Judicial  
5 Conference, the Director of the Federal Judicial Center,  
6 and the Director of the Administrative Office of the United  
7 States Courts.

8   “§ 480. Training programs

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

20   “§ 481. Automated case information

21           “(a) The Director of the Administrative Office of the  
22 United States Courts shall ensure that each United States  
23 district court has the automated capability readily to re-  
24 trieve information about the status of each case in such  
25 court.

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

3           “(A) the information to be recorded in district  
4 court automated systems; and

5           “(B) standards for uniform categorization or  
6 characterization of judicial actions for the purpose of  
7 recording information on judicial actions in the dis-  
8 trict court automated systems.

9       “(2) The uniform standards prescribed under para-  
10 graph (1)(B) of this subsection shall include a definition of  
11 what constitutes a dismissal of a case and standards for  
12 measuring the period for which a motion has been pend-  
13 ing.

14       “(c) Each United States district court shall record in-  
15 formation as prescribed pursuant to subsection (b) of this  
16 section.

17 “§ 482. Definitions

18       “‘As used in this chapter the term ‘judicial officer’  
19 means a United States district court judge or a United  
20 States magistrate.’”.

21       (b) IMPLEMENTATION.—(1) Except as provided in sec-  
22 tion 105 of this Act, each United States district court shall,  
23 within three years after the date of the enactment of this  
24 title, implement a civil justice expense and delay reduction



1 plan under section 471 of title 28, United States Code, as  
2 added by subsection (a).

3 (2) The requirements set forth in sections 471 through  
4 478 of title 28, United States Code, as added by subsection  
5 (a), shall remain in effect for seven years after the date of  
6 the enactment of this title.

7 (c) EARLY IMPLEMENTATION DISTRICT COURTS.—

8 (1) Any United States district court that, no ear-  
9 lier than June 30, 1991 and no later than December  
10 31, 1991, develops and implements a civil justice ex-  
11 pense and delay reduction plan under chapter 23 of  
12 title 28, United States Code, as added by subsection  
13 (a), shall be designated by the Judicial Conference of  
14 the United States as an Early Implementation District  
15 Court.

16 (2) The chief judge of a district so designated  
17 may apply to the Judicial Conference for additional  
18 resources, including technological and personnel sup-  
19 port and information systems, necessary to imple-  
20 ment its civil justice expense and delay reduction  
21 plan. The Judicial Conference may provide such re-  
22 sources out of funds appropriated pursuant to section  
23 106(a).

24 (3) Within eighteen months after the date of the  
25 enactment of this title, the Judicial Conference shall

1 prepare a report on the plans developed and imple-  
2 mented by the Early Implementation District Courts.

3 (4) The Director of the Administrative Office of  
4 the United States Courts shall transmit to the United  
5 States district courts and to the Committees on the  
6 Judiciary of the Senate and House of Representa-  
7 tives—

8 (A) copies of the plans developed and im-  
9 plemented by the Early Implementation District  
10 Courts;

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

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

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

“23. Civil justice expense and delay reduction plans..... 471”.

19 SEC. 104. DEMONSTRATION PROGRAM.

20 (a) IN GENERAL.—(1) During the four-year period be-  
21 ginning on January 1, 1991, the Judicial Conference of the  
22 United States shall conduct a demonstration program in ac-  
23 cordance with subsection (b).

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

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

12       (2) The United States District Court for the Northern  
13 District of California, the United States District Court for  
14 the Northern District of West Virginia, and the United  
15 States District Court for the Western District of Missouri  
16 shall experiment with various methods of reducing cost  
17 and delay in civil litigation, including alternative dispute  
18 resolution, that such district courts and the Judicial Confer-  
19 ence of the United States shall select.

20       (c) STUDY OF RESULTS.—The Judicial Conference of  
21 the United States, in consultation with the Director of the  
22 Federal Judicial Center and the Director of the Administra-  
23 tive Office of the United States Courts, shall study the ex-  
24 perience of the district courts under the demonstration pro-  
25 gram.

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

6 SEC. 105. PILOT PROGRAM.

7 (a) IN GENERAL.—(1) During the four-year period be-  
8 ginning on January 1, 1991, the Judicial Conference shall  
9 conduct a pilot program in accordance with subsection (b).

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

13 (b) PROGRAM REQUIREMENTS.—(1) Ten district courts  
14 (in this section referred to as “Pilot Districts”) designated  
15 by the Judicial Conference of the United States shall im-  
16 plement expense and delay reduction plans under chapter  
17 23 of title 28, United States Code (as added by section  
18 103(a)), not later than December 31, 1991. In addition to  
19 complying with all other applicable provisions of chapter  
20 23 of title 28, United States Code (as added by section  
21 103(a)), the expense and delay reduction plans implement-  
22 ed by the Pilot Districts shall include the six principles and  
23 guidelines of litigation management and cost and delay re-  
24 duction identified in section 473(a) of title 28, United  
25 States Code.

1       (2) At least five of the Pilot Districts designated by  
2 the Judicial Conference shall be judicial districts encom-  
3 passing metropolitan areas.

4       (3) The expense and delay reduction plans imple-  
5 mented by the Pilot Districts shall remain in effect for a  
6 period of three years. At the end of that three-year period,  
7 the Pilot Districts shall no longer be required to include, in  
8 their expense and delay reduction plans, the six principles  
9 and guidelines of litigation management and cost and  
10 delay reduction described in paragraph (1).

11       (c) PROGRAM STUDY REPORT.—(1) Not later than De-  
12 cember 31, 1995, the Judicial Conference shall submit to  
13 the Committees on the Judiciary of the Senate and House  
14 of Representatives a report on the results of the pilot pro-  
15 gram under this section that includes an assessment of the  
16 extent to which costs and delays were reduced as a result  
17 of the program. The report shall compare those results to  
18 the impact on costs and delays in ten comparable judicial  
19 districts for which the application of section 473(a) of title  
20 28, United States Code, had been discretionary. That com-  
21 parison shall be based on a study conducted by an inde-  
22 pendent organization with expertise in the area of Federal  
23 court management.

