CIVIL JUSTICE REFORM ACT OF 1990

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

ADVISORY GROUP

REPORT AND RECOMMENDED PLAN

August 20, 1993

ADVISORY GROUP REPORT

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INTRODUCTION

The Civil Justice Reform Act of 1990 (the "Act"), 28 U.S.C. §471 et seq., requires that each United States District Court develop and adopt a Civil Justice Expense and Delay Reduction Plan ("the Plan"). As stated in the Act, the purpose of the 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." 28 U.S.C. §471.

Pursuant to the Act, the Chief United States District Judge, L. T. Senter, Jr., appointed an advisory group for the United States District Court for the Northern District of Mississippi (the "Advisory Group") on February 28, 1991. The Advisory Group consists of the following members:

Guy Mitchell, III, Chairman	Tupelo	Attorney
Norman Gillespie, Reporter	Oxford	Clerk of Court
Margaret Carey	Greenville	Attorney
Thomas Chew	Pontotoc	Postmaster
Jack Dunbar	Oxford	Attorney
Howard Gunn	Aberdeen	Attorney
Gerald Jacks	Cleveland	Attorney
Katherine Kerby	Columbus	Attorney
Will Lewis	Oxford	Merchant
Charles Merkel	Clarksdale	Attorney
Henry Paris	Indianola	Banker
Lester Sumners	New Albany	Attorney
William Dye (designee)	Oxford	U.S. Attorney

In discharging their responsibilities under the Act, the Advisory Group has met on numerous occasions over a two and one-half (2-1/2) year period of time, both as a committee of the whole and through subcommittees.

In pursuing those tasks, the Advisory Group obtained information from judges, magistrate judges, and lawyers who are actively involved in civil litigation in the Northern District of Mississippi (the "Court").

The Advisory Group has relied heavily on the support of Norman Gillespie, Clerk of the Court; Buster Hale, Chief Deputy; and Gina Kilgore, Administrative Analyst, both in preparing minutes of the Group's Meetings and preparing for the Group's review of statistical data relating to the Court and the Court's docket.

In addition to reviewing voluminous statistical data prepared by the Clerk's office and staff, the Advisory Group relied on the collective experiences of its members who are actively involved in civil litigation in the District. Also, various members of the Group have attended seminars sponsored by the Administrative Office and Federal Judicial Center and have obtained the advice of experts around the country as well as having reviewed plans of pilot and early implementation districts in other parts of the country.

In addition to the statistics prepared by the Clerk's office, the Advisory Group has also reviewed statistics provided by the Administrative Office of the United States Courts, and has conducted a public forum sponsored by the American Inns of Court (AmInnCourt).

The following report is respectfully submitted in fulfillment of the responsibilities of the Advisory Group under the Act.

Guy Mitchell, III, Tupelo, Chairman

Norman L. Gillespie, Oxford, Reporter

Margaret Carey, Greenville

Thomas Chew, Pontotoc

Jack Dunbar, Oxford

Howard Gunn, Aberdeen

Gerald Jacks, Cleveland

Katherine Kerby, Columbus

Will Lewis, Oxford

Charles Merkel, Clarksdale

Henry Paris, Indianola

Lester Sumners, New Albany

William Dye, Oxford

IMPLEMENTATION OF THE ACT IN THE NORTHERN DISTRICT OF MISSISSIPPI

In preparation for completing this report the Advisory Group has assessed the Court's civil and criminal dockets, including the condition of the dockets at the inception of the Group's work in February, 1991, and systematic updates of the status of the docket, through June, 1993.

The Committee has reviewed the filings, both civil and criminal, and has analyzed the demands being placed on the Court's resources by the filings and the passage of other federal legislation which directly impacts the Court.

The Advisory Group has attempted to identify the principal causes of both cost and delay in civil litigation in the District and that analysis together with the other sources of data provide the basis for the Advisory Group's recommendation of a plan for the reduction of expense and delay in civil litigation in the District Court.

The Advisory Group has taken into consideration the particular needs and circumstances of the District, the litigants in the District, and the attorneys who practice in the District. The recommendations which follow this report include significant contributions by the court, the litigants and the attorneys.

The Advisory Group has followed the principles and guidelines of the Act in that it has included in its consideration the following:

(a) Treatment of cases that tailors the level of case management to the complexity of the case, the amount of time needed to prepare a case for trial, and the resources available to prepare and dispose of a case;

(b) Early and continuing involvement in the pretrial process by a judicial officer;

(c) Monitoring of appropriate cases through discovery or case management conferences;

(d) Encouragement of cost-effective discovery;

(e) Discouragement of unnecessary discovery motions; and

(f) Authorization to refer cases to alternate dispute resolution programs.

I. Description of the Court

The Northern District of Mississippi consists of four divisions: the Eastern Division, headquartered at Aberdeen; the Delta Division, headquartered at Clarksdale; the Western Division, headquartered at Oxford; and the Greenville Division, headquartered at Greenville. The District is comprised of the 37 most northern counties of Mississippi and is largely rural with a population of 970,176 (1990 Census).

Currently, the District is authorized three district judges, two magistrate judges, and one clerk/magistrate judge. The most recently authorized judicial officer, a district judge, was confirmed in 1985 giving the District the maximum authorized number of judicial officers for the last eight years. Chief Judge L. T. Senter, Jr., District Judge Glen H. Davidson, and Magistrate Judge Jerry A. Davis are stationed in Aberdeen; District Judge Neal Biggers and Clerk/Magistrate Judge Norman L. Gillespie are stationed in Oxford. Magistrate Judge J. David Orlansky is stationed in Greenville.

Civil cases are initially assigned to district judges by division using an automated case assignment system whereby each district judge receives a percentage of the filed cases. By local

rule, all pretrial matters are referred to the two full-time magistrate judges.[1] Magistrate Judge Davis is assigned all cases filed in the Eastern and Western Divisions for pretrial matters and is referred two-thirds (2/3) of all Parchman Penitentiary 1983 civil rights cases for reports and recommendations. Magistrate Judge Orlansky is assigned all cases filed in the Delta Division and all non-Parchman cases in the Greenville Division for pretrial matters. In addition, Magistrate Judge Orlansky is referred all Social Security cases and one-third (1/3) of the Parchman Penitentiary 1983 civil rights cases for reports and recommendations.

II. Assessment of Conditions in the District

A. Condition of the Docket

In terms of raw filings, a review of the criminal and civil dockets shows that although there has been a slight increase in criminal cases, the civil filings have remained fairly constant for the last five (5) years. (See Appendices A-12, B-1, B-2, D-12, E.) Moreover, civil filings dominate the docket of the District. For the 12 month period ending June 30, 1988, the total number of criminal filings was 8.5% of the District's total filings. For the 12 month period ending June 30, 1992, the total number of criminal filings was 9.8% of the District's total filings. (See Appendix B-1).

