United States District Court
Northern District of West Virginia
Post Office Box 1275
Elkins, West Virginia 26241

Robert E. Maxwell
Chief Judge

December 2, 1991

Mr. Duane Lee, Chief
Court Administration Division
Administrative Office of U. S. Courts
Washington, DC 20544

Dear Mr. Lee:

Following our discussion with regard to the application of the Civil Justice Reform Act of 1990 to the Northern District of West Virginia, I enclose a copy of the report of the Advisory Group for your information.

I am forwarding a copy of this today to the Director of the Administrative Office, the Director of the Federal Judicial Center, the Fourth Circuit Judicial Council, % Sam W. Phillips, Circuit Executive, the Chief Judges of the District Courts of the Fourth Circuit and Senator Biden. I believe this covers the statutory mailings but we will double check the Civil Justice Reform Act to make sure that all parties are properly notified of our effort.

It is our desire, as a demonstration district under the Act, to become an early implementation district in order that we can move forward even more rapidly than has been our experience. If there is anything further you feel should be done in this regard your advice and counsel will be greatly appreciated.

With warm good wishes, I remain

Sincerely,

Robert E. Maxwell
United States District Judge

REM/lef
Enclosure

United States District Court
Northern District of West Virginia
Post Office Box 1275
Elkins, West Virginia 26241

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Mr. L. Ralph Mecham, Director
Administrative Office of
the United States Courts
Washington, DC 20544

Honorable William W. Schwarzer, Director
Federal Judicial Center
Dolley Madison House
1100 17th Street, NW
Washington, DC 20005

Honorable Sam J. Ervin, III
Chief Judge, Fourth Circuit Court of Appeals
P.O. Drawer 2146
Morganton, North Carolina 28655

Honorable Samuel W. Phillips
Circuit Executive
Fourth Circuit Court of Appeals
P.O. Box 6G
Richmond, Virginia 23214

Honorable Albert V. Bryan, Jr.
Chief Judge, United States District Court
P.O. Box 21449
200 S. Washington St.
Alexandria, Virginia 22320

Honorable James C. Cacheris
Chief Judge designate
P.O. Box 21449
200 S. Washington St.
Alexandria, Virginia 22320

Honorable Walter E. Black, Jr.
Chief Judge, United States District Court
101 W. Lombard St.
Baltimore, Md. 21201

Honorable James C. Fox
Chief Judge, United States District Court
P.O. Box 2143
Wilmington, North Carolina 28402

Honorable Richard C. Erwin
Chief Judge, United States District Court
223A Federal Building and Courthouse
251 North Main Street
Winston-Salem, North Carolina 27101

Honorable Richard L. Voorhees
Chief Judge, United States District Court
241 U. S. Courthouse
100 Otis Street
Asheville, N.C. 28801

Honorable Falcon B. Hawkins
Chief Judge, United States District Court
P.O. Box 835
Charleston, S.C. 29402

Honorable James C. Turk
Chief Judge, United States District Court
P.O. Box 2796
Roanoke, Virginia 24001

Honorable Charles H. Haden, II
Chief Judge, United States District Court
P.O. Box 1139
Parkersburg, WV 26101

Re: Civil Justice Reform Act of 1990

Gentlemen:

The Civil Justice Reform Act Advisory Group for the United States District Court for the Northern District of West Virginia has submitted its report pursuant to the above-styled Act. I am pleased to have the opportunity of forwarding the same to each of you with the Court's appreciation for the extensive effort given to this project by the individual members of the Advisory Group, its Executive Committee and the Reporters.

Yours truly,

Robert E. Maxwell
United States District Judge

REM/lef
Enclosure

cc: Hon. Frederick P. Stamp, Jr.
Hon. William M. Kidd

Report of the Advisory Group

to

The United States District Court

for the

Northern District of West Virginia

pursuant to the

Civil Justice Reform Act of 1990

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REPORT OF THE ADVISORY GROUP
TO
THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

I. Description of the United States District Court for the Northern District of West Virginia.

A. Description of District and Authorized Judgeships.

The Northern District of West Virginia is comprised of thirty-two (32) of the state's fifty-five (55) counties and encompasses both of the state's panhandles. The Eastern Panhandle's northern boundary is formed by the Potomac River, which separates it from Maryland. The panhandle is bound on the east and the south by Virginia. Its proximity to Washington, D.C., and the Baltimore, Maryland metropolitan areas is responsible for much of its population increases and economic growth. The Mason-Dixon line extends west across the district to form its boundary with Pennsylvania and provide the terminus for the state's Northern Panhandle, which extends sixty-three miles north of the line between Pennsylvania and Ohio. The Ohio River creates the entire western boundary of the district and separates it from the state of Ohio. The district's twelve thousand seven hundred and sixty-two (12,762) square miles is inhabited by seven hundred and seventy thousand (770,000) of the states' one million eight hundred thousand (1,800,000) people.

The navigable river system of the Ohio and Monongahela rivers and an abundance of coal and natural gas has given rise to chemical and steel industries and electric generating facilities within the district. Forests in the district provide a basis for a hardwood industry, and the small fertile valleys have sustained agricultural activities. In addition to litigation which grows out of travel and commerce, the district hosts the state's maximum and minimum security prisons and a federal minimum/medium correctional facility.

The rugged beauty of the appalachian mountain range extends through the district in a northeasterly direction and has given rise to a tourist industry, which includes three major ski resorts. While these mountains contain much of the state's natural resources and are responsible for much of its beauty, they also provide physical barriers which has historically made east-west travel difficult. Even the advent of interstate road systems did not significantly improve east-west travel within the district. That improvement in east-west travel must await the turn of the century and the completion of the appalachian corridor system of roads. The geographical considerations, which gave rise to multiple points of holding court in the district, continue to be relevant today, if reasonable access to the federal judicial system is to be provided. Therefore, the court continues to sit in the four statutory points of holding court: Clarksburg, Elkins, Martinsburg (Eastern Panhandle), and Wheeling (Northern Panhandle).

There are three authorized judgeships for the district. The chief judge is headquartered in Elkins and another district judge in Wheeling. The third judgeship was

created in the Civil Justice Reform Act of 1990 and is still vacant. A senior judge now sits in Clarksburg. The clerk of court and the principal clerk's office is located in Elkins. The clerk's offices in Wheeling and Clarksburg are staffed on a regular basis, and the clerk's office in Martinsburg is staffed by a Deputy Clerk from one of the other offices when the court sits there. There is a full time magistrate judge in Elkins and part time magistrate judges in Morgantown and Wheeling. The bankruptcy judge is headquartered in Wheeling. Like the district judges, the magistrate judges and the bankruptcy judge travel within the district when necessary.

B. Special Statutory Status

Under the provisions of the Judicial Improvements Act of 1990, Section 104(2), the United States District Court for the Northern District of West Virginia was designated a demonstration district to "experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution ..." The Advisory Group, appointed pursuant to Section 478, has elected to pursue "early implementation" status as well.

II. Assessment of Conditions in the United States District Court for the Northern District of West Virginia.

A. Background.

On December 1, 1990, the President signed into law the Civil Justice Reform Act of 1990. The purpose of the Act is to reduce cost and delay of civil litigation in the United States District Courts. The Act contemplates a community effort and significant

contribution not only by the courts, the Congress, and the Executive branch, but also by litigants and attorneys.

The primary means for reduction of civil justice expense and delay is to be the prompt implementation of an expense and delay reduction plan recommended by the district courts after significant input from litigants and attorneys. Ultimate approval must come from the United States Judicial Conference after review by the Fourth Circuit Judicial Council, all chief district judges in the Fourth Circuit, and the Administrative Office of the United States Courts.

On February 9, 1991, as required by the Act, the United States District Court for the Northern District of West Virginia appointed an Advisory Group consisting of litigants, lawyers, academicians, state bar officials, representatives of the United States Attorney's office, individuals experienced in alternative dispute resolution, public defenders, and a representative of the West Virginia Attorney General's office. On April 12, 1991, the Advisory Group conducted its first meeting and undertook the tasks of conducting a prompt assessment of the court's workload and preparing a report recommending the specific measures, rules, and programs for adoption by the district court as its civil justice expense and delay reduction plan.

This judicial district has been designated by Congress as a "demonstration district," which must experiment with various methods of reducing costs and delay, including alternative dispute resolution procedures (28 U.S.C. §104). The judicial district also has the option to become an "early implementation district." However, in order to be

designated by the Judicial Conference as an early implementation district, this district must develop and implement its plan by December 31, 1991 [28 U.S.C. § 103(c)]. After careful study and due deliberation, it is the recommendation of the Advisory Group that this judicial district implement its plan by December 31, 1991, and seek to be designated by the Judicial Conference as an early implementation district. Further, if so designated, it is the recommendation of this Advisory Group that additional technological and personnel support resources be sought to assist in the implementation of this court's plan designed to reduce expense and delay associated with civil cases.

The recommended expense and delay reduction plan submitted by the Advisory Group is the product of significant research, study, and analysis. The Advisory Group initially conducted an assessment of the court's civil and criminal dockets and identified what appeared to be the principal causes of cost and delay in civil litigation within this judicial district. The Advisory Group also examined the impact of recent criminal and civil legislation upon the civil docket and administration of the civil justice system. Finally, based upon its findings, the Advisory Group has submitted its report containing recommendations that the district court develop its own plan responsive to the particular needs and circumstances of this judicial district and the litigants and attorneys within this judicial district.

B. Condition of the Docket

The Advisory Group began its work by conducting an assessment of the civil and criminal dockets of this judicial district, as required by the Act [28 U.S.C. § 472(c)].

In conducting this assessment, the members of the Advisory Group have reviewed work loads and case processing statistics maintained by the Administrative Office of the U.S. Courts. Members of the Group have studied a report prepared by the National Judicial Center based on these data, entitled Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990. (February 1991). The Advisory Group also considered the six-page "Status Report from the Clerk of the Court" prepared by and submitted to the Group on April 12, 1991. Finally, the Group obtained additional information on a pre-existing mediation program known as "Settlement Week," other alternative dispute resolution experiments, and the civil and criminal dockets generally. Finally Group members have reviewed the existing literature on delay reduction including:

1. Report of the Federal Courts Study Committee (April 2, 1990).

2. Defeating Delay: Developing and Implementing a Court Delay Reduction Program (Based upon the American Bar Association Court Delay Reduction Standards) (ABA, 1986).

3. M. Selvin & P. Ebener, Managing the Unmanageable: A History of Civil Delay in the Los Angeles Superior Court (Band, 1984).

4. Protracted Civil Trials: Views From the Bench & the Bar (Federal Judicial Center, 1981).

5. M. Solomon & D. Somerlet, Caseflow Management in the Trial Court: How and For the Future, Task Force on Reduction of Litigation Cost and Delay (ABA, 1984).

6. Case Management and Court Management in United States District Courts (Federal Judicial Center, 1977).

7. Justice for All: Reducing Costs & Delay in Civil Litigation (The Brookings Institution, 1989).

8. Handbook on Alternatives for Dispute Resolution (Published by American College of Trial Lawyers, 1991).

1. Analysis of the Civil and Criminal Dockets.

Based upon a review and analysis of the foregoing information, the Advisory Group makes the following assessments of the civil and criminal dockets of this judicial district.

a. The statistics, graphs, and charts set forth as pages 7 through 19 of the "Guidance to Advisory Groups Memo" dated February 28, 1991, are consistent with the general impressions formed by members of the Advisory Group with respect to the condition and status of the criminal and civil dockets of this judicial district.

b. Magistrate judges have been instrumental in the resolution of civil discovery disputes, but have not presided over any significant number of civil trials. Thus, while the magistrate judges do function effectively to reduce delay in the discovery process, they do not function significantly in the trial of civil cases.

c. During the past five years this judicial district has had a reasonably large number of visiting judges, who have heard both civil and criminal matters. The case termination figures for this judicial district reflect the assistance of the visiting judges.

However, the Advisory Group does not perceive that, even with the assistance of visiting judges, there has been a perceptible reduction of delay in the termination of civil cases. Furthermore, because visiting judges are available only on a limited basis, as a matter of necessity, counsel and litigants frequently receive short notice of trial dates and other deadlines, are required to try cases away from the normal point of holding court, and are occasionally "stacked up" in order to maximize dispositions within a narrow time frame. As a result, the expense to litigants is frequently higher when civil cases are handled by visiting judges.

d. The "judicial workload profile" reflects that during the past five years the overall number of yearly civil and criminal filings in this judicial district has ranged between the high 700's to somewhat in excess of 1,000 cases. During this same five-year period, the pending per judge caseload in this judicial district has ranged from nearly 500 up to approximately 750 cases per judge. Also, during this same five-year period, the terminations per judge have been approximately 400 to 550 cases per year. These termination figures reflect not only the assistance of a large number of visiting judges, but also the successes of "Settlement Week."

e. The number of civil cases filed in this judicial district has remained almost constant for the last four years (1987-1990). During 1985 and 1986, however, the number of civil cases filed was significantly higher. (The weighted filings were essentially constant). However, between 1985 and 1990 the number of criminal felony cases filed per year has almost doubled.

f. The latest statistical report presented to this judicial district by the Administrative Office indicates that of the 94 judicial districts, this judicial district ranks 9th in the nation in the number of criminal filings per judgeship. More specifically, the current report reflects 118 criminal felony filings per judgeship, as compared to the national average of 58. By contrast, this judicial district ranks 78th of the 94 judicial districts in the number of civil filings per judgeship per year (275 civil filings per judgeship for fiscal year (1990)).

g. On average over the last four statistical years, the criminal caseload has made up slightly less than 27% of the entire caseload in this judicial district; however, the rate of disposition for criminal felony cases has been significantly quicker than the rate of disposition for civil cases -- undoubtedly due to the mandates of the Speedy Trial Act, which effectively assigns criminal cases a higher priority than civil cases. The effect of the priority assigned criminal cases, coupled with the high rate of criminal filings per judgeship, has been to retard the disposition of civil cases which go to trial in this district markedly when compared with national figures. During the period in question here, the national average time from joinder of issues to trial in a civil case was consistently 14 months. By contrast in this district, the average period for such development is 24 months or fully 10 months longer than the national average. That figure results in a ranking of this district of 81st out of the 94 district courts studied.

h. Statistical analysis of the civil caseload mix during statistical years 1988 through 1990 reflects that six case types account for approximately 75% of the civil

filings in this judicial district. Those case types are: (1) prisoner civil rights (19%); (2) contract (17%); (3) personal injury (14%); (4) social security (13%); (5) labor (6%); and (6) non-prisoner civil rights (6%). Because different types of cases tend to move through the courts in different ways, it is important to consider the typical path to disposition for these six types of civil cases which make up 75% of the civil caseload of this judicial district. According to the "Guidance to Advisory Groups Memo" issued February 28, 1991, most social security cases and condition of confinement civil rights cases brought by state prisoners are disposed of by summary judgment. These two types of cases constitute approximately 33% of the civil case filings in this judicial district. Conversely, contract actions, personal injury cases, non-prisoner civil rights cases, and labor law cases tend to be disposed of by a greater variety of methods and follow more varied paths to disposition. These types of cases constitute approximately 42% of the civil filings for this judicial district over the last three statistical years.

Not only are these six (6) case types the most frequently filed in this district, they also take up the bulk of judicial resources. Guidance at page 13 shows the burden imposed by various types of civil cases on those resources. Under the analysis, the same six (6) civil case types are the most demanding in this district. Within this group of six civil case types, however, there are several statistical comparisons, which may be of significance to the development of the courts civil justice expense and delay reduction plan. For example, although prisoner civil rights cases constitute 19% of the civil case filings, the judges have been required to devote slightly less than 8% of their time to

these cases. Similarly, while non-prisoner civil rights cases constitute 6% of the civil filings, such cases have required almost 14% of the judge time allocated to civil cases.

Significantly, this judicial district does not have a high percentage of case type filings which fall into the "highly complex" category, e.g., securities and commodities, civil RICO, copyright, patent and trademark, ERISA, tax, and bank failures. Civil case mix trends for the last ten statistical years have not varied significantly, suggesting that any plan for the future could reasonably assume continuation of the same civil case mix.

i. Analysis of the criminal docket also is assisted by statistics contained in the "Guidance to Advisory Groups Memo" dated February 28, 1991. Between 1981 and 1984, the number of criminal filings increased steadily; between 1984 and 1986 the number of criminal filings dropped off somewhat; and between 1986 and 1990 the number of criminal filings increased sharply. From 1982 through 1987, drug cases constituted between 40% to 45% of the total criminal case filings. However, in 1988 drug cases accounted for approximately 58% of the criminal filings, and in statistical year 1989 drug cases accounted for approximately 65% of total criminal filings. Drug filings data for all criminal cases are not yet available from the Administrative Office for statistical year 1990 for this judicial district. The Group did have data for felony filings during that year which are discussed below. The impact of the Speedy Trial Act and increased criminal filings has been a substantial demand on the resources of this judicial district for criminal trials. According to the data contained in the "Guidance to Advisory Groups Memo" for the statistical year 1985 through 1990, criminal trials have steadily

increased as a percentage of total trials since 1986. More specifically, in 1986 criminal trials constituted approximately 42% of all trials; in 1987 criminal trials constituted approximately 69% of all trials; in 1988 criminal trials constituted approximately 88% of all trials; in 1989 criminal trials constituted approximately 78% of all trials; and in 1990 criminal trials constituted approximately 91% of all trials.