24       (2)(A) The Judicial Conference shall include in its  
25 report a recommendation as to whether some or all district

1 courts should be required to include, in their expense and  
2 delay reduction plans, the six principles and guidelines of  
3 litigation management and cost and delay reduction identi-  
4 fied in section 473(a) of title 28, United States Code.

5 (B) If the Judicial Conference recommends in its  
6 report that some or all district courts be required to include  
7 such principles and guidelines in their expense and delay  
8 reduction plans, the Judicial Conference shall initiate pro-  
9 ceedings for the prescription of rules implementing its rec-  
10 ommendation, pursuant to chapter 131 of title 28, United  
11 States Code.

12 (C) If in its report the Judicial Conference does not  
13 recommend an expansion of the pilot program under sub-  
14 paragraph (A), the Judicial Conference shall identify alter-  
15 native, more effective cost and delay reduction programs  
16 that should be implemented in light of the findings of the  
17 Judicial Conference in its report, and the Judicial Confer-  
18 ence may initiate proceedings for the prescription of rules  
19 implementing its recommendation, pursuant to chapter 131  
20 of title 28, United States Code.

21 **SEC. 106. AUTHORIZATION.**

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

1       (b) IMPLEMENTATION OF CHAPTER 23.—There is au-  
2 thORIZED to be appropriated not more than \$5,000,000 for  
3 fiscal year 1991 to implement chapter 23 of title 28,  
4 United States Code.

5       (c) DEMONSTRATION PROGRAM.—There is authorized  
6 to be appropriated not more than \$5,000,000 for fiscal year  
7 1991 to carry out the provisions of section 104.

**APPENDIX C:**

**Memorandum of**

**March 25, 1993**



L. RALPH MECHAM  
DIRECTOR

JAMES E. MACKLIN, JR.  
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

WASHINGTON, D.C. 20544

March 25, 1993

**IMPORTANT AND URGENT**

MEMORANDUM TO ALL JUDGES, UNITED STATES DISTRICT COURTS

SUBJECT: Postponement of Civil Jury Trials

At the direction of the Executive Committee of the Judicial Conference, I am writing to advise you that, effective May 12, 1993, new civil jury trials will have to be postponed. Implementation of this action will be avoided if the judiciary's pending request for a supplemental appropriation for the fees and allowances of jurors is timely approved. We will, of course, advise you promptly, should such approval be received.

In the fiscal year 1993 Fees of Jurors appropriation, Congress approved \$5.2 million less than was requested. Anticipating this, and taking into account escalating requirements, the judiciary has sought a supplemental of \$7.5 million for this account. To date, no congressional action has been taken on the supplemental request.

In order to prepare for the possibility that a supplemental appropriation will not be enacted prior to funds being depleted in the Fees of Jurors account, the Executive Committee met on March 22, 1993, to develop a plan of action. Weighing several options, the Committee decided to reserve sufficient funds to continue criminal trials through the end of the fiscal year and, assuming the request for supplemental funds has not yet been approved, delay civil jury trials when the funds run out. The Committee further agreed to continue to study the impact of this action.

Accordingly, the Judicial Conference, through its Executive Committee, has directed that you be notified that no funds will be available to empanel new civil jury trials from May 12

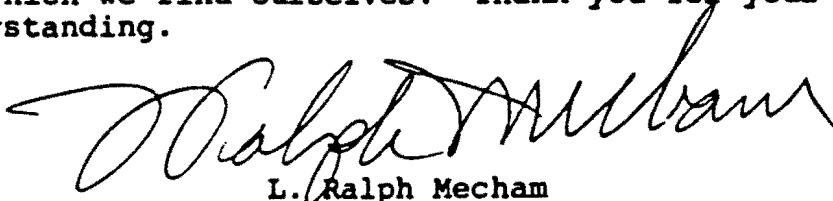
SUBJECT: Postponement of Civil Jury Trials

2

forward. Only juries which have been empaneled for the trial of a specific case prior to May 12 -- as well as juries which have already commenced hearing testimony or conducting deliberations - - may continue to serve until those cases are concluded. This postponement must continue in effect until we inform you that Congress has made available sufficient funds to permit the lifting of this restriction.

Please note that case decisions interpreting the Jury Selection and Service Act of 1968, as amended, have determined that the use of volunteer jurors is unlawful. It therefore appears that the current financial crisis cannot be met by the use of jurors who volunteer to serve without compensation.

The Executive Committee very much regrets that this extreme action is necessary, but I trust all of you understand the severe fiscal situation in which we find ourselves. Thank you for your cooperation and understanding.

A handwritten signature in cursive script, appearing to read "L. Ralph Mecham".

L. Ralph Mecham

cc: Chief Judges, United States Courts of Appeals  
Circuit Executives  
District Court Executives  
Clerks, United States District Courts

**APPENDIX D:**

**Civil/Criminal Case Filing and  
Disposition Statistics**

**CIVIL/CRIMINAL CASE FILINGS AND  
DISPOSITION STATISTICS**

	<u>1986</u>	<u>1991</u>
<b>Case Disposition Time:</b>		
<b>Criminal Cases</b>	<b>3.1 months</b>	<b>5.6 months</b>
<b>Civil Cases</b>	<b>12 months</b>	<b>17 months</b>
<b>Number of Criminal Case Dispositions</b>	<b>376</b>	<b>417</b>
<b>Number of Criminal Defendant Dispositions</b>	<b>545</b>	<b>657</b>
<b>Criminal Case/Judgeship Ranking Nationwide</b>	<b>6</b>	<b>2</b>
<b>Total Criminal Jury Trials</b>	<b>46</b>	<b>41</b>
<b>Total Criminal Non-Jury Trials</b>	<b>23</b>	<b>31</b>
<b>Total Civil Jury Trials</b>	<b>44</b>	<b>16</b>
<b>Total Civil Non-Jury Trials</b>	<b>45</b>	<b>15</b>