However, the number of terminations per year has steadily decreased to yield a higher number of pending cases. For the 12 month period ending June 30, 1988, 1,139 cases were

[1]By agreement among the other judicial officers, Clerk/Magistrate Judge Gillespie enters scheduling orders and conducts pretrial conferences in the Western Division. Judge Gillespie also handles pretrial matters in cases in which the full-time magistrate judges have conflicts.

filed and 1,356 cases were terminated to yield a ratio of 1.2 cases terminated to every case filed. For the 12 month period ending June 30, 1992, 1,283 cases were filed and 1,105 cases were terminated to yield a ratio of 0.9 cases terminated to every case filed. During the five year period from July 1, 1987, to June 30, 1992, the number of pending cases rose from 1,391 to 1,522, an increase of 9%, while the number of total filings rose only slightly. (See Appendices B-1, B-5).

Four types of cases dominate the civil docket in the District: pro se prisoner, civil rights, contract, and tort (personal injury) cases. Over the past five years, while contract and tort cases have decreased, pro se prisoner cases[2] and civil rights cases have increased significantly. (See Appendices A-12, A-13, B-1, B-3, C-2, D-12, D-13). For the 12 month period ending June 30, 1988, pro se prisoner and civil rights cases comprised 25% of the total civil filings. For the 12 month period ending June 30, 1992, pro se prisoner and civil rights cases comprised 49% of the total civil filings. (See Appendix B-1). As of June 30, 1993, prisoner and civil rights cases comprised 55% of the total pending civil cases. (See Appendix C-2).

Although slightly increasing every year, the criminal caseload has had relatively minor impact on the civil docket. (See Appendices A-18, D-18). However, although trial time in the District is devoted primarily to the civil docket, trial time devoted to criminal matters is rising.

[2]The bulk of prisoner cases are state habeas corpus petitions and 1983 conditions of confinement complaints. By local rule, these cases are referred to the full-time magistrate judges for reports and recommendations.

(See Appendices A-19, D-19). Over the five year period from 1986 to 1991, the ratio of criminal trials to total trials increased from 17% to 24%. (See Appendix D-19).

In terms of completed trials, civil disposition times, and civil three year old cases, the statistics show that over the last five years the District has increased its completed trials per year per judgeship, decreased the median time in months from filing to disposition of civil cases, decreased the median time in months from issue to trial, and decreased the number (and percent) of civil cases over three years old. (See Appendices B-6, B-7, E). However, the number of pending cases and weighted filings per judgeship has risen over the past five years. (See Appendices B-8, E).

In review, although the District's docket appears to be relatively stable with respect to the total number of cases filed, there continues to be growth in the number of pro se prisoner and civil rights cases filed and in the number of dispositive motions pending in civil cases. The backlog of dispositive motions contributes significantly to the rising pending cases. In addition, the increase in pro se prisoner cases takes pretrial case management time[3] away from the magistrate judges, further exacerbating the disposition of civil cases. Without additional judicial resources, the Advisory Group expects the median disposition times and the number of three (3) year old cases to rise.[4] These statistics reflect the need for additional judicial personnel to

[3]In addition to addressing pretrial motions, all magistrate judges conduct pretrial and settlement conferences.

[4]From September, 1992 to March, 1993, the number of civil cases pending over three years doubled primarily due to the backlog of prisoner cases. (See Appendix C-3).

reduce the number of pending cases. Thus, the Advisory Group strongly recommends the appointment of an additional District Judge and an additional Magistrate Judge.

B. Cost and Delay

In seeking to identify the principal causes of cost and delay in the District, the Advisory Group drew from its experience and judgment and from the thinking of experts in other districts. To insure that the conclusions accurately reflected actual conditions here, the Advisory Group prepared and administered a comprehensive questionnaire to the judges and magistrate judges. (See Appendix F).

An overriding concern of the Advisory Group was not to tamper with a good system that for the most part works very well.[5] However, a current review of the civil docket shows three areas of institutional delay of concern to the Group: the backlog of pending dispositive motions; the backlog of cases stayed awaiting ruling on dispositive motions; and the backlog of requests to proceed *in forma pauperis* in pro se prisoner cases. (See Appendix C-1). In many instances, dispositive motions are not addressed until after the final pretrial conference and just before trial. Counsel then must prepare to discuss all issues at the final pretrial conference and many times prepare to litigate all issues at trial. An early disposition of dispositive motions prior to the final pretrial conference would reduce the cost of additional preparation.

A companion problem is that because of the backlog of dispositive motions, cases stayed upon agreement of all parties pending a ruling on dispositive motions are likely to remain stayed

[5]In discussion with practicing members of the Bar concerning the requirement to adopt a plan, the remark most often heard was "please do not tamper with a good working system."

for a long time. Under the current system, pending motions in those cases set for trial have priority over stayed cases or cases not set for trial. The principal reason for seeking such a stay is to avoid further expense when a dispositive motion is likely to resolve the case. An earlier ruling would reduce both delay and cost.

Finally, the backlog of requests to proceed *in forma pauperis* in pro se prisoner cases results in considerable delay in the adjudication of prisoner cases. Since the grant or denial of *in forma pauperis* status is the initial step in the processing of prisoner cases, the backlog indicates that prisoner cases cannot be addressed in a timely manner with two full-time magistrate judges. Moreover, since prisoner cases approach 40% of civil filings, the delay is reflected proportionately in the total disposition time for all civil cases.

In addition to the institutional delay reflected in an analysis of the dockets, the Advisory Group notes two other areas of cost and delay, one created by the court and the other created by the attorneys and litigants. First, the present practice of stacking cases for trial, not disclosing the order of priority, and continuing a case in some cases less than two weeks before trial can lead to increased cost. In some instances, expert witnesses must be paid twice for trial preparation. Moreover, attorneys retained on an hourly basis must bill twice for trial preparation and attorneys paid on a contingent basis just lose the aborted preparation time.

Second, discovery abuse is increasing. Rather than aiding the parties in defining the issues, discovery has become a club for attorneys and litigants to inflict misery on the other side. Under the current practice, it is very difficult to conduct discovery consistent with the size and complexity of the litigation. The Advisory Group concludes that while the proposed

amendments to the Federal Rules of Civil Procedure will not stop discovery abuse, the discovery rule amendments are a step in the right direction.

III. Recommended Measures, Rules and Programs

All Advisory Group members were asked to list their concerns and opinions as to specific areas of the judicial process that needed to be improved and advise the full committee of those concerns. This was done initially and the results of the opinions and concerns were discussed by the full committee. Many of those concerns are discussed in the proposed plan.

At the public forum in Oxford additional input was received from members of the bar and from Judge Davidson, who participated in that session. Many additional Advisory Group meetings were held where specific areas of concern were addressed in detail.

On the basis summarized above, the Advisory Group proposes a multifaceted recommendation for consideration by the Court. First, the Group recommends the retention of certain present procedures that are effective in reducing cost and delay. Second, the Group recommends development of a Plan for this District. Based on its work, the Advisory Group has developed a proposed Plan for the Court's consideration, but the Advisory Group also strongly recommends consideration of a uniform Plan for the Northern and Southern Districts of Mississippi so that the present uniformity of practice may be continued so far as practicable. Finally, the Advisory Group recommends proposing, through the Judicial Conference or Administrative Office, a system for assessing the impact of new federal legislation on the docket of federal courts.