The Advisory Group believes this significant increase in criminal trials is attributable to both the increased criminal filings and the sentencing guidelines.

j. The "Judicial Workload Profile" contained in the "Guidance to Advisory Groups Memo" at page 8 classifies 1990 felony filings in this judicial district into twelve categories (immigration, embezzlement, weapons and firearms, escape, burglary and larceny, marijuana and controlled substances, narcotics, forgery and counterfeiting, fraud, homicide and assaults, robbery, and "all other"). Of the 235 total 1990 criminal felony filings for this judicial district, 107 (46%) are either "narcotics" or "marijuana and controlled substances" and 67 (29%) are "fraud." These three offense categories constitute 75% of all 1990 criminal felony filings in this judicial district.

k. Statistics provided by the clerk of this judicial district in his six-page report presented to the Advisory Group on April 12, 1991, suggest that the 1990 narcotics/marijuana and controlled substances filings for 1990 are consistent with the historical picture over the last three statistical years (narcotics cases account for 49% of the total criminal felony filings). However, the number of fraud cases filed in 1990 represents a significant increase, in that fraud cases accounted for only 16% of the total

criminal felony filings during the past three statistical years, but 29% of the total criminal felony filings in 1990.

1. Also contained in the clerk's report to the Advisory Group is a summary of cocaine prosecutions within this judicial district during statistical years 1988 through 1990. According to the clerk, the purpose of this analysis was to consider the recommendation of the Report of the Federal Courts Study Committee (April 2, 1990) to limit federal prosecutions to charges that cannot or should not be prosecuted in the state courts. In particular, the clerk's analysis was conducted to determine whether cases involving minimal amounts of drugs, with no interstate or international connections, could have been referred for state prosecution. In order to determine the quantity of cocaine involved, the clerk relied upon language of the plea agreements, indictments, and informations filed. Unfortunately, in many instances, these resources were silent as to quantity (reading, for example, that the defendant was charged with distribution of a "quantity of cocaine"). Nevertheless, where the clerk was able to accurately determine the quantity of cocaine involved, it was determined that, in calendar year 1988, 44% of the individual defendants were held accountable for less than two grams of cocaine or crack (in one instance the amount involved was .01 of a gram). Of these 1988 cases, 24% of the individuals charged with cocaine offenses were held responsible for more than two grams of cocaine, and 32% of the individuals were convicted of cocaine offenses for which no specific quantity of cocaine was charged. Any use of cocaine, of course, is a serious matter. The issues, however, are whether these prosecutions properly should be

handled in the state or federal court, and what the consequences for the federal court system are if such prosecutions are improperly directed there.

m. Based upon an analysis of calendar year 1989 closed cases available at the Elkins point of holding court (all criminal cases are maintained on the Elkins docket), the clerk determined in his six-page report that 96 defendants were charged with cocaine offenses; 29% of these cases involved less than two grams of cocaine; 29% involved over two grams of cocaine; and 40% involved offenses for which no quantity was specified. The same analysis was performed for calendar year 1990. According to the clerk, an incomplete docket reflects 23 defendants charged with cocaine offenses. The clerk acknowledges that some of these cases have not yet been ended, but concludes that most have progressed to the point where the quantity of cocaine involved can be ascertained. In those instances, the clerk determined that 26% of the cases involved less than two grams and 48% involved more than two grams.

n. Based upon the foregoing study and analysis of recent drug prosecution in this judicial district, and in apparent reliance upon the Federal Court Study Committee (April 2, 1990) conclusion that "federal prosecutors must resist the urge to dedicate scarce resources of the federal judicial system to problems that can be dealt with effectively at the state and local level," (Report of the Federal Court Study Committee at page 37) the clerk concludes that the United States Attorney's office for this judicial district should limit its drug prosecutions to charges that cannot or should not be prosecuted in the state courts. In particular, the clerk recommends that the U.S. Attorney's office refer to state

prosecutors those cases involving minimal amounts of drugs with no interstate or international connections.

o. Also contained in the six-page report of the clerk to the Advisory Group is a summary and analysis of criminal fraud prosecutions in this judicial district. As previously noted, fraud cases constitute the second largest category of criminal felony filings in this judicial district, and appear to be on the increase during statistical year 1990. According to the clerk, the vast majority of fraud filings during the past three statistical years involve "student loan fraud." With respect to these student loan fraud cases, the clerk observes that although most of the student-defendants accept responsibility for their student loan default and agree to make restitution, each case nevertheless requires a hearing for consideration of the plea and a subsequent hearing for sentencing. The clerk suggests that student loan fraud cases, but for the allegation that the defendant committed fraud in the student loan application process and thereafter misappropriated the federally insured loan proceeds, are more in the nature of civil collection proceedings, which could be efficiently handled administratively on the civil docket. By handling the cases on the civil docket, the burdensome mandates of the Speedy Trial Act would become inapplicable to a substantial number of cases, according to the clerk's report.

2. Trends Case Filings and in the Demands Placed Upon Court Resources.

Based upon its study and analysis of the civil and criminal dockets of this judicial district, the Advisory Group has identified certain trends in the demands placed upon the Court's resources, including not only the judicial officers, but also supporting personnel,

buildings, and facilities.

a. Judicial Officers.

The number of civil filings per judgeship over the last four (4) years has remained fairly constant (ranging between 271 to 284). However, there has been a steady and marked increase in the number of criminal filings over the last five (5) years (51 in 1986 to 118 in 1990). Although there was a drop in the civil filing from 350 in 1986 to 271 in 1987, the weighted filings per judgeship increased for those same years from 341 in 1986 to 359 in 1987. The weighted filings reached a five (5) year high of 385 in 1990.

The economy in West Virginia bottomed out approximately two years ago and has shown steady improvements since that time. The improvements in the economy reflect a diversification of the economic base, beyond the one heavily dependent on coal which existed two decades ago. The state is enjoying a marked increase in tourism. Some increase in diversity tort litigation is likely as a result. High technology job opportunities have resulted from the development of "Software Valley." Copyright and patent litigation is likely to follow this development. The relocation of the Federal Bureau of Investigations Fingerprint Division to Harrison County will continue this diversity and provide additional economic stimulation. In addition, the resumption of work on corridor H, which will span the eastern portion of the Northern District of West Virginia by connecting Interstate 79 and Interstate 81, will stimulate additional growth. The proximity of the eastern panhandle counties of Berkeley, Jefferson and Morgan to the metropolitan areas of Washington, D.C. and Baltimore, Maryland, has helped generate

both economic growth & population increases. Between the 1980 and the 1990 census, the population of these counties increased 22 percent. All these developments bode well for the continued economic growth in the Northern District of West Virginia. With this increase in economic activity, the federal district court can anticipate a commensurate increase in related business and governmental litigation. In addition, it is anticipated that a variety of federally funded projects in the Northern District, such as the improvement on the locks and dams on the Monongahela River, will increase the number of land condemnation cases, similar to that experienced in the early 1980s with the construction of the Stonewall Jackson Dam and Lake Project. The Advisory Committee, therefore, concludes that the Northern District of West Virginia should experience an increase in civil filings at a rate greater than experienced in many other federal districts in the decade ahead.

The increase in criminal filings over the past five years has placed an extremely heavy burden upon the Article III judges. As noted previously, the federal district ranks ninth in the nation in the number of criminal filings per judgeship with 118 per judgeship in 1990, as compared with the national average of 58. Thus, judges in this district carry more than twice the number of criminal filings as does the average federal judge. Given the priority in the scheduling of criminal cases mandated in the Speedy Trial Act of 1974, the impact of increased criminal filings extends beyond the increased caseload for the court. Under the Speedy Trial Act, the "ordinary" criminal case must be set for trial not less than thirty (30), not more than seventy (70) days from filing of the information or

the indictment. Therefore, civil cases must be scheduled around the criminal docket. The chart contained in "The Guidance to the Advisory Group Memo", setting forth the number of criminal trials and criminal trials as a percentage of total trials (Chart 10), reflects that since 1987, criminal trials have represented at least one-half of all trials. The fact that many criminal cases are disposed of by plea agreements, frequently on the "eve" of trial, does not free up the court's time for civil trials, because there is insufficient time to schedule civil cases, i.e., the party litigants must provide witnesses sufficient notice of the trial dates, so that necessary arrangements can be made for the witnesses, as well as the parties to attend the trial.

The referral of small quantity narcotics and controlled substance cases with no interstate or international connections, from federal courts to state courts, would provide the court an opportunity to work on the civil docket, before the criminal case load returns to its present level under the new federal legislation discussed hereafter. In addition, the Advisory Group anticipates that even without small quantities of narcotic and controlled substance cases of an intrastate nature, the criminal case load will continue to experience a steady increase, because of the economic activities discussed above and the propensity for criminal activities to follow such economic growth.

Although the participation of visiting judges has been of significant assistance in managing both criminal and civil dockets, it is clear that civil cases continue to receive less judicial attention and to proceed to trial much more slowly than litigants deserve. For the past three reporting years, 1988 to 1990, median time in months from issue to

trial for civil cases has ranged from 20 to 28, while the national average for this interval is 14 months. Although Congress has created a third judgeship for this judicial district, the Advisory Group is concerned that the gains to be realized upon the arrival of the third judge will be substantially offset by reduced participation of visiting judges, leaving the civil docket without any significant improvements.

b. Magistrate Judges.

The Northern District of West Virginia is served by a full time magistrate judge sitting in Elkins and part time magistrate judges in Wheeling and Morgantown. Like Article III judges, magistrate judges have substantial responsibilities in criminal cases, with those responsibilities constituting a significant portion of their case load. In addition, magistrate judges, particularly the full time magistrate judge in Elkins and the part time magistrate judge in Morgantown, are involved with duties pursuant to 28 U.S.C. §636 (b) for Type I[1] civil cases. The full time magistrate judge and, to a lesser extent, the part time magistrate judges have been involved in handling Type II[2] civil cases with their principle involvement in such cases being the resolution of discovery

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[1] Type I cases include the following: student loan collection cases; cases seeking recovery of overpayment of veteran's benefits; appeals of Social Security Administration benefit denials; Condition-of-Confinement cases brought by state prisoners; habeas corpus petition; appeals from bankruptcy court decisions; land condemnation cases; and asbestos product liability cases. The designation originates with the Guidance to Advisory Committee.

[2] Type II cases include the following: contract actions other than student loan, veteran's benefit and collection of judgment cases; personal injury cases other than asbestos; non-prisoner civil rights cases; patent and copyright cases; ERISA cases; labor law cases; tax cases; securities cases; and other actions under federal statutes, e.g. FOIA, RICO and banking laws.

matters, rather than conducting the trial in such civil cases.

The plan set forth below contemplates fixed deadlines for the completion of discovery after the answers are filed. In order for this plan to succeed, discovery disputes between the party litigants will have to be resolved promptly. It is anticipated that the magistrate judges' involvement with the discovery related issues will, therefore, increase. It is also anticipated that when the new judgeship created in the Civil Justice Reform Act of 1990 is filled, there will be an increase in the referrals of matters to the magistrate judges pursuant to 28 U.S.C. § 636(b). While it is anticipated that the majority of the cases on the trial docket will be referred to "Settlement Week Conferences" conducted by volunteer lawyers serving as mediators, the district judge in Wheeling has indicated he plans to more fully utilize the magistrate judge stationed in Wheeling for motion referrals and other aspects of case management. Given this expected increase in referrals, combined with the appointment of a new district judge authorized under the Civil Justice Reform Act of 1990, it is anticipated the court will request the magistrate's division to "upgrade" the magistrate judge's position in Wheeling to full time and to retain the part time magistrate judge in Morgantown.

c. Supporting Personnel.

i. Clerk's Office.

There are four statutory locations for holding court in the Northern District of West Virginia - Clarksburg, Elkins, Martinsburg, and Wheeling. Chief Judge Robert E. Maxwell and the principal clerk's office is located in Elkins. Clerk's offices are also

staffed in Wheeling, where Judge Frederick P. Stamp, Jr. has his headquarters, and in Clarksburg, where Senior Judge William M. Kidd is located. The Clerk's office in Martinsburg is not staffed on a regular basis, but is staffed by a deputy clerk from one of the other clerk's office when a judge sits there. However, based on the projected economic growth and population increases in the eastern panhandle of West Virginia, it is anticipated that within the next five (5) years full time staffing of the Clerk's office in Martinsburg will be needed[3].

An additional district judge for the Northern District of West Virginia was authorized in the Civil Justice Reform Act of 1990. It is assumed that before the end of the calendar year an individual will be appointed to fill this judgeship. While recognizing the decision of where the new judge will have his or her headquarters may have some additional impact on both supporting personnel and facilities needs, the advisory committee believes at this time it is safe to project certain personnel needs for the clerk's office.

The reestablishing of Wheeling as the headquarters for a sitting judge has resulted in an increase in court activity[4]. It is anticipated the new judge will have a similar effect at his or her headquarters location. Also as noted in Section IV of this report, new

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[3] Attorneys practicing in the area around Martinsburg believe that a fully staffed clerk's office is necessary now.

[4] On June 30, 1990, there were a total of 188 civil cases pending on the docket in Wheeling. Judge Stamp established his headquarters in Wheeling and was sworn in as district judge on July 30, 1990. On June 30, 1991, 229 civil cases were pending on the Wheeling docket.

criminal statutes are projected to significantly increase the criminal case load in this district as well as most other districts. In addition, the Advisory Group's recommendation presented to the court, as a part of this plan, will increase the case management and monitoring responsibilities of the clerk's office for a significant number of additional civil cases. The increased case management responsibilities assigned to the clerk's office combined with the increased litigation anticipated as a result of economic development projected for this district will all combine to produce a need for an additional five (5) positions in the clerk's office within the next five (5) years. Of the five positions needed in the clerk's office, there will be an immediate need (i.e. fiscal year 1992) for the deputy clerks to assist with the increased case management responsibilities assigned to the clerk's office by the plan set forth herein. These additional and increased responsibilities involve monitoring of the discovery practices for the "standard cases" under the differential case management proposed in this district's plan; promptly bringing to the court's attention all discovery related motions or dispositive motions for rulings, and at the completion of discovery, scheduling and coordinating essentially all type II civil cases for "Settlement Week Conferences." The logistics for "Settlement Week Conferences" include the arrangement of sufficient conference space for the mediation sessions and then coordinating the scheduling of the attorneys and the party litigants in an efficient and most cost effective manner. For those cases not settled, dates for the pretrial order/conference and a firm trial date must be arranged.

The increased need for personnel assumes that the current automation underway within the clerk's office will come on line as anticipated.

ii. Probation/Pretrial Services Department.

The information presented in response to this category not only addresses this specific question, but also illustrates the impact of the criminal docket upon the court's entire docket. The time frame for all calculations in this subsection is June 1987 to June 1991.

a. Personnel.

The Northern District of West Virginia has one Chief Probation Officer, nine Probation Officers, one PC System Administrator, and a clerical staff of eight. There are currently seven (7) Probation/Pretrial Services Officer vacancies in the Northern District of West Virginia.

The Chief Probation Officer, one Probation Officer, and one PC System Administrator are located in the headquarters office at Elkins. Approximately ninety percent (90%) of the arraignments and bail hearings are conducted in Elkins. Four Probation Officers are in Wheeling, which is located approximately one hundred forty miles northwest of the headquarters office; three Probation Officers are located in Clarksburg, which is fifty miles west of the headquarters; and one Probation Officer is located in Martinsburg, which is approximately one hundred sixty miles northeast of the headquarters office.

The clerical personnel consist of one Chief Probation Clerk and one Probation

Clerk in Elkins; one Clerk-in-Charge and one Probation Clerk in Clarksburg; three Probation Clerks in Wheeling; and one Clerk-in-Charge in Martinsburg.

During the past five (5) years, one employee has taken disability retirement and one employee has retired.

This District is currently understaffed for Probation/Pretrial Services Officers by seventy-seven (77) percent. The new work measurement study conducted by the Administrative Office for the United States Courts indicated that a twenty-two (22) percent deficiency in the total staffing existed in every district in the United States. Therefore, this District is understaffed by one hundred seventeen (117) percent. The survey was conducted to determine the amount of extra work involved in preparing the guideline presentence reports. Also considered is the amount of time spent by the probation officers in researching objections received from both the Government and defense counsel in relation to the guideline presentence reports.

b. Caseload Per Officer.

As of June 30, 1987, three probation officers were supervising two hundred fifty-eight probation/parole cases. This averaged eighty-six offenders per officer. As of June 30, 1988, three probation officers were supervising three hundred eight probation/parole cases. This averaged one hundred and three offenders per officer. As of June 30, 1989, five probation officers were supervising three hundred thirty probation/parole cases. This averaged sixty-six offenders per officer. As of June 30, 1990, seven probation officers were supervising four hundred forty-nine probation/parole cases. This averaged sixty-

four offenders per officer. As of June 30, 1991, nine probation officers were supervising four hundred ninety-six probation/parole cases. This averaged fifty-five offenders per officer.

c. Ratio of Officers to Criminal Filings (By Defendants).

As of June 30, 1987, the ratio of officers to criminal filings was seventy-nine per office. As of June 30, 1988, the ratio of officers to criminal filings was eighty-two per office. As of June 30, 1989, the ratio of officers to criminal filings was sixty-four per officer. As of June 30, 1990, the ratio of officers to criminal filings was forty-nine per officer. As of June 30, 1991, the ratio of officers to criminal filings was twenty-four per officer.

d. Other Relevant Information.

