REPORT OF THE ADVISORY GROUP

AND PLAN FOR IMPLEMENTATION OF THE

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

AS ADOPTED BY THE

SOUTHERN 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 SOUTHERN DISTRICT OF WEST VIRGINIA PURSUANT TO THE CIVIL JUSTICE REFORM ACT OF 1990

INTRODUCTION

On March 1, 1991, in compliance with the Civil Justice Reform Act of 1990, 28 U. S. C. § 472 (a), the Honorable Charles H. Haden II, Chief Judge of the United States District Court for the Southern District of West Virginia, appointed a Civil Justice Expense and Delay Reduction Advisory Group for the Southern District of West Virginia. The Advisory Group was charged with recommending a plan to facilitate deliberate adjudication of civil cases on the merits, to monitor discovery, to improve litigation management, and to ensure just, speedy, and inexpensive resolution of civil disputes.

Having met, organized into subcommittees, studied the various aspects of the operation of the United States District Court for the Southern District of West Virginia and considered and adopted a plan as directed, the members of the Advisory Group respectfully submit the following plan.

I. AN ASSESSMENT MATTERS REFERRED TO IN 28 U. S. C. § 472 (c) (1). 28 U. S. C. § 472 (b) (1)

A. The condition of the Civil and Criminal Dockets of the Court. 28 U. S. C. § 472 (c) (1) (A)

The United States District Court for the Southern District of West Virginia is not troubled by delay in civil litigation. During the three-year period from January 1, 1988 to December 31, 1990, over 4/5ths of all civil cases filed in the District were closed within 18 months of filing. The breakdown by "points of holding court" is as follows:

Points of Holding Court	% of Civil Cases Closed within 18 months of filing
Beckley	83.87%
Bluefield	84.09%
Charleston	81.68%
Huntington	82.56%
Parkersburg	86.70%

Indeed, the caseload management statistics in the United States District Court for the Southern District of West Virginia are among the best (perhaps the best) in the Federal Judiciary. As of June 30, 1991, for example, the three year old or older pending civil caseload in the District was ONE, which represented 15/200 of one percent of the

District's pending caseload.

Jury utilization and the costs attendant thereto have also received special attention in this District, with the result that, for the reporting period ending June 30, 1991, the District had only 7.7% of jurors not selected, serving or challenged on the first day of jury service, making this District the second best jury utilization court in the country.

B. Trends in case filings and in the demands being placed on the Court's resources. 28 U. S. C. § 472 (c) (1) (B)

1. Increase in Caseload

A paramount demand identified was the increased number of criminal cases and criminal defendants being processed through the federal courts on a district-wide basis as a result of increasing the staff of the United States Attorney's office. With more Assistant United States Attorneys focusing their efforts on drug and political corruption cases, there have been more defendants filed against, more cases filed, and a

corresponding increase in the number of trials. With more court time and resources spent responding to the increased criminal caseload, the resolution of civil cases has slowed within all divisions of this District.

2. Federal Sentencing Guidelines.

The Federal Sentencing Guidelines, promulgated by the Congress through the Sentencing Commission, which became effective in 1987, have caused the time required by judges and their entire staffs, including Clerk's office personnel, to increase dramatically. Increased criminal case loads combined with the additional procedures required by the Sentencing Guidelines has resulted in more in-court time spent by judges and their staffs on criminal cases.

While the Sentencing Guidelines have consumed more and more judicial time and resources, and the United States Attorney's staff has increased, there has been no corresponding increase in the number of judicial officers. There has been one new judgeship created within the District as a result of the heavy criminal caseload, but there has been no increase in the number of law clerks, no increase in the Clerk's office staff,

nor do all divisions have a full-time Magistrate Judge. The problems caused by the Sentencing Guidelines will be discussed in more detail under the "Recommendations" section of this Plan.

3. Increasing number of cases brought under the Court's diversity jurisdiction.

The Advisory Group notes the concern of some of the district judges about the increased use by attorneys and litigants of diversity jurisdiction to file cases in federal court that might otherwise be filed in state court, in spite of the recent increase in the jurisdictional amount from $10,000 to $50,000.

4. Increasing federalization of the Law

There is an increasing trend toward federalizing areas of the law which traditionally have been left to the states. In particular, the Advisory Group can identify the new Federal Debt Collections Act and the ERISA laws wherein Congress has federalized employee pension benefit and insurance laws. There has been an increasing number of cases under the ERISA Act filed within the District. The issues arising in these cases are complex and require much judicial expertise and time. As the number of cases

and their complexity increases, the roles of the judges' law clerks increase as well.

5. Increasing Complexity of Cases.

As the complexity of the civil docket continues to increase there is less judicial time to give thoughtful reflection on the issues raised in those cases. Mass liability tort actions and other complicated cases such as asbestos litigation, hearing loss cases, and other toxic tort actions represent a developing trend which has resulted in further demands being placed on the Court's resources.

C. Principal causes of cost and delay in civil litigation.

28 U. S. C. § (c) (1) (C).

The principal causes of cost and delay in civil litigation are summed up under the recommendations in Section III of this plan.

D. The extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts. 28 U. S. C. § (c) (1) (D)

This topic is covered in recommendation I in Section III of this plan.

II. THE BASIS OF THE ADVISORY GROUP'S RECOMMENDATION THAT THE COURT DEVELOP A PLAN RATHER THAN SELECT A MODEL PLAN. 28 U. S. C. § 472 (c) (1) (D)

A Model Plan would obviously be designed for a judicial district which faced significant problems with delay in its civil caseload, a situation which statistics reveal is the norm rather than the exception. Thus, considering the unique state of the civil docket in the Southern District of West Virginia, the Advisory Group felt that a plan specifically designed for the unique circumstances existing in this District would be most desirable.

Moreover, it will likely be quite some time before a Model Plan will be available to the Court and the Advisory Group believed that the judges of this District would want to move ahead as expeditiously as possible with the important suggestions that were developed.

III. RECOMMENDED MEASURES, RULES AND PROGRAMS. 28 U. S. C. § 472 (b) (3)

A. The United States Magistrate Judges should become completely and integrally involved in civil proceedings from their initial stages.

United States Magistrate Judges are viewed by the Court, Court staff, and the bar as being eminently qualified to perform many of the roles which are recommended in this plan. The Advisory Group believes that many of the delays identified in its study are matters particularly suited for disposition by Magistrate Judges. The primary example is the delay and cost associated with motions not being rules upon in a timely manner. Additionally, the simplified procedures and use of the Magistrate Judges outlined herein should reduce delay and expense in civil proceedings.

No later than the pre-trial conference, parties should be requested and encouraged to agree in writing to a referral to a Magistrate Judge for trial in the event a last-minute continuance by a District Judge is necessitated. This recommendation requires a corresponding commitment by the Court that Magistrate Judges will be made available on short notice.

The Court should enter Standing Orders or form orders referring certain types of cases (e.g., prisoner petition cases, Social Security cases, and the like) directly to a Magistrate Judge for findings and recommendations. Judges will impose their own time limits on referral motions, and will monitor those time limits. All time limits established shall conform to the reporting guidelines established by the Civil Justice Reform Act.

Implementation of this recommendation will fulfill the objectives of Principles and Guidelines Nos. 1, 2, 3, 5 and 6 of 28 U. S. C. 473 § (a).

B. TIME FRAME ORDERS

Standard Time Frame Orders shall be entered in cases that require a trial before a jury or the Court. All cases should be analyzed by a judicial officer to determine the appropriate schedule for the Time Frame Orders. In complex cases or at the request of counsel, a conference will be held to set time frames.

When setting time frames, each case is to be reviewed and placed into one of three classes:

Class A - Set for trial 6 months from filing

Class B - Set for trial 9 months from filing

Class C - Open end period as to date. Trial date to be scheduled after conference with counsel.

The purpose of a time frame conference, which may be held by telephone, shall be to establish the following:

(1) To determine the complexity of the case, and if, necessary to designate it as a complex or mass tort litigation-type case.

(2) To establish realistic discovery and pretrial time frame deadlines.

(3) To establish summary judgment or dismissal motions deadlines.

(4) To determine if the parties are willing to proceed through the trial phase with the Magistrate Judge sitting at all levels of the litigation, including final settlement conference and trial.

(5) To evaluate the possibility of early settlement and the setting

of alternative dispute resolution mechanisms as early as possible.

The Advisory Group has determined that Time Frame Orders have often resulted in delays because of establishing unrealistically short deadlines in complex or mass tort litigation-type cases and because counsel have not assisted in the establishing of these deadlines. This recommendation also takes into account the fact that certain complex or mass tort litigation may be assigned to one particular District Judge and subject to very case-specific procedures to address that type of litigation. The Advisory Group also believes that by establishing earlier motion for summary judgment filing dates, including all other dispositive motions, and the implementation of early dispute resolution procedures, delays will be reduced as well as costs.

The summary judgment motion filing date should not predate the discovery cut-off date.

The Advisory Group also recommends adoption of a new local rule establishing a procedure for Judges to determine whether a case is so complex or likely to be so time

consuming that it reasonably cannot be expected to be concluded within 12 months.

The District Judge shall refer to the Magistrate Judge such matters involved in complex litigation as the District Judge in his or her discretion determines will promote the efficient disposition of such case on the court's docket.

Implementationon of this recommendation will fulfill the objectives of principles and guidelines Nos. 1, 2, 3 and 6 of 28 U. S. C. § 473 (a).

C. DISCOVERY

The local rules should be amended to provide that all discovery matters be assigned to the Magistrate Judges for resolution unless otherwise ordered by the District Judge assigned to the case.

Consistent with the Advisory Group's recommendation that Magistrate Judges should become completely and integrally involved in all civil proceedings from their initial stages, the Advisory Group believes Magistrate Judges must become involved in all discovery matters as early as possible with regard to motions to compel, disputes over whether discovery should or should not be had, and similar matters in order to avoid

delay. At the present time avoidable delays are occurring and expenses are being incurred because lawyers cannot get simple discovery matters resolved which must be timely resolved in order for a case to progress efficiently.

The Advisory Group has identified as a major source of delay throughout the Southern District the resolution of simple discovery disputes which are not being timely ruled upon because Judges do not have enough time to promptly dispose of these issues. An informal dispute resolution system should be implemented which will permit the resolution of discovery disputes promptly and efficiently, perhaps triggered by a single letter or phone call to the Magistrate Judge. Because many discovery disputes require nothing more than the intervention of an objective voice, an informal conference or conference call with the Court's law clerk or Magistrate Judge may resolve the problem. The use of Magistrate Judges in ruling on all discovery matters will insure that delays do not occur and that litigation will proceed within the Time Frame Order previously established by the Magistrate Judge.

Implementation of this recommendation will fulfill the objectives of Principles and

Guidelines No. 6 of 28 U. S. C. § 473 (a).

D. DISPOSITIVE AND NON-DISPOSITIVE MOTIONS

The local rules should be amended to provide that all non-dispositive motions shall be referred to the Magistrate Judge unless otherwise ordered by the District Judge assigned the case. Dispositive motions may be referred to a Magistrate Judge upon the individual determination of the District Judge. Monitoring of referred motions shall be consistent with guidelines set forth in Section III, paragraph A.

