REPORT OF

THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF LOUISIANA

CIVIL JUSTICE REFORM ACT
ADVISORY COMMITTEE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

REPORT OF THE ADVISORY GROUP

CIVIL JUSTICE REFORM ACT

TABLE OF CONTENTS

INTRODUCTION

In 1990, the United States Congress enacted the Civil Justice Reform Act. **28 U.S.C. § 471-482.** The Act requires that each Federal District Court implement a "civil justice expense and delay reduction plan." The purpose of each plan is 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."

In accordance with the requirements of the Civil Justice Reform Act, the Advisory Group for the United States District Court for the Western District of Louisiana submits to the Court the following report and recommendations for reducing costs and delays in civil cases.

I. DESCRIPTION OF THE COURT

The United States District Court for the Western District of Louisiana is comprised of 42 parishes stretching from the Mississippi and Atchafalaya Rivers on the east, the Gulf of Mexico on the south, the State of Texas on the west and the State of Arkansas on the north. The district has six (6) places of holding court, to wit: Alexandria, Lafayette, Lake Charles, Monroe, Opelousas and Shreveport. **28 U.S.C. § 98 (c).** For administrative purposes the district is divided into the following five (5) divisions: Alexandria Division, Lafayette/Opelousas Division, Lake Charles Division, Monroe Division and Shreveport Division.

The Western District of Louisiana has seven (7) authorized judgeships. Presently, six (6) of these judgeships are filled and there is one (1) vacancy. The district has four (4) senior judges at this time, all of whom are active. The district also has five (5) full-time magistrate judge positions and two (2) part-time magistrate judge positions. One of the part-time magistrate judges also serves as the clerk of court.

The judicial officers in the Western District of Louisiana are spread throughout the district as follows:

Alexandria. In the Alexandria Division there is a district judge, a senior district judge and a full-time magistrate judge.

Lake Charles. The Lake Charles Division has a district judge, a senior district judge and a full-time magistrate judge.

Lafayette/Opelousas. The Lafayette/Opelousas Division has the largest concentration of judicial officers, which includes three (3) district judges, a senior district judge and two (2) full-time magistrate judges. One of the three (3) judges in that division presently serves as chief judge. Two (2) circuit judges also reside in this division.

Monroe. The Monroe Division has the vacant district judge position and a part-time magistrate judge.

Shreveport. The Shreveport Division includes a district judge, a senior judge, a full-time magistrate judge, the clerk/part-time magistrate judge, and two (2) circuit judges, including the chief judge for the Fifth Circuit.

II. ASSESSMENT OF CONDITIONS IN THE DISTRICT

A. CONDITION OF THE DOCKETS

The Civil Justice Reform Act requires that district court advisory groups make a thorough assessment of the state of the court's civil and criminal dockets. In making this assessment, the advisory group is to determine the condition of the civil and criminal dockets and identify trends in case filings and in the demands being placed on the court's resources. **28 U.S.C. §472(c)(1)(A) and (B).** In order to assess the state of the docket a five-year review of the statistics for the district was undertaken.

1. CONDITION OF THE CIVIL AND CRIMINAL DOCKETS

In order to assess the condition of the docket of this court, it is necessary to examine a wide variety of statistics. Some areas which should be reviewed are the number of cases filed, the number of cases closed, and the number of cases which are still pending. Since trials have a marked effect on a judge's time, that is another figure which should be noted. It is also important to determine the length of time it takes cases to proceed through the court system. Statistics in that area also add light to the picture of the docket presented.

Cases filed, closed and pending provide one indicator of the state of a court's docket. The following table shows these statistics for this district.

United States District Court
Western District of Louisiana

FILINGS			
Year	Civil	Criminal	Total
1988	3351	255	3606
1989	3134	208	3324
1990	2908	243	3223
1991	2842	337	3179
1992	2475	258	2733

CLOSINGS			
Year	Civil	Criminal	Total
1988	3538	206	3744
1989	3161	232	3393
1990	3048	195	3243
1991	3064	247	3311
1992	2912	268	3180

PENDING			
Year	Civil	Criminal	Total
1988	3552	122	3674
1989	3535	98	3623
1990	3478	146	3624
1991	3278	236	3514
1992	2824	223	3047

Table 1.

In 1988 civil case filings were 3,351. By 1992 this number had fallen 26% to 2,475. During this same period criminal case filings rose 2% from 255 to 258. In 1988 there were 3,538 civil cases closed, and in 1992 there were 2,912 civil cases closed, a decrease of 17%. Criminal case closings rose 30% from 206 in 1988 to 268 in 1992. Pending civil cases fell 20% from 3,552 in 1988 to

2,824 in 1992. On the other hand, criminal cases increased from 122 in 1988 to 223 in 1992, a rise of 83%. Overall, pending cases fell 17% from 3,674 in 1988 to 3,047 in 1992.

Since the work of the court eventually breaks down to the efforts of the individual judge, it is useful to examine case statistics on a per judge basis. The following table compares the per judgeship statistics of this district with the national average. It is to be noted that in 1991 a number of judgeships were added by an omnibus judgeship bill, i.e. 1 in the Western District of Louisiana and 74 nationwide.

Actions Per Judgeship

	Western District of Louisiana			United States District Courts		
	Filings	Termin-ations	Pending Cases	Filings	Termin-ations	Pending Cases
1987*	514	523	604	466	462	461
1988*	595	476	651	467	462	466
1989*	553	464	620	459	457	461
1990*	558	404	640	437	423	476
1991*	415	337	486	372	371	422

* Year shown is the twelve-month period ending June 30 of the year indicated.

Table 2.

In the Western District of Louisiana statistics are further broken down into contested and uncontested cases to present a more meaningful picture of cases which require judge time. "Uncontested" cases are defined as government collection cases in which no opposition has been filed. Since the great majority of these cases proceed by default, they are never seen by a district judge, but handled entirely by the clerk/magistrate judge.

"Contested" cases are all other civil cases, including government collection cases wherein a response is filed by defendant. The following table shows statistics broken down by "contested" and "uncontested" civil cases.

United States District Court
Western District of Louisiana
Civil Cases
(Contested & Uncontested)

FILINGS			
	Contested	Uncontested	Total
1988	2625	726	3351
1989	2357	777	3134
1990	2272	708	2980
1991	2526	316	2842
1992	2275	200	2475

CLOSINGS			
	Contested	Uncontested	Total
1988	2932	606	3538
1989	2607	554	3161
1990	2310	738	3048
1991	2613	451	3064
1992	2572	340	3180

PENDING			
	Contested	Uncontested	Total
1988	3225	327	3552
1989	3007	518	3525
1990	2991	487	3478
1991	2941	337	3278
1992	2660	164	2824

Table 3.

A deeper understanding of the five-year statistics can be gained by examining selected types of cases. The following tables set forth filings in several significant case types in this district.

United States District Court
Western District of Louisiana
FILINGS

YEAR	Prisoner Civil Rights	Habeas Corpus	Social Security Appeals	Civil Rights
1987	187	110	179	204
1988	229	93	324	186
1989	206	130	189	155
1990	189	237	147	156
1991	246	183	213	157

YEAR	Foreclosure	Labor	Marine Personal Injury	Contract
1987	123	49	466	638
1988	644	80	335	618
1989	484	106	404	626
1990	865	117	347	432
1991	269	101	315	340

Table 4.

Several case categories that have shown an increase over the past five (5) years are primarily referred to magistrate judges. These case categories include prisoner civil rights cases, habeas corpus cases and social security appeals. Foreclosure cases which are referred to the clerk/magistrate judge have been variable, but still comprise a substantial docket. Marine personal injury cases and contract cases which are primarily handled by district judges have decreased, but labor cases which are also handled by district judges have shown a marked increase.

Cases are not spread evenly through the district. As shown in the following chart, the Lafayette/Opelousas Division has consistently led the district in filings over the past five (5) years, and in 1992 had 42% of all pending cases.

United States District Court
Western District of Louisiana

ALL CASES FILED					
Division	1988	1989	1990	1991	1992
Alex	439	393	563	430	340
Laf/Opel	1225	1127	1009	968	985
L. C.	563	455	468	530	466
Monroe	654	670	596	648	465
S'port	725	697	587	603	477
ALL CASES PENDING					
Division	1988	1989	1990	1991	1992
Alex	496	472	616	501	361
Laf/Opel	1505	1402	1419	1325	1273
L. C.	534	513	448	481	423
Monroe	518	631	526	632	524
S'port	621	605	615	575	466

Table 5.

Looking at these same statistics by local standards, including only "contested" cases, the following tables present a slightly different picture, with the Lafayette/Opelousas Division accounting for 44% of pending contested cases in 1992.

United States District Court
Western District of Louisiana

CONTESTED CIVIL CASES FILED					
Division	1988	1989	1990	1991	1992
Alex	281	229	405	321	284
Laf/Opel	1047	973	845	844	888
L. C.	474	390	346	452	399
Monroe	314	274	271	468	316
S'port	509	491	405	441	388
CONTESTED CIVIL CASES PENDING					
Division	1988	1988	1990	1991	1992
Alex	423	368	491	382	342
Laf/Opel	1412	1312	1327	1241	1173
L. C.	488	480	385	429	370
Monroe	370	354	297	441	369
S'port	532	493	491	448	406

Table 6.