A. Present Procedures that Should be Retained

The Advisory Group recommends that the Court retain existing procedures that are working well and consider changes in existing procedures only to the extent needed to address significant problems. To that end, the Advisory Group notes that many of the District's present practices should be continued without alteration.

1. First, the Advisory Group emphasizes the continuing need for uniform local rules in the Northern and Southern Districts of Mississippi. Adoption of the Uniform Local Rules represented a step forward in federal civil litigation in this state. Although the Advisory Group believes that its Plan represents the best approach for the District, the benefits of uniform practice in the Northern and Southern Districts are so great that the Court should strive to accommodate the ideas of the Southern District in formulating its final Plan. To that end, the Advisory Group would be happy to work with members of the Court and with the Southern District to reconcile any differences in the two plans.

2. The Advisory Group does not believe that the Court has any proper role in revising or limiting fee agreements between clients and their counsel. Specifically, the Advisory Group does not believe that the Court should undertake to place a limit on contingent fees. The reasonableness of any fee arrangement is governed by Rule 1.5 of the Rules of Professional Conduct. Placing additional limits on such fees would threaten the ability of unpecunious litigants to have their rights vindicated.

B. The Goals of the Proposed Plan

The Advisory Group believes that the Plan to be adopted by the Court should have the following general goals. The Advisory Group has attempted to address these goals in its proposed Plan.

1. Discovery is the most expensive procedural aspect of the District's civil litigation. It is not pursued intelligently, is open ended, and because it inflicts more pain on the recipient than on the propounder, it is typically overdone. Under current procedures it is difficult to limit discovery to an amount and frequency consistent with the size and complexity of the case. Clearly, the Plan must give a practical basis by which discovery may be reduced, and tailored to the needs of the case.

2. The lack of early and consistent judicial intervention in pretrial proceedings permits cases to languish, rewards dilatory tactics, and fails to resolve threshold legal issues that may reduce or eliminate the need for further discovery. The need for an increased number of district judges and magistrate judges in the District becomes crystal clear when analyzing this particular area of concern and without an increase in the number of judges and magistrate judges, greater case management is difficult; however, it is the conclusion of the Advisory Group that the Plan must provide for increased case management with firm deadlines and scheduling orders.

3. Pretrial motions may be critical in affecting the future of civil litigation. Few things foster uncertainty and delay more than a pending motion for summary judgment that has been before the court for many months. Particularly in discovery disputes, a prompt filing made

immediately after submission/argument or argument of the motion is far more preferable to a more elaborate ruling rendered after the matter has been under advisement for weeks or months. More prompt rulings on dispositive motions are encouraged by the Plan.

4. We live in an electronic age. The traditional practice that hearings are conducted with the Court and all counsel personally present is far more expensive than telephonic hearings. As communications continue to improve, the use of the telephone and other means of electronic communication should become the first option of the court and counsel rather than the last resort, and the use of conferences by telephone should be encouraged in the proposed Plan.

5. Any judicial proceeding is expensive. The Advisory Group believes that alternate dispute resolution procedures should be encouraged but not mandated. However, the utility of such procedures, including summary jury trials, depends heavily upon the parties' willingness to participate in them. Where one or both parties are not willing to participate in good faith, alternate dispute resolution procedures tend to become another layer of process that must be negotiated before a final decision can be obtained. Thus, the court should encourage and reward -- but not mandate -- alternate dispute resolution procedures.

In sum, the central purposes of the proposed Plan are to limit discovery, increase judicial involvement in the litigation, and establish procedures that will match civil actions with the lowest degree of pretrial procedure needed for their just resolution. The proposed Plan is intended to allow the Court to treat cases differently, depending on characteristics of those cases.

C. Summary of the Proposed Plan

The Advisory Group's proposed Plan begins with a differentiated case management procedure by which cases are evaluated and assigned to a track. It is recommended that there be five (5) separate tracks:

1. An "expedited" track for simple cases that should be completed within nine months after filing, have a discovery cutoff of no more than 100 days, where interrogatories are limited to 15 and no more than 3 fact witness depositions can be taken without prior approval of the court;
2. "Standard" cases shall be completed within 12 months or less after filing, a discovery cutoff date of no later than 200 days after filing, 5 single part interrogatories, 5 fact witnesses without further order of the court;
3. "Complex" cases will have a discovery cutoff established by the case management plan and a completion goal of no more than 18 months after filing;
4. "Administrative" cases are referred by the Court directly to a magistrate judge; and
5. "Mass torts" will have to be treated in accordance with special management plan to be adopted by the court.

The Plan provides for evaluation and assignment of the cases looking at a number of factors in each instance. In making the assignments, the Court considers the recommendations of counsel, evaluates each case pursuant to the guidelines and assigns the case to a case management track prior to the case management conference if possible.

Section II of the Advisory Group's Plan provides for early judicial involvement in the case and further provides that within 30 days after responsive pleadings, required disclosures and initial depositions that counsel are required to meet, confer on a number of matters, including identifying the principal factual and legal issues in dispute, determining the differential case management track for the case, what disclosures may be necessary, motions whose resolution might have a significant impact on the scope of discovery, undertaking discovery consistent with the track recommendations and preparation of a proposed case management plan and scheduling order setting forth the track and any ADR recommendations and deadlines for amendments to pleadings, joinder of parties, completion of discovery, designation of experts, and filing of motions.

The Plan further provides that within ten days after the conference between counsel to discuss the issues outlined above that a case management report and proposed scheduling order be submitted to the magistrate judge. If counsel are unable to agree on such a case management report, the magistrate judge may schedule a case management conference which shall be attended by lead counsel for each party and may be conducted by telephone or in person. Prior to that conference the parties are required to report to the magistrate judge in writing the matters on which they agree and the matters on which they differ, and the reason for those differences.

At the case management conference the magistrate judge shall enter a case management plan and a scheduling order as the magistrate judge deems appropriate. In the event that there is an agreement and a case management report has been submitted, the magistrate judge shall

within ten days after receiving that report enter an order adopting the report and the scheduling deadlines.

Following the discovery process as established by the case management plan, and within ten days after the completion of that process, counsel for all parties shall submit a written report advising the magistrate judge on the progress of settlement negotiations and, if the magistrate judge deems a settlement conference advisable after receiving the settlement reports, the magistrate judge shall schedule a settlement conference at which lead counsel and a representative of each party must be present. Moreover, after the settlement conference if the case is not resolved, the court enters an order setting the case for trial consistent with the track designation and also sets a time for the pretrial conference, which as provided in the Plan, shall be held no earlier than 45 days nor later than 30 days from the trial date.

One significant portion of the Advisory Group's Plan, after placing all of the additional responsibility on the parties for initial disclosure, identification of the issues, and a more restricted discovery schedule, provides that the pretrial conference will be conducted by the judicial officer assigned to try the case. It is felt by the Advisory Group that such a conference being conducted by the trial judge will assist in further narrowing the issues with the possible settlement of the case as an outgrowth of the narrowing of those issues.

At or before the pretrial conference the court rules on any pending motions and dispositive motions, thus placing the case in a trial posture if settlement is not reached at the pretrial conference. A final pretrial order is prepared after the pretrial conference.