The Magistrate Judge should file recommended decisions in cases in which he or she was not designated to handle through ultimate disposition and should file final decisions in all cases over which he or she has ultimate jurisdiction and authority. When recommended decisions are filed by Judges, Local Rule 2.03 should be amended to provide that the recommended decision shall be adopted, rejected or modified by the District Judge assigned to the case and a final order entered on the recommended decision not less than thirty days prior to the scheduled trial of the civil action. However, the Advisory Group believes it is imperative that the amendment to the local

rules must provide that a final order must be entered in respect to all pending pretrial motions except motions in limine at least thirty days prior to trial.

Motions to dismiss shall be given priority status. Counsel should brief the motion adequately. To receive priority status it should not be buried within a pleading or within other motions; it must be designated separately and prominently as a motion to dismiss when filed within or among other pleadings. If a motion to dismiss is or may be suit-resolving or claim-narrowing, prompt consideration of the motion is the only way to limit the otherwise unnecessary expenditure of the parties' time and resources.

If significant motions are not ruled upon well before trial, substantial costs can be incurred because of the multiple scheduling problems, use of attorney time, and costs to litigants in pretrial preparation.

Implementation of this recommendation will fulfill the objectives of Principles and Guidelines No. 2 of 28 U. S. C. § 473 (a).

E. ADDITIONAL LAW CLERK SUPPORT

Because of the new duties to be placed upon Magistrate Judges, the Advisory

Group recommends that one additional law clerk be hired, to be located in Charleston, and to be assigned by the Chief Judge to ease the Magistrate Judge workload.

The Advisory Group believes that delays will occur less frequently with the use of this additional law clerk by insuring that Magistrate Judges have adequate support to deal with expanded responsibilities. Additional law clerks should help prevent delays in addressing Social Security and prisoner writ cases.

F. ELIMINATION OF FILING SUPPORTING MEMORANDA ON SPECIFIC MOTIONS

Local Rule 2.03 should be amended to eliminate the requirement of the filing of supporting memoranda on all routine non-dispositive motions[1] and motions to compel where the opposing party has ignored the interrogatory or request. The amendment also should limit briefs or memoranda supporting any motion to no more than twenty pages.

Such a local rule must be qualified by permitting memoranda to exceed twenty pages with prior approval of the District Judge or Magistrate Judge, with the

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[1] For example, motions for enlargements or extensions of time under Rule 6, motions to amend clerical errors in pleadings, and motions for sanctions filed under Rules 37 and 56.

understanding that such approval may be obtained by telephone conference or informal letter and that such leave would be granted liberally based upon the complexity of the case or issue involved. Further, Local Rule 2.03 should be changed to provide all non-dispositive motions be accompanied by a proposed order granting the relief requested.

These rule changes will assist in reducing cost and delay by limiting the amount of repetitive, inconsequential memoranda required to dispose of simple matters and by assisting law clerks in drafting orders on simple matters expeditiously.

G. MAINTAINING CIVIL TRIAL SCHEDULE

When a District Judge who has scheduled more than one case to commence trial on the same day becomes aware that two scheduled cases will go to trial on that particular day, the Judge shall attempt to get parties to other civil cases scheduled for that day to consent to a trial before a Magistrate Judge. If such agreement is not reached, the assigned Judge must attempt to find another District Judge who is willing to try the other scheduled cases.

The Advisory Group believes implementation of this recommendation will result

in major cost savings to litigants since the cost of securing expert witnesses, medical witnesses, trial witnesses, and the travel involved therewith may be the single most expensive aspect of litigation today. This procedure has been utilized by two Judges in the District for some time now and has proved highly successful. By getting the trial of a case commenced on the date it was scheduled an enormous amount of wasted time and costs incurred because of these delays will be kept to a minimum.

H. AUTOMATION OF THE COURT SYSTEM

The United States District Court for Southern West Virginia should develop its computer resources and computer management tools as expeditiously as possible.

The following are specific, albeit not very scientific, recommendations which District Judges, Magistrate Judges, law clerks, and Clerks agree would be helpful:

(1) Access to Docket Sheets

A computer program must be established which permits access to docket sheets by all District Judges, Magistrate Judges, law clerks and Clerks' office personnel within the District. The docket sheets must be available, although on a limited-access basis, to

all Court personnel and should also be available on a limited-access basis to lawyers. The program should be written with special passwords and/or codes so that only Clerk's office personnel may access the docket sheets for the purpose of editing or adding thereto. It is additionally recommended that the most recent entry on the docket sheets either be in a special block color or, if monochrome screens are used, such entries should be brighter than other typing on the screen.

(2) Judge Docket and Case Identification

Docket sheets should have designations as to which District Judge and Magistrate Judge is in charge of the case so that Judges may search only their docket sheets and permit review of only docket sheets which have recent (5 or 10 days) docket entries on them.

(3) Docket Scheduling and Calendaring System

A docket scheduling and calendaring system must be established for all Court personnel and made available to all Court personnel so that District Judges, Magistrate Judges, law clerks, and the Clerk's office may at any time determine who is where and

what they are doing and what they need to be doing in the future. This software should also have the capability of being accessed for editing purposes by the use of special passwords or codes so that changes can only be made by the appropriate personnel, i.e., a Judge or secretary could only change the Judge's calendar and the Clerk's office could only change the master docket of the court.

(4) Indexing Court Opinions

All written opinions designated by the Judge shall be indexed by the Court librarian and entered into a computer system so as to be accessible to all Court personnel, including the bar.

(5) Additional Automation Personnel

All of the above recommendations can only be accomplished if the Clerk's office obtains funding for and hires a competent full-time computer systems person to supervise software maintenance, networking, back-up, and perhaps most importantly, training and updating of all Court personnel.

The Advisory Group strongly believes that these recommendations must be

followed in order to reduce delays. To be able to implement many of the recommendations in this plan, District Judges and Magistrate Judges should have a calendaring and docketing system that permits each of them to take a realistic look at what everyone in the system is doing on a day-to-day and week-to-week basis.

While these recommendations involve significant expenditures for computer hardware, software, and personnel, they should yield savings in time spent by personnel in "chasing docket sheets," mailing paper all over the District, and trying to figure where everyone is at any given time.

It should be noted that the Southern District will be going on-line January 1, 1992, with an automated case management system (Civil) which will begin to resolve the computer problems in the District. The system will replace the manual paper system and terminals will be available to all court personnel for review of the status and recent activities of civil actions for all divisions of the Court.

I. SENTENCING GUIDELINES

The Sentencing Guidelines promulgated by Congress through the Sentencing

Commission, which became effective in 1987, have had a significant negative impact on the civil docket in the Southern District of West Virginia and should be repealed or significantly amended.[2]

The Sentencing Guidelines constitute the most significant piece of legislation to have an impact on the civil docket. As can be seen from the following chart, there has been an increase in the number of cases tried and in the number of defendants tried over the past six years.

Fiscal Year	1986	1987	1988	1989	1990	1991
Case File Defendant Count	337	324	502	448	523	506
Case File Count	204	215	287	253	378	394
Tried Defendant Count	31	20	15	55	56	50
Tried Case Count	18	18	14	35	45	38

These increases are directly attributable to the Sentencing Guidelines and an increase in the number of cases brought to the United States Attorney's expanding staff.

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[2] Michael W. Carey, United States Attorney and a member of the Advisory Group, strongly opposes any amendment or repeal of the Sentencing Guidelines. Charles McElwee, another member of the Advisory Group, also opposes the recommendation, not because he has formulated that view on the merits of the issue, but because he has not heard both sides of the issue presented.

With the advent of minimum mandatory sentences, there is no longer the count and sentence bargaining that used to exist in the Federal criminal system. Therefore, in many instances, defendants and their counsel believe it in their best interest to go to trial as opposed to reaching a plea agreement facing a minimum mandatory sentence.

At the sentencing stage, Judges are often unable to be judges exercising discretion but are directed merely to apply numbers from a chart in disposing of criminal defendants.

The Advisory Group also finds that, while not revealed in any statistical evidence, per se, the Sentencing Guidelines have resulted in a large consumption of judicial time for criminal matters at the expense of the civil docket. There is an increased importance placed upon criminal motion practice and sentencing hearings by the defense attorneys where issues such as relevant criminal conduct and acceptance of responsibility issues take a much greater percentage of judicial time than was the case in the pre-Guideline days. Oftentimes, a sentencing under the Guidelines can turn into a mini-trial of the defendant's prior criminal history and conduct as the criminal bar, in order to wrestle

with the problems created for them in the defense of their clients by the Sentencing Guidelines, do everything they possibly can to let a Judge be a judge in deciding the case. This problem, unless crime disappears, can only become worse in the future as counsel insist on more mini-trials at sentencing hearings in an effort to give the Judge what little leeway is left.

J. ADDITIONAL MID-LEVEL MANAGEMENT STAFF

To account for the workload impact, there should be a corresponding expansion in staffing levels in the Clerk's office, especially at the range of mid-level manager.

With the advent of automation to improve efficiency and productivity within the court, the scope of responsibility within the Clerk's Office has expanded. The Administrative Office created a Systems Administrator position resolving the technical training and support problems somewhat, but in a court the size of the Southern District of West Virginia, the addition of an Operations Manager is necessary.

The creation of the position of Operations Manager, as contained in the Judicial Salary Plan, will guarantee that all civil and criminal cases in the District are constantly

monitored. This position would ensure that all cases stay on track, and if a case encounters delay, appropriate action could be taken to resolve the cause of the delay. The position should serve as a civil case coordinator and work closely with the Judges, law clerks, and courtroom deputies in maintaining efficient case management practices. This position should also monitor, from an administrative standpoint, the District's arbitration system.

MEDIATION PROGRAM

A Mediation Program should be created in the Southern District of West Virginia, modeled after and drawing upon aspects of existing programs in (1) the District of Columbia; (2) the District of Connecticut; (3) the Middle District of Florida; (4) the Southern District of New York; (5) the Southern District of Ohio; (6) the Eastern District of Pennsylvania; (7) the Eastern and Western Districts of Washington; and (8) the Northern District of West Virginia.

1. Basic Features

The Southern District of West Virginia's Mediation Program would be a mandatory

mediation program involving those cases deemed by the assigned judge as appropriate for mediation. The selection of cases for inclusion would be made by the Court. The neutral mediations would be drawn from experienced litigators in the Southern District who would donate their time to the program. The program would include provisions for recusal of neutrals assigned by the Court upon a showing of good cause. Based upon the experience of other districts, the average time for a mediation session would be approximately two hours. All discussions during the mediation sessions would be absolutely and completely confidential and could not be referred to or discussed with the presiding Judge should the case remain unsettled after the mediation effort. This requirement would be strictly enforced.

2. Cases Included

All civil cases within the Southern District would be potentially eligible for inclusion in the Mediation Program. At the same time, the Court would make the ultimate decision regarding which cases to include and would order mandatory participation of such cases in the Mediation Program. Cases would typically need to be

mature in the sense that at least a period of six months has expired since the date of the filing of the case. This is consistent with the experience of mediation and settlement programs elsewhere in the country. Experience suggests that cases should either have completed or be close to the completion of discovery, if the cases are being actively and aggressively pursued by the parties; or if the parties have allowed the matter to languish; it may well be appropriate for mediation even if discovery has not been fully undertaken.

A general notice would be sent to all attorneys practicing in the Southern District inviting their participation and asking them to suggest cases for inclusion in the program. So as not to be perceived to be operating from a weak position in referring a case to mediation, the suggestion by counsel for one party for inclusion would be completely "blind" and the fact that the case was suggested would not be made known to the other party or to anyone other than the Judge deciding the question of eligibility in the Mediation Program.