A review of the action taken in cases proceeding through this Court may also prove useful. The following table sets forth action taken in all cases terminated within the period shown.

United States District Court
Western District Of Louisiana
Action Taken In Civil Cases

	No Court Action	Before PreTrial	During or After PreTrial	During or After Trial	Percent Reaching Trial
1987*	1597	871	300	215	7.2%
1988*	1259	1396	271	221	7.0%
1989*	951	1934	245	174	5.3%
1990*	752	1830	228	169	5.7%
1991*	744	1981	222	152	4.9%

* Year shown is the twelve-month period ending June 30 of the year indicated.

Table 7.

Trials undertaken by the Court is another helpful measure by which court activity can be judged. The following table shows trials during the five-year statistical period.

United States District Court
Western District Of Louisiana

TRIALS			
	Civil	Criminal	Total
1987*	214	23	239
1988*	198	27	225
1989*	148	29	177
1990*	144	29	173
1991*	124	29	153

* Year shown is the twelve-month period ending June 30 of the year indicated.

Table 8.

The total number of trials conducted in the Western District has decreased since 1987. In 1987, 239 trials were conducted, but by 1991 this number had dropped to 153. The greatest drop is in the area of civil trials which have decreased from 214 in 1987 to 124 in 1991. Criminal trials have experienced a steady increase, rising from 23 in 1987 to 27 in 1988, and then leveling off at 29 for 1989-1991. The following table compares local trial figures with the national average.

Trials Per Judgeship

	1987*	1988*	1989*	1990*	1991*
Western District of La.	40	38	30	29	22
United States Courts	35	35	35	36	31

* Year shown is the twelve-month period ending June 30 of the year indicated.

Table 9.

In addition to reviewing the volume of cases handled by the Court, it is also useful to examine the time it takes these cases to progress through the court system. There are a wide variety of statistical measures which might shed light on the time it takes cases to go through the litigation process.

United States District Court
Western District Of Louisiana
Civil Cases Pending
(By Time Case Pending)

	Total Cases	Less Than 1 Year	1 to 2 Years	2 to 3 Years	Over 3 Years	Percent Over 3 Years
1987*	3563	2199	1009	249	106	3.0%
1988*	3830	2465	999	289	77	2.0%
1989*	3641	2178	974	378	111	3.0%
1990*	3744	2361	836	421	126	3.4%
1991*	3266	1978	863	296	129	3.9%

* Year shown is the twelve-month period ending June 30 of the year indicated.

Table 10.

Of cases that were pending in the Western District in 1991, only 3.9% were more than three years old, giving the court a ranking of 3rd in the circuit and 21st in the nation. The national average for cases more than three years old was 11.8%. Statistics for the last five (5) years show that the percentage of three-year-old cases in the Western District has remained low.

Median Times In Months From Filing To Disposition

	W. D. OF LOUISIANA		UNITED STATES	
	Civil	Criminal	Civil	Criminal
1987*	14	3.2	8	3.4
1988*	13	3.3	8	3.6
1989*	10	4.7	8	2.6
1990*	11	6.2	8	4.5
1991*	11	5.8	9	4.8

* Year shown is the twelve-month period ending June 30 of the year indicated.

Table 11.

The median time from filing to disposition of a civil case has fallen from 14 months in 1987 to 11 months in 1991. The national median time from filing to disposition of civil cases has increased from eight(8) months to (9) months during the period from 1987 through 1991. In criminal cases this district has seen a rise from a median time of 3.2 months in 1987 to 5.8 months in 1991. Over the same period the national median time in criminal cases rose from 3.4 months to 4.8 months.

Median Times In Months From Issue To Trial

	1987*	1988*	1989*	1990*	1991*
W.D. La.	18	17	18	22	25
U. S.	14	14	14	14	15

* Year shown is the twelve-month period ending June 30 of the year indicated.

Table 12.

Median time from joining issue to commencement of trial is another measure of litigation progress. In this district, median time from issue to trial has increased from 18 months in 1987 to 25 months in 1991. The national average during this period rose from 14 months in 1987 to 15 months in 1991.

The statistics mentioned above encompass the work of the district judges, a portion of which is referred to magistrate judges. There is another body of work performed by the magistrate judges for which statistics are not available. A discussion of the additional duties of the magistrate judges can be found of page 19-20.

2. TRENDS IN CASE FILINGS AND IN THE DEMANDS BEING PLACED ON COURT RESOURCES

Over the five-year period from 1988-1992 overall case filings in the district dropped from 3606 to 2733, which amounts to a 24% differential. (Table 1.) Total civil cases fell from 3351 to 2475, a decrease of 26%. A look at "contested" civil cases (Table 3.) shows a decline from 2625 to 2275, a difference of only 13%. Criminal cases, on the other hand, rose from 255 to 258, an increase of 2%. (Table 1.) The trend in the district seems to be an increase in criminal activity and a decrease in civil litigation. However, the fact that total cases filed per judgeship in this district (415) are still in excess of the national average (372) should not be forgotten. (Table 2.)

While it is impossible to determine with certainty the reasons for the civil decrease, there are some likely explanations. One factor which tended to limit civil case filings was the insufficiency of judicial resources, which will be discussed later in this report. Indicative of this phenomenon was a survey by the Lafayette Trial Lawyers which indicated that 770 additional cases would have been filed in this district during the years 1989-1991

if an adequate number of judges were available. (See Attachment # 1) Another factor which had an impact on civil filings was the change in jurisdictional amount in diversity cases from $10,000 to $50,000 in November of 1988. **28 U.S.C. 1332.** The decline experienced in the oil industry probably had a negative effect on civil filings since a reduction in the activity of oil companies resulted. Given the volume of maritime litigation filed in the court from offshore drilling, reduced drilling means reduced lawsuits.

Regardless of the reasons for the decline in civil filings, there is a definite trend toward reduced civil litigation. The recent addition of judge-power in this district may reverse this trend to some degree, but any substantial increase in civil activity is not expected.

Criminal cases on the other hand have increased and are expected to continue to increase. One reason for this increase is the emphasis placed by the U. S. Attorney on drug crimes and white collar crimes, such as S. & L. frauds. This heightened focus in those areas has every likelihood of continuing. If Congress decides to make violence against women a federal crime and to continue to federalize other traditional state crimes, such as car-jacking, there could be an explosion of criminal activity. This, however, is impossible to predict.

Concurrent with the decrease in case filings, pending cases have declined, but cases pending per judgeship in the district (486) are still far in excess of the national average of cases

pending per judgeship (422). While total pending cases declined 17%, pending civil cases declined 20%. In the area of "contested" pending civil cases there was a drop of 17%. The one troubling factor in the area of pending cases is the 83% increase in pending criminal cases. The filling of vacant judgeships and the addition of a judgeship in 1991 should result in an even lower pending caseload in years to come.

An examination of Table 7, Table 8 and Table 9 reveals some interesting trends. The number of trials has steadily decreased over the past 5 years from 239 to 153. The average trials per judge declined from 40 to 22, while the national average was only reduced from 35 to 31. Some of this may be explained by the 62 months of vacant judgeships and the fact that although a judgeship was added in 1991, it was not filled until November of that year.

The number of cases terminated during or after pretrial and during or after trial has also taken a steady plunge. The cases terminated with no court action has also declined each year. The area where terminations have increased is before pretrial. It is felt that this increase is a result of early involvement of judicial officers in the cases. Early scheduling conferences, whose scope continues to expand, is a definite factor in this phenomenon. Judicial involvement in other status conferences also contributes. Since the court is expanding this early involvement, this trend should continue.

As shown in Table 10 the court has suffered a gradual increase in 3-year-old cases. While the 3.9% reading for three-year-old

cases is still far below the national average of 11.8%, attention should be paid to the trend toward increase. This is another area which should be aided by the 1991 increase in judge power.

In civil cases the time from filing to disposition has fallen from a high of 14 months in 1987 to 11 in 1991. (Table 11) However, the district still remains above the national average which has risen from 8 months to 9 months during the period. In criminal cases the median time in the district has risen from 3.2 months to 5.8 months, while the national average increased from 3.4 months to 4.8 months.

Probably the most troubling trend is found in the area of median time from issue to trial found in Table 12. This measure has increased in this court from 18 months in 1987 to 25 months in 1991. Throughout the period the district times remain considerably above the national average. While an increase in judge power should have a marked impact on this statistic, scheduling practices should also be closely scrutinized.

3. JUDICIAL RESOURCES AND FACILITIES

a) Judicial Resources.

After a long period of coping with insufficient judicial resources, the Western District of Louisiana seems to possess enough judge-power to efficiently deal with the caseload. At present the Western District of Louisiana has 7 authorized district judgeships and 5 full-time magistrate judgeships. In addition the district has a part-time magistrate judge and a clerk/magistrate judge. There is only 1 judicial vacancy at this time.