**APPENDIX E:**

**Judicial Workload Profiles**

**NORTH CAROLINA WESTERN**

**U.S. DISTRICT COURT  
JUDICIAL WORKLOAD PROFILE**

TWELVE MONTH PERIOD ENDED JUNE 30

**NUMERICAL  
STANDING  
WITHIN  
U.S. Circuit**



**OVERALL  
WORKLOAD  
STATISTICS**

	1981	1980	1979	1978	1977	1976
Filings*	1,047	1,002	583	847	775	946
Terminations	1,098	831	894	783	857	875
Pending	806	857	686	597	533	615
Percent Change in Total Filings Current Year	Over Last Year ▶	4.5				
	Over Earlier Years ▶	6.5	23.6	35.1	10.7	
Number of Judgeships	3	3	3	2	2	2
Vacant Judgeship Months	12.0	12.0	7.7	.0	.0	.0

61	5
71	5

**ACTIONS  
PER  
JUDGESHIP**

FILINGS	Total	349	334	328	424	388	473
	Civil	291	274	258	323	287	340
	Criminal	58	60	70	101	101	133
Pending Cases	269	286	229	299	266	308	
Weighted Filings**	340	306	261	460	415	527	
Terminations	366	277	298	392	429	438	
Trials Completed	47	58	65	93	73	74	

66	7
72	7
15	1
79	8
61	5
51	8
31	4

**MEDIAN  
TIMES  
(MONTHS)**

From Filing to Disposition	Criminal	2.3	2.3	2.3	1.9	2.3	1.5
	Civil	7	7	6	8	10	8
From Issue to Trial (Civil Only)	18	8	12	9	9	10	

4	1
19	2
62	5

**OTHER**

Number (and %) of Civil Cases Over 3 Years Old	53 ( 7.0)	41 ( 5.1)	35 ( 5.6)	22 ( 4.1)	13 ( 2.7)	14 ( 2.6)
Triable Defendants** in Pending Criminal Cases Number (and %)	43 (74.1)	20 (42.6)	56 (63.6)	44 (55.7)	22 (48.9)	40 (54.8)
Per: Usage Index	15.15	14.45	15.76	14.74	14.62	14.61
% of Jurors Not Serving	21.0	18.8	24.2	22.7	23.7	21.4

16	1
2	2

**FOR NATIONAL PROFILE AND EXPLANATION OF NATURE OF SUIT AND OFFENSE  
CLASSIFICATIONS SHOW BELOW OPEN FOLD OVER BACK COVER**

**1981 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE**

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	874	66	102	276	40	8	24	136	74	21	80	7	40
Criminal*	167	-	18	1	11	-	20	5	1	16	39	26	30

\*Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.

\*\*See Page 129.

**NORTH CAROLINA WESTERN**

**U.S. DISTRICT COURT  
JUDICIAL WORKLOAD PROFILE**

**TWELVE MONTH PERIOD ENDED JUNE 30**

	1982	1981	1980	1979	1978	1977
--	------	------	------	------	------	------

**OVERALL  
WORKLOAD  
STATISTICS**

Filings*	1,479	1,047	1,002	983	847	775
Terminations	1,340	1,098	831	894	783	857
Pending	945	806	857	686	597	533
Percent Change in Total Filings Current Year	Over Last Year ▶	41.3				
	Over Earlier Years ▶		47.6	50.5	74.6	90.8
Number of Judgeships	3	3	3	3	2	2
Vacant Judgeship Months	4.8	12.0	12.0	7.7	.0	.0

**JUDICIAL  
STANDING  
WITHIN  
EJS Circuit**

7	3
11	2

**ACTIONS  
PER  
JUDGESHIP**

FILINGS	Total	493	349	334	328	424	388
	Civil	436	291	274	258	323	287
	Criminal	57	58	60	70	101	101
Pending Cases	315	269	286	229	299	266	
Weighted Filings**	329	340	306	261	460	415	
Terminations	447	366	277	298	392	429	
Trials Completed	60	47	58	65	93	73	

35	5
39	5
19	1
77	8
76	7
38	6
15	2
3	1
10	2
52	6

**MEDIAN  
TIMES  
(MONTHS)**

From Filing to Disposition	Criminal	3.5	2.3	2.3	2.3	1.9	2.3
	Civil	5	7	7	6	8	10
From Issue to Trial (Civil Only)	16	18	8	13	9	9	

38	53	41	35	22	13
4.2	7.0	5.1	5.6	4.1	2.7
33	43	20	56	44	22
58.9	74.1	42.6	63.6	55.7	48.9
16.10	15.15	14.45	15.76	14.74	14.62
21.8	21.0	18.8	24.2	22.7	23.7

**OTHER**

Number (and %) of Civil Cases Over 3 Years Old	38	53	41	35	22	13
Triable Defendants** in Pending Criminal Cases Number (and %)	58.9	74.1	42.6	63.6	55.7	48.9
Juror Usage Index	16.10	15.15	14.45	15.76	14.74	14.62
% of Jurors Not Serving	21.8	21.0	18.8	24.2	22.7	23.7

**FOR NATIONAL PROFILE AND EXPLANATION OF NATURE OF SUIT AND OFFENSE CLASSIFICATIONS SHOWN BELOW, OPEN FOLDOUT AT BACK COVER.**

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1309	80	620	219	11	7	14	146	70	15	91	3	33
Criminal*	166	1	15	6	19	6	20	6	2	19	47	13	12

\*Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.

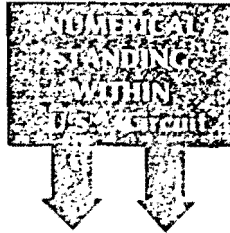
\*\*See Page 131.