Once a case has been determined appropriate for mediation by the Court, a notice would be sent to the parties and the matter would proceed to mediation unless good

cause could be shown by the litigants why the case should not be included in the program. It is expected that such good cause would rarely be granted by the Court but such exclusion from the program would be possible in appropriate circumstances. The experience of mediation and settlement week programs throughout the country is that if both parties suggest a case for mediation, it should be included in the mediation program and if one party suggests inclusion of the case, it should be given strong consideration for participation in the program.

While all civil cases that have matured appropriately would potentially be eligible for inclusion, the experience of other mediation programs and the docket experience of the Southern District suggest that not all cases are equally likely to benefit from mediation. Most mature civil cases would participate in the program. Those types of cases that typically would be included in the program would include:

1. Commercial and Other Contract Cases

2. Personal Injury Matters

3. Civil Rights Employment Cases

4. ERISA Cases

5. Tax Matters

6. Debt Collection Cases

7. Asbestosis Claims

8. FELA Matters

9. Labor-Management Employment Cases

10. Miscellaneous Civil Actions

A numerically much smaller number of cases are typically not appropriate for inclusion:

1. Administrative Agency Appeals

2. Habeas Corpus and Other Prisoner Petitions

3. Forfeitures of Seized Property

4. Bankruptcy Appeals

On a case-by-case basis, even these matters could be included in the mediation

program, but there are special problems that suggest they may not typically warrant inclusion:

3. Mediators

Mediators would be selected from the experienced litigators at the bar in the Southern District. They would be matched with cases that need to be mediated based upon their experience in the relevant area of law. Volunteers would be invited to participate in a letter issued by the Chief Judge, with a copy of that invitation in the West Virginia Lawyer. Training would be coordinated with the State Bar, particularly with the Committee on Judicial Improvement and the Alternative Dispute Resolutions Committee. Training of those volunteers selected by the Court would probably take 1 1/2 days on a weekend at a central site. These volunteers would be trained in alternative dispute resolution methods, and particularly techniques related to mediation. Efforts would be made to obtain Mandatory Continuing Legal Education credits for volunteers who undergo the training program and who participate in the mediation program.

The mediator in a particular case will be selected from a panel of three mediators named by a District Judge. The plaintiff's side and the defendant's side would each strike one mediator, with the one remaining automatically being the mediator for that case.

Since the mediators would be donating their time and expenses to participate in the program, it is expected that best results would obtain if notice of the scheduling of the settlement periods were given at least five months in advance. Initially it is anticipated that settlement periods would take place approximately every six months, perhaps in early April and late October.

4. Mediation Procedure

After a case has been determined to be appropriate for mediation by the Court, a notice requiring trial counsel and a party with settlement authority to attend would be sent. It is important that each notice be signed by the Judge to whom the case is assigned and be sent in the form of an order to lend the process the maximum authority possible. The order would also indicate that the parties are required to participate in

good faith. These measures have substantially enhanced the seriousness with which the parties approach mediation, which has been found to be an important element in the ultimate success of this type of project.

The notice of mediation would indicate that counsel for each party is to file a written factual presentation not to exceed five pages in length, with the attachment of any pertinent supporting documents at least ten days prior to the mediation. At the mediation session, counsel for each party would be given five to ten minutes to clarify any facts which need additional development. Up to fifteen minutes would be permitted for counsel for each party in the form of argument. Mediators would then meet with the parties and their counsel both together and separately in an effort to encourage settlement.

5. Post Mediation Follow-up

At the conclusion of each mediation session, all participants would be given questionnaires to solicit their feedback on the program. Mediators would fill out a form indicating whether the case had been settled, whether follow-up mediation efforts would

be appropriate, or suggestions to the Court for the procedures to process the case if it is not successfully mediated. Any follow-up necessary with regard to the mediation of cases on which progress was made but final settlement not achieved would be undertaken by a designated Magistrate Judge.

If a case is not settled, stringent enforcement of the requirement that there be no reference made to the contents of discussions during the mediation process is necessary. The experience of other mediation and settlement week projects is that such a requirement is necessary so that the parties will know that their discussions are in absolute confidence and will understand that the contents of their discussions may not be used against them in any fashion should the mediation effort not be successful.

6. Implementation

Initial planning for the Southern District program will be undertaken by a committee consisting of the Chief Judge, one Magistrate Judge, the Clerk of the Court and two representatives of his office, and three members of the Advisory Group.

In the initial phases of the project, particular emphasis would be given to the

selection of older and "stalled" cases. The Clerk's office would identify all cases which are more than six months old and would separate them into the types of cases which would presumptively be included and those which would be presumptively excluded by the subject matter as described supra. Additionally, a mailing to all attorneys practicing in the Southern District would invite suggestions for additions to the mediation program. The ultimate decision as to the eligibility of case for inclusion in the project would be made by the Judge to whom the case is assigned.

Any initial notice indicating that the case had been designated for mediation would be sent to the parties to determine whether good cause could be shown why the case should not be included. After the case is determined to be definitely appropriate for mediation, an order signed by the appropriate Judge would be issued. That order would indicate three alternate times during a two-week period. Counsel would then be requested to rate those times in order of preference and to indicate which of those times were absolutely not available.

With regard to scheduling mediators, care should be taken not to overburden

mediators from out-of-town since they are providing their services on a pro bono basis. Mediators would be asked to handle a maximum of approximately four cases per settlement period. For out-of-town mediators, these cases would be scheduled over a two-day period rather than throughout the two-week mediation period.

Based on the Northern District's experience with its Settlement Week Program, the approximate cost for training mediators, including notices, etc., would be $7,000. There would be some incidental costs to the Clerk's office to send out notices and to provide personnel to coordinate the scheduling of mediation sessions.

IV. PRINCIPLES & TECHNIQUES OF LITIGATION MANAGEMENT AND COST AND DELAY REDUCTION. 28 U. S. C. § 473

A. PRINCIPLES AND GUIDELINES

In the preparation of this plan the Advisory Group studied the "principles and guidelines of Litigation management and cost and delay reduction" set forth in 28 U. S. C. § 473 (a). The Advisory Group recommends that the following principles and guidelines be adopted in the Southern District of West Virginia:

1. Systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case. 28 U. S. C. § 473 (a) (1).

2. Early and ongoing control of the pretrial process through involvement of a judicial officer in -

(A) Assessing and planning the progress of a case;

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

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

(ii) The trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

(C) Controlling the extent of discovery and the time

for completion of discovery, and ensuring compliance with appropriate required discovery in a timely fashion; and

(D) Setting, at the earliest practicable time, deadlines for filing motion and a time framework for their disposition. 28 U. S. C. § 373 (a) (2).

3. For all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer -

(A) Explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

(B) Identifies or formulates the principal issues in

contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42 (b) of the Federal Rules of Civil Procedure;

(C) Prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to -

(i) Identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) Phase discovery into two or more stages; and

(D) Sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition. 28 U. S. C. § 473 (a) (3).

4. Encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices. 28 U. S. C. § 473 (a) (4).

5. Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion. 28 U. S. C. § 473 (a) (5). Local Rule 2.06 should be amended to facilitate the implementation of this principle.

6. Authorization to refer appropriate cases to alternative dispute

resolution programs that -

(A) Have been designated for use in a district court;

or

(B) The court may make available, including mediation, mini-trial, and summary jury trial.

28 U. S. C. § 473 (a) (6).

B. LITIGATION MANAGEMENT AND COST AND DELAY REDUCTION TECHNIQUES

The Advisory Group also studied the "litigation management and cost and delay reduction techniques" set forth in 28 U. S. C. § 473 (b) and recommends that the following techniques be adopted in the Southern District of West Virginia:

1. A requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably-related

matters. 473 (b) (2).

To facilitate the implementation of this technique, the Advisory Group has included the appropriate language in Amended Local Rule 2.06, under "Principle No. 5," above.

2. A neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a non-binding conference conducted early in the litigation. 28 U. S. C. § 473 (b) (4).

3. A requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussion be present or available by telephone during any settlement conference. To facilitate the continuation of this technique in the Southern District of West Virginia the Advisory Group recommends that Local Rule 2.10 remain in effect.

The Advisory Group recommends that the following "litigation management and cost and delay reduction techniques" set forth in § 473 (b) of the Civil Justice Reform Act of 1990 NOT be adopted in the Southern District of West Virginia.

1. A requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so. 28 U. S. C. § 473 (b) (1).

   The Advisory Group believes that this recommended technique would be impractical and thereby of no value in improving the efficiency of the civil docket.

2. A requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request. 28 U. S. C. § 473 (b) (3).

   The Advisory Group believes that this recommended

technique would be impractical and thereby of no value in improving the efficiency of the civil docket. If counsel makes repeated requests of the Court for extensions of discovery or continuances of the trial date, the Court may require that the parties consent to such requests in writing.

Conclusion: The members of the Advisory Group would note in closing that it has been an honor and a privilege to have had the opportunity to serve the federal judicial system in this important capacity.

Respectfully submitted this 29th day of August, 1991.

Charles R. McElwee, Chairman

Rudolph L. DiTrapano, Vice Chairman

JUDICIAL IMPROVEMENTS ACT OF 1990

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

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

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

SEC. 102. FINDINGS.

The Congress makes the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

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

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

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

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

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

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

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

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

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

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

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

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

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

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

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

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

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§ 474. Review of district court action

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

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

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

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

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

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

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

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

"§ 478. Advisory groups

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

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

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

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 479. Information on litigation management and cost and delay reduction

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

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

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

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

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

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

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

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

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

(3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

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

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

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

"23. Civil justice expense and delay reduction plans..... 471".

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

SEC. 106. AUTHORIZATION.

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

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

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

Assessing the Court's Dockets (§ 472(c)(1))

Each district compiles certain statistics on workload and case processing. These statistics conform to a uniform national reporting system, maintained by the Administrative Office, and provide certain basic information about the state of a court's dockets. This information is the necessary starting point for any analysis and is presented here for your use. However, because the national reporting system was not specifically designed for identifying and analyzing causes of cost and delay, the advisory groups will find it necessary to seek and analyze supplemental information.

In Section A we present some of the routinely collected statistics along with several additional measures for assessing the condition of the dockets and for analyzing trends in case filings. (Note that all measures presented in Section A are specific to your district.) In Section B we list some measures the group may wish to seek or develop to aid its assessment of trends in the demands placed on court resources.

A. Determining the condition of the civil and criminal dockets and identifying trends in case filings (§ 472(c)(1)(A) & (1)(B))

A major source of information about the caseloads of the district courts is the statistical data regularly collected and published in the *Federal Court Management Statistics (MgmtRep),* which provides a six-year picture for each district, and in the *Annual Report of the Director of the Administrative Office of the United States Courts (AORep).*

The published tables are prepared from individual case data regularly reported to the Administrative Office by the courts. A report is provided when a case is filed, with a follow-up when the case is terminated. As in any massive reporting process, there are many opportunities for error and inconsistency to enter the system, but there is no reason to expect systematic error that would affect specific locations or specific activities.

The published data are the basis of the assessments of court activity that are currently made by the courts, by the judicial system, and by Congress. Consequently, a thorough grasp of those data will be helpful for understanding the assessments others will be making and for communications both among the advisory group, the courts, and the Judicial Conference and among advisory groups.