The judicial roster of the district is as follows:

Alexandria:

District Judge F. A. Little, Jr.

Senior District Judge Nauman S. Scott

Magistrate Judge John Simon

Lafayette:

District Judge John M. Shaw, Chief Judge

District Judge Richard T. Haik

District Judge Rebecca F. Doherty

Senior District Judge Richard J. Putnam

Magistrate Judge Mildred E. Methvin

Magistrate Judge Pamela A. Tynes

Lake Charles:

District Judge James T. Trimble, Jr.

Senior District Judge Edwin F. Hunter, Jr.

Magistrate Judge Alonzo P. Wilson

Monroe:

(Vacancy in district judge position)

Magistrate Judge John W. Wilson (part-time)

Shreveport:

District Judge Donald E. Walter

Senior District Judge Tom Stagg

Magistrate Judge Roy S. Payne

Clerk/Magistrate Judge Robert H. Shemwell

This amounts to a total of 6 district judges, 4 senior district judges, 5 full-time magistrates, 1 part-time magistrate judge and

1 clerk/magistrate judge. The total will be increased by 1 district judge when the Monroe vacancy is filled.

The statistical base used in this report is the five-year period from 1988 through 1992. During that period there were several changes in authorized judge-power. There were also a number of months of vacant judgeships.

At the start of 1988 the Western District of Louisiana had six (6) authorized district judgeships and four (4) authorized full-time magistrate judgeships. There were also two (2) part-time magistrate judge positions and a clerk/magistrate position. In 1991 an additional district judge position was added and a part-time magistrate judge position was converted to full-time status, thereby bringing the district up to its present strength.

From 1988 to 1992 there were a number of judicial vacancies. On November 9, 1988, Judge John M. Duhe' was elevated from this court to the Fifth Circuit Court of Appeals. This vacancy was not filled until June 14, 1991, the vacancy having existed for more than 31 months. On February 13, 1990, Judge Earl E. Veron took senior status and, subsequently, died on August 28, 1990. His replacement took office September 17, 1991, with the vacancy having existed for more than 20 months.

The seventh district judgeship created for this district was not filled until November 15, 1991, which resulted in an additional 11 months of judicial vacancy. Conversion of the part-time magistrate judge position to full-time was accomplished on December 5, 1991. The district judge vacancy in Monroe was created on

February 28, 1992, when Judge Tom Stagg took senior status and Judge Donald E. Walter transferred to Shreveport. This resulted in an additional 10 months of judicial vacancy.

The activities in the area of judicial resources during the period from 1988 through 1992 had a definite impact on the statistics. Several factors should be considered when reviewing the statistics for this period. The fact that there were in excess of 72 months of judicial vacancies deserves note. Additionally, the fact that the seventh district judge and the fifth magistrate judge did not take office until the end of 1991 should be recognized.

Not only did judicial vacancies affect the amount of work which could be accomplished in the court, but the level of filings was also influenced. A survey by the Lafayette Trial Lawyers Association indicates that an additional 770 cases would have been filed in the Lafayette/Opelousas Division during the period from 1989-1991 had sufficient judge-power been available. (See Attachment # 1) It is probable that this lack of judicial resources also affected other potential case filings, but the degree of such loss is impossible to quantify.

Magistrate judges constitute a substantial judicial resource. Many of the duties performed by the magistrate judges are not reflected in the statistics given for the district court. However, if these functions were not performed by magistrate judges, their performance would involve district judges.

In criminal matters magistrate judges generally perform all pre-indictment functions, such as issuance of search and arrest warrants, initial appearances, detention hearings, bond hearings, and preliminary examinations. Many magistrate judges also conduct arraignments and issue reports and recommendations on criminal motions.

The magistrate judges have responsibility for misdemeanor cases. This includes handling all criminal matters arising on military reservations, such as Barksdale Air Force Base and Fort Polk. Since there is no state jurisdiction over these military reservations, their duties encompass all criminal violations from traffic violations to serious criminal matters. Case arising under the Migratory Bird Treaty Act (MBTA) also occupy considerable magistrate judge time. Since this district lies in the Mississippi flyway, this burden is not inconsiderable.

In addition to the criminal burden carried by magistrate judges, responsibilities in the civil area continue to expand. Besides being primarily responsible for social security appeals, prisoner cases and uncontested cases, the magistrate judges are heavily involved in case management for other civil cases.

While the level of judicial resources has presented a problem in the past, judge-power does not seem to pose a threat to the future. The advisory group does feel that the establishment of a full-time magistrate judge position in Monroe, with the increase in magistrate judge involvement in case management and settlement, would advance the judicial efficiency of the district.

b) Facilities.

Providing adequate facilities for court proceedings has presented an increasing problem. However, projects underway and being pursued should have the effect of alleviating this deficiency. A division-by-division look at facilities in the district sets forth both the problems and the proposed solutions.

Alexandria. The Alexandria courthouse has one courtroom and one smaller hearing room. With three (3) judicial officers in residence conflicts sometimes arise with scheduling, but so far the court has been able to cope with any problems. The design of the building does not lend itself to addition of any further courtrooms.

Lafayette. The Lafayette courthouse has two (2) full-size courtrooms and three (3) smaller hearing rooms with limited jury facilities. The building has been added on piecemeal and does not seem capable of accommodating any further courtrooms. Scheduling of courtrooms presents a major problem at this location. Even when there are enough courtrooms available, it is necessary to hold jury trials in hearing rooms far too small to effectively conduct such proceedings. The Administrative Office and the General Services Administration have been made aware of the acute problems at this location and a prospectus for a new federal courthouse is being prepared for presentation to Congress.

Lake Charles. The Lake Charles courthouse has one courtroom and a smaller hearing room with limited jury facilities. A new courthouse project is well underway. It is projected that a new

courthouse will be complete in Lake Charles sometimes during 1994. The new courthouse will have four (4) full-size courtrooms to take care of the three (3) resident judges and a visiting bankruptcy judge.

Monroe. The Monroe courthouse has a full-size courtroom and a small hearing room. A project to improve the hearing room and construct adjacent chambers to be shared by a visiting bankruptcy judge and a part-time magistrate judge is underway and should be completed in 1993.

Shreveport. The Shreveport courthouse has two (2) full-size courtrooms and a smaller bankruptcy courtroom without jury facilities. Scheduling presents a problem at the facility. A new courthouse is under construction and should be completed by the end of 1993. The new courthouse will have four (4) full-size courtrooms and a smaller courtroom which will be utilized for preliminary criminal proceedings, but which could serve to conduct a jury trial.

While facilities in the district are presently inadequate, projects underway should alleviate these deficiencies. In fact if Congress funds a new building for Lafayette, the district should have ample courtroom facilities for the foreseeable future.

B. COST AND DELAY

The Advisory Group does not feel that either cost or delay is a significant problem in the Western District of Louisiana. This is not to say that improvements in the court system in the district cannot be made, but only that the district is not experiencing substantial difficulties in either area.

The statistical review of the docket shows that although the overall caseload of the district has shown a slight decrease, the district is still far above the national average in actions per judgeship. In spite of a per judgeship termination rate in excess of the national average, pending cases continue to exceed the national average on a per judgeship basis. Statistics on time intervals indicate that attention should be given to the time elapsed between joining of issue and trial.

The Advisory Group did not feel that litigation costs were excessive in the district. From their interviews it was determined that discovery was one area where cost could be a problem, but that this should be principally controlled by the client, not by court action. Problems in discovery practices included taking unnecessary depositions and having multiple attorneys attend depositions when one attorney would suffice. It was the feeling of the Advisory Group, and the great majority of attorneys attending town meetings, that clients have already started to exert more control over the discovery process.

The Advisory Group reviewed the proposed discovery amendments to the Federal Rules of Civil Procedure in great detail. These

discovery amendments were also the subject of a great deal of discussion at the town meetings. The overwhelming consensus of the members of the Advisory Group and the attorneys attending the town meetings was that the disclosure provisions of the new rules would both increase costs and cause a number of ancillary difficulties. These difficulties include compelling an attorney to make a decision on whether a matter should be disclosed when such decision puts the attorney in the position of whether to be an advocate for the opposing side or be a zealous advocate for his own client: a definite ethical dilemma. Additionally, a great deal of costs would be generated making disclosure of information which may be of no possible use to the opposing side. Another possible cost-generating effect of the new rules would be to create a new area of litigation, i.e. whether or not disclosure was complete, timely, etc. It was the feeling of both the participants at the town meetings and the Advisory Group that a local rule should be passed exempting the Western District of Louisiana from the disclosure provisions of the new discovery rules.

The Advisory Group also noted that when a trial was scheduled, certain trial preparation costs were incurred immediately prior to the scheduled date, regardless of whether the trial was actually commenced. If the trial was continued at the last moment, these costs would have to be repeated upon the setting of a new trial date. Control of these costs is tied to adequate notice when a scheduled trial is continued or canceled for some other reason.

The Advisory Group noted with approval that the Court had several procedures that limited court appearance by counsel, thereby reducing costs. The large majority of motions are decided on briefs without necessity of a court appearance by counsel. When personal appearance is not deemed absolutely necessary, counsel are permitted to participate in pretrial and other conferences by telephone. Both of these practices reduce litigation costs by eliminating travel costs and reducing time which counsel must spend away from the office.