**NORTH CAROLINA WESTERN**

**U.S. DISTRICT COURT  
JUDICIAL WORKLOAD PROFILE**

TWELVE MONTH PERIOD ENDED JUNE 30

		1983	1982	1981	1980	1979	1978			
OVERALL WORKLOAD STATISTICS	Filings*	1,794	1,479	1,047	1,002	983	847			
	Terminations	1,726	1,340	1,098	831	894	783			
	Pending	1,013	945	806	857	686	597			
	Percent Change in Total Filings - Current Year	Over Last Year ▶		21.3					34	2
		Over Earlier Years ▶			71.3	79.0	82.5	111.8	14	1
	Number of Judgeships		3	3	3	3	3	2		
Vacant Judgeship Months		.0	4.8	12.0	12.0	7.7	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	598	493	349	334	328	424	28	3
		Civil	513	436	291	274	258	323	37	3
		Criminal	85	57	58	60	70	101	11	1
	Pending Cases		338	315	269	286	229	299	79	7
	Weighted Filings**		420	329	340	306	261	460	65	6
	Terminations		575	447	366	277	298	392	19	3
	Trials Completed		63	60	47	58	65	93	12	2
	MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.5	3.5	2.3	2.3	2.3	1.9	2
Civil			4	5	7	7	6	8	4	1
From Issue to Trial (Civil Only)			10	16	18	8	13	9	17	6
OTHER	Number (and % of Civil Cases Over 3 Years Old)		31 3.3	38 4.2	53 7.0	41 5.1	35 5.6	22 4.1	26	3
	Triple Defendants** in Pending Criminal Cases Number (and %)		68 74.7	33 58.9	43 74.1	20 42.6	56 63.6	44 55.7		
	Jurors per Trial Day		16.79	16.10	15.15	14.45	15.76	14.74	47	4



**FOR NATIONAL PROFILE AND EXPLANATION OF NATURE OF SUIT AND OFFENSE CLASSIFICATIONS SHOWN BELOW, OPEN FOLDOUT AT BACK COVER.**

**1983 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE**

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1539	136	709	186	10	10	21	188	88	42	97	8	44
Criminal*	247	1	18	5	30	5	18	15	7	29	66	29	24

\*Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.

\*\*See Page 120



**NORTH CAROLINA WESTERN**

**U.S. DISTRICT COURT  
JUDICIAL WORKLOAD PROFILE**

**TWELVE MONTH PERIOD ENDED JUNE 30**

**NUMERICAL  
STANDING  
WITHIN  
U.S. Circuit**

**OVERALL  
WORKLOAD  
STATISTICS**

	1984	1983	1982	1981	1980	1979
Filings*	2,102	1,794	1,479	1,047	1,002	983
Terminations	1,914	1,726	1,340	1,098	831	894
Pending	1,203	1,013	945	806	857	686
Percent Change in Total Filings - Current Year	Over Last Year ▶	17.2				
	Over Earlier Years ▶		42.1	100.8	109.8	113.8
Number of Judgeships	3	3	3	3	3	3
Vacant Judgeship Months	.0	.0	4.8	12.0	12.0	7.7

17 1  
13 1

**ACTIONS  
PER  
JUDGESHIP**

FILINGS	Total	701	598	493	349	334	328
	Civil	610	513	436	291	274	258
	Criminal Felony	91	85	57	58	60	70
Pending Cases	401	338	315	269	286	229	
Weighted Filings**	465	420	329	340	306	261	
Terminations	638	575	447	366	277	298	
Trials Completed	58	63	60	47	58	65	

20 3  
26 3  
7 1  
72 6  
53 3  
22 3  
17 2

**MEDIAN  
TIMES  
(MONTHS)**

From Filing to Disposition	Criminal Felony	3.7	3.5	3.5	2.3	2.3	2.3
	Civil	4	4	5	7	7	6
From Issue to Trial (Civil Only)		11	10	16	18	8	13

3 1  
1 1  
19 4

**OTHER**

Number (and %) of Civil Cases Over 3 Years Old	5 .4	31 3.3	38 4.2	53 7.0	41 5.1	35 5.6
Triable Defendants** in Pending Criminal Felony Cases Number (and %)	52 61.9	68 74.7	33 58.9	43 74.1	20 42.6	56 63.6
Jurors per Trial Day	17.00	16.79	16.10	15.15	14.45	15.76

2 1  
47 3

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS  
SHOWN BELOW — OPEN FOLDOUT AT BACK COVER**

**1984 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE**

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1829	268	802	187	25	8	19	219	89	49	112	3	48
Criminal Felony*	270	-	7	5	19	6	20	7	6	26	109	36	29

\*Filings in the "Overall Workload Statistics" section include criminal felony transfers, while filings "by nature of offense" do not.  
\*\*See Page 129.

**NORTH CAROLINA WESTERN**

**U.S. DISTRICT COURT  
JUDICIAL WORKLOAD PROFILE**

		TWELVE MONTH PERIOD ENDED JUNE 30								
		1985	1984	1983	1982	1981	1980	U.S.	Circuit	
OVERALL WORKLOAD STATISTICS	Filings*	1,834	2,102	1,794	1,479	1,047	1,002			
	Terminations	2,050	1,914	1,726	1,340	1,098	831			
	Pending	987	1,203	1,013	945	806	857			
	Percent Change in Total Filings Current Year	Over Last Year ▶	-12.8					87	9	
	Over Earlier Years ▶		2.2	24.0	75.2	83.0	28	2		
	Number of Judgeships	3	3	3	3	3	3			
	Vacant Judgeship Months	4.9	.0	.0	4.8	12.0	12.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	611	701	598	493	349	334	23	3
		Civil	505	610	513	436	291	274	37	3
		Criminal Felony	106	91	85	57	58	60	5	1
	Pending Cases	329	401	338	315	269	286	78	8	
	Weighted Filings**	451	465	420	329	340	306	41	1	
	Terminations	683	638	575	447	366	277	6	2	
	Trials Completed	60	58	63	60	47	58	5	2	
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	2.2	2.1	2.0	2.1	1.9	2.3	2	1
		Civil	5	4	4	5	7	7	11	3
	From Issue to Trial (Civil Only)	9	11	10	16	18	8	5	2	
OTHER	Number (and %) of Civil Cases Over 3 Years Old	7 .8	5 .4	31 3.3	38 4.2	53 7.0	41 5.1	2	1	
	Triable Defendants** in Pending Criminal Felony Cases Number (and %)	100 (74.1)	52 (61.9)	68 (74.7)	33 (58.9)	43 (74.1)	20 (42.6)			
	Jurors**	Present for Jury Selection	18.56	19.41	21.06	—	—	—	9	2
		% Not Selected, Serving, or Challenged	18.3	21.9	27.7	-	-	-	10	3

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS  
SHOWN BELOW—OPEN FOLDOUT AT BACK COVER**

1985 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1514	142	698	155	26	12	16	170	103	26	114	7	45
Criminal*	311	-	4	1	27	3	22	9	11	27	92	64	51

\*Filings in the "Overall Workload Statistics" section include criminal felony transfers, while filings "by nature of offense" do not.  
\*\*See Page 167.