On July 1, 1991, this District implemented Enhanced Supervision on all newly released cases. This is mandated by Title 18, United States Code, Section 3603. The parameters of monitoring, controlling, and influencing the activities of offenders are specified in the conditions of supervision established by the court and the Parole Commission. Mandatory and standard conditions are behavioral requirements for all offenders. Special conditions provide the probation officer with supplemental authority to administer additional sanctions and to provide for correctional treatment.

The authority for imposing conditions of supervision is delineated in statutes pertaining to probation, supervised release, and parole. The court's authority to impose conditions of probation supervision is contained in Title 18, United States Code, Section

3563 and for supervised release in Title 18, United States Code, Section 3583. The Parole Commission's authority is derived from Title 18, United States Code, Section 4209.

To accomplish these objectives, the probation officer has the following specific responsibilities as outlined in Title 18, United States Code, Section 3603:

1. Protect the community
2. Address relevant problems of the offenders

The Chief Probation Officer is responsible for implementing, monitoring, and maintaining supervision standards. The United States Probation Officer executes the sentence through risk control, supervision, and correctional treatment. The officer obtains knowledge of the offense, enforces conditions of supervision, and reports violations according to the established standards and procedures.

As to other relevant information, the Probation Division of the United States Courts has entered into an arrangement with the Bureau of Prisons to supervise, by electronic monitoring and home confinement, individuals who are now serving prison sentences.

The first home confinement seminar was held July 22 - 25, 1991. Three other seminars are planned in the next few months. Both Pretrial Services and Probation Officers are taking advantage of the home confinement and electronic monitoring training.

Those officers attending the seminar are instructed to prepare a district implementation plan to be presented to their respective chiefs. The two probation officers

from the Northern District of West Virginia have submitted to headquarters proposed contracts with various electronic monitoring agencies.

Currently, the Administrative Office and the Bureau of Prisons have established fourteen pilot districts for electronic monitoring and home confinement. This program is called "Community Control Program." It has been agreed between the Administrative Office, the Bureau of Prisons, and the Parole Commission to expand the pilot program to twelve additional districts. The Bureau of Prisons has agreed to fund the expanded program until such time as the Administrative Office receives and allocates the congressional appropriations.

As to the Guidelines, the Sentencing Reform Act of 1984 provides little guidance in reference to sentencing procedures. Under Guideline sentencing, the judge is required to find relevant facts, select the rules that apply to those facts, and to explain the rationale of the sentencing decision, which is subject to appellate review. The sentencing process has become more adversarial with counsel pursuing legal issues much as they do at trial. Careful management is required to comply with the new requirements without undue expenditure of judicial time.

Since the charges plead to largely determine the sentence, it has changed the nature of plea bargaining. In comparison, pre-guideline pleas were relevantly simple. Under the guidelines, the plea bargains have become more complicated and must be analyzed more closely. The guidelines here significantly increased the work load of the probation offices.

Attached as Exhibit 1 is a copy of the organizational chart, the Model Local Rule, a copy of the twelve month period of criminal findings, a table of individuals under supervision, and reports for the twelve month period ending June for the years 1987, 1988, 1989, 1990, and 1991.

d. Building and Facilities

As stated above, there are four statutory points of holding court in the Northern District of West Virginia. The newest of these court's facilities is in Elkins, the headquarters for Chief Judge Maxwell and the Clerk of the Court. This facility was completed in 1976 and is designed to permit expansion. The oldest court facility is located in Wheeling, which is the headquarters for Judge Stamp. Renovation to the court facilities in Wheeling is necessary in order to accommodate the needs of a sitting judge. Additional space is needed for the court's support staff. Other federal agencies housed in the Wheeling facility expanded into space adjacent to the courtroom during the period of time when Wheeling did not serve as headquarters for a sitting judge.

The activities in the clerk's office in Wheeling, and the number of files maintained there, has significantly increased since it was reestablished as a headquarters for a district court judge. In addition to needing more space, the fact that the jury room is located on a different floor from the courtroom and is not handicap accessible creates problems which need to be addressed. Therefore, additional space and alteration of existing space is necessary in Wheeling to meet the needs of the court.

The court's facilities in Clarksburg and Martinsburg are adequate for current

needs. It is noted, however, that if the new judge is headquartered in Clarksburg that arrangements will need to be made to accommodate both the new judge and the senior judge currently housed there. Other than in Wheeling, the jury facilities at the other points of holding court are adequate for current and anticipated future needs.

There currently exists adequate temporary holding facilities for prisoners in each of the locations of holding court. Prisoners kept overnight are housed in state jail facilities, pursuant to an agreement between the federal government and local authorities.

While the library space in Elkins, Clarksburg, and Martinsburg is adequate for current needs and for the immediate future, the library facilities in Wheeling are insufficient for the court's current needs. Although the library space available in Martinsburg is currently adequate, there are serious deficiencies in the library's holdings. The planned installation of Westlaw and Lexis will help to alleviate the lack of library resources.

The automation of the judges chambers and the libraries is viewed as a positive step, and will increase the access of research resources available to the court with a minimum impact upon space needs.

While the Advisory Group believes that these observations concerning facilities and space are valid, it recognizes a more precise analysis of building and facilities needs must await the appointment of the new judge and the selection of the new judge's headquarters location.

e. Automation and Other Technical Support.

However, a more precise analysis of the facilities and support personnel needed must await the appointment of the new judge and the selection of the new judge's headquarter location.

It is noted that the three new deputy clerk positions requested in the discussion of the clerk's office needs are directly related to the increased responsibility for case management given to the clerk's office pursuant to the plan recommended herein and are separate and apart from the support personnel that may be needed as a result of the new judgeship.

B. Identifying the Principal Causes of Cost and Delay in Civil Litigation

1. Overview of Civil Litigation

The Advisory Group has attempted to identify the primary causes of avoidable cost and delay associated with civil litigation in this judicial district. In reaching its conclusions, the Advisory Group has analyzed a number of possible causes of cost and delay, focusing not only on court procedures, but also the way in which litigants and attorneys approach and conduct litigation, the special problems relating to pro se litigation, and the special problems relating to criminal and civil practices of the United States Government.

The Advisory Group recognizes that the term "court procedures" may be construed to refer either to court-wide procedures (such as those followed by the court as a whole, whether by rule, order, or custom) or to the procedures or practices followed by individual judges. The following "problem identification" is made after consideration of

The district court is currently proceeding with plans for automation. The hardware necessary for the new CIVIL system is now being installed. While the new system will not significantly speed up the process of docketing of cases, it will enable the clerk's office to maintain statistical data and information needed both for administrative purposes and by counsel and litigants. In addition, the time necessary to retrieve the information should be significantly reduced, while at the same time increasing the amount of information and data available. Finally, automation of the clerk's office is an important component for the case management, which will be needed to implement the Advisory Group's recommendations set forth in this plan.

Courtroom reporting services in this district are currently handled by two full time court reporters and a part time contract reporter. The current courtroom reporting is adequate for current needs, but additional courtroom reporting services will be necessary when the new judge is appointed.

3. Trend in Court Resources.

As noted above, a new judgeship for the Northern District of West Virginia was created in the Civil Justice Reform Act of 1990. This new position has not yet been filled but the Advisory Group anticipates it will be filled in the near future. Once the headquarters court for the new judge is established, there will be need for additional support personnel for the judge's chambers and it is anticipated there will be a need for additional staffing in the clerk's office. Depending upon the location selected for the headquarters office, there may be a need for modification in the physical facilities.

numerous "court procedures," both generic and individual. Additionally, the Advisory Group has carefully reviewed and considered not only the suggested considerations set forth at pages 24 through 28 of "Guidance to Advisory Groups Memorandum," but also the presence, absence, or the application of other procedures and practices which may cause avoidable cost and delay in civil litigation.

The Advisory Group believes that key to reducing delay and the accompanying avoidable cost of civil litigation in the Northern District of West Virginia is regaining control of its civil docket. The court must exert that control as it did before the advent of the Speedy Trial Act of 1974. This is not to imply that the Speedy Trial Act of 1974 is the sole cause of the current problem. Rather, it is a statement that the Speedy Trial Act and numerous other developments, including increased filing, over the past two decades have led to the current circumstances, which are at the heart of the problems, which creates the cost and delay that this study seeks to address.

The Brookings Institution's Task Force Report on Justice for All: Reducing Cost and Delay in Civil Litigation, (The Brookings Institution, 1989) makes the following observation as its introduction to the section on Recommendations for Procedural Reforms.

> More than fifty years have passed since the Federal Rules of Civil Procedure (FRCP) were drafted and adopted. As expressed in 1938, the core objectives of the rules are threefold: "the just, speedy and inexpensive determination of every action." With the passage of five decades, these objectives - set forth in Rule 1, a symbol of their importance that is all too often forgotten or ignored - have not changed. They are, and should be, fundamentally important and enduring. Our civil justice system should

continue to strive for their delivery in every case.

What has changed during the past fifty years is not the objectives of the rules but the civil justice system itself - the number and kinds of cases, the litigants, and the lawyers. The civil rules, in other words, apply to a dramatically different system than that which existed at the time of their drafting. To some degree, the rules that follow Rule 1 have sought to keep pace with the changes in the system. The amendment process has been used on several occasions, most recently in 1980 and 1983, when changes were in large part directed at correcting abuses in the discovery process and increasing the involvement of judges in case management.

To a significant degree, however, the reform efforts of years past have been stopgaps designed to address narrow problems, rather than to effect fundamental changes that would dramatically improve the system (Rosenberg, 1984). The rising costs and delays involved in litigation demand now a more far-reaching approach. Indeed, Justice Lewis Powell's dissent from the adoption of the 1980 amendments has been prophetic:

> I doubt that many judges or lawyers familiar with the proposed amendments believe they will have an appreciable effect on the acute problems ... The Court's adoption of these inadequate changes could postpone effective reform for another decade ... I do not dissent because the modest amendments recommended by the Judicial conference are undesirable. I simply believe that Congress' acceptance of these tinkering changes will delay for years the adoption of genuinely effective reforms (Powell, 1980, pp. 522-23; emphasis added). Brookings reports pages 8-9.

The task force believes that time has proven Justice Powell's 1980 prediction to be entirely correct. Although well intentioned, past changes in the rules failed to alleviate the dual problems of litigation costs and delays. Accordingly, we have concluded that reform efforts must look beyond "tinkering changes," in Justice Powell's words, and must instead search for more systemic solutions.

As a demonstration project under the Civil Justice Reform Act of 1990, the Northern District of West Virginia will attempt the broad based implementation of a form

of alternative dispute resolution, which has proved very successful on a more limited basis over the past two years. In 1987, United States District Court for the Northern District of West Virginia in cooperation with the West Virginia State Bar instituted a mediation process for selected civil cases known as "settlement week." The initial experience with "settlement week" proved very promising, and its continued acceptance by the attorneys and the party litigants suggest that it has an important role in helping to reduce cost and delay in civil litigation in this district. The plan set forth below builds upon the success and the acceptance of "settlement week" in this district as a solution to the problems of the civil docket.

Taken individually, the committee has identified no significant problems with the various stages in the civil litigation process in the Northern District of West Virginia. The difficulty has been in maintaining an overall schedule of the various procedural steps, which move the case from its initial filing to a resolution, either through settlement or by trial. The advisory committee believes that historically the underlying problem for the civil docket has been the inability to set and maintain firm trial dates or to receive reasonably prompt rulings on dispositive motions. Without assured closure, dates or deadlines set for the completion of discovery or for the filing of pretrial motions and for pretrial conferences tend to lose their significance. The proposed plan calls for fixed discovery periods, prompt use of dispute resolution, and firm trial dates.

Consistent with the Brookings report and the suggestions of the Civil Justice Reform Act, the plan set forth herein will provide for case tracking or differential case

management. The plan will provide for two tracks for Type II[5] civil cases and a third track for Type I[6] civil cases. Type I cases will continue to be managed by the clerk's office in the same manner as currently provided. These cases are managed by the clerk's office from the time they are filed until they are ready for disposition, at which time they are brought to the judges's attention. This case management proceeds at a reasonable pace and without unreasonably imposing upon judicial time.

Type II cases will be divided into two tracks, one for complex cases and the other for all other or standard cases. For complex cases, within forty-five (45) days of the filing of the answer, there will be a scheduling conference with the judge assigned the case to tailor the discovery and pretrial activities to meet the particular needs of each case. These cases will require active judicial management from their start.

Case management for all other Type II civil cases will be by the clerk's office. The plan contemplates the monitoring of the standard cases by the clerk's office and requires court approval for good cause for an extension of the discovery deadlines. Discovery disputes will have to be resolved promptly in order to keep the discovery process in these standard cases moving forward.

The plan set forth herein will provide that at the conclusion of discovery there is

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[5] See infra note 2

[6] See infra note 1

a presumption that all Type II[7] cases will be set for "settlement week." The submission of the case for mediation, with trained mediators, is consistent with the fact that most civil cases nationally and in this district settle before trial. The purpose of the mediation "settlement week" is to facilitate the settlement discussion and process. A structured mediation proceeding will serve the needs of litigants whose cases are settled by helping to reduce delay and cost, but will also conserve the court's time for those cases which require the services of a judge and jury to resolve the issues in conflict. Therefore, the goal of the proposed plan is to provide an incentive to focus discovery (a reasonable yet firm cut off date for discovery) and a linkage between the completion of discovery and the referral of the case for alternative dispute resolution. If the settlement efforts prove unsuccessful, a firm trial date will be established at the conclusion of the settlement discussions.

For complex cases, Rule 16 will continue to apply in a manner consistent with present practice to provide the vehicle for judicial management. For the standard cases, the pretrial order/pretrial conference will follow "settlement week." Because of the analysis of the case and the discussion which is inherent in settlement discussions, the court and the parties should be able to prepare a pretrial order which focuses upon the issues for trial, and should, in many cases, enable the trial to proceed more efficiently to conclusion then if formal settlement discussions had not been held.

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[7] See infra note 2

Other than the changes outlined above, the Advisory Group does not perceive any systemic problems which need to be addressed in the local rules, which were revised effective November 12, 1987, and are well suited to the needs of both the party litigants and the court, and are well accepted by the attorneys. In addition, the jury selection plan has worked well both for those citizens called to serve on the jury and for the court in administering its plan.

2. Analysis of Court Procedures

a. Assignment procedures

A memorandum from the three judges to the Clerk of Court, dated July 30, 1990, dictates the procedures currently used for the assignment of cases. Pursuant to this memorandum, the deputy clerks manually assign civil and criminal actions in the following manner:

i) All civil actions filed at the Wheeling point of holding court are placed upon the docket of Judge Stamp.

ii) All civil actions filed at the Elkins point of holding court are placed upon the docket of Judge Maxwell.

iii) Except for those pending civil actions on the Clarksburg docket which Judge Kidd retained on his docket, all civil actions filed at the Clarksburg and Martinsburg points of holding court are placed, in alternative fashion, upon the dockets of Judges Maxwell and Stamp on a one-for-one basis.

iv) State prisoner cases brought pursuant to 42 U.S.C. § 1983 or 28 U.S.C. §

2254 are divided between the dockets of Judge Stamp and Judge Maxwell on a one-for-one basis regardless of the physical location of the state prisoner bringing such actions.

v) All criminal actions are initially docketed at the Elkins point of holding court and are then divided on a one-for-one basis between Judge Maxwell and Judge Stamp.

vi) In the event conflicts or unusual circumstances arise with respect to any civil or criminal matter assigned to either Judge Maxwell or Judge Stamp, the judges upon consultation and conference determine the appropriate Judge's docket upon which the matter should be placed and the Clerk's Office is advised accordingly.

When the Northern District of West Virginia is fully automated, the assignment of civil cases will no longer be manually performed by the deputy clerks. The computer shall assign cases consistent with the formula described above.

b. Time Limits

The deputy clerks and the judges' law clerks now work together to manually monitor the time limits for service of process and answers, as well as enforcing time limits and extensions. Because of the lack of automation to date and the magnitude of the criminal and civil docket, this is not always an efficient system. However, as reflected in the discussion covering automation, this District will soon be "on-line" with an automated civil case management system. The computer will monitor time limits and the Court can efficiently be advised of matters requiring attention.

Historically, the Court has accommodated requests by counsel for extensions of time, particularly when the extension is stipulated to by all counsel in the case. The

proposed plan would restrict responses to these requests, so as to streamline the development of cases.

c. Rule 16 Conferences

Local Court Rule 2.13(f) exempts certain cases from the mandatory scheduling requirements of Rule 16. The Court has, however, consistently required scheduling deadlines in these cases to ensure prompt disposition.

With regard to the format of the Rule 16 conferences, the pressures of the Speedy Trial Act and the magnitude of the criminal docket have inhibited the Court from scheduling Court-supervised Rule 16 conferences. When formal Rule 16 conferences cannot be held, counsel are sometimes asked to meet independently of the Court and develop a proposed Rule 16 Order, which addresses the scheduling deadlines anticipated by Rule 16[8].

When a scheduling conference is conducted by the Court, the topics of discussion include scheduling, the scope of discovery, alternative dispute resolution, and the narrowing of issues.