Although the Advisory Group did not feel that delays in the litigation process were excessive, it was noted that some delays were experienced. One of the most significant causes of this delay is too much work and too few judges to handle the load. This is directly attributable to the high volume of cases and the reduced number of judges available. With the recent addition of judge-power, hopefully, this phenomenon is a thing of the past.

During the period from 1987-1991 the Western District of Louisiana was consistently over the national average in cases filed per judgeship. That in itself would be a source of potential delay. However, this situation was exacerbated by the existence of judicial vacancies. During that period the district suffered through 72 months of judicial vacancies. This combination of workload and reduced judicial resources almost certainly contributed to delays in this district.

Trial calendar setting practices is another area where delay may be introduced. The majority of the judges set trials by

scheduling a number of cases, from 8 to 15, on a calendar for a trial week. One judge sets a single case for trial with a backup in case the primary case does not go to trial. The former practice is based on the theory that once set for trial the majority of cases will be settled. The latter practice focuses on the cost of preparation for trial and is grounded in the belief that this cost should only be incurred once.

III. RECOMMENDATIONS.

The Advisory Group is of the opinion that the procedures in place in the Western District of Louisiana are effective in moving cases timely through the court system. However, the Advisory Group does have some suggestion for improvement.

A. Uniform Procedures. The Western District of Louisiana is made up of a number of judges sitting over a wide area. While the local rules provide a general outline of procedures, many judges employ procedures unique to them. The Advisory Group is particularly interested in striving for uniform motion procedures and scheduling orders.

A variety of scheduling orders, pretrial orders, etc. are in use. Adoption of uniform procedures where practical would have several advantages. Uniform procedures would permit transfer of cases between judges at any stage of the proceeding without difficulty. Uniform procedures would also help attorneys to develop procedures for practicing in the court without having to allocate extra resources, and, therefore, extra cost, to compliance with a particular judge's procedures.

Recommendation:

That the court adopt uniform procedures for all judges wherever practical.

B. Alternate Dispute Resolution. The Advisory Group studied several forms of Alternate Dispute Resolution (hereinafter ADR) in order to determine whether any of the ADR mechanisms would have significant potential for reducing litigation costs and delays in this district. The Advisory Group concludes that the current state of the civil docket in the Western District of Louisiana of Louisiana does not demand a recommendation for any type of mandatory ADR. However, the Advisory Group does believe that voluntary ADR can play a positive role in particular cases, and recommends that the district court provide litigants with notice of the availability of such ADR. Further, the committee recommends that a court-sponsored settlement conference under **Fed.R.Civ.Proc. 16** be available in all appropriate cases. The Advisory Group considered recommending that a local rule be passed permitting the judge to require attendance by a party or their representative, but determined that such a rule would not be advisable in light of the recent Fifth Circuit case of **In Re Stone, 986 F.2d. 898 (5th Cir. 1993).** In addition, it was felt that the proposed amendment to **Fed.R.Civ.Pro. 16(c)** should address this problem. In pertinent part, **Rule 16(c)** provides "If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute." (See also **28 U.S.C. § 473(b)(5)**)

Recommendations:

That the court establish a registry of voluntary ADR services and provide notice of these services to all civil litigants.

That the court pass a local rule permitting the court to order a settlement conference. The conference should be held by a judicial officer other than the one who will decide the case on the merits should a settlement not be reached.

C. Differentiated Case Management: Under **28 U.S.C. § 473 (a) (1)** the court is directed to consider

> "(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."

Presently, in this district a number of differentiated case management techniques are utilized, but there is no formal program for differentiated case management.

Recommendation:

It is recommended that a formal program of differentiated case management be instituted in line with the principles set out below.

I.F.P. Applications. All applications to proceed in forma pauperis shall be referred to the Clerk/Magistrate Judge. After action on the application, the matter should be subject to the normal rules for referral of civil cases.

Uncontested Docket. All collection actions filed by the United States or any agency of the United States shall be assigned to the Uncontested Docket. All "uncontested cases" shall be referred to the Clerk/Magistrate Judge. If an answer or adversarial motion is filed in an "uncontested case," the case shall be transferred to the regular civil docket.

Prisoner Docket. All habeas corpus matters, both state and federal, and all civil rights actions involving conditions of confinement shall be assigned to the Prisoner Docket. All prisoner cases shall be initially assigned to the Clerk/Magistrate Judge for preliminary handling. The Clerk/Magistrate Judge shall take all necessary action to either issue a report and recommendation on procedural grounds or after development of the record to refer the matter to the regularly assigned Magistrate Judge for report and recommendation on the merits.

Social Security Docket. All appeals from decisions of Administrative Law Judges in social security cases shall be assigned to the Social Security Docket. Cases on the Social Security Docket shall be assigned to Magistrate Judges for report and recommendation.

Accelerated Docket. The Accelerated Docket shall consist of non-jury cases requiring either no live testimony or a minimal amount of live testimony, i.e. one-half day or less. To be listed on the Accelerated Docket, the attorneys must jointly certify to the court the eligibility of the case.

Stand-By Docket. The Stand-By Docket shall consist of civil cases ready for trial wherein the case is ready for trial and can be called for trial upon four-week notice. To be listed on the Stand-By Docket, the attorneys in the case must jointly certify that the case is ready for trial and that such case can be tried on four-week notice. The fact that a case is on the Stand-By Docket shall not affect that case's place on the regular docket. Trials in cases on the Stand-By Docket shall be held by any available judge or with consent by any available magistrate judge.

Nothing in the differentiated case management program shall be interpreted to prevent any judge from employing appropriate specialized procedures for the handling of specific cases.

D. Early Judicial Intervention: The Advisory Group considered the issue of early neutral evaluation, but felt that establishment of a program in this district would increase costs and be of little value. The Advisory Group was of the opinion that benefits equivalent to those expected from early neutral evaluation could be realized from "initial pretrial conferences," which are already being held in this district, without any increase in costs.

In several divisions of the court "scheduling" conferences under **Fed.R.Civ.Pro. 16 (b)** are held in all appropriate cases. These conferences are not limited to scheduling matters, but also explore definition of issues, discovery settlement, etc. A scheduling order setting all deadlines in the case is issued as a result of the conference. (See Attachment #2) In light of the expanded scope of the conferences, they are often referred to an "initial pretrial conferences." The Advisory Group recommends that "initial pretrial conferences" be held in appropriate cases throughout the district.

Recommendation:

That a scheduling or "initial pretrial" conference be held by the magistrate judge in all appropriate cases. That the conference include a broad scope of matters including voluntary disclosure, issue definition, and settlement. That a comprehensive scheduling order issue from each scheduling conference.

E. Judicial Resources. In general resources within the court are sufficient. However, the Advisory Group feels that additional resources in several areas would serve the court and the litigants.

With the expanded case management responsibility of magistrate judges, there needs to be a full-time magistrate judge at each location of court where a district judge resides. This would enable the court to implement good case management practices, such as initial pretrial conferences, status conferences, settlement conferences, etc. at each location of the court. The Advisory Group feels that a full-time magistrate judge should be located in Monroe. The part-time magistrate in Monroe essentially performs

only preliminary criminal matters. The Monroe magistrate judge's part-time status does not allow time for any involvement in civil case management.

In the Alexandria Division the district judge chooses to retain for review a number of cases that in other divisions are being automatically referred to magistrate judges. The district judge then makes referrals on a case-by-case basis. The result of this practice is less than maximum utilization of the full-time magistrate judge in Alexandria. As an alternative to establishing a new full-time magistrate judge position in Monroe, the proposition of switching magistrate judge positions in Monroe and Alexandria should be considered. This would result in a full-time magistrate judge position in Monroe and a part-time magistrate judge position in Alexandria.

Effective case management is a developing field. The Advisory Group feels that the court should employ a staff attorney to aid the court in keeping current with case management trends and to implement those practices in the district. The staff attorney could also monitor the state of the docket and keep the court current on problems developing in the system. Finally, the staff attorney could assist in drafting standing orders, local rules and court plans, such as the jury plan, speedy trial plan, etc.

Recommendation:

Appoint a full-time magistrate judge to sit in Monroe, or transfer a full-time magistrate judge position from Alexandria to Monroe and establish a part-time magistrate judge position in Alexandria.

Employ a staff attorney for the court to monitor and assist in case management and to draft court operation plans.

F. Discovery. Discovery is an important factor in both cost of and delay in litigation. Steps should be taken to limit discovery and to insure that discovery is timely completed. However, any discovery limitations should be carefully crafted not to unduly restrict an attorney's ability to properly prepare for litigation. The primary factor in controlling discovery costs should be the client. Control of discovery costs should be determined by interaction between the client and the attorney.