Section III of the Group's proposed Plan deals with discovery control and motion practice and it is felt by the Committee that controlling the extent and timing of discovery will reduce the cost to the litigants and the delay in the process. One of the primary provisions of the Plan calls for required disclosures by the plaintiff at the time the Complaint is filed, including the name, address and telephone number of all individuals likely to have discoverable information, copies or descriptions of all documents, compilations and tangible things that are relevant to the claims of the plaintiffs and a computation of the damages as claimed by the filing party. The defendant must within 45 days of service of the Complaint, which includes the required disclosures by the plaintiff, serve similar disclosures on the plaintiff.

The Plan further provides for the initial depositions within 15 days of service of process and required disclosures. The defendant may depose the filing party not to exceed four hours and filing parties have a like right to notice the defendant's deposition. All initial depositions of the parties are to be completed within 60 days of filing of the Complaint and on completion of the required disclosures and the permitted depositions or waiver thereof, the plaintiff must notify the court of that fact and no further discovery is permitted until the entry of the case management plan. It is felt that this procedure will provide a cost savings to all parties and could lead to early settlement of cases without unnecessary discovery being undertaken by the parties.

The Plan outlines the procedure by which motions are filed and supporting documentation is presented to the court and provides that all motions shall be decided by the court without a

hearing or without oral argument unless the court on its own motion in its discretion allows such a hearing or oral argument.

The Plan further outlines the role of the magistrate judge, provides for cases to be tried by the magistrate judge by consent of parties, and contains provisions for sanctions to be imposed in the event the parties do not comply with the rules and the Plan.

Section IV of the proposed Plan deals with alternative dispute resolution programs and makes available to the parties early neutral evaluation, mediation, arbitration, and other ADR procedures. Such procedures are encouraged but not mandated with the exception of early neutral evaluation which may be ordered by the court in its discretion, and further the Plan provides that should a case be submitted to early neutral evaluation ("ENE") by agreement or assigned to ENE by the court that the ENE conference shall be held at the same time as the other discovery proceedings in the case.

Section V of the Plan deals with other features concerning handling of pro se cases, procedures for monitoring, and telephone depositions. It is believed by the Advisory Group that adoption of its proposed Plan will assist in the substantial reduction of cost and delay in civil litigation in the United States District Court for the Northern District of Mississippi.

RECOMMENDED PLAN

RECOMMENDED PLAN

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SECTION ONE: DIFFERENTIATED CASE MANAGEMENT (DCM)

I. GENERAL PROVISIONS

A. Purpose

The DCM system is intended to permit the court to manage its civil docket in the most effective manner, to reduce costs and to avoid unnecessary delay, without compromising the independence or the authority of either the judicial system or the individual Judge and without forfeiting the discovery and analysis necessary for litigants to adequately prepare their cases. The underlying principle of the DCM system is to make access to a fair and efficient court system available and affordable to all citizens.

B. Definitions

1. "Differentiated case management" ("DCM") is a system providing for management of cases based on case characteristics. This system is marked by the following features: the Court reviews and screens civil case filings and channels cases to processing "tracks" which provide an appropriate level of judicial, staff, and attorney attention; civil cases having similar characteristics are identified, grouped, and assigned to designated tracks; each track employs a case management plan tailored to the general requirements of similarly situated cases; and provision is made for the initial track assignment to be adjusted to meet the special needs of any particular case.

2. "Judicial officer" is either a United States District Judge or a United States Magistrate Judge.

3. "Case Management Conference" is the conference conducted by the Judicial Officer in the event counsel cannot agree on a "Case Management Plan," pursuant to Section II, infra.

4. "Case Management Plan" ("CMP") is the plan adopted by the Judicial Officer prior to or at a Case Management Conference. The plan shall include the determination of track assignments, whether the case is suitable for reference to an ADR program, the type and extent of discovery, the setting of a discovery cut-off date, and deadline for filing motions.

5. "Court" means the United State District Judge, United States Bankruptcy Judge, the United States Magistrate Judge, or Clerk of Court personnel, to whom a particular action or decision has been delegated by the Judges of the United States District Court for the Northern District of Mississippi.

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

7. "Discovery cut-off" is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel must initiate discovery requests and notice or subpoena depositions sufficient in advance of the discovery cut-off date so as to comply with this rule, and discovery requests that seek responses or schedule depositions which would otherwise be answerable after the discovery cut-off are not enforceable except by order of the Court for good cause shown.

Notwithstanding the foregoing, a party seeking discovery will not be deemed to be in violation of the discovery cut-off if all parties consent by written confirmation to delay; provided, however, that the parties may not, by stipulation and without the consent of the Court, extend the discovery cut-off to a date later than ten (10) days before the Final Pretrial Conference.

C. Date of Application

This section shall apply to all civil cases filed on or after January 1, 1994, and may be applied to civil cases filed before that date if the assigned judge determines that inclusion in the DCM system is warranted and notifies the parties to that effect.

D. Conflicts with Other Rules

In the event that the Rules in this Section conflict with other Local Rules adopted by the Northern District, the Rules in this Section shall prevail.

II. TRACKS, EVALUATIONS, AND ASSIGNMENT OF CASES

A. Number and Types of Tracks

As set out herein, all civil cases filed after the effective date of the plan shall be assigned to one of the tracts as follows:

1. "Expedited" - Cases on the Expedited Track shall be completed within nine (9) months or less after filing, and shall have a discovery cut-off no later than one hundred (100) days after filing of the [case management plan] ("CMP"). Discovery guidelines for this track include interrogatories limited to fifteen (15) single-part questions, no more than three (3) fact witness depositions per party without prior approval of the Court, and such other discovery, if any, as may be provided for in the CMP.

2. "Standard" - Cases on the Standard Track shall be complete within twelve (12) months or less after filing, and shall have a discovery cut-off no later than two hundred (200) days after filing of the CMP. Discovery guidelines for this track include interrogatories limited to thirty-five (35) single-part questions, no more than five (5) fact witness depositions per party without prior approval of the Court, and such other discovery, if any, as may be provided for in the CMP.

3. "Complex" - Cases on the Complex Track shall have the discovery cut-off established in the CMP and shall have a case completion goal of no more than eighteen (18) months.

4. "Administrative" - Cases on the Administrative Track shall be referred by Court personnel directly to a Magistrate Judge for a report and recommendation. Discovery guidelines for this track include no discovery without prior leave of Court, and such cases shall normally be determined on the pleadings or by motion.

5. "Mass Torts" - Cases on the Mass Torts Track shall be treated in accordance with the special management plan adopted by the Court.