Magistrate judges are used extensively in the District to resolve discovery disputes and to conduct Rule 16 discovery conferences when necessary. In most instances, when confronted with a discovery dispute, that motion, as well as all non-dispositive pre-trial motions, are referred to the Magistrate Judge, which eliminates the need to prepare

[8] Counsel are now typically notified to meet and prepare a Rule 16 Order within 60-120 days from the filing of the complaint, unless service of process has not been returned or an answer has not been filed.

another reference order if further disputes should arise, and also gives the Magistrate Judge the ability to schedule a discovery conference if he deems the same to be appropriate. In other words, this method gives the magistrate judge the ability to control the entire scope of civil discovery. The proposed plan would alter the timing of many pre-trial conferences and would provide more self-executing structure to the discovery process.

d. Discovery Procedures

Cut-off dates are presently established in the Rule 16 Order which is usually entered within 120 days from the filing of the complaint. When the Court has been unable to provide the parties with a firm trial date, cut-off dates for discovery are typically extended, often by agreement of the parties. In such cases it is not unusual for the Court to receive a proposed pre-trial order, which reflects that the parties are still in the process of taking depositions.

As mentioned, control of the scope and volume of discovery is typically delegated to a magistrate judge, but usually only upon receipt of a motion to compel or other pre-trial motion. Local Court Rule 2.08(f) requires counsel for movant to certify that he has conferred with opposing counsel and made a good faith effort to resolve the dispute. The Committee recommends that the current rule be amended so that this certification is required at the time that the motion is filed. The Magistrate Judge then proceeds to resolve the dispute.

Discovery procedures in this judicial district are perceived by members of the

Advisory Group as generally fair, workable, and only infrequently subject to abuse. The present limitation on the number of interrogatories permitted in civil cases should be continued. When discovery disputes arise, counsel should be required to attempt, in good faith, to resolve such disputes informally, and as a condition of filing a motion to compel, the moving party should be required to state specifically what good faith attempts were made to resolve the discovery issues. Counsel opposing a motion to compel discovery similarly should be required to state specifically what good faith attempts have been made to informally resolve the disputes. Except in extraordinary situations, magistrate judges should continue to be utilized to resolve discovery disputes. Prompt resolution of discovery disputes is imperative; otherwise, discovery disputes will disrupt the management and scheduling of the civil action and undue delay will result. Although sanctions should be imposed when attorneys or litigants clearly abuse the discovery process, the Advisory Group feels that imposition of sanctions should be the exception rather than the rule. The Group believes that the proposed scheduling rules in tandem with the local rules already in use, will insure that discovery delays do not retard the progress of cases.

e. Motion Practice

Once again, the pressures of the Speedy Trial Act and the magnitude of the criminal docket now infringe upon the Court's ability to schedule oral argument on pending motions. Motions are routinely ruled upon from the record without opportunity for oral argument. When oral argument is requested by counsel or when the Court deems

oral argument essential, an attempt is first made to schedule the same for argument by telephone conference. This has worked with a great deal of success and counsel seem to appreciate the opportunity to present argument without traveling substantial distances.

As with most civil case management at this time, motions are monitored manually by law clerks and deputy clerks. When the motion is mature for disposition, the motion is brought to the judge's attention for review.

3. Analysis of Litigant and Attorney Practices--Privately Represented Litigants.

a. Pre-Filing Practices--Screening Cases.

It is the Advisory Committee's assessment that essentially all cases brought in the federal courts in this district have been appropriately investigated both as to law and facts, that when needed, there has been sufficient consultation with expert witnesses, and in most cases there has been some discussion of possible settlement with the opposing party prior to instituting the law suit. While at the present time there are no widespread discussions of alternative dispute resolution options prior to filing suit in this district, it was not until the "settlement week" started in the Northern District of West Virginia in 1987 that there was any significant use of alternate dispute resolutions to the broad spectrum of civil cases. It is therefore anticipated, or at least hoped, that with the advent of the plan set forth herein, that in the future there will be increased consideration of ADR by party litigants and their counsel prior to the institution of lawsuits.

b. Pleading Practices.

As a general statement, party litigants have taken full advantage of the opportunities to plead multiple counts and inconsistent theories in complaints and in answers. It appears to be the common and accepted practice that if in doubt, the attorney should include all possible theories and defenses of the case in the complaint and answer with the expectation that the adversary/judicial system will cull out those counts or theories not well founded in fact and/or law.

c. Discovery Practices.

As noted above, the discovery procedure in this judicial district is perceived by members of the Advisory Committee as generally fair, workable, and only infrequently subject to abuse. The present limitation on the number of interrogatories permitted in civil cases by local rule has worked well and its continuation is supported by the Advisory Committee. In many cases, there is a commendable amount of voluntary exchange of information. Frequently the parties are able to enter into stipulation or admissions, which significantly limits the cost and delay involved in pretrial discovery. The proposed plan builds on these current exchanges.

Local Rule 2.08(f) requires counsel for the movant in all discovery motions to certify he or she has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issue raised by the motion. It is assumed by the Advisory Committee that all parties adhere to this rule in good faith and only those issues which the parties are unable to resolve through such conferences are brought to the court's

attention in the form of a discovery related motion. Following a decision by the court on discovery motion, the parties in essentially all cases comply with the ruling. The committee favors the policy and practice that sanctions should be imposed only when the attorneys or litigants have clearly abused the discovery process or motion practice.

d. Motion Practice.

The Advisory Committee does not believe there is an abuse of motion practice within the district and that the vast majority of 12(b) motions, Rule 56 motions and discovery related motions are filed in the belief that there is a good faith basis for such motion, as opposed to being filed for dilatory purposes. With respect to such motions, the Advisory Committee recommends that the motions be brought to the court's attention promptly for decision. The time period for the opposing and reply memorandum set forth in local rules are reasonable and workable. With respect to hearings, it is the group's consensus that most dispositive motions can be resolved on brief and do not require oral argument, and that dispositive motions should be ruled upon as soon as possible. The Advisory Group recognizes that a decision on such motions may be one of the most important ways for the parties to avoid expenses associated with trial preparation. As to such motions, the Advisory Committee's recommendation is essentially that the current practices for the consideration of such motions on brief, as opposed to oral arguments, continue to be the rule and that rulings on such motions be issued as soon as reasonably possible by the courts or magistrate judges.

e. Trial Practice.

The pretrial conference/order has worked reasonably well in this district in narrowing the issues for trial, providing the forum to resolve a significant number of issues pertaining to exhibits and their admissibility at trial and for the stipulation of facts, and in general, providing a framework which leads to a reasonably efficient conduct of the trial. In general, there is reasonable cooperation among members of the bar as to the stipulation of non controversial facts and agreement on the admissibility of routine documents not in controversy. The trial of most civil cases is conducted in a reasonable period of time by lawyers who are well prepared to address the issues.

It is recognized that the court handles a large number of civil cases and necessarily must set these cases for trial as the criminal docket allows. The Advisory Committee, nevertheless, suggests that a date certain for trial be established whenever possible. While recognizing the efficiency for the court of setting several civil trials for the same date, attorneys have expressed concern for the expense to litigants, who are in the "back up" position, and the increased inconvenience if the trials are set for points of holding court, other than those near the cities in which their offices are located.

f. Sanctioning Practice.

The Advisory Committee believes the courts have used sanctions in appropriate manner, i.e., that the sanctions are an exception rather than the rule, and have been used to deal with fairly clear cut abuses.

g. Private Attorney Fees.

It is the Advisory Committee's belief that there is no significant abuse by the attorneys churning of cases in order to increase billable hours, or that there are unreasonable and excessive fees being charged by the plaintiff's attorneys.

h. Court Awarded Attorney Fees.

Attorney fees ordered pursuant to the Civil Justice Act and other statutory provisions are monitored for reasonableness in the hours charged, and the hourly rate approved is consistent with the provisions of the law.

i. Settlement Practices/Use of Alternative Dispute Resolution Methods.

In 1987, in cooperation with the West Virginia State Bar, the Court for the Northern District of West Virginia conducted its first "settlement week" conferences. Volunteer lawyers were trained as mediators and cases from the courts docket were selected for the "settlement week" experiment. Of the 139 cases included in the first "settlement week" conferences, 49 (35%) were settled. Since the initial "settlement week" in October of 1987, there have been four other "settlement weeks" (April 1988, October 1988, May 1989, and August 1990). Of the 382 cases referred for mediation during the first four settlement weeks, 134 (35%) were settled[9]. In addition, at least 6 other cases settled after "settlement week," because of the progress made during the

[9] The statistics for the July-August 1990 settlement week were not included in Mr. Patrick's report in May of 1990 which are attached as appendix 1. In July-August of 1990, of the thirty (30) cases assigned for settlement week, seven (7) cases were allowed to withdraw before settlement week. Of the remaining twenty-three (23) cases, seven (7) cases settled with mediation.

mediation sessions and the continued work of the mediators.

Of equal importance to the success rate is the fact that these "settlement week" conferences have been very well received and accepted by the attorneys and the party litigants, and very gratifying and rewarding to the lawyers who have served as the volunteer mediators.

In May of 1990, Mr. Thomas O. Patrick, who serves as the coordinator of "settlement week," prepared a report and presentation on "settlement week" in the Northern District of West Virginia. In conjunction with that report, he prepared several charts summarizing certain data on the four settlement weeks which had been held. These charts are attached hereto as Exhibit 2.

j. Compliance with Time Limits and Local Rules.

As has been noted in several other portions of this report, one of the difficulties encountered in this district is the inability to control the civil docket which in a large measure is because of the criminal case load and the requirements of the Speedy Trial Act. This inability to provide with reasonable certainty trial dates for civil cases has made it difficult for the attorneys to accept deadlines established in pretrial orders or by the local rules as firm deadlines. Therefore, it is not uncommon for pretrial activities to extend beyond the established dates. As is evident from the material set forth hereinafter, one of the primary proposals for the plan recommended is that firm dates should be established, which will be deviated from only for good cause shown.

k. Appeal Practices.

There does not appear to be any systemic problem in this jurisdiction in regards to interlocutory appeals or appeals on the merits which contribute significantly to the cost and/or delay of civil litigation.

l. Client Participation in Litigation.

Clients with decision making authority are required, absent extenuating circumstances, to attend "settlement week" conferences. Consistent with sound mediation principles, the client's presence at the "settlement week" conference is important, if not indispensable. Settlement opportunities are significantly increased when the client comes to understand the strengths and weakness of the respective cases and as they learn of the interest and concerns of the opposing party. As a general statement, the clients are actively involved and participate in the decision making process in this district. It is anticipated that with the referral of essentially all cases for alternative dispute resolution, clients will continue to be involved in decisions at all stages of the litigation.

4. Analysis of Special Problems Relating to Pro Se Litigation

Pro se litigation is reviewed as soon as possible by a judicial officer and dismissed when appropriate pursuant to 28 U.S.C. § 1915(d), which authorizes the dismissal of actions if the Court is satisfied that the action is frivolous or malicious. Quite frequently, a case received from a pro se litigant is filed and assigned a docket number, but process not issued, until the plaintiff can particularize his claim. When completed, a second review by the Court is conducted.

In considering affidavits to proceed in forma pauperis, the IFP form is reviewed by a deputy clerk. Presently, at the Elkins point of holding court, an attorney is employed as a deputy clerk, a portion of whose responsibilities include functioning as a pro se law clerk. The deputy clerk makes the appropriate calculation and prepares a proposed order for review by the judge. Quite often, challenges to the assessment by the pro se litigant delay the litigation.

The deputy clerk is responsible for daily management of all pro se litigation. Since the responsibilities for the case management of pro se litigation were first transferred to this position, the case management of pro se litigation has improved substantially. The deputy clerk plays a significant role in screening pro se filings and assisting the judge in controlling repeated filings. Controlling repeated filings is quite difficult, because orders to refrain from such filings are commonly ignored by pro se litigants, particularly incarcerated individuals, and also because appellate courts are hesitant to block access to the courts, with the exception of the most serious offenders.

The full-time Magistrate Judge in Elkins is used extensively for the referral of pro se litigation, most particularly once the case has proceeded through the initial screening phases and is ready for trial or summary disposition.

Currently, there are no special procedures for the appointment of counsel in civil pro se litigation. Appointment of counsel in such matters is rarely done[10]. It is hoped

[10] At the request of the District Judge, approximately ten law firms in Wheeling have agreed to accept appointment to assist with the trial of selected 1983 cases.

that a program can one day be initiated, perhaps with the assistance of the State Bar and the WVU College of Law, which might provide a pool of law students and lawyers to represent the interests of civil pro se litigants.

Succinctly stated, there are quite a few special problems relating to pro se litigation. Although the Court now has in place an efficient method of tracking and screening frivolous filings, such filings are many and are quite time consuming for the district judges. Since pro se litigants are in most instances unable, or perhaps unwilling, to articulate their claims, a great deal of time is spent deciphering the true cause of action.

In addition, because of the unfamiliarity with the rules of civil procedure and local rules, pro se litigation suffers from substantial delay resulting from interlocutory appeals, mandamus proceedings, and judicial complaints. Pro se litigants often flood the Court with papers, whether relevant or not to the litigation, and the Court must sort through the documents to ascertain their importance.

A significant problem is presented in pro se litigation for accomplishing discovery. Often, the individual is incarcerated, which presents obvious problems, and in most instances the pro se litigant is insufficiently versed in the law to know or understand the appropriate methods of discovery. This problem is obviously compounded by the inadequate system for providing legal assistance. Finally, as with civil cases in general, the pressures of the criminal docket prevent the Court from providing pro se litigants with firm trial dates, which results in the delays previously discussed.

The State of West Virginia recently began construction of a new maximum security penitentiary in the Southern District of West Virginia, which is scheduled for completion in 1993. When the new prison is completed, the inmates currently housed in Moundsville in the Northern District of West Virginia will be transferred to the new facility and the Moundsville penitentiary will be closed. The closure of Moundsville and the transfer of the maximum security inmates from the district should help to alleviate some of the existing problems with pro se prisoner petitions. It is noted, however, that the medium security penitentiary in Huttonsville, the Women's Correctional Facility in Pruntytown and the Federal Correctional Institute in Morgantown will remain in the district; thus, the problem with pro se litigation will continue.

5. Special Problems Relating to Litigation Involving the United States.

a. Criminal Practices

In recent years, the criminal docket has swelled with drug prosecutions, student loan cases and a variety of other types of prosecutions initiated by various governmental agencies. Due to the mandates of the Speedy Trial act, and other constitutional and procedural requirements, criminal cases are thrust to the forefront of the trial docket. Consequently criminal cases constitute approximately half[11] of the trials in the district and consume a substantial amount of judicial resources.

It has been observed that an increasing number of drug prosecutions involve only

[11] See Guidance to Advisory Groups at Table 19.

a negligible amount of controlled substance. Although no less important, cases dealing with only a negligible amount of controlled substance may be better handled by state prosecution efforts. In practice, the vast majority of drug prosecutions seen in this district begin as state and local investigations. The "Narcotics Task Force" is the principle investigative entity which works with the United States Attorney to initiate most of drug-related prosecutions in this district. That Task Force has traditionally been composed of local, state and federal agents.

Few, if any, cases which are investigated are ever referred for state prosecution. Thus, in striving to effectively reduce delay, it is strongly suggested that drug prosecutions involving negligible quantities of controlled substances should be considered for referral for state prosecution. While the Advisory Group recognizes that there are sometimes law enforcement advantages to be gained by indictment of smaller participants in a criminal enterprise so as to encourage their testimony against those more highly placed, it finds it difficult to ascribe all of the filings here to such strategic considerations.

In addition, there are several types of criminal cases which, by their nature, lend themselves to civil adjudication instead of criminal prosecution. For example, in recent years this district has experienced an increase in student loan default cases and mail fraud and tax prosecutions. It has been observed in many instances the institution of a civil action as opposed to criminal prosecution would have resulted in a more favorable outcome to the actual parties involved in the dispute.

The expanded use of pre-trial diversion procedures, along with the institution of

civil actions, provides a viable mechanism for enforcement of governmental legal obligations. While the use of civil litigation would involve judicial resources, it would lessen the need for the expedited scheduling of criminal proceedings.

Another troublesome aspect of present criminal case disposition is the last minute or "eve of trial" plea negotiations. Often the litigants involved in criminal cases first advise the court of plea negotiations on the "eve of trial." Where counsel are aware that cases are likely to result in pleas, the court should be advised so that the critical path scheduling of non-trial cases may be adjusted accordingly. In many instances, it has been related that the lack of cooperation and full disclosure of discovery has led to protracted pre-trial proceedings. It was hoped that with the advent of the government's "open-file policy," the complications normally associated with discovery would dissipate. Unfortunately, it has been observed that all too frequently discovery disputes arise from defense counsel's concern over the government's failure to make full disclosure of discovery, which ultimately leads to further delay. An unwanted by-product of these frequent discovery disputes are the "eve of trial" pleas. At that time, the court's schedule is prepared and there is inadequate time to give notice of rescheduling of other meaningful matters to replace the lost criminal trial.

With the full implementation of the sentencing guidelines, new procedures were adopted. In cases involving pleas, the parties often attempt to stipulate to the relevant facts of the case. Delay has been experienced where the plea agreement does not contain a statement of facts supporting the stipulation as required by Guideline § 6B1.4 of the

United States Sentencing Guidelines. The Government has, by practice, been responsible for the preparation of the plea agreements in criminal cases. Government attorneys have been repeatedly advised of the need to include an adequate written factual statement to support a guideline plea upon stipulation. Such delay would be eliminated if the Government would comply with the court's request to properly document the plea by supplying the necessary facts to support the plea agreement.