1. Measures for Determining the Condition of the Civil Docket

a. Caseload volume. *MgmtRep* for 1990 shows the number of civil and criminal cases filed, terminated, and pending for statistical years (years ended June 30) 1985-1990. A copy of the table for the Southern District of West Virginia appears on the following page. The table also shows the number of authorized judgeships and the months of judgeship vacancy. The authorized judgeships—not the available judge power—is used in calculating the number of actions per judgeship reported in this table.

The table does not report the number of actions per magistrate judge. In some districts, these judicial officers handle a substantial volume of pretrial proceedings in civil cases. In most districts, magistrate judges also have responsibility for misdemeanor cases and for preliminary proceedings in felony cases. Statistics on the workload of magistrate judges may be obtained from the Magistrates' Division of the Administrative Office.

b. Caseload mix and filing trends. The variety of cases making up the caseload in most district courts will be surprising to many who study them for the first time. That variety may be important to advisory groups in assessing the docket and in considering what groups of cases, if any, should be treated differently in management plans. Different types of cases tend to move through the courts in different ways. For example, some are almost always disposed of by default judgment (student loan); some are in the nature of an appeal (bankruptcy); some are a unique subset of another category (asbestos cases in the personal injury category). From readily available data we cannot discern how a specific case moved through the system nor how a future case may move. Some types of cases, however, may move through the system in distinctive ways often enough to warrant your special attention. Do they affect court performance distinctively? Do they consume court resources distinctively?

We have sorted case types into two categories to illustrate the point of distinctive paths. Type I case types are distinctive because within each case type the vast majority of the cases are handled the same way; for example, most Social Security cases are disposed of by summary judgment. Type II case types, in contrast, are disposed of by a greater variety of methods and follow more varied paths to disposition; for example, one contract action may settle, another go to trial, another end in summary judgment, and so on. (See the table in Appendix B for a complete definition of the case types.)

Type I includes the following case types, which over the past ten years account for about 40% of civil filings in all districts:

- student loan collection cases
- cases seeking recovery of overpayment of veterans' benefits
- appeals of Social Security Administration benefit denials
- condition-of-confinement cases brought by state prisoners
- habeas corpus petitions
- appeals from bankruptcy court decisions
- land condemnation cases
- asbestos product liability cases

The advisory group may wish to consider whether, in this district, these categories or any others identified by the group are distinctive enough to warrant special attention in assessing the condition of the docket or in recommending future actions. Careful documentation of analyses and decisions of this kind will contribute significantly to the final report the Judicial Conference must make to Congress.

Type II includes the remainder of the case types, which collectively account for about 60% of national civil filings over the past ten years. Case types with the largest number of national filings were:

- contract actions other than student loan, veterans' benefits, 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
- other actions under federal statutes; e.g., FOIA, RICO, and banking laws

Chart 1 shows the percentage distribution among types of civil cases filed in your district for the past three years.

Chart 1: Distribution of Case Filings, SY89-91

Southern District of West Virginia

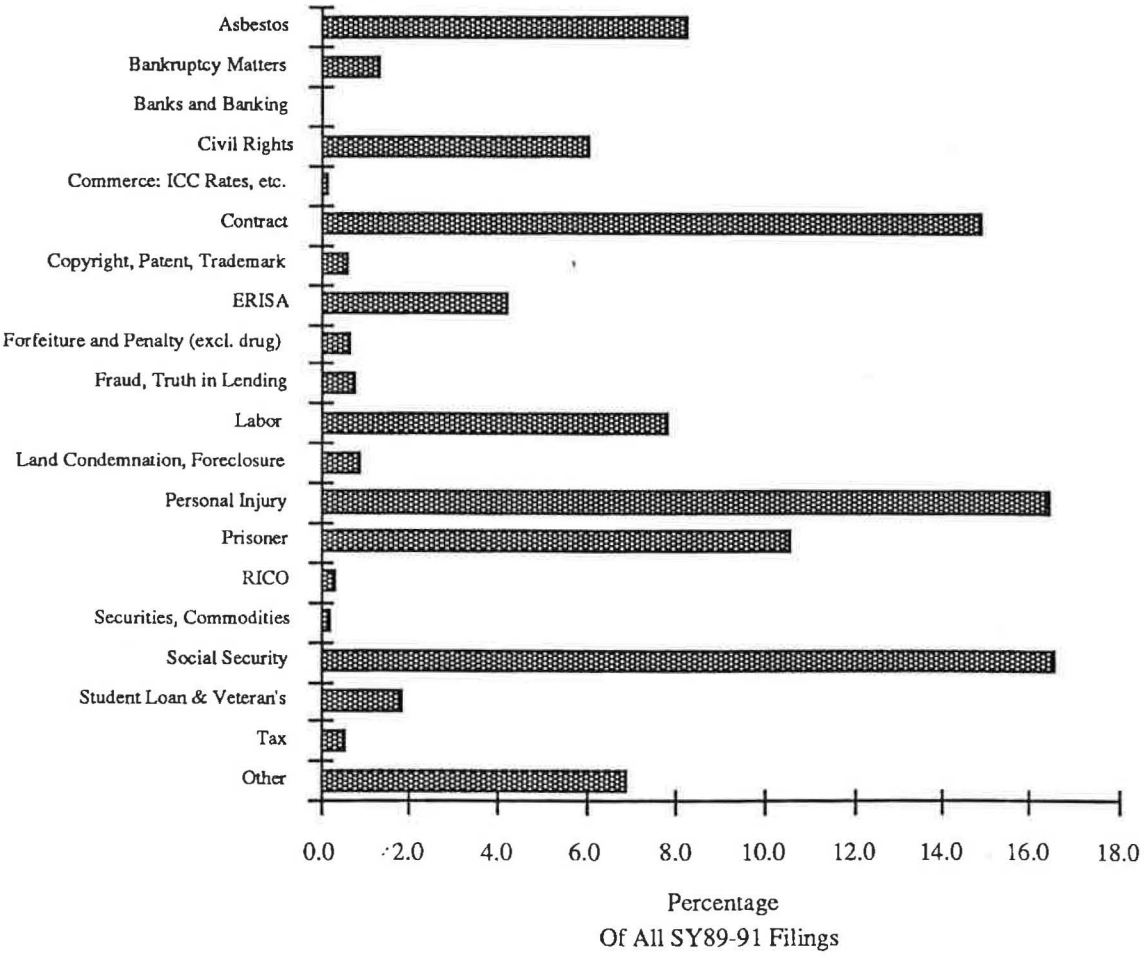


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY82-91
Southern District of West Virginia