B. Evaluation and Assignment of Cases

1. Evaluation Criteria - The Court shall consider and apply the following factors in assigning cases to a particular track:

a. Expedited:

(1) Legal Issues: Few and clear

(2) Required Discovery: Limited

(3) Number of Real Parties in Interest: Few

(4) Number of Fact Witnesses: Up to five (5)

(5) Expert Witnesses: None

(6) Likely Trial Days: Three (3) or less

(7) Character and Nature of Damage Claims: Usually a liquidated amount.

b. Standard:

(1) Legal Issues: More than a few, some unsettled

(2) Required Discovery: Routine

(3) Number of Real Parties in Interest: Up to five (5) legal entities but which represent no more than 3 diverse interests

(4) Number of fact witnesses: Up to ten (10)

(5) Expert Witnesses: Two (2) or Three (3)

(6) Likely Trial Days: Three (3) to Five (5)

(7) Character and Nature of Damage Claims: Routine

c. Complex:

(1) Legal Issues: Numerous, complicated and possibly unique

(2) Required Discovery: Extensive

(3) Number of Real Parties in Interest: More than five (5)

(4) Number of Fact Witnesses: More than ten (10)

(5) Expert Witnesses: More than three (3)

(6) Likely Trial Days: More than five (5)

(7) Character and Nature of Damage Claims: Usually requiring expert testimony.

d. Administrative:

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

e. Mass Torts:

(1) Factors to be considered for this track shall be identified in accordance with the special management plan adopted by the Court.

2. Evaluation and Assignment - The court shall consider recommendations of counsel, evaluate each civil case in accordance with this Section, and assign each case to one of the case management tracks prior to or, if necessary, at the case management conference.

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

I. PLANNING THE PROGRESS OF THE CASE

A. Early Assessment/Pretrial Case Management

1. Within 30 days after all responsive pleadings, required disclosures, and initial depositions of parties have been filed and/or completed, counsel are required to meet, by telephone or in person, and confer regarding the following matters.

a. Principal issues:

(1) Identify the principal factual and legal issues in dispute;

(2) Discuss the principal evidentiary basis for claims and defenses;

(3) Determine the "DCM" case track provided by Section One, days required for trial, and whether the case should be considered for ADR procedures.

b. Additional Disclosure. Discuss whether voluntary additional disclosure of documents or other information should be made, and if so, when.

c. Motions. Identify any motions whose early resolution would have a significant impact on the scope of discovery or other aspects of the litigation.

d. Discovery. Consistent with case "track recommendations, determine what additional discovery is required beyond the voluntary disclosures and initial depositions of the parties, with designated time limitations.

e. Preparation of a proposed case management plan and scheduling order, setting forth track and/or ADR recommendations, deadlines for amendments to pleadings and joinder of additional parties, completion of discovery, designation of experts, and filing of motions, including motions for summary judgment and motions in limine.

f. Settlement.

2. Case Management Report/Conference. Within ten days after the conference of counsel to discuss the above issues and with the initiative of the plaintiff's counsel, a case management report and proposed scheduling order shall be submitted to the Magistrate Judge. If counsel cannot agree as to the provisions of a case management report, the Magistrate Judge shall be so advised, and shall in such event, schedule and conduct a case management conference as soon thereafter as possible, which shall be attended by lead trial counsel for each party. The conference may be either by telephone or in person. Prior to the conference, the parties will be required to report to the Magistrate Judge in writing the matters on which the parties agree and the separate matters on which they differ with reasons therefor. At the case management conference, the Magistrate Judge, after considering the position of all parties, shall enter a case management plan and scheduling order as he/she deems appropriate.

In the event of agreement between the parties, the Magistrate Judge shall within ten days after receiving the case management report enter an order adopting the report and scheduling deadlines, with such revisions as the Court may order following consultation with the parties.

B. Settlement Conferences

1. Within ten days after the completion of all discovery pursuant to the case management plan, counsel for all parties shall separately submit a written report advising the

Magistrate Judge assigned to the case of the progress of settlement negotiations. Each report shall include a summary of the issues in the case, including an itemization of the damages claims. The reports shall also include a realistic assessment of the value of the case specifically stating the reasons for that assessment. The parties shall not be required to serve opposing counsel with a copy of their report. If the Magistrate Judge deems a settlement conference to be advisable after receiving the reports, or at the request of any party, the Magistrate Judge shall schedule a settlement conference within 30 days from the date the reports are received by him.

2. In addition to lead counsel for each party, a representative of each party with authority to bind that party for settlement purposes shall be present in person at the settlement conference.

3. The notice of the settlement conference shall set forth the format of the conference and shall include any requirement for information or documents which must be submitted to the Magistrate Judge prior to or at the conference as the Magistrate Judge may direct.

4. No statement, oral or written, made by any party to the Court or counsel(s) opposite pursuant to this rule, shall be admissible or used in any fashion in the trial of the case or any related case.

5. In the event a party has a motion for summary judgment pending, the Magistrate Judge may defer the settlement conference until the trial judge rules on the motion.

C. Trial Setting

At the settlement conference, if the case is not resolved, the Court shall enter an order setting the case for trial, consistent with the case's "track" designation, and also shall at such time set a pretrial conference date no earlier than 45 days nor less than 30 days from the trial

date. If for any reason a settlement conference is not conducted, the Court shall, within 20 days after the completion of discovery, set the trial and pretrial conference dates.

D. Pretrial Conference

1. The pretrial conference shall be conducted by the judicial officer assigned to try the case.

2. It is recognized that a formal pretrial conference may not be needed in all cases. The trial judge either on his/her own motion or by joint request of the parties, may determine that a pretrial conference is unnecessary. In such event, a jointly agreed pretrial order shall be submitted to the Trial Judge and all requirements of this rule shall be complied with, at, or before the time and date set for pretrial conference, unless the Trial Judge shall reschedule the submission of the pretrial order.

3. At or before the pretrial conference, the Court will rule on any pending motions, dispositive or otherwise.

E. Final Pretrial Order

1. The final pretrial order shall set forth:

a. A concise summary of the ultimate facts claims: (i) by plaintiff(s); (ii) by defendant(s); and (iii) by other parties;

b. Facts established by pleadings or by stipulations or admissions of counsel;

c. Contested issues of facts;

d. Contested issues of law;

e. Exhibits (except documents for impeachment only) to be offered in evidence by the parties respectively. In the event counsel cannot in good faith to stipulate the

authenticity and/or admissibility of a proposed exhibit, the order shall identify the same and state the precise ground of objections;

f. The names and addresses of witnesses for all parties, including rebuttal witnesses. Impeachment witnesses need not be listed. The order shall also identify those witnesses who will be available to an adverse party at trial without the necessity of a subpoena. Except for good cause shown, a witness may not testify at trial unless disclosed on the pretrial order.

Such witness list shall indicate whether the witnesses will give fact or expert testimony or both, and whether the witness will testify as to liability or damages or both, and whether their testimony will be live or by deposition.

g. Any additional matters to aid in the disposition of the action;

h. The probable length of trial; and

i. Full name, address, and phone number of all counsel of record for each party.

F. Trial Planning

1. Final pretrial conferences will be used to resolve as many issues as possible prior to the commencement of trial. Motions in limine as to evidentiary issues and special requests for jury instructions shall be submitted by the parties not later than 10 days prior to the date for which the trial is set. Each such request shall be on a separate sheet of paper, should be numbered and should be supported by appropriate citations of authorities, and a copy thereof should be furnished to opposing counsel at the time the special request are submitted to the

court. Where good cause is shown to exist, counsel may, with the permission of the court, submit additional written requests during the progress of the trial.

2. If any case is in a backup status 14 days prior to the designated trial date, the Court shall so advise counsel, and at the request of any party the trial date shall be rescheduled.