Criminal forfeiture matters present a special problem because they have not been brought to conclusion by the Government and have been left to languish on the docket. Lastly, it has been observed that further delay could be eliminated if the Government would take care to properly prepare Rule 11 and Sentencing Orders. Often the court is required to request that the Government make revisions to its orders to comply with the rulings made at the time of the proceeding.

b. Civil Practices

Forfeiture cases have contributed to the docket congestion problem in this District. First, presumably because of the criminal case load, these cases do not receive top priority from the United States Attorney's office. Secondly, in many instances, the defendant in a forfeiture case is either incarcerated or is not represented by counsel. Thirdly, because of many technical matters associated with forfeiture cases, i.e., orders of publication, substantial judicial resources are required by the court in reviewing these documents to determine the appropriate language to provide proper notice to all interested parties. It is, therefore, not uncommon for these cases to languish on the docket for

many years essentially in an inactive status.

In litigation involving the Department of Labor, the Department of Interior, the Environmental Protection Agency, the Secretary of Health and Human Services, the Internal Revenue Service, and other federal agencies, the court routinely receives motions for extension of time to file answers, motions, responsive briefs, etc... It is not uncommon for several months to pass before motions to dismiss or motions for summary judgment are ready for disposition. Additionally, the parties consistently seek leave to amend complaints, file motions, and join parties after Rule 16 deadline for filing the same has passed. Many times no effort is made to show good cause why the deadlines were not met.

6. Special Problems Relating to State and Local Government Litigation

Inattentiveness is the primary cause of delay in prisoner litigation from the perspective of the State. After receiving an Answer, which customarily includes inappropriate and insufficient defenses, many cases do not receive sufficient monitoring by the parties.

As with litigation involving the United States, these cases are often handled by many different deputy attorney generals during its course. Likewise, extensions of time are common practice.

It is acknowledged that the State encounters difficulties in completing discovery and preparing pre-trial orders because of the pro se status, and incarcerated status, of many of its opponents. As the Court has problems sorting through the deluge of

documents often filed by these litigants, so must the State.

7. The Impact of Recent Legislation

a. Criminal Legislation

i. Guideline Sentencing

Without much hesitation, it can be said that the advent of the Sentencing Reform Act of 1984 and the sentencing guidelines now established by the United States Sentencing Commission have increased the time expended by the district judges in preparation for sentencing. Much more time is spent reviewing presentence reports and objections thereto; sentencing hearings also take longer. In addition, because all relevant conduct must be considered, not just the count of conviction, there is less incentive to plead guilty, and more criminal trials have resulted. Additionally, as Judge William Schwarzer, Director of the Federal Judicial Center, recently noted, requiring judges to take into account relevant uncharged conduct creates the need for collateral proceedings to determine guilt outside the regular criminal trial.

The Sentencing Guidelines also have resulted in more appeals in cases where the only issue is the application of the guidelines, which in turn has resulted in more frequent appellate orders requiring resentencing by the district courts.

ii. Mandatory minimum sentencing

Because of the sentencing guidelines, mandatory minimum sentencing has not greatly impacted cost and delay in the federal civil litigation process.

iii. New statutory drug and gun offenses

The Senate-passed Violent Crime Control Act and other related crime bills, currently being debated in Congress, could perhaps close the door for civil litigants in federal courts. An amendment to the Senate-passed Violent Crime Control Act provides for federal prosecution of cases in which a firearm was used to commit a homicide, provided that at some point the firearm crossed either state or foreign borders. The Administrative Office of the United States Courts recently announced that the Advisory Group Executive Committee of the Judicial Conference of the United States opposes the amendment, based upon statistics which suggest that such cases could flood the federal courts with thousands of cases involving homicides committed with a firearm. The National Law Journal, July 29, 1991, Nexis. The Conference Executive Committee relied upon the most recent data available from the Federal Bureau of Investigation, which reflected that 12,000 homicides involving firearms were committed in 1989. Approximately 95 percent of those homicides are believed to have involved firearms that moved through interstate or foreign commerce. If all such cases were prosecuted in federal court, the Conference Executive Committee estimated that the cost to the Judiciary would exceed $2.5 billion. The Conference Executive Committee's opposition to the amendment is consistent with the Judicial Conference's long-standing position that federal prosecutions should be limited to charges that cannot or should not be prosecuted in the state courts.

iv. RICO

The Court has seen a recent rash of proliferation of criminal RICO prosecutions. In many of these cases, it would appear as if typical conspiracies involving mail fraud and state offenses were enhanced by the RICO charges. The Advisory Group received differing assessments as to the impact of these filings on judicial resources. There appear to be no hard data currently available on this issue. The Group recommends that such data be developed so that the impact of these practices may be assessed in the future.

b. Civil Legislation

i. RICO

The Court has not, to date, seen a significant proliferation of civil RICO cases and it would not appear to impact civil litigation at this time.

ii. ERISA

Cases brought under the Employee Retirement Income Security Act of 1974 (ERISA) are beginning to impact the docket, primarily because of total preemption requiring federal jurisdiction. It would appear that defendants are increasingly removing all types of employment cases, traditionally removable only if diversity jurisdiction exists, under ERISA. Likewise, traditional bad faith claims against insurance companies are now being removed from state courts pursuant to ERISA when the underlying claim for benefits develops under an employee benefit plan. Although the West Virginia bad faith statute appears to regulate the insurance industry, the courts have interpreted ERISA to preempt any state cause of action, if the claim arises under an employee benefit plan.

iii. Superfund and Environmental legislation

These cases are typically complex and involve many parties. They suffer from the delays and expense caused by the problems previously mentioned in the section dealing with litigation involving the United States.

iv. Federal Debt Collection Procedures Act

This statute, which became effective on May 29, 1991, established a new set of procedures for the collection of debts owed to the United States government. With some exceptions, the Act will preempt state law collection remedies that the United States currently must utilize to collect a debt owed to the United States, and replace the state laws with a set of federal remedies that are to be applied uniformly throughout the country.

The applicability of the Act is quite broad, establishing the civil procedures for the United States to obtain a prejudgment remedy in connection with a claim on a debt or to obtain post-judgment recovery of a debt. Neither the Court nor the Advisory Group can anticipate the impact that it will have on the expense and delay of litigating other civil cases. If the Act is used extensively by the United States Attorney, there is no doubt that it will consume a considerable amount of time for the Clerk's Office and the Court. The Administrative Office of the United States Courts has advised that "Clerks' offices, of course, will have an essential role in the implementation of the procedures under the Act. Clerks will be receiving and docketing pleadings, including applications; issuing and signing notices; issuing and signing writs; scheduling hearings; on occasion, receiving

deposits of certain proceeds; and within the prohibition of dispensing legal advice, explaining the Act to the public or referring the public to appropriate sources of information."

The impact on the Court will be substantial since the debtor has the right to request a hearing. Prejudgment remedies available include attachment, receivership, garnishment, and sequestration. The district court may assign its duties under the Act to a United States Magistrate Judge.

In addition to the natural pressure the Act will place on the Court's docket by its complex nature, the problems earlier explained relating to litigation involving the United States government will most certainly surface. Given the types of obligations which fall within the scope of the Act, to name a few, debts based on educational loans, veterans benefits overpayments, Small Business Administration loans, criminal fines and restitution, it is expected that the Act, once fully implemented, will bear a considerable burden on the Court's docket, and therefore will require the most efficient administration possible.

v. Immigration Act of 1990

The Advisory Committee has not identified any significant impact this Act will make in this district.

III. Recommendations.

A. Recommended Measures, Procedure, Rules and Programs

After considering the results of our analysis and the principles and guidelines set

forth in 28 U.S.C § 473(a), the Advisory Group makes the following recommendations:

(1) The court should adopt "systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity [and] the amount of time reasonably needed to prepare the case for trial" (see 28 U.S.C. § 473(a)(1).

(2) The court should adopt a local rule for required disclosure, patterned after the draft revision of Rule 26 Federal Rules of Civil Procedure (a suggested draft is set forth in the recommended plan)[12].

(3) Consistent with the statutory charge of the "demonstration program" set forth in § 104(b)(2) the use of "Settlement Week Conferences" (mediation) should be expanded.

(a) "Settlement Weeks" should be scheduled on a regular basis and not

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[12] While there was a consensus in support of adopting a local rule patterned after the draft revision of Rule 26 of the Federal Rules of Civil Procedure, there were two issues on which there is a minority position to report.

(1) Draft Rule 26 (a)(1) provides for required initial disclosures to be simultaneous, i.e., disclosure by both plaintiff and defendant within 30 days after service of an answer. The recommended local rule adopts this position. The members of the committee who preferred a staged "initial disclosure" argued that the defendant needs to know something about plaintiff's case before the defendant can reasonably designate potential witnesses and exhibits. In addition, it was asserted, the plaintiff controls the timing of the institution of the law suit and, therefore, can prepare the initial disclosure prior to filing the suit.

(2) Draft Rule 26(2) provided for the simultaneous disclosure of expert testimony which may be presented at trial i.e. 60 days before the case is scheduled for trial. The recommended draft rule provides for a sequencing for the disclosure of expert testimony, first by the plaintiff and then by the defendant. This change was made because it was believed that in many cases the expert witness(es) the defense will rely upon is dependant upon the expert witness(es) the plaintiff plans to utilize. Some members of the committee preferred the "simultaneous disclosure" of the draft rule.

less than three per calendar year.

(b) Unless the court approves a different form of alternative dispute resolution, or the case is exempt because there would be no possible benefits, all type II civil cases should be referred to "Settlement Week Conferences."

(c) Upon request by the parties and approval by the court, cases may be referred for early neutral evaluation.

(4) Motions to dismiss filed pursuant to Rule 12(b) or motions for summary judgment filed pursuant to Rule 56 or discovery related motions should be promptly brought to the court's attention for a ruling.

(5) Case which are not settled as a result of "Settlement Week Conferences," or some other authorized form of alternative dispute resolution, should be promptly given firm trial dates.

(6) The court should propose to the circuit judicial council and to the Judicial Conference of the United States that both adopt resolution endorsing Recommendation A of Chapter 2 of the Report of the Federal Courts Study Committee (April 2, 1990), concerning federal prosecution of narcotics cases.

B. How the Recommendations Require Significant Contributions by the Court, the Litigants, and the Litigants' Attorneys and Reflect Needs and Circumstances Thereof.

(1) The differentiated civil case management system and the coordination of

"Settlement Week Conferences" will impose an additional burden upon the clerk's office. The Advisory Group supports the Clerk of the Court's request for the additional personnel necessary to successfully implement the plea recommended.

(2) The recommendation that essentially all Type II civil cases be referred to "Settlement Week Conferences" will increase the number of lawyer volunteers necessary to mediate all cases. This will require additional members of the bar to volunteer to be trained and serve as mediators.

(3) The increased demand for mediators will require the court to establish and offer periodically mediation training sessions.

(4) The recommended plan will require that motions to dismiss, motions for summary judgment and discovery related motions be brought to the court promptly for decision.

(5) The recommendation will require the court to control its calendar so that a firm trial date can be provided for cases not settled during "Settlement Week" or through some different form of alternative dispute resolution.

(6) The proposed changes in discovery procedure will require contributions from both lawyers and judges, as they adapt to the new procedure of required disclosure and deadlines that will be extended only for good cause.

(7) The recommendation will require the court to be actively involved in the case management of complex litigation. In supervising complex litigation,

the court will need to consider phased discovery and other techniques to assist in reducing cost and delay.

C. How the Recommended Plan Complies with § 473's Guidelines, Principles, and Techniques.

(1) In formulating its recommended plan, the Advisory Group must consider, and may include, the guidelines, principles, and techniques listed in 28 U.S.C. § 473(a). This plan complies with § 473(a) in the following way:

(a) The Advisory Group recommends that the court continues its existing procedure for the case management of Type I civil cases. It recommends that there be differential case management for Type II civil cases: "complex cases" which will require early and active judicial intervention, including the tailoring of discovery to meet the needs of the case, and standard cases which will have established discovery deadlines and involve case monitoring by the clerk's office.

(b) The recommended plan includes a provision for required disclosure, patterned after a draft revision of Rule 26 of the Federal Rules of Civil Procedure.

(c) The Advisory Group recommendation for reasonable discovery deadlines is intended to provide the parties sufficient time to conduct all necessary discovery. The establishment of a reasonable deadline

for the completion of discovery is intended to require the parties to organize their discovery and to focus on the important issues.

(d) The Advisory Group notes that local Rule 2.08(f)(Discovery) currently provides:

Counsel for movant in all discovery motions shall file with the Court within ten (10) days after filing of the respondent's brief statement certifying that he has conferred with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the Court, together with a detailed explanation why such agreement could not be reached. If part of the issues raised by the motion have been resolved by agreement, the statement shall specify the issues so resolved and the issues remaining unresolved.

The Advisory Group recommends that this language be amended to read:

Counsel for movant in all discovery motions shall file with the Court concurrent with such motion a statement certifying that he has conferred with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the Court, together with a detailed explanation why such agreement could not be reached. If part of the issues

raised by the motion have been resolved by agreement, the statement shall specify the issues so resolved and the issues remaining unresolved.

(e) The recommended plan calls for all cases, except those exempted by the court or submitted to a different form of alternative dispute resolution to be scheduled for "Settlement Week Conferences" (mediation).

(2) The Advisory Group also considered the six techniques for litigation management and cost and delay reduction contained in 28 U.S.C. § 473(b).

(a) The recommended plan calls for judicial intervention and active case management of discovery in complex litigation and required disclosure, discovery deadlines and monitoring by the clerk's office of "standard cases."

(b) Existing "Settlement Week Conference" procedures contemplates that each party be represented at the conference by an individual who has authority to negotiate in good faith and agree to settlements. This policy will continue.

(c) The Advisory Group does not believe that given the other provisions it has recommended, and the fact that an individual with settlement authority is expected to attend "Settlement Week Conferences," that it is necessary to recommend that the lawyer and party sign requests

for discovery extensions or postponement of trial.

(d) The plan recommended will permit referral of a case upon the request of the parties and the approval of the court for early neutral evaluation.

(e) The plan recommended contemplates that essentially all Type II civil cases be referred for "Settlement Week Conferences" and that representatives of the parties with authority to enter into binding settlement discussions be present or available by telephone during the settlement conference.

D. Recommendation that the Court Adopt the Draft Plan.

Upon recommendation of the Advisory Group, the court seeks to be an Early Implantation District (see 28 U.S.C. § 482(c)) and, therefore, must implement its plan by the end of 1991. Because 28 U.S.C. § 477(a) contemplates that the Judicial Conference will base any model plans that it may promulgate on plans submitted within the same deadline, we regard as inapplicable 28 U.S.C. § 472(b)(2): mandate to explain why we recommend adoption of the plan attached as opposed to any model plan.

APPENDIX A

Membership of the Advisory Group
for
The United States District Court
for
The Northern District of West Virginia

James C. West, Jr., Esq. PO Box 2348 Clarksburg, WV 26302	Co-Chairman, West Virginia State Bar Committee on Alternative Dispute Resolution Executive Committee
James M. Brown, Esq. PO Drawer L Beckley, WV 25802	
E. Glenn Robinson, Esq. PO Box 1791 Charleston, WV 25326	
Robert M. Steptoe, Jr., Esq. PO Box 2190 Clarksburg, WV 26302	Chair of Advisory Group Executive Committee
Richard L. Douglas, Esq. PO Box 1419 Martinsburg, WV 25401	Chairman West Virginia State Bar Executive Committee
Charles F. Bagley, III, Esq. P.O. Box 1835 Huntington, WV 25719	President West Virginia State Bar
G. Nicholas Casey, Esq. PO Box 1746 Charleston, WV 25326	
Joseph Wallace, Esq. PO Box 7 Elkins, WV 26241	

W. Dean DeLaMater, Esq.
PO Box 2290
Weirton, WV 26062)

John Palmer, Esq.
Robinson & McElwee
600 United Center
Charleston, WV 25301

President
Defense Trial Counsel of
West Virginia

William E. Parsons, Esq.
Fitzsimmons & Parsons
2003 Warwood Ave.
Wheeling, WV 26003

Immediate Past President
West Virginia Trial Lawyers

Ted M. Kanner, Esq.
501 Charleston Natl. Plaza
Charleston, WV 25301

President
West Virginia Trial Lawyers

Lawrence E. Morhous, Esq.
PO Box 529
Bluefield, WV 24701

Clarence E. Martin, III, Esq.
PO Box 1286
Martinsburg, WV 25401

President
West Virginia Bar Association

Jessica J. Justice, Esq.
West Virginia University
School of Law
Morgantown, WV 26506

West Virginia State Bar
Continuing Legal Education

James J. MacCallum, Esq.
PO Box 38
Madison, WV 25130

Dean Donald G. Gifford
College of Law
West Virginia University
Morgantown, WV 26506

Theodore R. Dues, Jr., Esq.
PO Box 5105
Charleston, WV 25361

Sharon Mullens, Esq.
P.O. Box 20017
Charleston, WV 25302
President
Mountain State Bar

Richard L. Gottlieb
Chief Deputy Attorney General
Building 1, Room E-26
State Capitol
Charleston, WV 25305
Chief Deputy
Attorney General's Office

William A. Kolibash
United States Attorney
Wheeling, WV 26003

Joseph W. Powell
501 Broad Street
Charleston, WV 25301
President
American Federation
of Labor - CIO

Barbara Fleischauer, Esq.
Rt. 4 Box 362
Morgantown, WV 26505-9428
Executive Committee