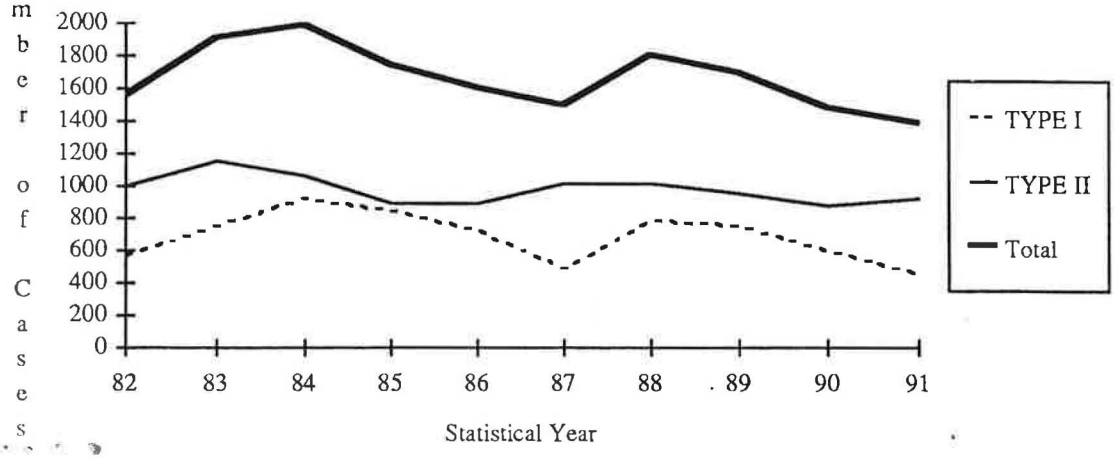


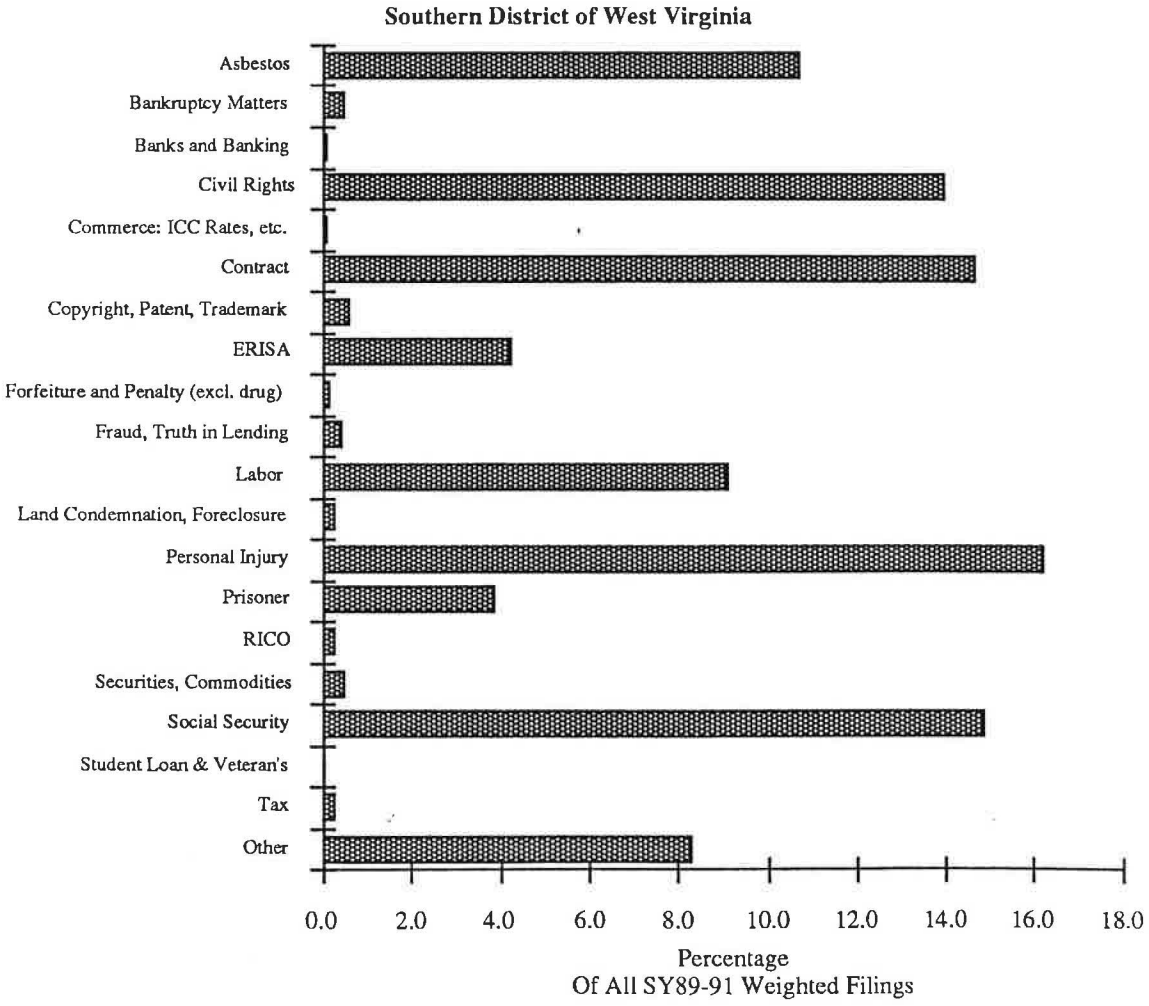
Table 1: Filings by Case Types, SY82-91

Southern District of West Virginia

	82	83	84	85	86	87	88	89	90	91
Asbestos	13	5	66	10	64	33	62	120	213	45
Bankruptcy Matters	6	38	36	19	27	11	18	25	14	24
Banks and Banking	5	12	5	2	4	0	2	1	1	0
Civil Rights	111	130	125	103	91	93	73	88	76	116
Commerce: ICC Rates, etc.	4	0	1	0	2	0	0	1	2	4
Contract	215	291	272	233	252	286	258	252	229	199
Copyright, Patent, Trademark	6	11	10	8	7	12	7	12	8	10
ERISA	5	22	23	17	17	36	66	64	75	56
Forfeiture and Penalty (excl. drug)	95	49	110	15	9	12	11	11	16	5
Fraud, Truth in Lending	5	7	13	3	9	12	19	13	15	9
Labor	154	154	162	138	136	130	84	121	124	114
Land Condemnation, Foreclosure	3	1	0	7	16	18	5	7	18	17
Personal Injury	226	360	232	232	210	281	358	300	190	259
Prisoner	91	102	104	122	120	112	170	163	143	177
RICO	0	0	0	0	2	5	3	0	11	5
Securities, Commodities	1	6	8	1	8	13	2	2	6	4
Social Security	218	380	476	379	270	224	477	387	178	191
Student Loan and Veteran's	228	230	245	301	219	83	44	49	29	8
Tax	9	8	4	10	17	16	14	6	13	8
All Other	154	96	90	130	120	119	121	75	113	127
All Civil Cases	1549	1902	1982	1730	1600	1496	1794	1697	1474	1378

c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights to show the approximate distribution of demands on judge time among the case types accounting for the past three years' filings in this district. The chart does not reflect the demand placed on magistrate judges.

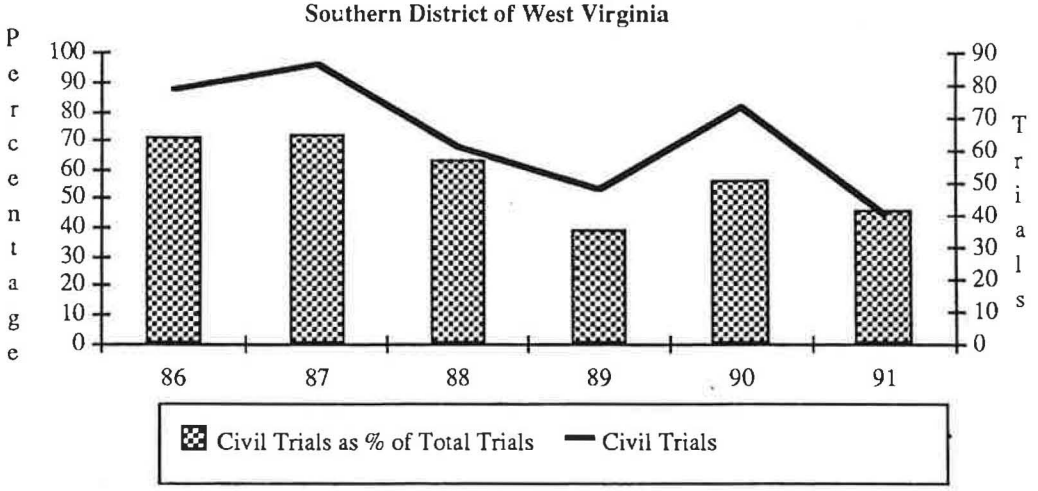
Chart 3: Distribution of Weighted Civil Case Filings, SY89-91



Another indicator of burden is the incidence of civil trials. Chart 4 shows the number of civil trials completed and the percentage of all trials accounted for by civil cases during the last six years.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY86-91

Southern District of West Virginia



d. Time to disposition. This section is intended to assist in assessments of "delay" in civil litigation in this district. We first look at conventional data on the pace of litigation and then suggest some alternative ways of examining data to estimate the time that will be required to dispose of newly filed cases. The *MgmtRep* table shows the median time from filing to disposition for civil cases and for felonies. Time from joinder of issue to trial is also reported for civil cases that reached trial. These data are commonly used to assess the dispatch with which cases have moved through a court in the past. When enough years are shown and the data for those years are looked at collectively, reasonable assessments of a court's pace might be made.

Data for a single year or two or three may not, however, provide a reliable predictor of the time that will be required for new cases to move from filing to termination. An obvious example of the problem arises in a year when a court terminates an unusually small portion of its oldest cases. Both average and median time to disposition in that year will show a decrease. The tempting conclusion is that the court is getting faster when the opposite is actually the case. Conversely, when a court succeeds in a major effort to clean up a backlog of difficult-to-move cases, the age of cases terminated in that year may suggest that the court is losing ground rather than gaining.

Since age of cases terminated in the most recent years is not a reliable predictor of next year's prospects, we offer other approaches believed to be more helpful. *Life expectancy* is a familiar way of answering the question: "How long is a newborn likely to live?" Life expectancy can be applied to anything that has an identifiable beginning and end. It is readily applied to cases filed in courts.

A second measure, *Indexed Average Lifespan* (IAL), permits comparison of the characteristic lifespan of this court's cases to that of all district courts over the past decade. The IAL is indexed at a value of 12 (in the same sense that the Consumer Price Index is indexed at 100) because the national average for time to disposition is about 12 months. A value of 12 thus represents an average speed of case disposition, shown on the charts below as IAL Reference. Values below 12

indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

Note that these measures serve different purposes. Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts; it is corrected for changes in the case mix but not for changes in the filing rate. Charts 5 and 6 display calculations we have made for this district using these measures.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY82-91

Southern District of West Virginia

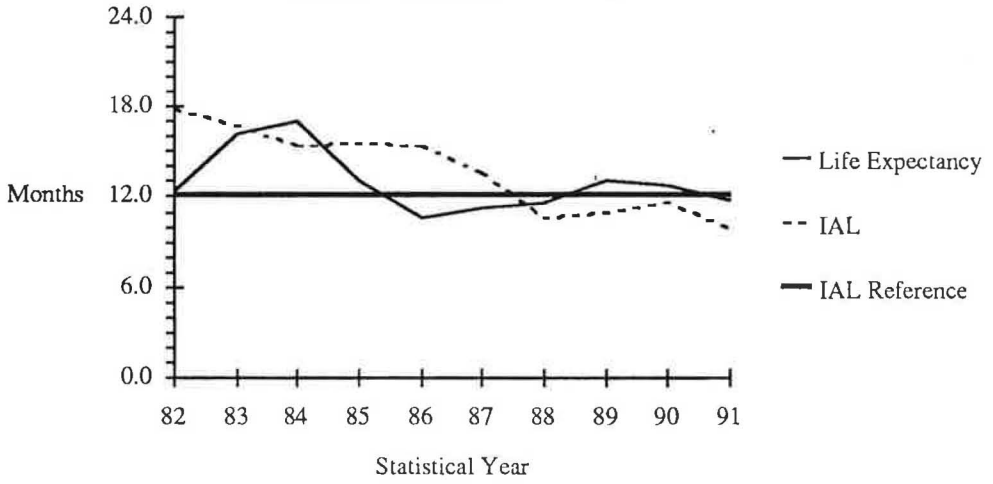
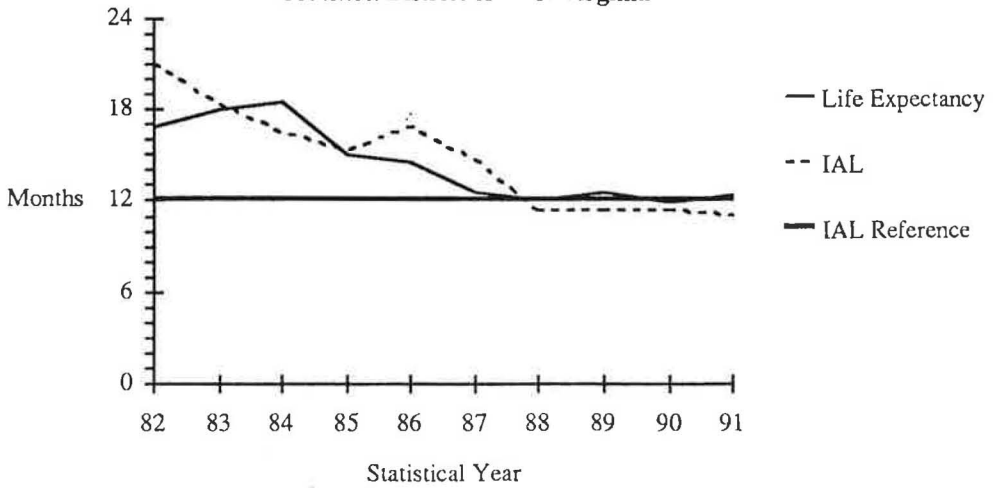


Chart 6 Corrected: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY82-91

Southern District of West Virginia

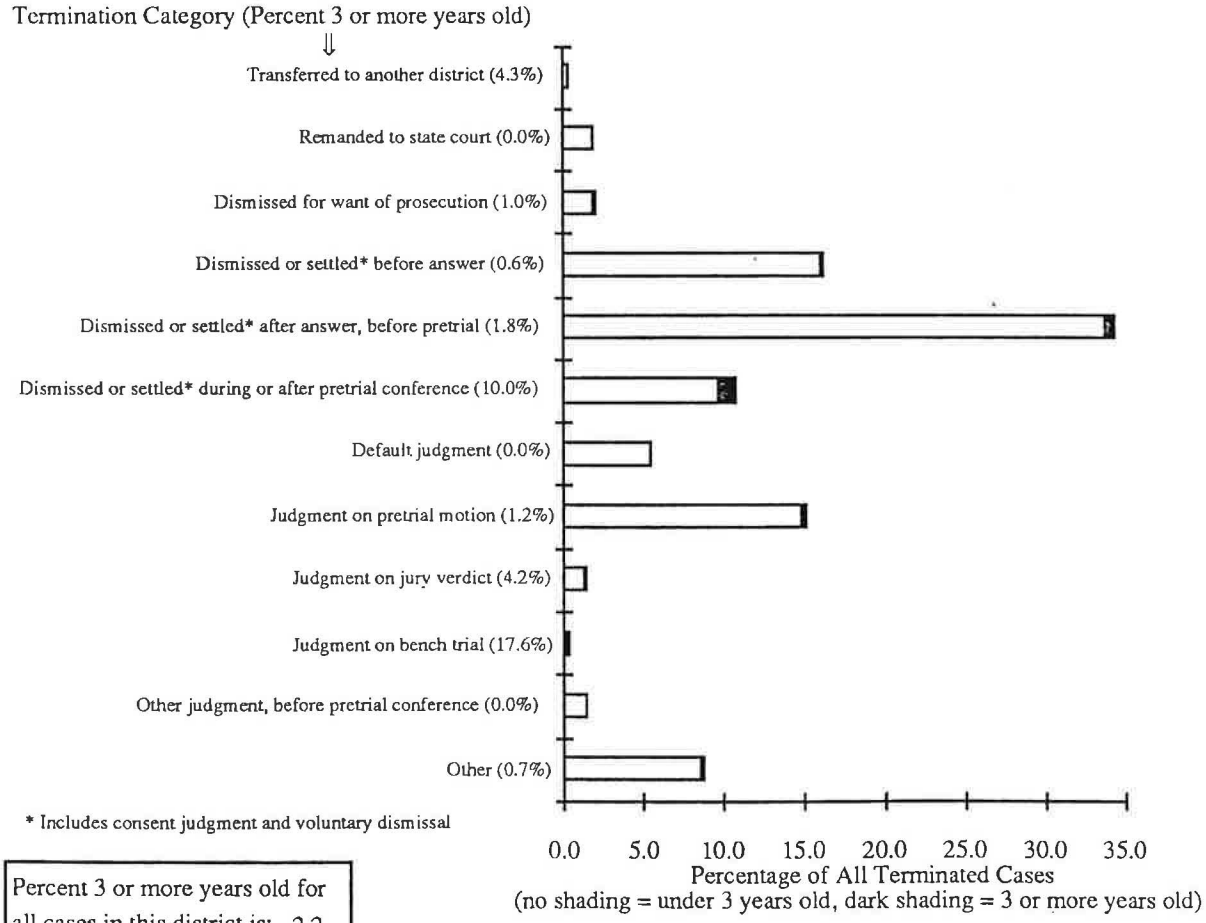


e. Three-year-old cases. The *MgmtRep* table shows the number and percentage of pending cases that were over three years old at the indicated reporting dates. We have prepared Charts 7 and 8 to provide some additional information on these cases.