Proposed amendments to the **Federal Rules of Civil Procedure** in the area of discovery are scheduled for implementation on December 1, 1993, absent any contrary action by Congress. (See Attachment #3) Some of the effects of these discovery amendments include "initial disclosure," "limitation of depositions and interrogatories," and "prohibition against discovery prior to initial disclosure." Town meetings held in this district revealed a great deal of concern over these proposed provisions. A majority of the attorneys present at the town meetings expressed a preference for local rules limiting the application of some or all of the proposed discovery amendments.

The town meetings produced arguments that the proposed discovery amendments would increase rather than reduce discovery costs, and cause a number of ancillary problems. "Initial disclosure" will result in production of a great deal of unnecessary documents as well as unnecessary investigation into a

number of potential witnesses who really have nothing to do with the case. These provisions will also spawn a new area of litigation for determination of whether a document should have been produced or a witness disclosed. The attorneys expressed the opinion that "initial disclosure" combined with "notice pleading" would definitely contribute to this phenomenon.

The participants at the town meetings also expressed the feeling that limitations on the number of depositions and interrogatories and the prohibition against any discovery prior to initial disclosure would increase costs by causing a number of unnecessary motions for exceptions. There is perceived to be no problem in this district with either the number of depositions or the number of interrogatories. It was also felt that delaying discovery until after initial disclosure was unnecessary.

It is the recommendation of the Advisory Group that the Western District of Louisiana enact a local rule excluding this district from the provisions of the proposed discovery rules providing for disclosure and other provisions stemming from disclosure, such as limitations on discovery pending disclosure. Discovery procedures in this district seem to be working well. Implementation of the discovery provisions of the proposed federal rules amendments would increase costs in a number of ways, including making broad disclosure which may not be relevant in an effort to protect against possible penalties for failure to disclose, and by creating a new area of litigation centering around the sufficiency of disclosure. These proposed amendments would

also place new burdens on attorneys, for example acting as attorney for the opposing side to determine what evidence might support some theory for the opposition or making an ethical determination of whether to disclose evidence in an area unknown to the opposition, but revealed to an attorney in confidence by his client.

Recommendation:

That the court enact a local rule excluding this court from the operation of the disclosure provisions of the proposed federal rules and any other provisions of such rules dependant on disclosure.

G. Calendaring. Efficient practices for trial calendaring (defined as scheduling of cases) has a significant effect on both cost and delay. The Advisory Group ascribes to the principle that trial settings settle cases and, therefore, a number of cases should be set on a trial calendar. On the other hand, the Advisory Group recognizes that there are certain costs associated with preparation for a trial which must be duplicated each time a trial date approaches, regardless of whether the trial actually takes place. Some of these costs involve securing attendance of witnesses immediately prior to trial. Accordingly, any continuance of a trial should take place far enough in advance of trial to prevent incurring pre-trial costs which would have to be duplicated at the next trial setting.

The Advisory Group proposes that multiple cases be set on trial calendars and that pre-trial conferences be held four (4) weeks in advance of trial. At pretrial conference the final trial

docket should be set at a realistic number. This advance notice of continuances would help prevent unnecessary pretrial expenditures.

Recommendation:

That multiple cases be scheduled on trial calendars and that pretrial conferences be set four weeks prior to trial.

That at pretrial conference a final trial calendar be set which includes only cases which are realistically expected to reach trial.

H. Civil Justice Reform Act Plan. Under the Civil Justice Reform Act, each court is required to either "develop a plan or select a model plan." **28 U.S.C. § 472(b)(2)** As previously stated, this district is not in need of major change. Accordingly, the Advisory Group feels that the court should develop its own plan in lieu of adopting a model plan.

Recommendation:

That the court adopt its own Civil Justice Reform Act Plan.

IV. COMPLIANCE WITH **28 U.S.C. § 473.**

The Civil Justice Reform Act requires the Advisory Group to consider a number of "principles and guidelines of litigation management and cost and delay reduction." **28 U.S.C. § 473** The Advisory Group followed this mandate and made recommendations where appropriate for this court. The following paragraphs are a summary of the action of the Advisory Group in this regard.

Differentiated Case Management. **28 U.S.C. § 473(a)(1)** The Advisory Group considered a number of options for differentiated case management. The Advisory Group chose not to adopt a "track" system based on the amount in controversy or similar criteria. The

Advisory Group chose to recommend a system based largely on the type of case involved. The system also includes several categories for cases which the attorneys involved feel are appropriate for expedited handling. (See pages 28-29)

Early Judicial Intervention. **28 U.S.C. § 473(a)(2)** The Advisory Group embraced the concept of early judicial intervention. The Group felt that this could best be accomplished by a system already being used in some divisions of this court of "initial pretrial conferences." The conferences recommended are in reality expanded scheduling conferences as required by **Fed.R.Civ.P. 16(b)**. The conferences include all aspects of a Rule 16(b) conference and other facets such as a discovery plan, discussion of claims and defenses, potential witnesses, experts, etc, as well as inquiry into possible settlement. A detailed scheduling order issues as a result of the conference. (See pages 29-30)

Complex Case Management. **28 U.S.C. § 473(a)(3)** The Advisory Group did not feel that a special procedure for complex cases was necessary. The normal system of "initial pretrial conferences" takes into consideration the complexity of the case. If special procedures are required, they should be individually tailored to fit the case.

Voluntary Discovery. **28 U.S.C. § 473(a)(4)** The Advisory Group feels that voluntary cooperation in discovery would reduce costs. However, the Group is of the opinion that the mandated "disclosure" of the proposed discovery amendments to the Federal Rules of Civil Procedure would increase costs instead of acting to

reduce costs. Unfocussed and irrelevant disclosure would increase costs. Costs would also be increased by the litigation spurred by contests over appropriateness and completeness of disclosure.

Discovery Dispute Certification. **28 U.S.C. § 473(a)(5)** The Advisory Group was in agreement with the principle that parties should certify that they have made a good faith attempt to resolve discovery disputes prior to coming to the court for relief. This district has long had a local rule requiring this certification. **ULLR 2.11W** Proposed **Rule 26(c) of the Federal Rules of Civil Procedure** will also contain this requirement.

Alternative Dispute Resolution. **28 U.S.C. § 473(a)(6)** The Advisory Group is of the opinion that while alternative dispute resolution serves a valuable function, it should not be a formal part of the legal process in this court. The Advisory Group recommends establishment of a resource center in the clerk's office to provide information to litigants interested in alternative dispute resolution. However, the Advisory Group does not feel that the court should be involved in mandated alternative dispute resolution. (see page 27)

Discovery-Case Management Plan. **28 U.S.C. § 473(b)(1)** This concept is embodied in the "initial pretrial conference" procedure discussed above.

Authority of Attorneys Attending Conferences. **28 U.S.C. § 473(b)(2)** The Advisory Group recognized the fact that the court requires the "trial" attorney to attend all conferences unless leave of court is granted for another attorney to attend. It is

felt that this requirement includes the authority of such attorney to bind the party. The Advisory Group also noted that proposed **Fed.R.Civ.P. 16(c)** contains a requirement that an attorney with authority to bind the party be present at all conferences.

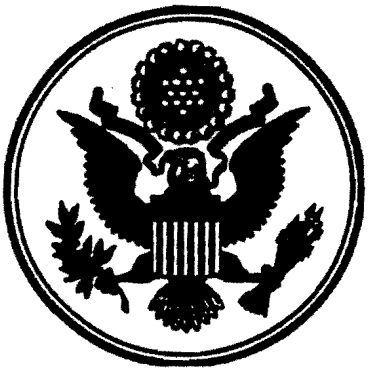
Extensions to be Signed by Attorney and Party. **28 U.S.C. § 473(b)(3)** The Advisory Group did not feel that a party should be required to join in all requests for extensions of discovery deadlines and postponements of trials. It was felt that this was the obligation of the attorney who in turn has an obligation to keep the client apprised of the progress of the litigation.

Early Neutral Evaluation. **28 U.S.C. § 473(b)(4)** The Advisory Group did not feel that a great deal would be gained by requiring early evaluation by a neutral representative. The Advisory Group was of the opinion that this function could adequately be handled at "initial pretrial conference."

Party Availability for Settlement Conferences. **28 U.S.C. § 473(b)(5)** The Advisory Group noted that this principle was addressed in proposed **Fed.R.Civ.Pro. 16(c)** which authorizes the court to require a party to be either present or reasonably available by telephone for settlement conferences.

CIVIL JUSTICE REFORM ACT ADVISORY COMMITTEE

WESTERN DISTRICT OF LOUISIANA



APPENDIX

ATTACHMENT NUMBER 1

LAFAYETTE TRIAL LAWYERS ASSOCIATION SURVEY
1989-1991

The Lafayette Trial Lawyers Association

April 9, 1991

Judge John M. Shaw
U. S. District Court
705 Jefferson Street
Lafayette, LA 70501

Dear Judge Shaw:

Enclosed are the original survey questionnaires that were completed and returned to my office.