Ray F. Formanek
1357 Headlee Avenue
Apartment C
Morgantown, WV 26505
Associated Press
Executive Committee

Mike Ross
Coalton, WV 26257
West Virginia Independent
Oil and Gas Association

John D. Lough
One Lowndes Square
Clarksburg, WV 26301
Wholesale/Retail Energy
Suppliers

Gary G. White, President
W. Va. Coal Association
1301 Laidley Tower; Charleston, WV 25301
West Virginia Coal Association

C. R. Hill, Jr., President W. Va. Bankers Association 1212 Commerce Square Charleston, WV 26301	West Virginia Bankers Association
James Varner, Esq. PO Box 2040 Clarksburg, WV 26302	Executive Committee
Boyd Warner, Esq. PO Box 1716 Clarksburg, WV 26302	Executive Committee
David Romano, Esq. 363 Washington Avenue Clarksburg, WV 26301	
Patrick Gallagher, President WV Manufacturer's Association 405 Capitol Street Suite 503 Charleston, WV 25301	West Virginia Manufacturer's Association
Michael Benninger, Esq. 318 Chestnut St. Morgantown, 26505	Executive Committee
Mary A. Kenney, Esq. 175 Walnut Street Morgantown, WV 26505	North Central West Virginia Legal Aid Society
John W. Fisher West Virginia University College of Law Morgantown, WV 26506	(REPORTER)
Franklin D. Cleckley West Virginia University College of Law Morgantown, WV 26506	(REPORTER)

Marjorie Anne McDiarmid West Virginia University College of Law Morgantown, WV 26506	(REPORTER)
Grergory Hinton, Esq. 301 Security Bank Bldg. Fairmont, WV 26554	
Ross Maruka, Esq. 221 Washington Street Fairmont, WV 26554	
John W. Cooper, Esq. Parsons, WV 26287	
Richard H. Talbott, Esq. P.O. Box 1909 Elkins, WV 26241	Executive Committee
Lester C. Hess, Jr., Esq. 1226 Chapline St. Wheeling, WV 26003	
Donald J. Tennant, Jr., Esq. 38 15th Street Wheeling, WV 26003	
Barbara L. Baxter, Esq. 1000 Hawley Building Wheeling, WV 26003	Executive Committee
Nan G. Brown, Esq. 11th & Chapline St. Wheeling, WV 26003	West Virginia Legal Services Plan, Inc.
James F. Companion, Esq. Suite 1000 1025 Main Street Wheeling, WV 26003	.Former United States Attorney Executive Committee

T. C. McCarthy, Jr., Esq.
307 Board of Trade Building
Wheeling, WV 26003

Barry M. Hill, Esq.
3334 Main St.
Weirton, WV 26062

Alfred J. Lemley, Esq.
132 Adams Street
P.O. Box 1189
Fairmont, WV 26554

American College of Trial Lawyers

Robert E. Maxwell
United States District Judge
P.O. Box 1275
Elkins, WV 26241

Frederick P. Stamp, Jr.
United States District Judge
P.O. Box 791
Wheeling, WV 26003

David L. Core
United States Magistrate Judge
P.O. Box 1366
Elkins, WV 26241

James E. Seibert
United States Magistrate Judge
P.O. Box 311
Wheeling, WV 26003

Dr. Wally Edgell
Clerk of Court
P.O. Box 1518
Elkins, WV 26241

APPENDIX B

OPERATING PROCEDURES

The full Advisory Group met on April 12th, 1991, pursuant to its responsibilities under the Civil Justice Reform Act of 1990 to present their ideas as to what factors caused or contributed to cost and delay in civil litigation in the Northern District of West Virginia, and what action, changes, or modification could be made to assist in the reduction of cost and delay. As a demonstration district, particular attention was given to alternative dispute resolution and more particularly, the experience of the "settlement week conferences" which were developed as a cooperative effort between the West Virginia State Bar and United States District Court for the Northern District of West Virginia. An Executive Committee of the Advisory Group was appointed to work with reporters to prepare the report and plan consistent with the general direction provided by the Advisory Group.

On June 13, 1991, the reporters presented to the Executive Committee a general concept for the report and plan for review and discussion. Following the initial review of the draft, eight members of the Advisory Group were selected to receive future drafts of the materials. These members were selected to provide a greater diversity of practice experience than was reflected on the Executive Committee. As expanded, the Executive Committee included members of the plaintiff and defense bars, individuals who represented corporations in labor management dispute and individuals who represented

unions, a representative of legal services and attorneys with general practices. The expanded Executive Committee also provided members from all geographic regions of the northern district. The reporters prepared a second discussion draft or outline which was delivered to the expanded Executive Committee on August 5th [hereinafter the Executive Committee]. Again, based upon comments and suggestions received, the reporters prepared a draft report which was circulated to the Executive Committee on the August 30, 1991. On September 12th, 1991, the Executive Committee met for a page by page review of the draft report. Based upon this discussion, the draft report was revised, modified and amended, and submitted to the entire Advisory Group on October 1st, 1991. Members of the Advisory Group were invited to submit comments on the draft report to the Executive Committee by October 21, 1991. On October 29, 1991, the Executive Committee met to discuss the comments it had received and made certain modifications to the report and plan based upon these comments and suggestions. In addition, the Executive Committee concluded that, given the nature of the comments and suggestions, it would not be necessary to resubmit the report to the Advisory Group. Following this meeting, the Executive Committee reviewed the final draft of the report and confirmed that the reporters had made the changes consistent with the decisions of the Executive Committee and then submitted the report and plan to the Chief Judge and the Judges of the United States District Court for the Northern District of West Virginia on behalf of the Advisory Group pursuant to the requirements of the Civil Justice Reform Act of 1990.

In addition to the material described in Part I, Section A, the Advisory Group has relied upon the Annual Report of the Director of the Administrative Offices for United States Court, for 1990 and 1989, a summary of the court's activity in criminal cases prepared by the Clerk of the Court of the United States District Court for Northern District of West Virginia and a monthly summary of cases prepared by the clerk's office. In addition, the Advisory Group studied a report entitled "Settlement Week Review" submitted on May 18, 1990, by Thomas O. Patrick, law clerk of the Chief Judge of the Northern District of West Virginia, and on a report provided by United States Probation Office for the Northern District of West Virginia. Members of the Clerk's office and the Judge's chambers were helpful in responding to inquiries and providing information upon request.

APPENDIX C

PLAN FOR CIVIL JUSTICE DELAY AND EXPENSE REDUCTION

By Appropriate Amendment(s) to the Local Rules for the United States District Court for the Northern District of West Virginia[13], Court Order or Modification of operating procedures, the Court should adopt and implement a plan which encompasses the following features:

I. Differential Case Management of Civil Cases into Three (3) Tracks.

A. Type I civil cases include student loan collection cases, cases seeking recovery of overpayment of veterans' benefits, appeal of Social Security Administration benefit denials, condition-of-confinement cases brought by state prisons, habeas corpus petitions, appeals from bankruptcy court decisions, land condemnation cases, and asbestos product liability cases. For these cases the clerk of court should continue case management consistent with its current procedure and bring cases to the court's attention when there is a motion to rule on or when the case is ready for deposition or other action.

B. Type II Civil Case - The remaining civil cases shall be divided into two tracks.

(1) Standard Case - All remaining Type II civil cases, except those classified as complex cases pursuant to subsection (2), shall be classified as standard

[13] The Reporters believe that the time sequence set forth in recommendation I(B)(1)(b) below in particular would best be achieved by amending the local rules so that practitioners may be advised before filing suit what procedures will govern.

civil cases. The clerk's office shall assume the case management of standard civil cases pursuant to the following guidelines:

(a) The clerk shall notify the parties upon the filing of a complaint or answer that unless the case is classified by the court as complex, the case will be managed as a standard civil case.

(b) Discovery in standard cases shall be pursuant to a local rule patterned after a draft revision of Rule 26 of the Federal Rules of Civil Procedure (hereinafter referred to as Rule 26) and subject to the following time frame:

(1) Within thirty (30) days following service of the answer, the parties shall exchange the required initial disclosure (Rule 26(a))[14].

(2) Except for the required initial disclosure (Rule 26(a)) and the deposition of parties, no discovery shall be permitted in the first 30 days following service of the answer (Rule 26(d)).

(3) Except for expert witnesses, all discovery shall be completed 180 days after service of an answer. Extensions shall be granted by the court only for good cause.

(4) Not later than 150 days after service of the answer, the plaintiff shall disclose its expert testimony to the defendant. Within 45 days of the disclosure of the plaintiff's expert testimony to the defendant,

[14] If an answer is filed simultaneously with a motion to dismiss under Rule 12, it is contemplated that this time periods will be tolled until disposition is made of the motion to dismiss.

the defendant shall disclose its expert testimony to the plaintiff (Rule 26(a)(2)). Discovery of expert witnesses shall be completed within 45 days following the defendant's disclosure of expert testimony to the plaintiff.

(Reporter's Note: The effect of this provision is that all discovery, except discovery of expert witnesses, must be completed 180 days after service of the answer. Since the decision to use experts or the type of experts to use may be dependant upon information obtained during discovery, the rule allows the parties to delay the decision on expert witnesses until late in the discovery period. The plaintiff's disclosure of expert testimony is what triggers the defendant's responsibility to disclose expert testimony. If the plaintiff waits until the 150th day following service of the answer to disclose expert testimony, the maximum time for the discovery of experts would be 240 days after service of the answer.)

(5) One hundred and twenty (120) days after service of an answer, the clerk of the court shall send a questionnaire to the parties to determine the status of discovery, i.e., the discovery completed and the discovery remaining to be complete. Based on the response to these questionnaires, the clerk shall bring to the court's attention those cases in which active judicial intervention may be necessary or appropriate.

(6) For the purpose of this rule, third party plaintiffs and cross plaintiffs shall be considered plaintiffs. Third party defendants and cross defendants shall be considered as defendants.

(2) Complex Civil Case. A case shall be classified complex when it is apparent that it raises issues of such complexity or that the discovery necessary to develop the case is of such a nature or extent that it cannot, even with a good faith effort, be completed in the time period set forth for standard cases. A case will be classified as complex upon the stipulation of all the parties and the approval of the court, upon the court's order on a motion filed by any of the parties, or by the court upon its own motion.

If a case is classified as complex, the court shall set a conference pursuant to Rule 16 of the Federal Rules of Civil Procedure for the purpose of scheduling or sequencing discovery or utilizing such other forms of case management as will assist in reducing cost and/or delay. In complex cases, unless exempted by the court, the required initial disclosure of Rule 26(a) shall be disclosed by the parties at the scheduling conference called by the judge. Except for the required initial disclosure, Rule 26 shall be applicable to complex litigation only to the extent imposed by the court as part of its case management.

II. Motion Practice

Upon receipt by the Clerk of the Court of motions to dismiss filed pursuant to Rule 12(b)(6) or motions for summary judgment filed pursuant to Rule 56 of the Federal Rules

of Civil Procedure or motions relevant to the discovery process, the clerk shall promptly bring said motions to the court's attention.

If such a motion is not ruled upon by the court within thirty (30) days of its service, then the discovery period established for the case shall be tolled to the extent the ruling on said motion exceeds thirty days from the service. The discovery period for the case shall resume upon the entry of an order ruling on the pending motion.

III. Increased Utilization of Alternative Dispute Resolution

"Settlement Week Conferences" should be scheduled at regular intervals and not less than three times in a calendar year.

All civil cases in which discovery is completed, except for Type I civil cases, and those cases exempted pursuant to the provisions hereof, will be referred to a "Settlement Week Conference." A case will be exempted from "Settlement Week Conferences" if the parties, with the consent of the court, agreed to some other form of alternative dispute resolution, such as arbitration, summary jury trial, mini-trial, or mediation with a magistrate judge or settlement judge. A case will also be exempt if the court finds there would be no beneficial purposes served by requiring the case to be submitted to a "Settlement Week Conference."

At any time after service of an answer, the parties may request that the case be referred for early neutral evaluation, by an evaluator agreed upon by the parties, or to some other agreed upon method for alternative dispute resolution. For the purpose of this provision, contract negotiations of a labor contract are considered an alternative form of

dispute resolution. If the request is granted by the court, the running of the discovery time periods established for the case shall be tolled until the early neutral evaluation is completed, or it is reported to the court that the alternate dispute resolution has been unsuccessful, or the court determines that one or more of the parties are no longer participating in the alternative process in good faith.

"Settlement Week Conferences" should be conducted pursuant to the rules and procedures developed for the "Settlement Weeks" currently used in this district.

For those cases exempted from a "Settlement Week Conference" because the court has determined there would be no beneficial purpose served by such a referral, and for those cases not settled as a request of the "Settlement Week Conference," the court should set for each such case a date for the submission of a pretrial order/or conference and a "firm" date for trial.

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures; Methods to Discover Additional Matter.

(1) Initial Disclosures. Except in actions exempted by these rules or when otherwise ordered, each party shall, without awaiting a discovery request, provide to every other party:

(A) the name and, if known, the address and telephone number of each individual reasonably likely to have information that bears significantly on any claim or defense, identifying the subjects of the information;

(B) a copy of or a description by category and location of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are likely to bear significantly on any claim or defense;

(C) the computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Unless the court otherwise directs or the parties otherwise stipulate with the court's approval, these disclosures shall be made (i) by a plaintiff within 30 days after service of an answer to its complaint; (ii) by a defendant within 30 days after serving its answer to the complaint; and, in any event, (iii) by any party that has appeared in the case within 30 days after receiving from another party a written demand for accelerated disclosure accompanied by the demanding party's disclosures. A party is not excused from disclosure because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or, except with respect to the obligations under clause (iii), because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required in paragraph (1), each party shall disclose to every other party any evidence that the party may present at trial under Rules 702, 703, or 705 of the Federal Rules of Evidence. This disclosure shall be in the form of a written report prepared and signed by the witness which includes a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information relied upon in forming such opinions; any exhibits to be used as a summary of or support for such opinions; the qualifications of the witness; and a listing of any other cases in which the witness has testified as an expert at trial or in deposition within the preceding four years.

(B) Unless the court designates a different time, these disclosures shall be made (i) by plaintiff within 150 days after the service of an answer to its complaint, and (ii) by a defendant within 45 days after disclosure by the plaintiff[15].

(1) In lieu of providing a written report, a party may disclose the required information through a deposition of the witness under Rule 30 commenced at least within the time periods that disclosures are required in the preceding paragraph. Other parties shall have the right to defer their cross-examination of the deponent for a period of as many as 30 days[16].

(C) By order in the case, the court may alter the type or form of disclosures to be made with respect to particular experts or categories of experts, such as treating physicians.

(3) Pretrial Disclosures. In addition to the disclosures required in the preceding paragraphs, each party shall provide to every other party the following information regarding the evidence that the disclosing party may present at trial other than solely for impeachment purposes:

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[15] There was disagreement within the Advisory Group and in the comments received concerning this sequencing of expert disclosure. The Group recommends that this issue be reviewed during the pendency of the experimental period.

[16] It is the intent of the drafters that the costs of producing the expert for this deposition will be borne by the proponent of the expert's testimony. If the opponent elects to exercise the option of deferring cross-examination, then the opponent will be responsible for bearing the costs of producing the expert on that subsequent occasion. Any other depositions of the expert will be governed by the normal rules of cost allocation.

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken by stenographic means, a transcript of the pertinent portions of such deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures shall be made at least 30 days before the end of the 180 day discovery period. Within 14 days thereafter, unless a different time is specified by the court, other parties shall serve and file (i) any objections that deposition testimony designated under subparagraph (B) cannot be used under Rule 32(a) and (ii) any objection to the admissibility of the materials identified under subparagraph (C). Objections not so made, other than under Rules 402-03 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(4) Form of Disclosures; Filing. The disclosures required by the preceding paragraphs shall be made in writing and signed by the party or counsel in compliance with subdivision (g)(1). The disclosures shall be served as provided by Rule 5 and, unless otherwise ordered, promptly filed with the court.

(5) Methods to Discover Additional Matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories: production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action,

whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations. Limitations in these rules on the number of interrogatories may be altered by the court for particular types or classifications of cases. The frequency or extent of use of the discovery methods permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery to the resolution of the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision
(c).
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(4) Trial Preparation: Experts.

(A) A party may by deposition examine any person who has been identified as an expert whose opinions may be presented at trial.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under

subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certificate that the movant in good faith has conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery. Except for depositions of a party or with leave of court or upon agreement of the parties, a party may not seek discovery from any source before making the disclosures under subdivision (a)(1) and may not seek discovery from another party before the date such disclosures have been made by, or are due from, such other party. Unless the court upon motion, for the convenience of parties and

witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Disclosures and Responses. A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired as follows:

(1) A party is under a duty seasonably to supplement its disclosures under subdivision (a) if the party learns that the information disclosed is not complete and correct. With respect to expert testimony that the party expects to offer at trial, the duty extends both to information contained in reports under Rule 26(a)(2)(A) and to information provided through a deposition of an expert and any additions or other changes to such information shall be disclosed by the time the party's disclosures under Rule 26(a)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is not complete and correct.

(3) The duty to supplement responses may be enforced by order of the court, or imposed by agreement of the parties, or at any time before trial through new requests for supplementation of prior responses.

(f) [Abrogated.]