Chart 7 shows the distribution of case terminations among a selection of termination stages and shows within each stage the percentage of cases that were three years old or more at termination.

Chart 7: Cases Terminated in SY89-91, By Termination Category and Age

Southern District of West Virginia

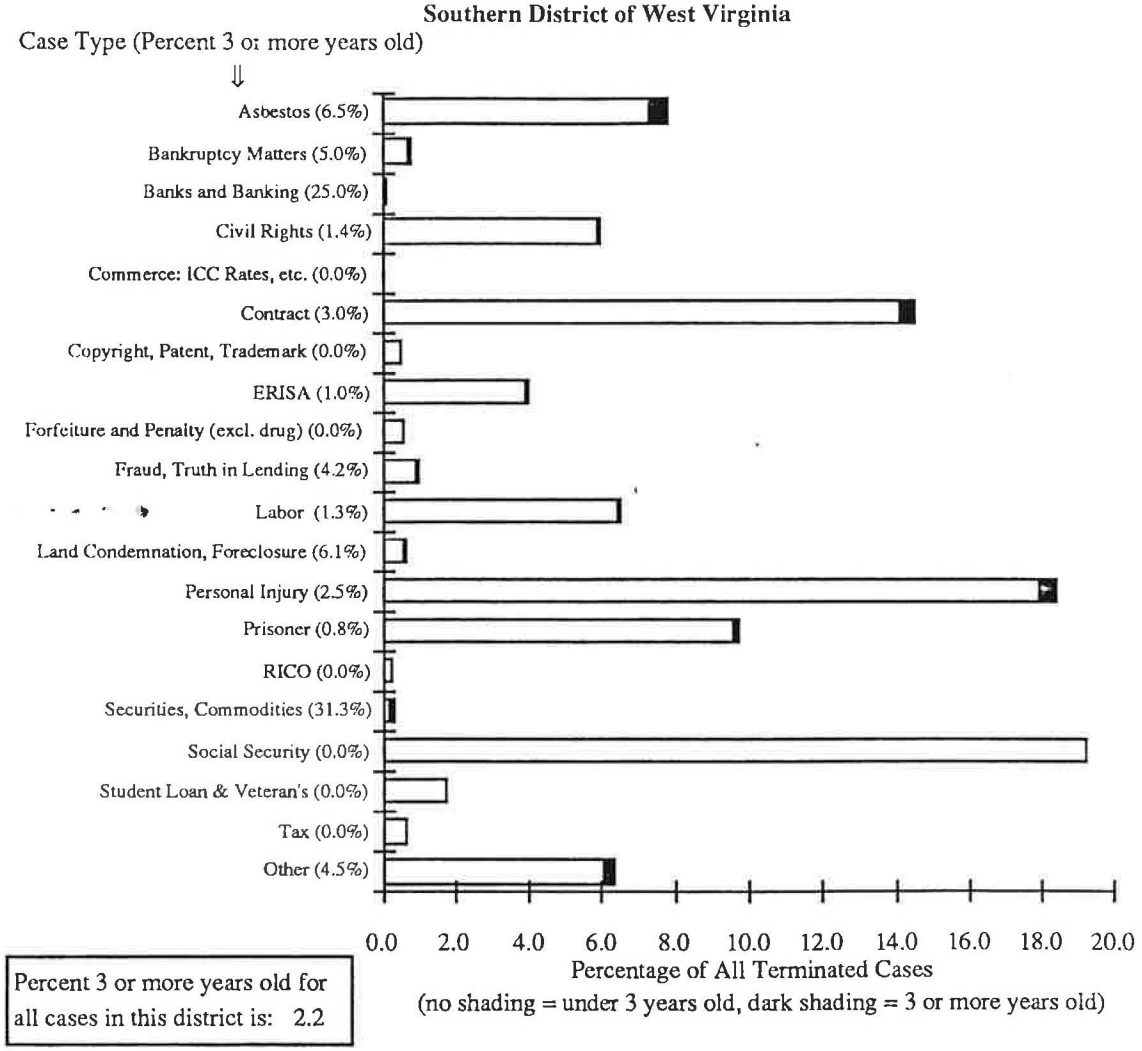


Percent 3 or more years old for all cases in this district is: 2.2

Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY89-91, By Case Type and Age

Southern District of West Virginia



Percent 3 or more years old for all cases in this district is: 2.2

f. Vacant judgeships. The judgeship data given in *MgmtRep* permit a calculation of available judge power for each reported year. If the table shows any vacant judgeship months for this district, a simple calculation can be used to assess the impact: Multiply the number of judgeships by 12, subtract the number of vacant judgeship months, divide the result by 12, and then divide the result into the number of judgeships. The result is an adjustment factor that may be multiplied by any of the per-judgeship figures in the *MgmtRep* table to show what the figure would be if computed on a per-available-active-judge basis. For instance, if the district has three judgeships and six vacant judgeship months, the adjustment factor would be 1.2 (36 – 6 = 30; 30 / 12 = 2.5; 3 / 2.5 = 1.2). If terminations per judgeship are 400, then terminations per available active judge would be 480 (400 × 1.2). This will overstate the workload of the active judges if

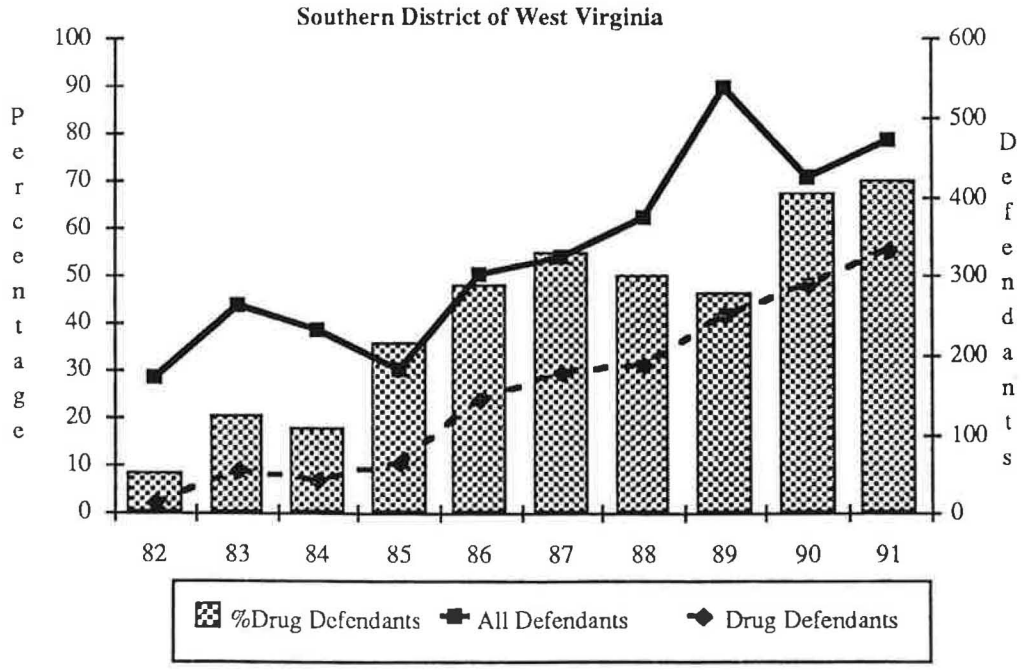
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

2. The Criminal Docket

a. The impact of criminal prosecutions. In calling on the advisory group to consider the state of the criminal docket, Congress recognized that the criminal caseload limits the resources available for the court's civil caseload. It is important to recognize that the Speedy Trial Act mandates that criminal proceedings occur within specified time limits, which may interfere with the prompt disposition of civil matters.

The trend of criminal defendant filings for this district is shown in Chart 9. We have counted criminal defendants rather than cases because early results from the current FJC district court time study indicate that burden of a criminal case is proportional to the number of defendants. Because drug prosecutions have in some districts dramatically increased demands on court resources, we have also shown the number and percentage of defendants in drug cases. A detailed breakdown of criminal filings by offense is shown on the last line of the table reproduced on page 8. A more detailed, five-year breakdown of the district's criminal caseload is available from David Cook of the Administrative Office's Statistics Division (FTS/633-6094).

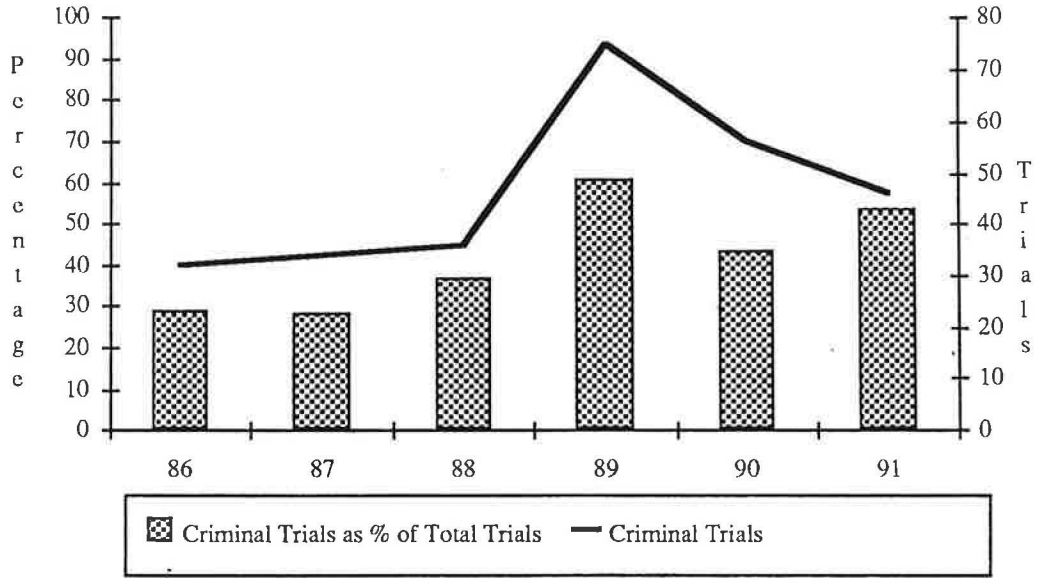
Chart 9: Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants, SY82-91



b. The demand on resources by criminal trials. Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY86-91

Southern District of West Virginia



For more information on caseload issues

This section was prepared by John Shapard of the Federal Judicial Center with assistance from David Cook and his staff in the Statistics Division of the Administrative Office of the U.S. Courts. Questions and requests for additional information should be directed to Mr. Shapard at (FTS/202) 633-6326 or Mr. Cook at (FTS/202) 633-6094.