G. Imposition of Costs and Expenses

Failure to participate in good faith in the preparation of the case management report, and unreasonable refusals to stipulate in the pretrial order to proposed facts and exhibits shall subject the refusing party to the imposition of such costs and expenses as may be assessed in the court's discretion, pursuant to Rule 37 F.R.Civ.P.

SECTION THREE: DISCOVERY CONTROL; MOTIONS PRACTICE

I. CONTROLLING THE EXTENT AND TIMING OF DISCOVERY

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

1. Required Disclosures by Plaintiffs. Except as hereinafter provided, a plaintiff shall file with the complaint, counterclaim, cross-claim, or third party claim, and in response to responsive pleadings, the following:

a. the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the plaintiffs' claims;

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 the claims of the plaintiffs;

c. a computation of any category of damages claimed by the filing party, making available for inspection and copying as under Rule 35, FRCP, the documents or other evidentiary material, on which such computation is based, including materials bearing on the nature and extent of injuries suffered not otherwise privileged or protected from disclosure;

d. Within 15 days of the filing of the defendants' disclosures of persons/information and documents relevant to the defenses asserted, the plaintiffs shall make similar disclosures to such defenses.

2. Required Disclosures by Defendants/Respondents. Within 45 days of service of the complaint, with required disclosures by the plaintiff, a defendant/respondent shall serve similar disclosures on all parties relevant to all claims and defenses, which shall include inspection as under Rule 34, FRCP, of 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.

3. Initial depositions. If notice is given within 15 days of service of process and required disclosures, a defendant/respondent may orally depose the filing party(s), not to exceed four (4) hours, before being required to file required disclosures. Filing parties shall have a like right to notice defendants/respondents' deposition, either on the same date as filing party(s) deposition, or any time within 15 days from receipt of defendants/respondents' answer and disclosures. In any event, all initial depositions of parties shall be completed within 60 days of the filing of the complaint.

B. Suspension of Discovery

On completion of the required disclosures and the permitted depositions (or waiver thereof) plaintiff shall notify the court, and no further discovery shall be permitted until the entry of the case management plan.

C. Completion of Discovery

After entry of the case management plan and scheduling order, discovery shall proceed as permitted by FRCP and this plan. By agreement parties may extend discovery deadlines by exchange of letters, as provided in Section One, supra. No party shall be required to proceed with discovery if there are pending motions relating to discovery issues, or pending dispositive motions as to any issue in the case unless ordered by the Court. Upon the filing of such motions, the moving party shall suggest to the Court why discovery should be stayed pending the resolution of the motion.

D. Exceptions

The above procedures and rules shall not apply to:

1. Any case assigned to tract one, or to matters involving student loans, bankruptcy appeals, social security appeals, prisoner petitions, and pro se cases;

2. Complaints for temporary restraining orders; however, plaintiff shall comply within 10 days after entry or denial of the order;

3. Complaints filed with counsel's affidavit that his/her representation was accepted too close to the running of the applicable statute of limitations to permit investigation for required disclosure; however, plaintiff shall comply within 45 days of the filing of the complaint or such additional time as the court may allow;

4. The United of States of America as a defendant to the extent that the United States shall serve required disclosures 25 days after its answer is due under Rule 12(a), Federal Rules of Civil Procedure rather than within 45 days of service of the complaint.

No other exceptions shall be allowed except upon motion with notice and order of the court.

II. MOTIONS PRACTICE

A. Applicability

The provisions of this rule apply to all written motions filed in civil actions.

B. Filing; Proposed Orders

The original of each motion, and all affidavits and other supporting documents shall be filed with the Clerk at the division office where the action is docketed. The moving party at the same time shall mail a copy thereof to the District Judge presiding in the action at his home office mailing address, or, if the motion is referred to a Magistrate Judge, to the Magistrate Judge at his home office mailing address.

A proposed order shall accompany the Court's copy of any motion which may be heard ex parte or is to be granted by consent. If the motion is referred to a Magistrate Judge, the proposed order shall be furnished to the Magistrate Judge with a copy of the motion.

C. Responses

The original of any response to the motion, all opposing affidavits, and other supporting documents shall be filed with the Clerk at the division office where the action is docketed within 10 days of service. Responses to motions and all objections shall be filed and copies distributed as provided in Paragraph B of this rule.

D. Memoranda; Documents Required with Motions to Dismiss or for Summary Judgment; Failure to Submit Required Documents.

At the time the motion is served, other than motions or applications which may be heard ex parte or those involving necessitous or urgent matters, counsel for movant shall mail to the Judge in charge of the case the original and one copy of a memorandum of authorities upon which he/she relies. No memorandum is required for routine motions, such as continuance or enlargement of time. Counsel for respondent shall submit the original and one copy of a memorandum of authorities in reply, and shall do so within ten (10) days after service of movant's memorandum. Counsel for movant desiring to submit a rebuttal memorandum may do so within five (5) days after the service of the respondent's memorandum. Parties may agree to one extension of ten (10) days each by exchange of letters. Any other requests for extension of time shall be made in writing to the Judge before whom the motion is noticed. In all motions for summary judgment the movant must file with the Clerk as a party of the motion an itemization of the facts relied upon in support of the motion which he claims to be both material and as to which there is no genuine issue. The respondent shall either file an agreement that the facts listed by the movant are undisputed or shall state with specificity those facts which are contested and the reasons therefor. In the event of cross-motions for summary judgment in which the parties agree on the facts, the parties shall file a stipulation of uncontested facts. Counsel shall strictly comply with the requirements of Rule 6(c) in connection with motions to compel discovery. Failure to timely submit the required motion documents may result in the denial of the motion and/or the imposition of appropriate sanctions.

If all parties certify that in their opinion the Court's ruling on the motion will likely dispose of the case (by dismissal, settlement, or otherwise), all discovery shall cease and the case shall be moved to priority status on the court's motion docket.

E. Length of Memoranda

Movant's original and rebuttal memoranda together shall not exceed a total of thirty-five (35) pages, and respondent's memorandum shall not exceed thirty-five (35) pages. Memoranda and other submissions required by paragraph (d), except as therein provided, are not to be filed with the Clerk's office.

F. Notice and Hearing

No notice to hear motions is required. All motions shall be decided by the court without a hearing or oral argument unless otherwise ordered by the Court on its own motion, or, in its discretion, upon written request made by counsel in an easily discernible manner on the face of the motion or response.

The scheduling of an evidentiary hearing or oral argument, where allowed, shall be set at such time and place as may suit the convenience of the Judge assigned to the case. The court may, in its discretion, hear oral argument by telephone conference.

G. Urgent or Necessitous Matters

Where the motion relates to an urgent or necessitous matter, counsel for the movant shall contact the courtroom deputy or the law clerk of the Judge to whom the action has been assigned and arrange a definite time and place for the hearing of the motion. In such cases, counsel for movant shall file a written notice to the other parties of the time and place fixed by the Court

for the hearing of the motion. The Court, upon receipt of the motion, may in its own discretion direct counsel as to the submission of memoranda of authorities for the Court's consideration.