**NORTH CAROLINA EASTERN**

**U.S. DISTRICT COURT  
JUDICIAL WORKLOAD PROFILE**

**TWELVE MONTH PERIOD ENDED JUNE 30**

	1986	1985	1984	1983	1982	1981
--	------	------	------	------	------	------

**OVERALL  
WORKLOAD  
STATISTICS**

Filings*	2,211	2,530	2,405	2,347	2,158	1,517
Terminations	2,335	2,631	2,485	2,338	1,822	1,791
Pending	1,227	1,351	1,452	1,531	1,519	1,183
Percent Change in Total Filings - Current Year	Over Last Year ▶	-12.6				
	Over Earlier Years ▶		-8.1	-5.8	2.5	45.7

**NUMERICAL  
STANDING  
WITHIN  
U.S. Circuit**

70	5
33	2

Number of Judgeships	4	4	3	3	3	3
Vacant Judgeship Months	12.0	11.6	4.9	4.3	12.0	12.0

**ACTIONS  
PER  
JUDGESHIP**

FILINGS	Total	553	633	802	782	719	506
	Civil	493	578	722	722	663	467
	Criminal Felony	60	55	80	60	56	39
Pending Cases	307	338	484	510	506	394	
Weighted Filings**	325	337	442	437	423	336	
Terminations	584	658	828	779	607	597	
Trials Completed	21	23	23	32	30	41	

26	2
31	2
21	3
79	6
83	8
23	3
88	9

**MEDIAN  
TIMES  
(MONTHS)**

From Filing to Disposition	Criminal Felony	4.4	4.4	3.0	2.5	2.5	4.9
	Civil	4	4	4	4	5	7
From Issue to Trial (Civil Only)		12	11	13	10	13	22

68	5
2	1
20	3

**OTHER**

Number (and %) of Civil Cases Over 3 Years Old	45 4.1	31 2.5	16 1.2	23 1.6	43 3.0	66 6.4
Triable Defendants** in Pending Criminal Cases Number (and %)	229 (79.0)	82 (40.8)	51 (30.4)	42 (44.2)	64 (78.0)	57 (79.2)
Jurors** Present for Jury Selection % Not Selected Serving, or Challenged	25.64	23.89	21.84	23.54	-	-
	10.5	12.4	7.7	14.5	-	-

34	5
26	6
4	1

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS  
SHOWN BELOW — OPEN FOLDOUT AT BACK COVER**

1986 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1970	37	676	586	115	18	38	179	135	28	84	-	74
Criminal*	233	-	27	2	12	3	31	21	15	26	30	16	50

\* Filings in the "Overall Workload Statistics" section include criminal felony transfers, while filings "by nature of offense" do not.  
\*\* See Page 167.

**NORTH CAROLINA WESTERN**

**U.S. DISTRICT COURT  
JUDICIAL WORKLOAD PROFILE**

**TWELVE MONTH PERIOD ENDED JUNE 30**

**OVERALL  
WORKLOAD  
STATISTICS**

	1987	1986	1985	1984	1983	1982
Filings*	1,376	1,487	1,834	2,102	1,794	1,479
Terminations	1,289	1,666	2,050	1,914	1,726	1,340
Pending	895	808	987	1,203	1,013	945
Percent Change in Total Filings - Current Year	Over Last Year ▶	-7.5				
	Over Earlier Years ▶		-25.0	-34.5	-23.3	-7.0
Number of Judgeships	3	3	3	3	3	3
Vacant Judgeship Months	.0	4.2	4.9	.0	.0	4.8

**NUMERICAL  
STANDING  
WITHIN  
U.S. Circuit**

52	4
77	5

**ACTIONS  
PER  
JUDGESHIP**

FILINGS	Total	1987	1986	1985	1984	1983	1982
	Civil	364	408	505	610	513	436
Criminal Felony	95	88	106	91	85	57	
Pending Cases	298	269	329	401	338	315	
Weighted Filings**	436	427	451	465	420	329	
Terminations	430	555	683	638	575	447	
Trials Completed	67	65	60	58	63	60	

49	4
65	6
7	1
83	8
45	2
55	7
2	1

**MEDIAN  
TIMES  
(MONTHS)**

From Filing to Disposition	Criminal Felony	1987	1986	1985	1984	1983	1982
	Civil	6	5	5	4	4	5
From Issue to Trial (Civil Only)		10	12	9	11	10	16

24	3
9	4
10	2

**OTHER**

Number (and %) of Civil Cases Over 3 Years Old	19 2.4	13 1.8	7 .8	5 .4	31 3.3	38 4.2	
Triable Defendants** in Pending Criminal Cases Number (and %)	155 (62.8)	69 (49.6)	100 (74.1)	52 (61.9)	68 (74.7)	33 (58.9)	
Jurors**	Present for Jury Selection	16.66	18.28	18.56	19.41	21.06	-
	% Not Selected Serving, or Challenged	26.3	20.6	18.3	21.9	27.7	-

19	4
5	2
44	6

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS  
SHOWN BELOW - OPEN FOLDOUT AT BACK COVER**

1987 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1091	101	173	193	27	7	28	247	120	32	96	4	63
Criminal*	281	-	14	1	12	6	28	24	36	29	69	28	34

\* Filings in the "Overall Workload Statistics" section include criminal felony transfers, while filings "by nature of offense" do not.  
\*\* See Page 167.