QUESTIONNAIRE
ADR PROGRAMS IN UNITED STATES DISTRICT COURT

1. How many years have you practiced in the United States District Court?

2. What area of law comprises the majority of your practice in District Court?

3. Do you believe that any of the following types of Alternative Dispute Resolution Programs could benefit and facilitate your cases in District Court:

   a. Early neutral evaluation -- a lawyer experienced in the subject matter of the case meets with the parties early in the proceedings to evaluate the case.

   b. Settlement Judge or Magistrate other than the trial judge or magistrate on your case conducts settlement negotiations.

   c. Mediation -- cases are referred to outside neutrals to conduct in-depth settlement negotiations.

   d. Settlement weeks -- certain weeks are designated as special time periods during which cases are scheduled for settlement conferences with neutral attorneys.

   e. Case valuation -- cases are referred to outside neutrals to assess the dollar settlement value of the case.

   f. Arbitration -- cases are referred to outside neutrals to provide an advisory judgment on the merits.

g. Mini-trials and mini-hearings -- attorneys make shortened presentations of their "best case" to persons with settlement authority or a neutral for each side to then meet to discuss settlement.

h. Summary jury trials -- use of an advisory jury and an abbreviated trial procedure is used to facilitate settlement in cases poised for protracted trials.

i. Other methods which you would like to recommend.

4. Are there certain types of cases that you believe are more susceptible to ADR resolution? Types that are less susceptible?

5. If attorneys or non-court neutrals are utilized, should their participation be voluntary or funded by the parties?

6. Would you be willing to serve as a neutral in your area of expertise? If so, would you serve in a voluntary capacity? In a fee paying capacity?

7. Please give any other suggestions or additional comments regarding the feasibility of ADR Programs in the District Court.

July 12, 1991

Dear Attorney:

In December of 1990 Congress enacted the Civil Justice Reform Act of 1990, which requires each District Court to appoint an Advisory Group to study ways in which the costs and delays associated with civil litigation can be reduced. The Advisory Group for the Southern District of West Virginia has been formed, and one of our tasks is to study the feasibility of implementing one or more alternative dispute resolution programs in the District Court in order to reduce costs and delays in litigation.

If you do not conduct any portion of your practice in the United States District Court for the Southern District of West Virginia, please disregard the enclosed survey. If, however, you practice in the District Court, the Advisory Group would appreciate your time, thoughts and assistance in providing us with valuable information through your answers and comments on the attached questionnaire. Please return the questionnaire in the enclosed stamped, self-addressed envelope by August 2, 1991.

We thank you for taking the time to participate in our study.

Sincerely yours,

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David P. Burton, Esq.
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PART II

PLAN FOR IMPLEMENTATION

OF THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

AS ADOPTED AND IMPLEMENTED

BY THE SOUTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

IN RE: PLAN FOR CIVIL JUSTICE DELAY AND EXPENSE REDUCTION

ORDER

Upon consideration of the report of the Civil Justice Expense and Delay Reduction Advisory Report filed pursuant to the provisions of the Civil Justice Reform Act of 1990, the United States District Court for the Southern District of West Virginia hereby adopts and implements this Civil Justice Expense and Delay Reduction Plan pursuant to Title 28, United States Code, Section 471, et seq., it is

ORDERED that said Plan attached hereto shall be implemented and placed in operation throughout the District.

It is further ORDERED that a certified copy of this Order and the attached Plan be made available to the public and filed at each of the statutory points of holding court in the Southern District of West Virginia. In addition, the Clerk of the Court is directed to provide a certified copy of this Order and attached Plan to the Director of the Administrative Office of the United States Courts to the Judicial Council of the Fourth Circuit, the Chief Judge of the United States Court of Appeals for the Fourth Circuit, and to the Chief Judges of each of the other United States District Courts located in the Circuit. In addition, the Clerk of Court is directed to provide a certified copy of this Order and attachment to the Honorable Joseph C. Biden, Chairman, Senate Judiciary Committee, and to the Honorable William W. Schwartzer, Director of the Federal Judicial Center.

ENTERED this 30th day of December, 1991.

ENTERED

DEC 30 1991

_____ORDER BOOK
NO._____PAGE_____

Charles H. Haden II
Chief Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF WEST VIRGINIA

PLAN FOR IMPLEMENTATION OF THE CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

INTRODUCTION

Pursuant to the provisions of Public Law 101-650, approved December 1, 1990, creating the Civil Justice Reform Act of 1990, the United States District Court for the Southern District of West Virginia appointed a Civil Justice Expense and Delay Reduction Advisory Group for the Southern District of West Virginia. The Advisory Group was charged with recommending a plan to facilitate deliberate adjudication of civil cases on the merits, to monitor discovery, to improve litigation management, and to ensure just, speedy, and inexpensive resolution of civil disputes.

The Advisory Group filed its initial Report August 29, 1991. After review with the Court, the Advisory Group filed its final Report in December 1991. Upon consideration of the recommendations of the Advisory Group, the Southern District will adopt and implement the following plan for the District.

I. STANDING COMMITTEE ON LOCAL RULES

To facilitate the implementation of the various components of the Plan, the District's Standing Committee on Local Rules will be reconstituted and directed to review the Report and, by no later than June 1, 1992, draft proposed Local Rules changes needed to implement this Plan.

II. PRINCIPLES AND GUIDELINES

A. Systematic, Differential Treatment of Civil Cases

All cases shall be analyzed by a judicial officer to determine the appropriate schedule for the Time Frame Order. In complex cases or at the request of counsel, a conference will be held to establish time frames.

When setting time frames, each case is to be reviewed and placed into one of three classes:

Class A - Set for trial 6 months from filing.

Class B - Set for trial 9 months from filing.

Class C - Open end period as to trial date. The date of trial shall be scheduled after conference with counsel.

The purpose of a time frame conference, which may be held by telephone, shall be to establish the following:

1) To assist in the determination of the complexity of the case, and if necessary, to designate it as a complex or mass tort litigation-type case.

2) To establish realistic discovery and pretrial time frame deadlines.

3) To establish summary judgment or dismissal motions deadlines.

4) To determine if the parties are willing to proceed through the trial phase with the Magistrate Judge sitting at all levels of the litigation, including final settlement conference and trial.

5) To evaluate the possibility of early settlement and the setting of alternative dispute resolution mechanisms as early as possible.

B. Plan and process of the case, early and on-going involvement of judicial officers, discovery control and early motion deadlines:

1. Time Frame Orders

Once issues are joined or a responsive pleading has been filed by all defendants, the Court shall enter a Time Frame Order in all civil actions not excepted by Local Rule, which shall establish the dates for the completion of pretrial matters. A model Time Frame Order is set forth in the appendix.

The Time Frame Order will set firm dates for the following:

a) Joinder and amendments

b) Rule 12(b) motions

c) Extra-judicial procedures

d) Discovery

e) Summary judgment and other dispositive motions (except for Rule 12 (b) motions)

f) Pretrial order

g) Proposed charges to the jury and/or suggested ~~and/or~~ findings of fact and conclusions of law

h) Pretrial conference

i) Final settlement conference

The judge to whom the case is assigned shall enter a scheduling order designated as a "Time Frame Order" setting the required schedules with the proviso that counsel or unrepresented parties may, within twenty-one days after the entry of the order, move for modifications of the time limitations contained in the order. Absent the receipt of such motion from counsel or unrepresented parties, the time limitations set forth in the order will not be altered by the Court except upon subsequent order based on a showing of good cause.

2. Discovery

Once issues are joined, the Court will establish a

binding discovery schedule under which all discovery will be completed. "Completed" means that all discovery, objections, motions to compel and all other motions and replies relating to discovery in this action must be filed and/or noticed in time for the party objecting or responding to have opportunity under the Rules of Civil Procedure to make responses. Counsel will have twenty-one days from the entry date of the Time Frame Order to move for modifications of the discovery schedule established therein.

3. Motions and Responses

All motions in civil actions shall be concise and shall state precisely the relief requested. Motions shall be filed timely but not prematurely.

The Court shall give priority status to motions to dismiss. To receive priority treatment, a dismissal motion should not be buried within a pleading or within other motions. It must be designated separately and prominently as a motion to dismiss when filed within or among other pleadings. Counsel must brief dismissal motions adequately.

All non-dispositive motions shall be referred to the Magistrate Judge unless otherwise ordered by the District Judge assigned the case. Dispositive motions may be referred

to a Magistrate Judge upon the individual determination of the District Judge.

All motions shall be filed with supporting memoranda except routine, non-dispositive motions, e.g., motions for enlargements or extensions of time under Rule 6, motions to amend clerical errors in pleadings, motions for sanctions filed under Rule 37 and 56, and motions to compel when the opposing party has ignored the interrogatory or request.

In addition to supporting memoranda, all dispositive motions shall be accompanied by depositions (or designated portions thereof), admissions, documents, affidavits or other such exhibits in support thereof.

Memoranda and other matter in opposition to motions shall be submitted to the Clerk, with copies also submitted to the assigned Judge and served on opposing counsel or parties entitled thereto within fourteen days from the date of service of the motion. Any reply memoranda shall be submitted to the Clerk and also submitted to the assigned Judge and served upon opposing counsel or parties entitled within seven days.

Briefs or memoranda supporting any motion shall be limited to no more than twenty pages without prior approval of the District Judge or Magistrate Judge.

All dispositive motions unsupported by memoranda will be denied without prejudice.

The time periods contained in the Time Frame Order will not be modified to permit late filing of dispositive motions, or review of the same, except upon good cause shown.

Hearings or oral arguments on motions may be set by the Court at its discretion. Otherwise, motions shall be determined without hearing or oral argument.

Judges will impose time limits on referral motions, and will monitor those time limits. All time limits so established shall conform to the reporting guidelines established by the Civil Justice Reform Act.

C. Complex Case Identification and Management

The case management practice set out within this Plan allows for the identifying of complex cases and the establishing of time frames needed to adequately manage such cases.

The District's Standing Committee on Local Rules has been asked, however, to review the Local Rules and draft by no later than June 1, 1992, any amendments needed to identify and manage complex cases.

D. Voluntary Discovery Exchange

This Court encourages cost-effective discovery through

voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices.

The District's Standing Committee on Local Rules has been asked to review the Local Rules and draft by no later than June 1, 1992, proposed amendments concerning routine discovery exchange.

E. Good Faith Efforts of Parties to Resolve Discovery Disputes

Prior to filing a motion to compel or other motions in aid of discovery, counsel shall confer and proceed in good faith to resolve each dispute arising out of any discovery request. The motion to compel shall contain a statement that counsel have conferred and failed to resolve all disputes.