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

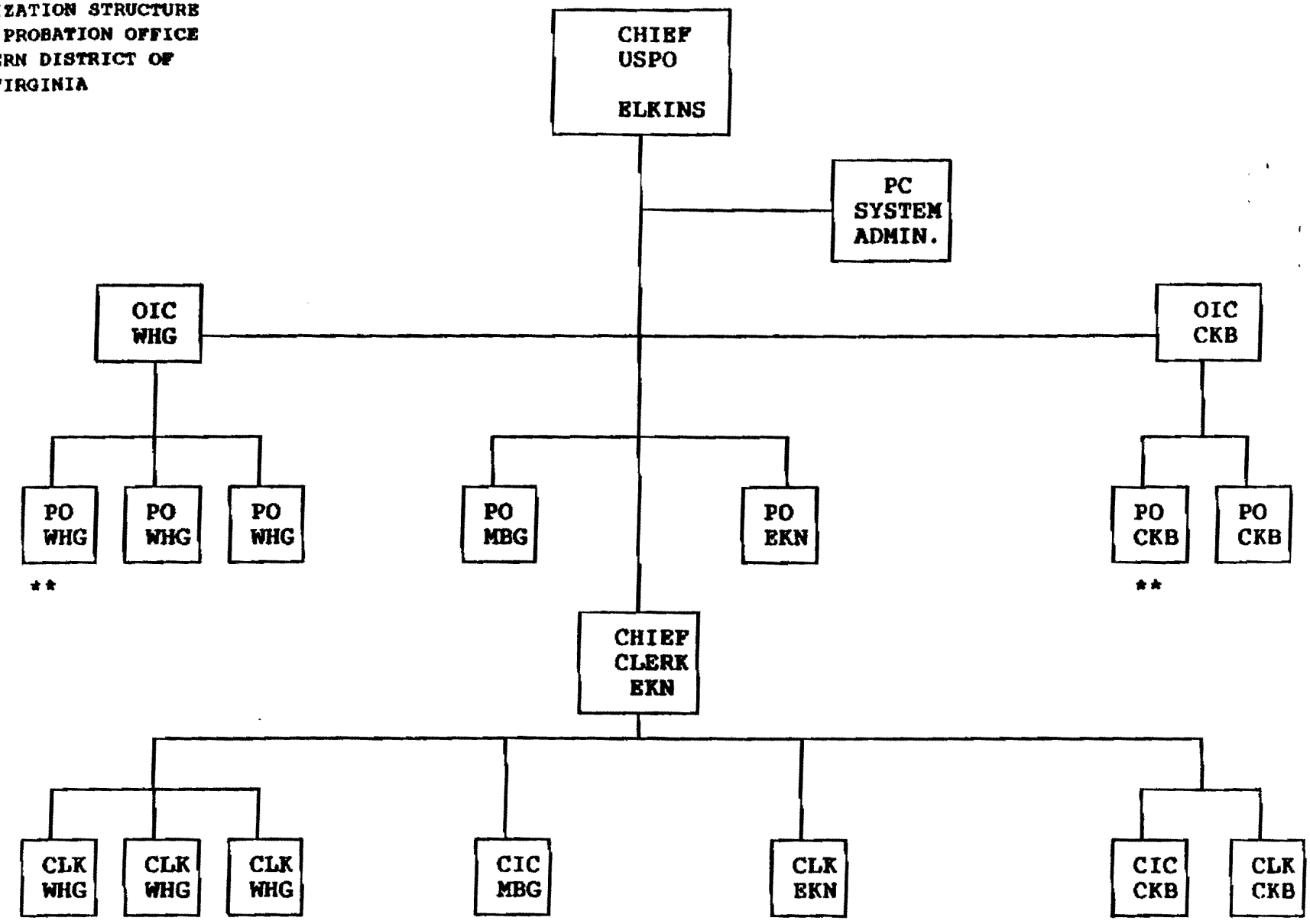
(1) Every disclosure made pursuant to subdivision (a) by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry the disclosure is complete and correct as of time it is made.

(2) Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party

who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

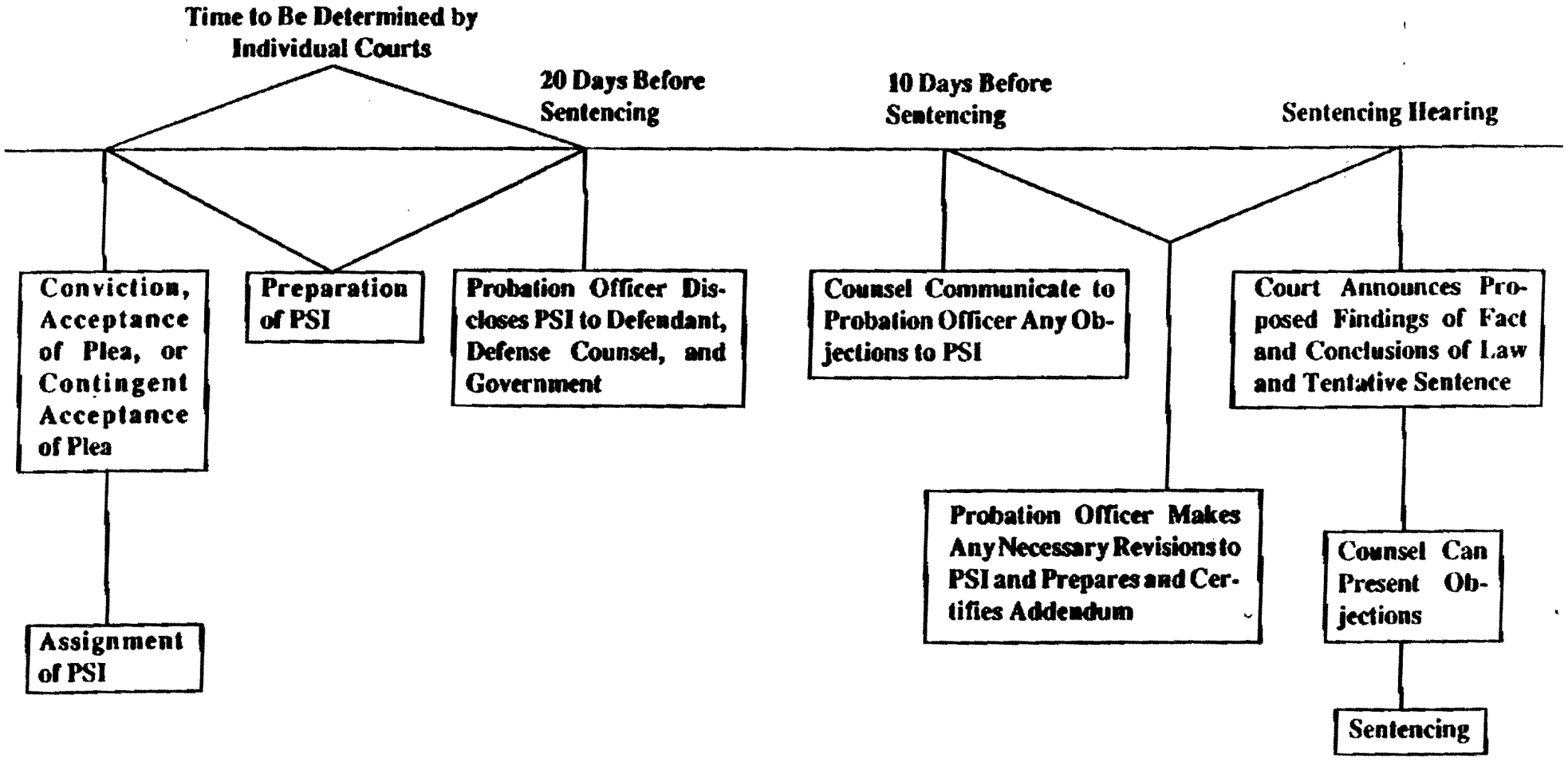
GANIZATION STRUCTURE
S. PROBATION OFFICE
RTHERN DISTRICT OF
ST VIRGINIA



FFICE ABBREVIATIONS:
* - Grade 13's
KN- Elkins (Headquarters)
KB- Clarksburg
BG- Martinsburg
HG- Wheeling

August 27, 1991

Model Local Rule



TWELVE MONTH PERIOD ENDING JUNE

CRIMINAL FILINGS IN THE NORTHERN DISTRICT OF WEST VIRGINIA

1987		1988		1989		1990		1991	
Indictments	People	Indictments	People	Indictments	People	Indictments	People	Indictments	People
179	236	193	245	248	318	244	341	163	215

DEFENDANTS UNDER SUPERVISION IN THE NORTHERN DISTRICT OF WEST VIRGINIA

	CLARKSBURG	ELKINS	MARTINSBURG	WHEELING	TOTAL	AVERAGE PER OFFICER	NUMBER OF OFFICERS
1987	26	124	---	108	258	86	3
1988	76	129	---	103	308	103	3
1989	112	79	42	97	330	66	5
1990	131	90	82	146	449	64	7
1991	202	42	81	171	496	55	9

TWELVE MONTH PERIOD ENDING JUNE

REPORTS COMPLETED IN THE NORTHERN DISTRICT OF WEST VIRGINIA

1987	CLARKSBURG	ELKINS	MARTINSBURG	WHEELING	TOTAL
PRESENTENCE	41	84	0	72	197
COLLATERAL	9	27	0	19	55
OTHER	1	73	0	71	145
TOTAL	51	184	0	162	397

1988					
PRESENTENCE	50	41	0	61	152
COLLATERAL	19	19	0	22	60
OTHER	24	82	0	84	190
TOTAL	93	142	0	167	402

1989					
PRESENTENCE	46	74	0	60	180
COLLATERAL	28	21	0	20	69
OTHER	29	48	4	62	144
TOTAL	103	144	4	142	393

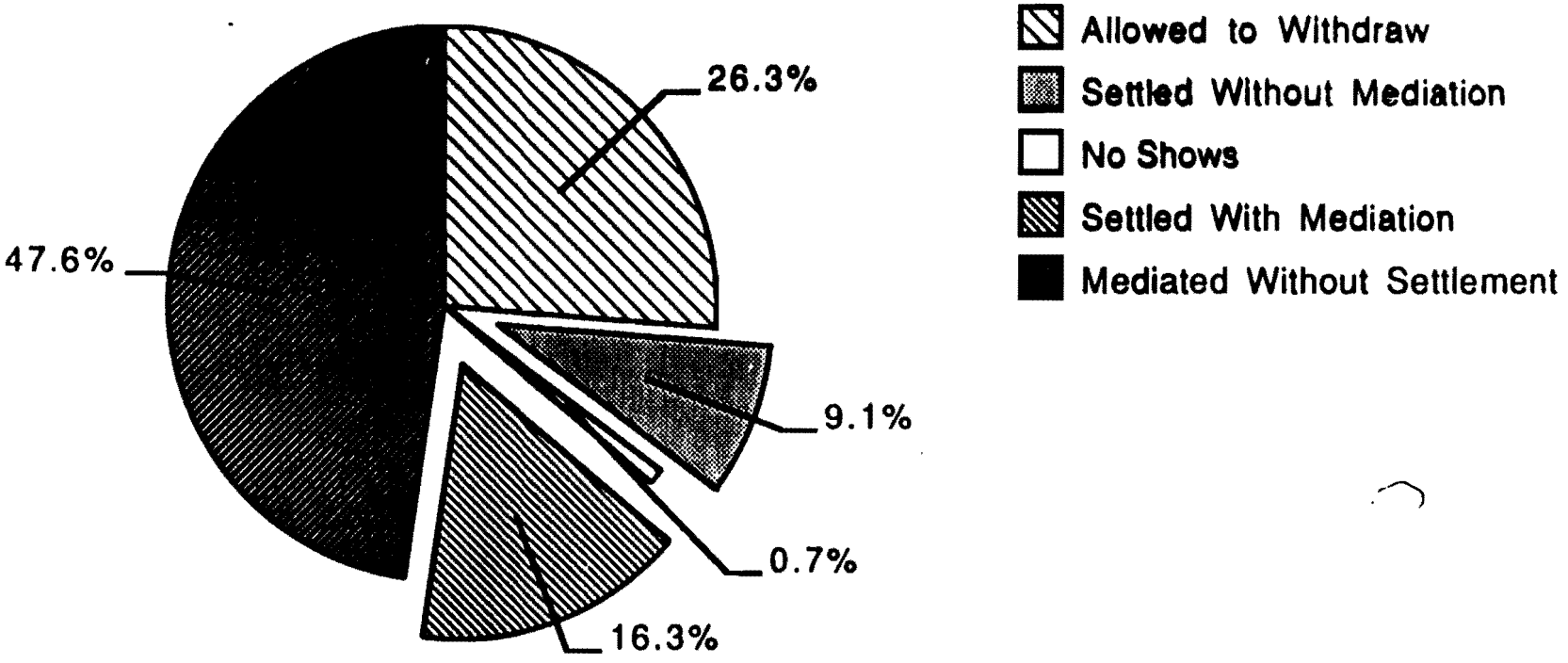
TWELVE MONTH PERIOD ENDING JUNE

REPORTS COMPLETED IN THE NORTHERN DISTRICT OF WEST VIRGINIA

1990	CLARKSBURG	ELKINS	MARTINSBURG	WHEELING	TOTAL
PRESENTENCE	47	67	36	91	241
COLLATERAL	25	32	11	23	91
OTHER	39	85	26	54	204
TOTAL	111	184	73	168	536
1991					
PRESENTENCE	64	40	33	88	225
COLLATERAL	32	35	14	20	101
OTHER	76	94	40	128	338
TOTAL	172	169	87	236	664

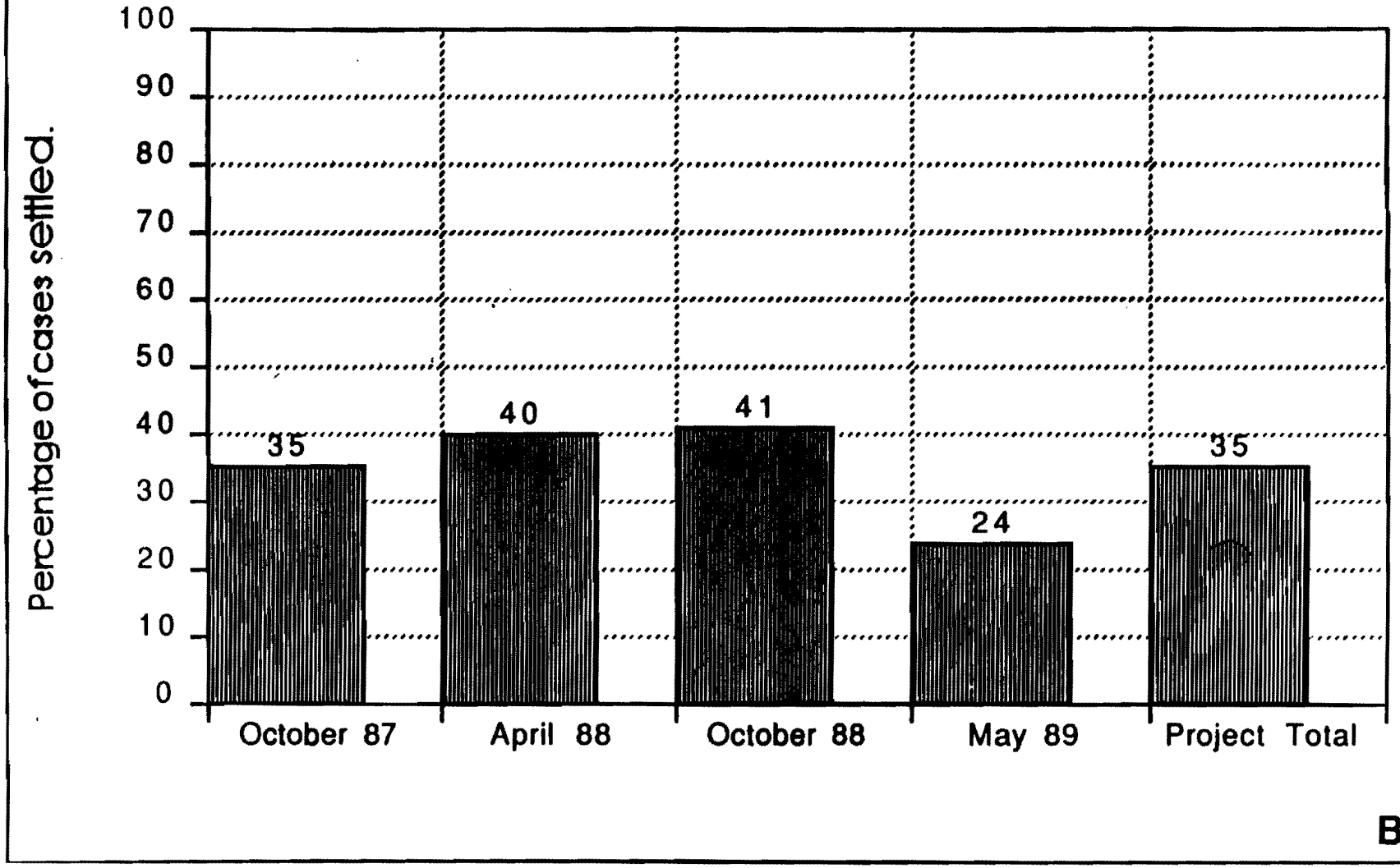
Settlement Week Pilot Project

(552 Cases Initially Included)