NORTH CAROLINA WESTERN

U.S. DISTRICT COURT  
JUDICIAL WORKLOAD PROFILE

TWELVE MONTH PERIOD ENDED JUNE 30

		1988	1987	1986	1985	1984	1983	NUMERICAL STANDING WITHIN U.S. Circuit		
OVERALL WORKLOAD STATISTICS	Filings*	1,408	1,376	1,487	1,834	2,102	1,794			
	Terminations	1,284	1,289	1,666	2,050	1,914	1,726			
	Pending	1,020	895	808	967	1,203	1,013			
	Percent Change in Total Filings - Current Year	Over Last Year ▶		2.3					41	7
		Over Earlier Years ▶			-5.3	-23.2	-33.0	-21.5	83	7
Number of Judgeships		3	3	3	3	3	3			
Vacant Judgeship Months		12.0	.0	4.2	4.9	.0	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	469	459	496	611	701	598	50	6
		Civil	376	364	408	505	610	513	59	7
		Criminal Felony	93	95	88	106	91	85	9	1
	Pending Cases	340	298	269	329	401	338	74	7	
	Weighted Filings**	405	436	427	451	465	420	57	4	
	Terminations	428	430	555	683	638	575	59	7	
	Trials Completed	59	67	65	60	58	63	5	2	
	MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	3.9	3.5	3.1	2.2	2.1	2.0	31
Civil			6	6	5	5	4	4	11	3
From Issue to Trial (Civil Only)		8	10	12	9	11	10	6	2	
OTHER	Number (and %) of Civil Cases Over 3 Years Old	14 1.6	19 2.4	13 1.8	7 .8	5 .4	31 3.3	10	4	
	Trial Defendants** in Pending Criminal Cases Number (and %)	129 (63.2)	155 (62.8)	69 (49.6)	100 (74.1)	52 (61.9)	68 (74.7)			
	Jurors**	Present for Jury Selection	17.16	16.66	18.28	18.56	19.41	21.06	8	2
% Not Selected, Serving, or Challenged		21.3	26.3	20.6	18.3	21.9	27.7	26	6	

FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS SHOWN BELOW—OPEN FOLDOUT AT BACK COVER

1988 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1127	120	218	191	33	7	30	202	121	38	98	3	66
Criminal*	274	-	18	7	10	8	21	16	32	33	70	37	22

\* Filings in the "Overall Workload Statistics" section include criminal felony transfers, while filings "by nature of offense" do not.  
\*\* See Page 167.

**U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE**

NORTH CAROLINA WESTERN		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT		
		1989	1988	1987	1986	1985	1984			
OVERALL WORKLOAD STATISTICS	Filings*	1,372	1,408	1,376	1,487	1,834	2,102			
	Terminations	1,462	1,284	1,289	1,666	2,050	1,914			
	Pending	928	1,020	895	808	987	1,203			
	Percent Change in Total Filings Current Year	Over Last Year . . .	-2.6						[55]	[5]
		Over Earlier Years . . .	- .3	-7.7	-25.2	-34.7		[92]	[9]	
	Number of Judgeships	3	3	3	3	3	3			
	Vacant Judgeship Months	3.9	12.0	.0	4.2	4.9	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	457	469	459	496	611	701	[48]	[5]
		Civil	330	376	364	408	505	610	[71]	[8]
		Criminal Felony	127	93	95	88	106	91	[6]	[1]
	Pending Cases	309	340	298	269	329	401	[81]	[8]	
	Weighted Filings**	397	405	436	427	451	465	[61]	[5]	
	Terminations	487	428	430	555	583	638	[38]	[3]	
	Trials Completed	53	59	67	65	60	58	[8]	[2]	
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	4.0	3.9	3.5	3.1	2.2	2.1	[11]	[2]
		Civil	9	6	6	5	5	4	[30]	[5]
	From Issue to Trial (Civil Only)	12	8	10	12	9	11	[24]	[3]	
OTHER	Number (and %) of Civil Cases Over 3 Years Old	18 2.4	14 1.6	19 2.4	13 1.8	7 .8	5 .4	[14]	[5]	
	Triable Defendants** in Pending Criminal Cases Number (and %)	158 (57.9)	129 (63.2)	155 (62.8)	69 (49.6)	100 (74.1)	52 (61.9)			
	Present for Jury Selection	21.99	17.16	16.66	18.28	18.56	19.41	[13]	[2]	
Jurors--% Not Selected, Serving, or Challenged	26.5	21.3	26.3	20.6	18.3	21.9	[34]	[6]		

FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS  
SHOWN BELOW -- OPEN FOLDDOUT AT BACK COVER

1989 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	991	37	203	192	35	9	23	205	126	27	95	1	38
Criminal	373	1	16	4	29	5	23	22	47	38	101	42	44

\* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.  
 \*\*See Page 167.

**U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE**

NORTH CAROLINA WESTERN		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT		
		1990	1989	1988	1987	1986	1985			
<b>OVERALL WORKLOAD STATISTICS</b>	Filings*	1,114	1,372	1,408	1,376	1,487	1,834			
	Terminations	967	1,462	1,284	1,289	1,666	2,050			
	Pending	1,038	928	1,020	895	808	987			
	Percent Change In Total Filings Current Year	Over Last Year . . .	-18.8						[88]	[8]
	Over Earlier Years . . .	-20.9		-19.1	-25.1	-39.3		[89]	[8]	
	Number of Judgeships	3	3	3	3	3	3			
	Vacant Judgeship Months	10.0	3.9	12.0	.0	4.2	4.9			
<b>ACTIONS PER JUDGESHIP</b>	<b>FILINGS</b>	Total	371	457	469	459	496	611	[71]	[8]
		Civil	238	330	376	364	408	505	[82]	[8]
		Criminal Felony	133	127	93	95	88	106	[6]	[1]
		Pending Cases	346	309	340	298	269	329	[69]	[7]
		Weighted Filings**	351	397	405	436	427	451	[71]	[7]
		Terminations	322	487	428	430	555	683	[80]	[9]
		Trials Completed	52	53	59	67	65	60	[10]	[2]
<b>MEDIAN TIMES (MONTHS)</b>	From Filing to Disposition	Criminal Felony	4.8	4.0	3.9	3.5	3.1	2.2	[23]	[2]
		Civil	9	9	6	6	5	5	[27]	[4]
		From Issue to Trial (Civil Only)	15	12	8	10	12	9	[43]	[7]
<b>OTHER</b>	Number (and %) of Civil Cases Over 3 Years Old	48 5.9	18 2.4	14 1.6	19 2.4	13 1.8	7 .8		[43]	[6]
	Triable Defendants** in Pending Criminal Cases Number (and %)	199 (52.0)	158 (57.9)	129 (63.2)	155 (62.8)	69 (49.6)	100 (74.1)			
	Jurors**	Avg. Present for Jury Selection	20.71	21.99	17.16	16.66	18.28	18.56	[10]	[2]
Percent Not Selected or Challenged		25.1	26.5	21.3	26.3	20.6	18.3	[32]	[6]	