F. ALTERNATIVE DISPUTE RESOLUTION PROGRAM

1. Basic Features

The Southern District of West Virginia's Mediation Program shall be a mandatory mediation program involving those cases deemed by the assigned judge as appropriate for mediation. The selection of cases for inclusion will be made by the Court. The neutral mediators are to be drawn from experienced litigators in the Southern District who will donate

their time to the program. The program includes provisions for recusal of neutrals assigned by the Court upon a showing of good cause. Based upon the experience of other districts, the average time for a mediation session will be approximately two hours. All discussions during the mediation sessions will be absolutely and completely confidential and shall not be referred to or discussed with the presiding judge should the case remain unsettled after the mediation effort. This requirement will be strictly enforced.

2. Cases Included

All civil cases within the Southern District are potentially eligible for inclusion in the Mediation Program. The Court, however, shall make the ultimate decision regarding which cases to include and shall order mandatory participation of these cases in the Mediation Program. To be considered for mediation, cases typically must be mature, that is, six months has passed since the case was filed. Discovery in the case shall either be complete or be close to the completion. If counsel or the Court have allowed the matter to languish, it may be appropriate for mediation although meaningful discovery has not occurred.

A general notice will be sent to all attorneys practicing

in the Southern District inviting their participation and asking them to suggest cases for inclusion in the program. So as not to be perceived by opposing counsel to be operating from a weak position in referring a case to mediation, the suggestion by moving counsel for inclusion would be wholly "blind" and the fact that the case was suggested would not be disclosed to the other party or to anyone other than the Judge deciding the question of eligibility for the Mediation Program.

Once a case has been determined appropriate for mediation by the Court, a notice will be sent to the parties and the matter shall proceed to mediation unless good cause can be shown by the litigants why the case should not be included in the program. The experience of mediation and settlement week programs throughout the country is that if both parties suggest a case for mediation, it should be included in the mediation program and if one party suggests inclusion of the case, it should be given strong consideration for participation in the program.

While all civil cases that have matured appropriately potentially will be eligible for inclusion, the experience of other mediation programs and the docket experience of the Southern District suggest that not all cases are likely to

benefit from mediation equally. Most mature civil cases are likely candidates for participation in the program. Types of cases typical for inclusion are:

1. Commercial and Other Contract Cases
2. Personal Injury Matters
3. Civil Rights Employment Cases
4. ERISA Cases
5. Tax Matters
6. Debt Collection Cases
7. Asbestosis Claims
8. FELA Matters
9. Labor Management Employment Cases
10. Miscellaneous Civil Actions

Cases typically excludable from the mediation program are:

1. Administrative Agency Appeals
2. Habeas Corpus and Other Prisoner Petitions
3. Forfeitures of Seized Property
4. Bankruptcy Appeals

On a case-by-case basis, even these matters may be included in the program.

3. Mediators

Mediators will be selected from the experienced litigators at the bar in the Southern District. They will be matched with cases that need to be mediated based upon the mediator's experience in the relevant area of law. Volunteers will be invited to participate in a letter issued by the Chief Judge, with a copy of that invitation to be published in the West Virginia Lawyer. Training will be coordinated with the State Bar, particularly with the Committee on Judicial Improvement and the Alternative Dispute Resolutions Committee. Training of those volunteers selected by the Court is anticipated to take 1-1/2 days on a weekend at a central site. These volunteers will be trained in alternative dispute resolution methods, and particularly techniques related to mediation. Efforts will be made to obtain Mandatory Continuing Legal Education credits for volunteers who undergo the training program and who participate in the mediation program.

The mediator in a particular case will be selected from a panel of three mediators named by a District Judge. The plaintiff's side and the defendant's side will each strike one mediator, with the one remaining automatically being named the mediator for that case.

Since the mediators will be donating their time and expenses to participate in the program, it is expected that best results would obtain if notice of the scheduling of the settlement periods were given at least five months in advance. Initially, it is anticipated that settlement periods will take place approximately every six months, perhaps in early April and late October.

4. Mediation Procedure

After the Court has determined a case to be appropriate for mediation, notice will be given requiring trial counsel and a party with settlement authority to attend. Each notice will be signed by the Judge to whom the case is assigned and be transmitted as a court order. The order will also state that the parties are required to participate in good faith.

The notice of mediation will indicate that counsel for each party is to file a written factual presentation not to exceed five pages in length, with the attachment of any pertinent supporting documents at least ten days prior to the mediation. At the mediation session, counsel for each party will be given five to ten minutes to clarify any facts which need additional development. Up to fifteen minutes will be permitted for counsel for each party in the form of argument.

Mediators may then meet with the parties and their counsel together and separately in an effort to encourage settlement.

5. Post Mediation Follow-up

At the conclusion of each mediation session, all participants will be given questionnaires to solicit their views of the process. Mediators will fill out a form indicating whether the case was settled or whether follow-up mediation efforts are necessary. If the case is not mediated successfully, the mediators shall forward suggestions to the Court for early resolution of the litigation. Any follow-up necessary with regard to the mediation of cases on which progress was made but final settlement not achieved will be undertaken by a designated Magistrate Judge.

6. Implementation

Initial planning for the Southern District program will be undertaken by a committee consisting of the Chief Judge, one Magistrate Judge, the Clerk of the Court and two representatives of his office, and three members of the Advisory Group. It is anticipated that the program will be implemented by April, 1992.

In the initial phases of the project, particular emphasis will be given to the selection of older and "stalled" cases. To

that end, the Clerk's office will identify all cases which are more than six months old and will separate them into the types of cases which presumptively will be included and those which presumptively will be excluded by subject matter as described supra. Additionally, a mailing to all attorneys practicing in the Southern District will invite suggestions for additions to the mediation program. The ultimate decision as to the eligibility of case for inclusion in the project will be made by the Judge to whom the case is assigned.

Any initial notice indicating that the case had been designated for mediation will be sent to the parties to determine whether good cause could be shown why the case should not be included. After the case is determined to be definitely appropriate for mediation, an order signed by the appropriate Judge will be issued. The order will indicate three possible meeting times during a two-week period. Counsel will then be asked to rank those times in order of preference and to indicate which of those times counsel is absolutely not available.

With regard to scheduling mediators, care should be taken not to overburden mediators not residing in the immediate area since they will be providing their services on

a pro bono basis. For efficiency, mediators will be asked to handle no fewer than four cases per settlement period. For out-of-area mediators, these cases will be scheduled over a two-day period rather than throughout the two-week mediation period.

It is estimated that the cost for training mediators, including notices, etc., will be approximately $7,000.00. The Court petitions the Judicial Conference, through the Administrative Office, to fund this cost pursuant to 28 U. S. C. § 482 (c) 2 from funds appropriated to the Judiciary pursuant to Section 106 (a).

III. TECHNIQUES INCLUDED IN THE PLAN

A. Binding Representatives at Pretrial and Final Settlement Conference

Lead trial counsel shall appear at the pretrial conference fully prepared to discuss all aspects of the case and the matters set forth in the pretrial order.

During no later than the 10-day period prior to the conference, the parties and their lead trial counsel shall meet together and conduct negotiations looking toward the settlement of the action, and counsel will be prepared at the conference to certify that they have done so. Lead counsel for the plaintiff first named in the complaint shall take the initiative in scheduling such meeting, and all other counsel shall cooperate to effect such negotiations.

Should lead trial counsel fail to appear at any pretrial conference or should a party (or his authorized representative) and his lead trial counsel fail to appear (or in the case of a party or his authorized representative, fail to be available as required by Local Rule 2.11) at any final settlement conference, should lead trial counsel for the parties otherwise fail to confer in settlement negotiations as provided herein, the Court may impose appropriate sanctions, including, but not limited to, sanctions by way of imposition of attorney's

fees against the attorney and/or his client pursuant to Rule 16(f), F. R. Civ P.

B. Extensions of Deadlines for Completion of Discovery or for Postponement of the Trial

If counsel makes repeated requests of the Court for extensions of discovery or continuances of the trial date, the Court may require that the parties consent to such requests in writing.

C. Neutral Evaluation Programs

The Court has developed an informal neutral evaluation program among the judges to allow for the presentation of the legal and factual basis of a case to a neutral court representative (District Judge or Magistrate Judge) at a non-binding conference conducted early in the litigation to facilitate settlement.

D. Parties with Binding Authority Required at Settlement Conferences

Lead trial counsel shall attend the final settlement conference. All parties or their representatives authorized to settle the case shall attend the final settlement conference in person or be available for consultation by telephone with the Court.

To avoid the assessment of fees and allowances of

jurors against either or both parties plaintiff and defendant and their counsel, the parties are to advise the Court of any settlement not later than 3:00 p.m. of the last day not a Saturday, Sunday or holiday prior to the trial date.

E. Trial Schedule Conflicts

When a District Judge who has more than one case scheduled to commence trial on the same day becomes aware that more than one case will go to trial on that day, the Judge shall attempt to secure consent, in the remaining cases scheduled for that day, to a trial before a Magistrate Judge. If agreement is not reached, the assigned Judge must attempt to secure another District Judge who is willing to try the next scheduled case.

IV. ADDITIONAL STAFF RESOURCES

A. Automation of the Court System

The Advisory Group Report has recommended that the Court take immediate steps to fully automate the Court system and that the Court petition the Administrative Office of the United States Court for funding to employ one additional full-time computer systems person to supervise software maintenance, networking, back-up, and perhaps most importantly, training and updating of all Court personnel.

The Court supports the recommendation and petitions the Judicial Conference through the Administrative Office, to fund this position pursuant to 28 U. S. C. § 482 (c) 2 from funds appropriated to the Judiciary pursuant to Section 106 (a).

B. Additional Law Clerk Support

Pursuant to the additional duties placed upon Magistrate Judges, the Advisory Group has recommended that one additional law clerk to be located in Charleston be appointed and assigned by the Chief Judge to ease the Magistrate Judge workload.

The Court supports this recommendation and petitions the Judicial Conference, through the Administrative Office, to

fund this position pursuant to 28 U. S. C. § 482 (c) 2 from funds appropriated to the Judiciary pursuant to Section 106 (a).

C. Additional Mid-Level Management Staff

The Advisory Groups Report recommends that the Clerk's office mid-level management staff be increased by creating and funding an operations manager position, as contained in the Judicial Salary Plan. This position will insure that all civil and criminal cases in the District are monitored constantly. To assure that all cases stay on a time track, if a case encounters delay, appropriate action can be taken to resolve the cause of the delay. The appointee will serve as a civil case coordinator and will monitor the District's mediation system.

The Court supports this recommendation and petitions the Judicial Conference, through the Administrative Office, to fund this position pursuant to 28 U. S. C. § 482 (c) 2 from funds appropriated to the Judiciary pursuant to Section 106 (a).

V. PERIODIC DISTRICT COURT ASSESSMENT

The Advisory Group appointed on March 1, 1991, in compliance with the Civil Justice Reform Act of 1990, 28 U. S. C. § 472 by the Chief Judge of this District shall meet on a regular basis during 1992, and succeeding years, to review the implementation of the District's Civil Justice Expense and Delay Reduction Plan and to assess the condition of the Court's civil and criminal docket with a view to determine appropriate additional actions that may be taken by the Court to reduce cost and delay in civil litigation and to improve the litigation management practices of the Court.

Beginning in 1993, the Advisory Group shall meet annually at least to review the condition of the Court's civil and criminal docket.

APPROVED this 30th day of December, 1991.

CHARLES H. HADEN II
Chief Judge, U. S. District Court