A

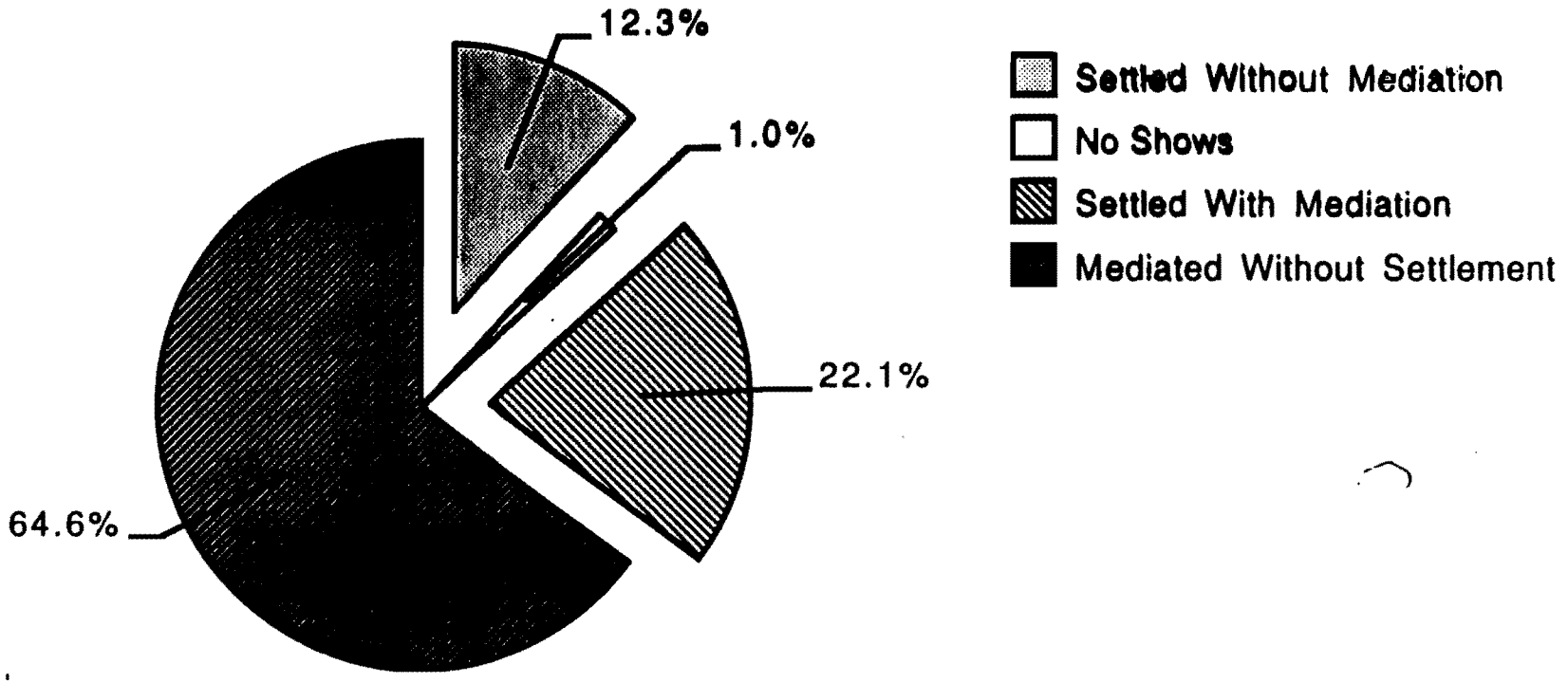
Settlement Week Project Summary



B

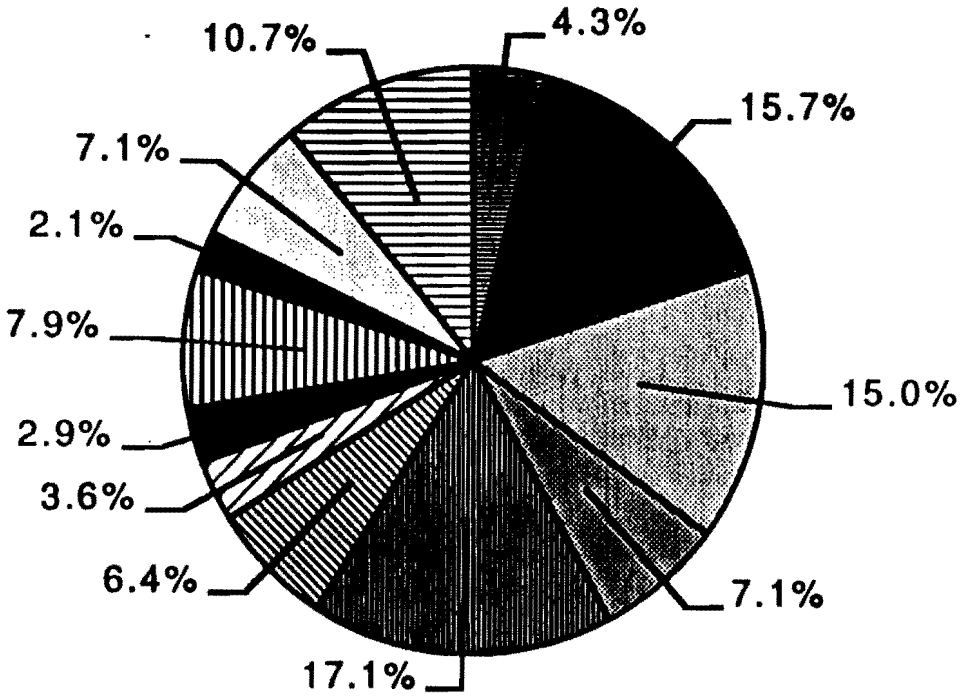
Settlement Week Pilot Project

(407 Cases Maintained)



C

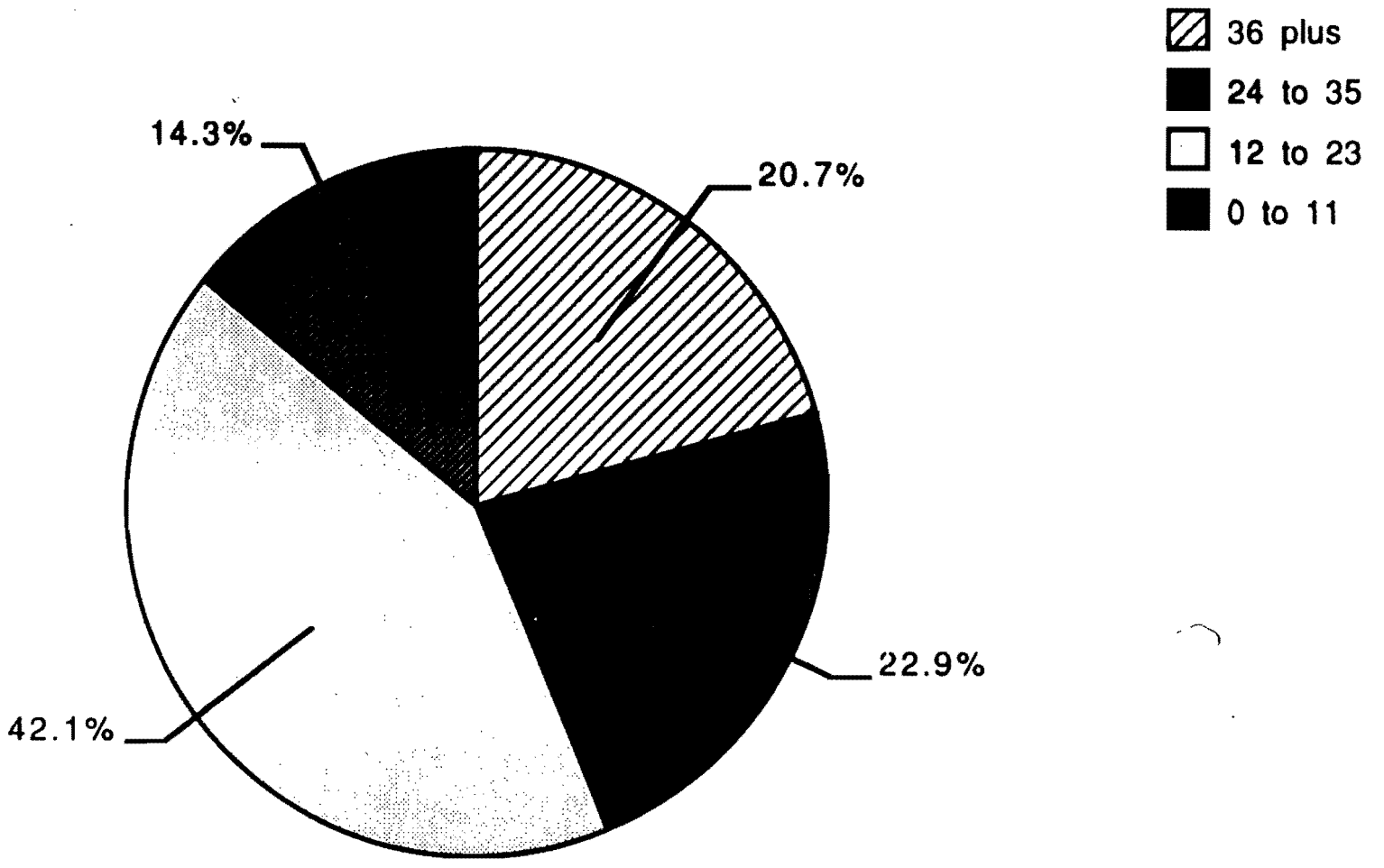
Nature of Suit



- Insurance Contract
- Other Contract
- Motor Vehicle Accident
- Product Liability
- Other Personal Injury
- Other Torts
- Intellectual Property
- Education
- Employment
- Energy
- Civil Rights
- Other

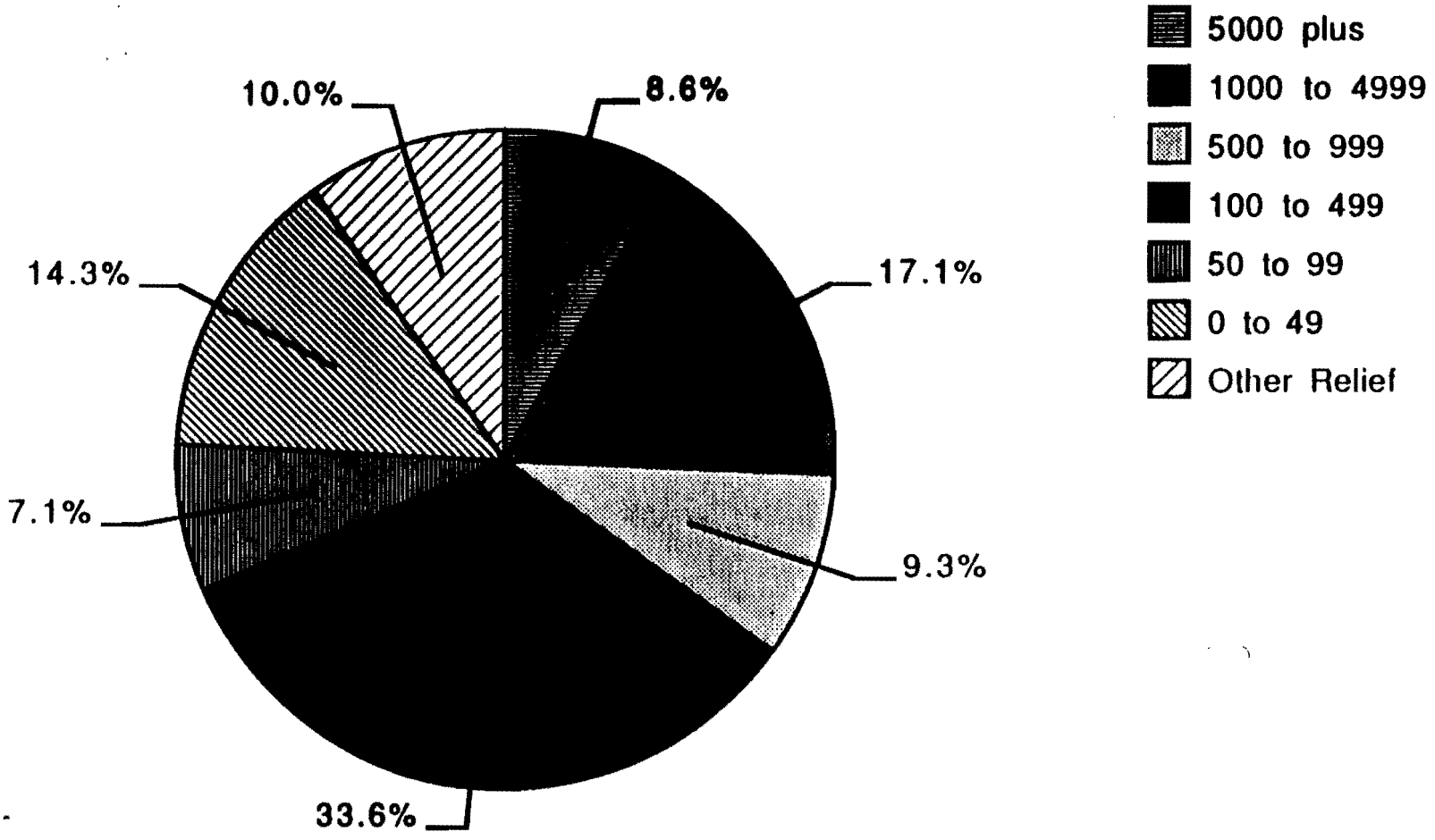
D

Age of Suit (in months)



E

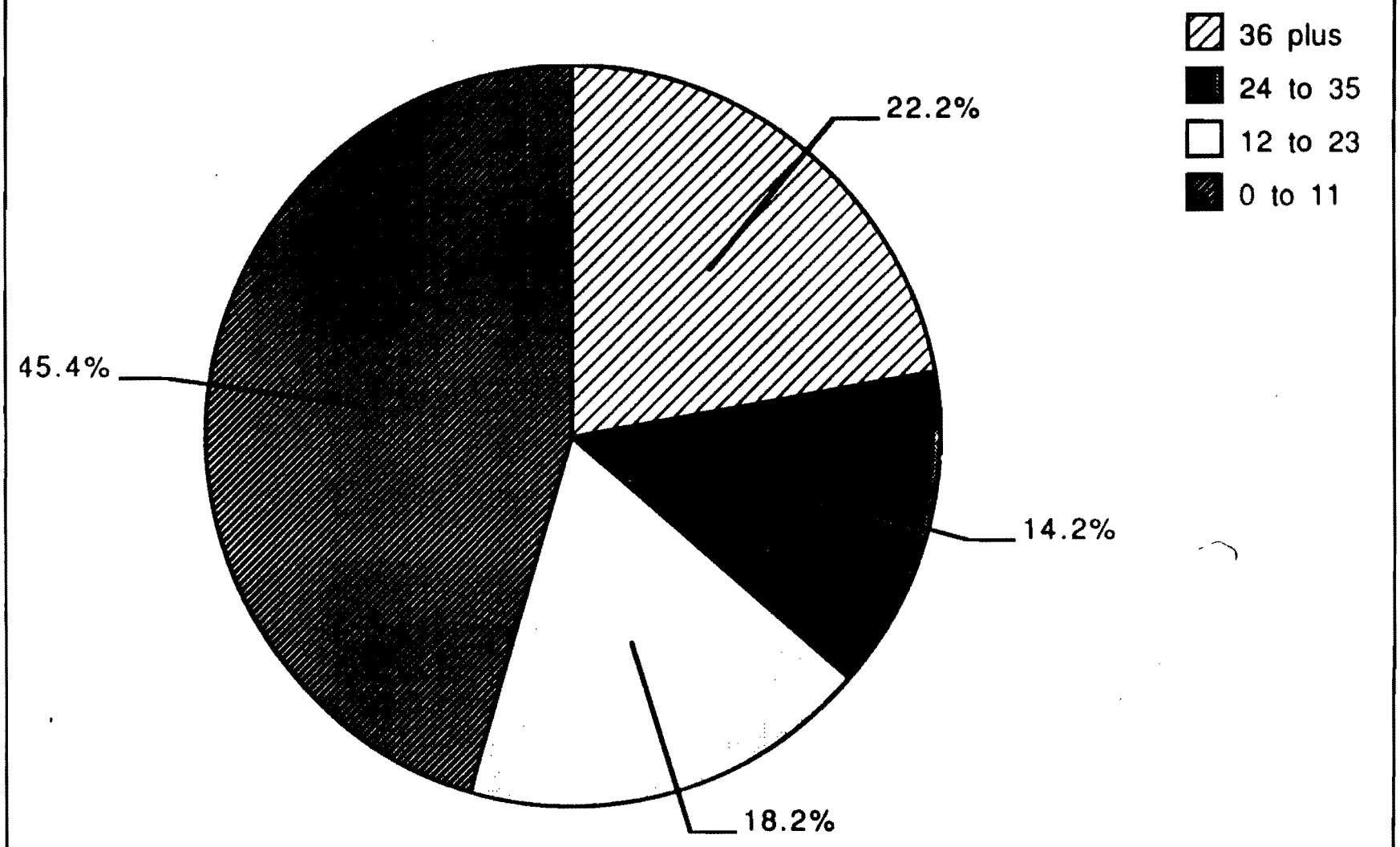
Amount sought in the Complaint (x 1000)



G

Age of Suit (in months)

District Wide as of June 30, 1988



F