Of the 354 attorneys polled, 116 responded to the survey as of today. Of the 116 responses, there were 61 yes's and 55 no's. The 61 positive responses (meaning that the responding attorney filed cases in another jurisdiction, other than the Lafayette-Opelousas Division, because of the Judge shortage) break down as follows:

Year	Number of Cases Filed Elsewhere
1989	247 cases
1990	363 cases
1991	160 cases
TOTAL	770

It is my understanding that 1047 contested civil cases were filed in 1988, 973 in 1989 and 845 in 1990. Using the data from the survey the number of contested civil cases filed would be as follows:

Year	Composite Filings
1989	1220
1990	1208

Please note that the responses are by individual attorneys and not by firm. While the identity of the survey respondents is confidential, each respondent can be identified by the number appearing at the right-hand corner of the questionnaire. Within many firms there were yes and no responses. Also, the number of cases filed elsewhere varied depending on the individual attorney.

In considering this data it should be kept in mind that numerous prominent trial attorneys did not respond to the questionnaire. Therefore, it would seem that the number of cases filed in other jurisdictions because of the judge shortage is larger than indicated by the survey.

In the event you should have any questions, please feel free to contact my office at your convenience.

Very truly yours,

AUBREY E. DENTON
President

AED/ad
Enclosures (116 original questionnaires)

HAND DELIVERED

ATTACHMENT NUMBER 2

SAMPLE SCHEDULING ORDER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

_____ **CIVIL ACTION NO.**_____

VS. **JUDGE**_____

_____ **MAGISTRATE JUDGE**_____

SCHEDULING ORDER

The following dates are hereby set:[1]

TRIAL: _____

PRETRIAL CONFERENCE: _____
(3-4 weeks bef. Trial)

DEADLINE:	**FOR:**		
(120 days bef. PTC)	1.		JOINDER OF PARTIES AND AMENDMENT OF PLEADINGS.
(90 days bef. PTC)	2.		PLAINTIFF'S EXPERT INFO/REPORTS.
Immediately upon receipt	3.		FURNISHING COPIES OF REPORTS OF TREATING PHYSICIANS OR OTHER RELEVANT INFORMATION.
(60 days bef. PTC)	4.	(a)	DISCOVERY.
		(b)	DEFENDANT'S EXPERT INFO/REPORTS.
		(c)	DISPOSITIVE MOTIONS.
(46 days bef. PTC)	5.		EXPERT DEPOSITIONS.
(30 days bef. PTC)	6.		PLAINTIFF'S COUNSEL TO HOST CONFERENCE TO PREPARE PRETRIAL STIPULATIONS.
(15 days bef. PTC)	7.	*	MOTIONS IN LIMINE
(7 days bef. PTC)	8.	*	PRETRIAL STIPULATIONS.
(21 days bef. TRIAL)	9.		TRIAL DEPOSITIONS (EXPERTS AND

[1] If a deadline falls on a Saturday, Sunday or federal holiday, the effective date is the first business day following the deadline imposed.

			LAY WITNESSES).
(10 days before **TRIAL**)	10.	*(a)	(NON-JURY TRIALS) TRIAI BRIEF AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.
		*(b)	(JURY TRIALS) JOINT JURY INSTRUCTIONS AND INTERROGATORIES.
		*(c)	DISCOVERY OF REQUESTED SURVEILLANCE EVIDENCE/FINAL DEPOSITION OF PARTY IN QUESTION.
		*(d)	DISCOVERY OF RULE 613 AND 801 IMPEACHMENT EVIDENCE.
		*(e)	EDITING OF TRIAL DEPOSITIONS/ FILING OBJECTIONS.
		(f)	AFFIDAVIT OF SETTLEMENT EFFORTS.
		(g)	EXCHANGE OF EXHIBITS AND DEMONSTRATIVE AIDS.
(5 days before **TRIAL**)	11.	*	FILING OBJECTIONS TO IMPEACHMENT/ SURVEILLANCE EVIDENCE (SEE INSTRUCTIONS FOR PARAGRAPHS 10(c)(6) AND 10(d)(2)).

NOTE: THE FOLLOWING INSTRUCTIONS, LISTED BY PARAGRAPH, SPECIFY WHAT CONSTITUTES COMPLIANCE WITH THE DEADLINES SET FORTH ABOVE.

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* Contains a requirement that a **COPY OF AN ITEM BE DELIVERED TO THE TRIAL JUDGE'S CHAMBERS.**

I N S T R U C T I O N S

PARAGRAPH 1

DEADLINE (120 DAYS BEFORE PRETRIAL)

Joinder of Parties and Amendment of Pleadings. Motions to join additional parties which require leave of court and motions to amend pleadings must be filed on or before the deadline date. All discovery necessary for the joinder of parties or amendments to pleadings must be completed in time to allow compliance with this deadline. Requests for extension of this deadline will require a showing of good cause.

PARAGRAPH 2

DEADLINE (90 DAYS BEFORE PRETRIAL)

Plaintiff's Expert Information and Reports.

(a) On or before the deadline, the plaintiff shall disclose to every other party any evidence that the plaintiff may present at trial under Rules 702, 703, or 705 of the Federal Rules of Evidence. Except for treating physicians[2], this disclosure shall be in the form of a written report prepared and signed by the witness and which includes (A) a complete statement of all opinions to be expressed and the basis and reasons therefor; (B) a complete list of the data or other information relied upon in forming such opinions; (C) any exhibits to be used as a summary of or support for such opinions; (D) the qualifications of the witness; and (E) a statement identifying the area of expertise in which the expert expects to testify at trial.

(b) Unless the parties mutually agree to an earlier date and time, expert witnesses shall be available for deposition during the two-week period following the discovery cutoff.

(c) A witness whose report was not timely provided will not be allowed to testify as an expert at trial over objection absent a showing of good cause.

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[2] See Paragraph 3 regarding treating physicians.

PARAGRAPH 3

DEADLINE (Immediately upon receipt!)

Reports of Treating Physicians and Other Relevant Information. A party who receives a report of a treating physician shall provide a copy to all other parties immediately upon receipt. The attorneys shall keep the opposing side currently apprised of the medical condition of the plaintiff (or of any other party whose physical or mental condition is placed into dispute).

PARAGRAPH 4

DEADLINE (60 DAYS BEFORE PRETRIAL)

(a) Discovery. All discovery must be completed on or before the deadline, with the exception of impeachment or surveillance evidence, expert depositions and trial depositions (see Paragraphs 5, 8, 10(c) and 10(d)). This requires, for example, that interrogatories be propounded more than thirty days before the discovery cutoff, to allow the full thirty days for response. Untimely discovery requests are subject to objection on that basis.

Motions related to discovery, including motions to compel, shall be filed on or before the discovery cutoff.

(b) Defendant's Expert Information and Reports. On or before the deadline, the defendant shall comply with the requirements of Paragraphs 2(a) and (b) above as to the defendant's expert witnesses. The provisions of Paragraph 2(c) will apply to any witness whose expert report is untimely.

(c) Dispositive Motions. Any motion under Rules 12(b), 12(c), 41(b) or 56, or which otherwise would dispose of a claim or defense of a party, must be filed on or before this deadline.

PARAGRAPH 5

DEADLINE (46 DAYS BEFORE PRETRIAL)

Expert Depositions. Discovery depositions of expert witnesses (whether medical or non-medical) may be taken after the discovery deadline set forth in Paragraph 4(a), but no later than the deadline set forth in this paragraph absent a showing of good cause.

PARAGRAPH 6

DEADLINE (30 DAYS BEFORE PRETRIAL)

Conference to Prepare Pretrial Stipulations. Trial counsel shall personally meet on or before the deadline to prepare a pretrial stipulation in accordance with the attached form. Counsel for plaintiff shall be responsible for scheduling the meeting at a mutually convenient date and time, and other counsel shall cooperate fully and assist in efforts to schedule the conference.

PARAGRAPH 7

DEADLINE (15 DAYS BEFORE PRETRIAL)

Motions in Limine. On or before the deadline, motions in limine shall be filed with the Clerk of Court and **A COPY SHALL BE DELIVERED TO THE TRIAL JUDGE'S CHAMBERS.**

PARAGRAPH 8

DEADLINE (7 DAYS BEFORE PRETRIAL)

Pretrial Stipulations. On or before the deadline, plaintiff's counsel shall file with the Clerk of Court pretrial stipulations in accordance with the attached form. The stipulations shall be signed by all trial counsel and **A COPY SHALL BE DELIVERED TO THE TRIAL JUDGE'S CHAMBERS.**

PARAGRAPH 9

DEADLINE (21 DAYS BEFORE TRIAL)

Trial Depositions. Depositions to be introduced at trial, whether of experts or lay witnesses, may be taken after the discovery deadline, but no later than the deadline indicated absent a showing of good cause, provided reasonable notice of such depositions is given to all parties.

PARAGRAPH 10

DEADLINE (10 DAYS BEFORE TRIAL)

(a) Trial Briefs in Non-Jury cases. On or before the deadline, each party in a non-jury case shall file with the Clerk of Court **AND DELIVER A COPY TO THE TRIAL JUDGE'S CHAMBERS:** (1) a trial memorandum outlining the facts the party expects to prove and citing the legal authorities relied upon; and (2) proposed findings of fact and conclusions of law.