H. Service

Movant and respondent shall serve copies of all motions, responses, and/or memoranda upon opposing counsel. When service is by mail, three (3) days shall be added to the periods prescribed in paragraph (d) of this rule.

I. Role of the Magistrate Judge

All pretrial motions are hereby referred to a Magistrate Judge for hearing and determination in accordance with the provisions of Rule 72, FRCP, with the exception of motions for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, to involuntarily dismiss an action, motions in limine regarding evidentiary matters, and for extension of time with regard to matters pending before a District Judge. Upon entry of a Pretrial Order, all motions thereafter served shall be submitted to the assigned trial judge.

J. Cases to be Tried Before Magistrate Judge by Consent

In any civil action which has been referred to a Magistrate Judge for trial upon consent of the parties, the Magistrate Judge becomes the trial judge and shall hear and determine any and all pretrial and post-trial matters including case-dispositive motions. Upon the written consent of all parties, the District Judge may refer any dispositive motion pending before the Court to a Magistrate Judge to hear and enter judgment or appropriate order thereon. Unless otherwise specified in the Order of Reference, the judgment or dispositive order entered by the

Magistrate Judge shall be the final order of the Court and appeal therefrom shall be to the Court of Appeals for the Fifth Circuit in the same manner and under the same conditions as an appeal from other judgment or order of the Court.

K. Court Reporters

If the hearing of a motion, whether at a regular motion day, pretrial conference, or special setting, requires the presence of a court reporter, the party requesting a court reporter shall obtain prior approval from the office of the District or Magistrate Judge before whom the motion is notice.

L. Untimely Motions

Any motion served beyond the motion deadline imposed in the case management plan may be denied solely because the motion is served untimely. Parties are encouraged to file all non-dispositive motions prior to the discovery deadline.

M. Sanctions - Frivolous Motions or Opposition

A patently frivolous motion or opposition to a motion on patently frivolous grounds may result in the imposition of appropriate sanctions, including the assessment of costs and attorneys' fees.

N. Sanctions - Frivolous Matters or Opposition

Delays, or continuances, or waste of the Court's time occasioned by the failure of a party to follow the procedures outlined in this rule may result in the imposition of appropriate sanctions, including assessment of costs and attorneys' fees. In this regard, counsel shall notify the appropriate Judge immediately if a submitted motion is resolved by the parties or the case in which the motion has been pending is settled.

SECTION FOUR: ALTERNATE DISPUTE RESOLUTION PROGRAMS (ADR) AND ADDITIONAL DISPUTE RESOLUTION TECHNIQUES

I. Alternate Dispute Resolution Programs (ADR)

A. Early Neutral Evaluation (ENE)

1. Early Neutral Evaluation means that early in the case the litigants meet with an outside neutral who is knowledgeable in the subject matter of the case to discuss all aspects of the case. ENE's major purpose is to reduce the cost and duration of litigation by enhancing communication, narrowing issues, and facilitating settlement. It is strongly recommended that there not be any additional meetings scheduled for counsel in order to accomplish ENE but that it be scheduled at the same time as the case management conference if conducted in person or be scheduled by the outside neutral coordinated with an aspect of the early discovery, such as the depositions of parties. All civil cases are eligible and may be referred to ENE either by agreement of all parties or, in appropriate situations, by court order in the discretion of the Court. The case will be assigned to an outside neutral evaluator by the Magistrate from the existing panel of available individuals.

2. The parties, upon either mutually electing ENE or being designated to go through ENE by the Court in its discretion, shall immediately notify the assigned outside neutral evaluator of dates available for an ENE conference either in conjunction with the case management conference or some other scheduled discovery in the case. The outside neutral then will

send a written notice to all parties of the time and place of the ENE session. The conference may also occur under conditions as ordered by the Court with the primary intent being to have the ENE conference coordinated with other existing scheduled discovery.

3. The evaluation session shall be held as soon as reasonably possible by the outside neutral. All discovery and documents prepared for the case management conference shall be made available by the parties to the assigned outside neutral for that person's review.

4. The written evaluation statements of the neutral evaluator shall not be filed and shall be shown to the presiding judicial officer.

5. The ENE conference shall be informal and the outside neutral conducting the conference will help the parties focus on the issues and work efficiently and expeditiously to make the case ready for trial and/or settlement.

6. The panel of outside neutral evaluators shall be established in the discretion of the District Court either by solicitation of volunteers from the bar of the District Court and/or by appointment of members from the private bar by the District Court and/or through coordination with the State Bar of the State through its existing administrative process. The outside neutral evaluators shall receive a fee per case of $300-$500 depending upon the complexity of the case and the discretion of the Court on exercising its discretion in assigning the case will determine said fee

for ENE or, upon mutual agreement of the parties, they will determine the fee. The expenses of ENE shall be divided equally in the event it is upon mutual agreement of the parties and, in the event that the case is assigned by the Court, it shall become part of the regular court costs.

7. No member of the private bar in active practice should serve as an early neutral evaluator more than three times in any one calendar year unless said attorney volunteers in writing to do so.

8. The entire Early Neutral Evaluation process is confidential. The parties and the early neutral evaluator shall not disclose information regarding the process including settlement terms or proposals to the Court or to third persons unless all parties otherwise agree. The parties' counsel and the evaluators may, however, respond to confidential inquiries and surveys authorized by the Court to evaluate the ENE program. Information provided in such inquiries or surveys shall remain confidential and not be identified with any particular case.

9. The ENE process shall be treated as a compromise negotiation for purposes of the federal rules of evidence and state rules of evidence.

B. Mediation

1. The judicial officer may grant mediation upon the agreement of all parties, either by written motion or their oral motion in court entered upon the record. If mediation is ordered, the litigants meet with an outside neutral, appointed by the court or selected by the litigants, for in-depth settlement

discussions. Frequently the mediators are experts in the subject matter of the case, but they need not be. Mediators facilitate discussions among the litigants to assist them in identifying the underlying issues and in developing a creative and responsive settlement package, but do not render a decision. The purposes are to increase the chances of settlement, help the litigants devise better settlements, and improve relationships among the litigants.

2. A mediator may be selected and assigned to the case who shall be qualified and knowledgeable about the subject matter of the dispute, but have no specific knowledge about the case. The mediator shall be compensated as agreed by the parties, subject to the approval of the judicial officer.

3. The mediator shall meet, either jointly or separately, with each party and counsel for each party and shall take any other steps that may appear appropriate in order to assist the parties to resolve the impasse or controversy.

4. The mediation shall be terminated if, after the seven (7) day period immediately following the appointment of the mediator, any party, or the mediator, determines that mediation has failed or no longer wishes to participate in mediation.

5. If an agreement is reached between the parties on any issues, the mediator shall make appropriate note of that agreement and refer the parties to the judicial officer for entry of a court order.

6. Mediation proceedings shall be regarded as settlement proceedings and any communication related to the subject matter of the dispute made during the mediation by any participant, mediator, or any other person present at the mediation shall be a confidential communication. No admission, representation, statement, or other confidential communication made in setting up or conducting the proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.