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS  
SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER**

**1990 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE**

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	715	47	84	147	37	6	25	147	76	23	70	1	52
Criminal*	388	-	28	53	6	13	47	79	27	44	9	40	42

\* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.

\*\*See Page 167.

**U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE**

NO. CAROLINA WESTERN		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT		
		1991	1990	1989	1988	1987	1986			
<b>OVERALL WORKLOAD STATISTICS</b>	Filings*	1,148	1,114	1,372	1,408	1,376	1,487			
	Terminations	1,049	967	1,462	1,284	1,289	1,666			
	Pending	1,092	1,038	928	1,020	895	808			
	Percent Change In Total Filings Current Year	Over Last Year. . .	3.1						[28]	[4]
		Over Earlier Years. . .	-16.3	-18.5	-16.6	-22.8		[72]	[7]	
	Number of Judgeships	3	3	3	3	3	3			
	Vacant Judgeship Months	3.8	10.0	3.9	12.0	.0	4.2			
<b>ACTIONS PER JUDGESHIP</b>	<b>FILINGS</b>	Total	383	371	457	469	459	496	[39]	[5]
		Civil	254	238	330	376	364	408	[74]	[7]
		Criminal Felony	129	133	127	93	95	88	[2]	[1]
		Pending Cases	364	346	309	340	298	269	[55]	[4]
		Weighted Filings**	387	351	397	405	436	427	[38]	[5]
		Terminations	350	322	487	428	430	555	[53]	[7]
		Trials Completed	41	52	53	59	67	65	[15]	[3]
<b>MEDIAN TIMES MONTHS)</b>	From Filing to Disposition	Criminal Felony	5.6	4.8	4.0	3.9	3.5	3.1	[41]	[4]
		Civil**	8	9	9	6	6	5	[19]	[4]
		From Issue to Trial (Civil Only)	17	15	12	8	10	12	[49]	[7]
<b>OTHER</b>	Number (and %) of Civil Cases Over 3 Years Old		48	48	18	14	19	13		
			5.9	5.9	2.4	1.6	2.4	1.8	[40]	[6]
		Average Number of Felony Defendants Filed per Case	2.0	1.6	1.6	1.4	1.7	1.6		
	Jurors	Avg. Present for Jury Selection	28.62	20.71	21.99	17.16	16.66	18.28	[26]	[4]
Percent Not Selected or Challenged		30.9	25.1	26.5	21.3	26.3	20.6	[51]	[7]	

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS  
SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER**

1991 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	763	9	81	149	47	10	25	157	92	36	64	1	92
Criminal*	370	-	14	40	7	14	21	90	14	52	11	53	54

\* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not. See Page 167.



**U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE**

ALL DISTRICT COURTS		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
		1992	1991	1990	1989	1988	1987		
<b>OVERALL /ORKLOAD TATISTICS</b>	Filings*	261,698	241,420	251,113	263,896	269,174	268,023		
	Terminations	270,298	240,952	243,512	262,806	265,916	265,727		
	Pending	261,181	274,010	273,542	265,035	268,070	264,953		
	Percent Change In Total Filings Current Year	Over Last Year	8.4						<input type="checkbox"/>
	Over Earlier Years	4.2			-.8	-2.8	-2.4	<input type="checkbox"/>	
	Number of Judgeships	649	649	575	575	575	575		
	Vacant Judgeship Months	1,340.4	988.7	540.1	374.1	485.2	483.4		
<b>ACTIONS PER JUDGESHIP</b>	FILINGS	Total	403	372	437	459	467	466	<input type="checkbox"/>
		Civil	350	320	379	406	417	416	<input type="checkbox"/>
		Criminal Felony	53	52	58	53	51	50	<input type="checkbox"/>
	Pending Cases	402	422	476	461	466	461	<input type="checkbox"/>	
	Weighted Filings**	405	386	448	466	467	461	<input type="checkbox"/>	
	Terminations	416	371	423	457	462	462	<input type="checkbox"/>	
	Trials Completed	31	31	36	35	35	35	<input type="checkbox"/>	
<b>MEDIAN TIMES MONTHS)</b>	From Filing to Disposition	Criminal Felony	5.9	5.7	5.3	5.0	4.3	4.1	<input type="checkbox"/>
		Civil**	9	9	9	9	9	9	<input type="checkbox"/>
	From Issue to Trial (Civil Only)	14	15	14	14	14	14	<input type="checkbox"/>	
<b>OTHER</b>	Number (and %) of Civil Cases Over 3 Years Old	19,423 8.7	28,421 11.8	25,207 10.4	22,391 9.2	21,487 8.8	19,782 8.1	<input type="checkbox"/>	
	Average Number of Felony Defendants Filed per Case	1.5	1.6	1.4	1.4	1.4	1.4	<input type="checkbox"/>	
	Jurors	Avg. Present for Jury Selection	37.84	36.79	35.84	35.89	32.27	31.1	<input type="checkbox"/>
		Percent Not Selected or Challenged	34.3	34.0	34.2	35.8	33.7	32.1	<input type="checkbox"/>

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS  
SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER**

**1992 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE**

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	226895	8415	17475	46452	7797	10143	15800	33771	36469	5670	23419	5062	20978
Criminal*	33994	1906	1490	4005	606	1685	4602	6994	1060	6169	624	1804	3049

\*Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.  
see Page 167.