(b) Joint Jury Instructions/Interrogatories. On or before the deadline, the parties in a jury case shall file with the Clerk of Court AND DELIVER A COPY TO THE TRIAL JUDGE'S CHAMBERS joint jury instructions as required under Uniform Louisiana Local Rule 13.10W, set forth below. Two modifications apply: (1) the term "joint jury instructions" shall be construed to include a joint verdict or interrogatory form; and (2) the applicable deadline is the one set forth in this order:

> "U.L.L.R. 13.10W. When a trial is to be held before a jury, counsel for all parties shall confer and prepare proposed joint jury instructions. If counsel are unable to agree as to any specific jury instruction, a separate proposal for such instruction may be submitted. If a separate proposal is submitted, it shall be supported by a memorandum of authorities. The joint and separate proposed jury instructions shall be filed with the Clerk of Court and a copy shall be provided to the judge before whom the trial is to be held at least seven (7) calendar days in advance of the date on which the jury trial is scheduled."

(c) Surveillance Evidence.[3]

(1) A party must make a timely request for discovery of surveillance evidence. Timeliness means that this request must be made prior to the end of the discovery deadline. An untimely request for surveillance evidence may be treated as any other untimely discovery request.

(2) The respondent need not respond to the discovery request and need not indicate whether there exists any such evidence until the deadline indicated. On or before the deadline, the respondent shall turn over to the requesting party all surveillance evidence in his possession or control which the respondent intends to offer at trial, and shall identify the individual(s) who will be necessary to lay a proper foundation.

(3) The respondent has the right to depose or redepose the individual who might have been the subject of the surveillance prior to responding to the discovery request.

(4) Depositions shall be upon reasonable notice to all parties, and shall be limited in scope to impeachment issues and updating any previous deposition.

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[3] Surveillance evidence may be offered at trial for impeachment purposes or as substantive evidence or both. This rule governs discovery of any surveillance evidence intended to be offered at trial, regardless of the intention of the offering party.

(5) Surveillance evidence will not be accepted at trial unless (A) the offering party has complied with the requirements set forth above; (B) the party subject to surveillance has failed to request discovery of the evidence in question; or (C) the offering party shows good cause for an exception to these rules.

(6) Any party who intends to offer surveillance films or videotapes into evidence at trial shall meet with all other parties to edit the material and agree on the portions to be shown. If agreement cannot be reached, appropriate motions shall be filed with the Clerk of Court, **AND A COPY DELIVERED TO THE TRIAL JUDGE'S CHAMBERS**, no later than 5 days before trial.

(d) Impeachment Evidence Under Rules 613 and 801 F.R.E.

(1) If a party has made a timely discovery request, the respondent shall make full disclosure of any impeachment evidence it reasonably anticipates offering at trial under Rules 613 or 801 of the Federal Rules of Evidence. Disclosure shall be made no later than the deadline indicated. Impeachment not covered by Rules 613 or 801 F.R.E. is not discoverable under this rule.

(2) The parties shall try to reach agreement regarding the nature and scope of the Rule 613 or 801 impeachment evidence to be introduced at trial. If agreement cannot be reached, appropriate motions shall be filed with the Clerk of Court, **AND A COPY DELIVERED TO THE TRIAL JUDGE'S CHAMBERS**, no later than 5 days before trial.

(e) Editing Trial Depositions/Filing Objections. On or before the deadline, all depositions to be used at trial, including video depositions, shall be edited to remove non-essential, repetitious, and unnecessary material as well as objections and colloquy of counsel. All objections to the deposition will be considered waived unless briefed and filed with the Clerk of Court, **WITH A COPY DELIVERED TO THE TRIAL JUDGE'S CHAMBERS**, on or before the deadline.

(f) Affidavit of Settlement Efforts. On or before the deadline, counsel for each party shall file with the Clerk of Court an affidavit stating the date and time that a conference of counsel was held to attempt to settle the case. In addition, plaintiff's counsel shall attest that he or she made a good faith settlement offer to defense counsel, and that defense counsel's counteroffer was conveyed to the plaintiff. Defense counsel shall attest that plaintiff's settlement offer was conveyed to the defendant, and that a good faith counteroffer was made to plaintiff's counsel.

In the event that plaintiff makes an offer of settlement to defendant which is refused, and judgment finally obtained by plaintiff is more favorable to plaintiff than the offer to defendant, then defendant may be ordered to pay the cost incurred by plaintiff after the date of refusal of plaintiff's offer unless good cause is shown. These costs may include all expert and witness fees incurred at trial, in addition to court costs of the litigation, but shall not include attorney's fees.

In the event that defendant makes an offer of settlement to plaintiff or responds to an offer by plaintiff which offer or response is refused and judgment, finally obtained by plaintiff, is less favorable to plaintiff than the offer of defendant, plaintiff may be ordered to pay the cost incurred by defendant after the date of refusal of defendant's offer unless good cause is shown. These costs may include all expert and witness fees incurred at trial, in addition to the court costs of the litigation, but shall not include attorney's fees.

(g) **Exchange of Exhibits/Demonstrative Aids.** On or before the deadline, the parties shall exchange exhibits and demonstrative aids, or copies thereof.

Unless otherwise ordered by the Court, all exhibits must be exchanged in a bench book, a copy of which must be delivered to the trial judge at the time of the exhibit exchange. All exhibits contained in the bench book will be considered by the Court to have been exchanged timely, those not included in the judges's bench book will be considered as not having been exchanged and, therefore, may not be used at trial over objection.

PARAGRAPH 11

DEADLINE (5 DAYS BEFORE TRIAL)

Objections to Impeachment or Surveillance Evidence. On or before the deadline, the parties shall comply with the requirements of Paragraphs 10(c)(6) and 10(d)(2) above with respect to filing appropriate motions addressing the nature and scope of impeachment or surveillance evidence to be introduced at trial.

Lafayette, Louisiana, this day of , 1992.

BY DIRECTION OF THE COURT
ROBERT H. SHEMWELL, CLERK

BY: _____
Deputy Clerk

ATTACHMENT NUMBER 3

FEDERAL RULES OF CIVIL PROCEDURE
PROPOSED DISCOVERY AMENDMENTS

FEDERAL RULES OF CIVIL PROCEDURE
PROPOSED AMENDMENTS

Rule 26. General Provisions Governing Discovery; Duty of Disclosure.

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

(1) Initial Disclosures. Except to the extent otherwise stipulated or directed by the court, a party shall, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

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

Unless otherwise stipulated or directed by the court, these disclosures shall be made at or within 10 days after the meeting of the parties under subdivision (f). A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness including a list of all publictions authored by the witness within the preceding ten years; the compensation to be paid for the study and the testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

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

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

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

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

Unless otherwise directed by the court, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(4) Form of Disclosures; Filing. Unless otherwise directed by order or local rule, all disclosures under paragraphs (1) through (3) shall be made in writing, signed, served, and promptly filed with the court.

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

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

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonable calculated to lead to the discovery of admissible evidence.

(2) Limitations. By order or by local rule, the court may alter the limits in these rules on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that; (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court

may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

* * * *

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under subdivision (a)(2)(B), the deposition shall not be conducted until after the report is provided.

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

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and (ii) with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certificate that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party

or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition, after being sealed, be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

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

(d) Timing and Sequence of Discovery. Except when authorized under these rules or by local rule, order, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by subdivision (f). Unless the court upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Disclosures and Responses. A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired, if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 26(a)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Meeting of Parties; Planning for Discovery. Except in actions exempted by local rule or when otherwise ordered, the parties shall, as soon as practicable and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosure required by subdivision (a)(1), and to develop a proposed discovery plan. The plan shall indicate the parties' views and proposals concerning:

(1) what changes should be made in the timing, form, or requirement for disclosures under subdivision (a) or local rule, including a statement as to when disclosures under subdivision (a)(1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(4) any other orders that should be entered by the court under subdivision (c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the plan.

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

(1) Every disclosure made pursuant to subdivision (a)(1) or subdivision(a)(3) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's

knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon it own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Rule 28. Persons Before Whom Depositions May Be Taken.

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(b) In Foreign Countries. Depositions amy be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of he United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the

United States under these rules.

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Rule 29. Stipulations Regarding Discovery Procedure.

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

Rule 30. Depositions Upon Oral Examination.

(a) When Depositions May Be Taken; When Leave Required.

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would result in more than ten depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined already has been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the United States and be unavailable for examination in this country unless deposed before that time.

(b) Notice of Examination: General Requirements; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) The party taking the deposition shall state in

the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the costs of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

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(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1), a deposition taken by such means is taken in the district and at the place where the deponent is to answer questions.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Federal Rules of Evidence, except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the

deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3).

(2) By order or local rule, the court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistently with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record

of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer shall securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it to the attorney who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness, shall, upon the request of the party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

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Rule 31. Depositions Upon Written Questions.

(a) Serving Questions; Notice.

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties.

(A) a proposed deposition would result in more than ten depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined has already been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d).

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

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Rule 32. Use of Depositions in Court Proceedings.

(a) Use of Depositions.

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(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

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(c) Form of Presentation. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.

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Rule 33. Interrogatories to Parties.

(a) Availability. Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2). Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(d).