## EXPLANATION OF PROFILES FOR UNITED STATES DISTRICT COURTS

### \*OVERALL WORKLOAD STATISTICS

Filings	<b>TOTAL NUMBER OF DISTRICT COURT CASES WHICH WERE</b> (Exclusive of all misdemeanor criminal cases for 1980 and 1981 and all minor and petty offenses for 1976-1979)		Filed during the year, including transfers
			Terminated during the year
			Pending at the end of the year
Terminations			
Pending			
Percent Change in Total Filings - Current Year	Over Last Year	Percentage change in total filings - current year over previous	
	Over Earlier Years	Percentage change in total filings - current year over two, three, four and five years ago	
Number of Judgeships	Authorized Judgeships (Does not include senior judges)		
Vacant Judgeship Months	Number of months during profile year that an authorized judgeship was not filled		

### \*ACTIONS PER JUDGESHIP

FILINGS	Total	<b>ALL FIGURES IN THIS SECTION ARE OBTAINED BY DIVIDING THE TOTAL STATISTICS FOR THE COURT BY THE NUMBER OF AUTHORIZED JUDGESHIPS.</b>  Excludes all misdemeanor criminal cases for 1980 and 1981 and all minor and petty offense criminal cases for 1976-1979	Total civil and criminal cases filed
	Civil		Includes all civil cases filed
	Criminal		Includes all criminal cases filed whether by indictment, information, or transfer
Pending Cases	Total pending cases at the end of the year		
Weighted Filings*	This figure is a mathematical adjustment of filings which gives heavier count to cases known to be of a more difficult and time consuming nature		
Terminations	Includes all terminated cases, civil & criminal, tried and not tried, disposed of during the year		
Trials Completed	Total trials completed, including evidentiary trials, hearings on temporary restraining orders and preliminary injunctions		

### MEDIAN TIMES (MONTHS)

From Filing to Disposition	Criminal	For all criminal defendants and all civil cases except land condemnation, prisoner petitions, and deportation reviews, terminated during the year whether by trial or other disposition, this figure shows the time interval in months for the middle (median) case. For all criminal defendants time is computed from the filing date to either the sentencing date or the dismissal/acquittal date. When the District had less than 25 terminations the median case was not computed.
	Civil	
From Issue to Trial (Civil Only)		For civil cases, except land condemnation, going to a trial during profile years, this figure shows the time interval in months for the middle (median) case. Time is computed from the date the answer or response is filed to the date trial begins.

### OTHER

Number (and %) of Civil Cases Over 3 Years Old	Total number of civil cases, except land condemnation, pending three years or more as of the end of the year and the percentage these same cases represent of total civil pending caseload.
Triable Defendants* in Pending Criminal Cases Number (and %)	Excludes those defendants who were awaiting sentence, committed for observation and study, physically or mentally incompetent to stand trial, awaiting trial on another charge, or fugitives. All other defendants are considered triable.
Juror Usage Index	The number of jurors available per jury trial day
% of Jurors Not Serving	Percentage of juror attendance days in which jurors did not serve on any actual trials

\*See Page 129.

### NATURE OF SUIT AND OFFENSE CATEGORIES

CASE CLASS	CIVIL	A - Social Security B - Recovery of Overpayments and Enforcement of Judgments C - Prisoner Petitions D - Forfeitures and Penalties and Tax Suits	E - Real Property F - Labor Suits G - Contracts H - Torts	I - Copyright, Patents, and Trademark J - Civil Rights K - Antitrust	L - All Other Civil Cases
	CRIMINAL (Felonies only. Excludes transfers.)	A - Immigration B - Embezzlement C - Auto Theft D - Weapons and Firearms	E - Liquor, Internal Revenue F - Burglary and Larceny G - Marihuana and Controlled Substances H - Narcotics	I - Forgery and Counterfeiting J - Fraud K - Homicide, Robbery, and Assault	L - All Other Criminal Cases

### WHAT THE DISTRICT'S NUMERICAL STANDINGS MEAN

These show where an individual district court stands in relation to other district courts in the circuit and in the country. All "workload" statistics are ranked in descending order (highest value receives rank of 1) and all other statistics are ranked in ascending order (lowest value is ranked first). In some categories fewer than 95 courts are ranked because the information was not available for all districts.

↑

VERTICAL ROW OF NUMBERS IN RIGHT MARGIN

**APPENDIX F:**

**Certificate of**

**Initial Attorneys Conference**

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
\_\_\_\_\_ DIVISION**

**CIVIL CASE NO. \_\_\_\_\_**

<b>Plaintiff,</b>	)	
	)	<b>CERTIFICATE OF</b>
<b>versus</b>	)	<b>INITIAL ATTORNEYS</b>
	)	<b>CONFERENCE</b>
<b>Defendant.</b>	)	
_____	)	

The undersigned counsel conferred on     (date)    . The matters discussed and the results of the discussions are as follows:

1.      This case should be assigned to the  
(expedited/standard/complex/administrative/mass torts) track.

or

     The parties failed to agree on a track assignment.

2.      This case (is/is not) suitable for mediation.

or

     The parties failed to agree on a recommendation for mediation.

3. The parties (did/did not) discuss settlement possibilities.

4. The parties (agreed/failed to agree) on the type(s) and extent of discovery.

5. \_\_\_\_\_ The discovery cut-off date for this case is \_\_\_\_\_.

or

\_\_\_\_\_ The parties could not agree on a discovery cut-off date.

6. \_\_\_\_\_ The motions filing deadline for this case is \_\_\_\_\_.

or

\_\_\_\_\_ The parties could not agree on a motions filing deadline.

7. \_\_\_\_\_ The tentative trial date for this case is \_\_\_\_\_.

or

\_\_\_\_\_ The parties could not agree on a tentative trial date.

8. Counsel for the parties have reached agreement on the following additional matters:

This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Plaintiff's Counsel

\_\_\_\_\_  
Defendant's Counsel