(b) Answers and Objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b)(1), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(d) Option to Produce Business Records. * * * *

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

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(b) Procedure. The request shall set forth either by individual item or by category the items to be inspected and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

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Rule 36. Requests for Admission.

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation, requests for admission may not be served before the time specified in Rule 26(d).

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith

requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

* * * *

* * * *

Rule 37. Failure to Make Disclosure or Cooperate in Discovery: Sanctions

(a) Motion for Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Appropriate Court. An application for an order to a party shall be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court in the district where the discovery is being, or is to be, taken.

(2) Motion.

(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6), or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(4) Expenses and Sanctions.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

* * * *

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(1) A party that without substantial justification fails to disclose information as required by Rule 26(a) or 26(e)(1) shall not, unless such failure is harmless, be permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter

proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

* * * *

(g) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in the development and submission of a proposed discovery plan as required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees caused by the failure.

ATTACHMENT NUMBER 4

MEMBERSHIP OF ADVISORY GROUP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
CIVIL JUSTICE REFORM ACT ADVISORY GROUP

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ATTACHMENT NUMBER 5

CIVIL JUSTICE REFORM ACT OF 1990

Public Law 101-650
101st Congress

An Act

To provide for the appointment of additional Federal circuit and district judges, and for other purposes.

Dec. 1, 1990
[H.R. 5316]

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".

Judicial Improvements Act of 1990.
Courts.
28 USC 1 note.

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

Civil Justice Reform Act of 1990.

SEC. 101. SHORT TITLE.

28 USC 1 note.

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

SEC. 102. FINDINGS.

28 USC 471 note.

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.

Reports.

"(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— Reports.

"(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.

Reports.

"(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. Reports.

"(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. Government publications.

"(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.

Records "(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.".

28 USC 471 note. (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.

28 USC 471 note. (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).

Reports. (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".

SEC. 104. DEMONSTRATION PROGRAM. 28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

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

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

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

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

SEC. 105. PILOT PROGRAM. 28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

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

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

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.

ATTACHMENT NUMBER 6

REPORTS OF TOWN MEETINGS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
CIVIL JUSTICE REFORM ACT
ADVISOkY GROUP

TOWN METING
Monroe, La.
May 10, 1993

A Town Meeting was held in the courtroom in Monroe, La. at 4:30 P.M. on Tuesday, May 10, 1993.

Tom Hayes reviewed the objectives of the Civil Justice Reform Act and the activities of the Advisory Group. A discussion on the recommendations of the Advisory Group ensued.

The principle area of discussion was the proposed discovery amendments to the federal rules of civil procedure. One area of concern was the initial disclosure provisions of Rule 26. This was thought to be particularly burdensome as relates to document disclosure. For example, the disclosure required in a products liability case based on design flaws would be massive. The simultaneous disclosure provision also drew criticism. It was suggested that plaintiff should disclose first and then defendant respond with their disclosure.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
CIVIL JUSTICE REFORM ACT
ADVISORY GROUP

TOWN METING
Shreveport, La.
May 17, 1993

A Town Meeting was held in the courtroom in Shreveport, La. at 4:00 P.M. on Monday, May 17, 1993.

The meeting began with the CJRA Chairman, Henry Bernstein, giving a general overview of the Civil Justice Reform Act and a review of the activities of the committee. Following this introduction, a discussion of the draft report of the committee was led by the reporter, Robert Shemwell.

There was considerable discussion on the proposed amended Federal Rules of Civil Procedure. This discussion centered on the proposed discovery rules, particularly, Rule 26. Some attorneys feel that the initial disclosure requirement of Rule 26 is too onerous and will result in increased costs. Concern was expressed that making the decision of whether or not a particular document would be helpful for the plaintiff violates the principle of the adversary system and places the attorney for defendant in a moral and ethical dilemma, possibly even violating the rules of professional conduct. There was also a worry that a substantial additional area of litigation will arise around the sufficiency of disclosure. One attorney described the proposed procedure as "unfocused discovery" in light of notice pleading and the broad disclosure requirements.

In respect to the proposed discovery rules, it was suggested that the CJRA Advisory Group propose a local rule limiting the effect of such rules. Some attorneys wanted to at least "opt out" of initial disclosure of documents and requirements limiting the number of depositions. There was some sentiment that the district should "opt out" of the entire proposed discovery rules.

The attorneys present whole-heartedly supported the concept of uniform procedures. It was suggested that the words "whenever practical" be dropped from the report to strengthen the recommendation.

Several aspects of differentiated case management were the subject of discussion. The requirement that both sides consent to being placed on the "stand-by" docket was questioned. One attorney felt that one side should be able to move the case to the "stand-by" docket. Another attorney felt that if a particular judge was assigned to a case, a party should be able to retain that judge instead of being placed on the "stand-by" docket and change being assigned to another judge. There was also one attorney who

expressed a desire for a "small claims" docket for matters with under $30,000 at stake. The small claims docket would have limitations as to pretrial stipulation requirements, limitations on discovery, etc.

Several other matters not discussed in the draft report were advanced. One attorney expressed a desire for increased attorney participation in voir dire. Another attorney asked for judges to consider at an early date crucial motions in limine which may be instrumental in settlement. One attorney suggested reinstitution of "motion days" in open court with oral argument.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
CIVIL JUSTICE REFORM ACT
ADVISORY GROUP

TOWN METING
Alexandria, La.
May 18, 1993

A Town Meeting was held in the courtroom in Alexandria, La. at 4:00 P.M. on Tuesday, May 18, 1993.

Comments were elicited on the draft report. Concern was expressed relative to the use of magistrate judges in several capacities, including pre trial conferences, scheduling conferences, prisoner cases. It was suggested that the judge also be among those who must consent to a case being placed on the stand-by docket.

The proposed discovery rules were also a subject of discussion. It was felt that initial disclosure placed an unreasonable burden on an attorney to "scour" his files. It was suggested that these rules would increase both litigation and costs.

Relative to judicial resources, it was suggested that the full-time magistrate judge position be switched from Alexandria to Monroe and that a part-time magistrate position be established in Alexandria.

In an attempt to control court costs, it was suggested that the losing party be required to pay the costs of a jury, similar to the system in place in the state courts of Louisiana.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
CIVIL JUSTICE REFORM ACT
ADVISORY GROUP

TOWN METING
Lake Charles, La.
May 19, 1993

A Town Meeting was held in the courtroom in Lake Charles, La. at 4:00 P.M. on Wednesday, May 19, 1993.

After a brief explanation of the Civil Justice Reform Act and the work of the Advisory Group, a discussion of the draft plan was led by Robert Shemwell.

The primary topic of discussion was discovery. The attorneys present agreed that discovery should be and in fact was being controlled by the client. A number of practices by clients limiting discovery by attorneys were cited.

There was a general dissatisfaction with the proposed discovery amendments to the federal rules of civil procedure. It was the general opinion that number of depositions was not a problem and should not be limited. Another point of contention was holding discovery in abeyance pending the 26(f) conference, which was thought to be unnecessary. There was a feeling that a local rule should be passed to opt out of at least some of the provisions of the proposed discovery amendments.

Differentiated case management was discussed. The attorneys felt that 4 weeks notice was correct for the stand-by docket. The possibility of a "small claims" docket was also discussed. One attorney who had experienced the East Texas track system expressed strong disagreement with that concept. If a small claims docket is to be utilized, a decision to place a case on that docket should be made at the scheduling conference by a magistrate judge.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
CIVIL JUSTICE REFORM ACT
ADVISORY GROUP

TOWN METING
Lafayette, La.
May 20, 1993

A Town Meeting was held in the courtroom in Lafayette, La. at 4:00 P.M. on Thursday, May 20, 1993.

After a brief explanation of the Civil Justice Reform Act and the work of the Advisory Group, a discussion of the draft plan was led by Robert Shemwell.

The major topic of interest was discovery. One attorney stated that, given the pivotal importance of discovery, judges and magistrate judges should give a great amount of attention to discovery disputes. One attorney questioned the concept that clients and attorneys should control discovery costs. There was strong disagreement with this position by a number of other attorneys who cited specific instances involving tightening of discovery practices by clients.

Concern was expressed about the proposed amendments to the Federal Rules of Civil Procedure in the area of discovery. The opinion was expressed that the number of depositions is not a real concern and should not be limited to 10. One attorney advanced the idea to review discovery at the scheduling conference and to make any necessary variations from the federal rules at that time. While no specifics were set out, there was a general feeling that local rules should be recommended to opt out of part or all of the proposed discovery provisions.

There were positive comments about the early judicial intervention procedures presently being utilized in the district. Scheduling conferences and resultant scheduling orders were said to be quite useful.

There was a discussion on differentiated case management. It was suggested that a case which was ready for trial, and then continued, should automatically be placed on the stand-by docket.

A possible legislative change was suggested involving payment of jury costs. It was proposed that the federal courts adopt the state court procedure of having the losing party pay for jury costs.

In order to avoid repeated subpoena costs when a trial is continued, it was suggested that some procedure be designed to continue the subpoenas. A form for continuance of a subpoena by an attorney will be drafted.