7. A mediator must also meet one of the following minimal requirements:

(a) The mediator may be a member in good standing of the Mississippi State Bar with at least five years of practice, and be an active member of the Mississippi State Bar within one year of application for certification; or

(b) Paragraph (a) notwithstanding, the Chief Judge, upon written request setting forth reasonable and sufficient grounds, may certify as a District Court mediator a retired judge who was a member of the bar in the state in which the judge presided. The judge must have been a member in good standing of the bar of another state for at least five years immediately preceding the year certification is sought; or

(c) The mediator may be the holder of a master's degree and be a member in good standing in his or her professional field with at least five years of practice in the State of Mississippi; and

(d) Notwithstanding the foregoing procedures which are the preferred method of certification, the Court may, in the absence of an available pool of certified mediators, appoint as a mediator a qualified person acceptable to the Court and the parties. Also, a person certified as a mediator by the American Arbitration Association, or any other national organization approved by the District Court, shall be deemed to qualify under this section as a District Court Mediator.

C. Arbitration

1. Definition.

Arbitration provides the parties an advisory adjudication of their case. The litigants briefly present their case to an outside neutral or panel of neutrals, who then gives the litigants an opinion of the judgment value of the case. The presentations of each side may be quite formal, but generally arbitration sessions are more informal than a trial and the rules of evidence are suspended.

2. Arbitrators.

(a) The Chief Judge shall certify as many arbitrators as he determines to be necessary under this rule.

(b) Any individual may be certified to serve as an arbitrator if: (1) he/she has been for at least five years a member of the bar of the highest court of a state or the District of Columbia; (2) he/she is admitted to practice before this court; and (3) he/she is determined by the Chief Judge to be competent to perform the duties of an arbitrator.

(c) Any member of the bar possessing the qualifications set forth in subsection (b) desiring to become an arbitrator, shall complete the application form obtainable in the office of the Clerk and when completed shall file it with the Clerk of Court who shall forward it to the Chief Judge of the Court for his determination as to whether the applicant should be certified.

(d) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. §453 before serving as an arbitrator.

(e) A list of all persons certified as arbitrators shall be maintained in the office of the Clerk.

(f) Any member of the Bar certified as an arbitrator may be removed from the list of certified arbitrators for cause by a majority of the judges of this Court.

3. Compensation and Expenses of Arbitrators. The arbitrators shall be compensated $200 each for services in each case assigned for arbitration. Whenever the parties agree to have the arbitration conducted before a single arbitrator, the single arbitrator shall be compensated $200 for

services. In the event that the arbitration hearing is protracted, the court will entertain a petition for additional compensation. The fees shall be paid by or pursuant to the order of the Director of the Administrative Office of the United States Courts. Arbitrators shall not be reimbursed for actual expenses incurred by them in the performance of their duties under this rule.

4. Scheduling Arbitration Trial.

(a) After an answer is filed a case may be agreed by all parties to be submitted to arbitration at which time the clerk shall send a notice to counsel setting forth the date and time for the arbitration trial. The date of the arbitration trial set forth in the notice shall be a date about one hundred twenty (120) days from the date the answer was filed. The notice shall also advise counsel that they may agree to an earlier date for the arbitration trial provided the arbitration clerk is notified within thirty (30) days of the date of the notice. The notice shall also advise counsel that they have ninety (90) days from the date the answer was filed to complete discovery unless the judge to whom the case has been assigned orders a shorter or longer period for discovery. In the event a third party has been brought into the action, this notice shall not be sent until an answer has been filed by the third party.

(b) The arbitration trial shall be held before a panel of three arbitrators, one of whom shall be designated as chairperson of the panel

unless the parties agree to have the hearing before a single arbitrator. The arbitration panel shall be chosen through a random selection process by the clerk of the court from among the lawyers who have been certified as arbitrators. The clerk shall endeavor to assure insofar as reasonably practicable that each panel of three arbitrators shall consist of one arbitrator whose practice is primarily representing plaintiffs, one whose practice is primarily representing defendants, and a third panel member whose practice does not fit either category. The arbitration panel shall be scheduled to hear not more than four (4) cases on a date or dates several months in advance.

(c) The judge to whom the case has been assigned shall at least thirty (30) days prior to the date scheduled for the arbitration trial sign an order setting forth the date and time of the arbitration trial and the names of the arbitrators designated to hear the case. In the event that a party has filed a motion to dismiss the complaint, a motion for summary judgment, a motion for judgment on the pleadings, or a motion to join necessary parties, the judge shall not sign the order until the court has ruled on the motion, but the filing of such a motion on or after the date of said order shall not stay the arbitration unless the judge so orders.

(d) Upon entry of the order designating the arbitrators, the arbitration clerk shall send to each arbitrator a copy of all the pleadings, including the order designating the arbitrators, and the guidelines for arbitrators.

(e) Persons selected to be arbitrators shall be disqualified for bias or prejudice as provided in Title 28, U.S.C. §144, and shall disqualify themselves in any action in which they would be required under Title 28, U.S.C. §455, to disqualify themselves if they were a justice, judge, or magistrate.

(f) The arbitrators designated to hear the case shall not discuss settlement with the parties of their counsel, or participate in any settlement discussions concerning the case which has been assigned to them.

5. The Arbitration Trial.

(a) The trial before the arbitrators shall take place on the date and at the time set forth in the order of the Court. The trial shall take place in the United States courthouse, in a room assigned by the arbitration clerk. The arbitrators are authorized to change the date and time of the trial provided the trial is commenced within thirty (30) days of the trial date set forth in the Court's order. Any continuance beyond this thirty (30) day period must be approved by the judge to whom the case has been assigned. The arbitration clerk must be notified immediately of any continuance.

(b) Counsel for the parties shall report settlement of the case to the arbitration clerk and all members of the arbitration panel assigned to the case.

(c) The trial before the arbitrators may proceed in the absence of any party who, after notice, fails to be present. In the event, however, that a party fails to participate in the trial in a meaningful manner, the Court may impose appropriate sanctions, including, but not limited to the striking of any demand for a trial de novo filed by that party.

(d) Rule 45 of the Federal Rules of Civil Procedure shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at the trial before the arbitrators. Testimony at the trial shall be under oath or affirmation.

(e) The Federal Rules of Evidence shall be used as guides to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least ten (10) days prior to the trial and the arbitrators shall receive such exhibits into evidence without formal proof unless counsel has been notified at least five (5) days prior to the trial that the adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrators may refuse to receive into evidence any exhibit, a copy or photograph of which has not been delivered prior to trial to the adverse party, as provided herein.

(f) A party may have a recording and transcript made of the arbitration hearing at the party's expense.

6. Arbitration Award and Judgment.

The arbitration award shall be filed with the court promptly after the trial is concluded and shall be entered as the binding judgment of the court. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the court in a civil action, except that it shall not be the subject of appeal.

II. Additional Dispute Resolution Techniques

A. Non-binding Summary Jury Trials

1. Definition

Because of the substantial court and litigant resources consumed, this procedure is most suitable for cases poised for lengthy trial. The litigants briefly present their case to a jury that has been randomly selected from the court's jury pool. The jury returns an advisory verdict on liability and damages, which is used as a spur for settlement discussions. Lawyers are generally permitted to question the jurors about their decision.

2. The judicial officer may convene a summary jury trial:

(a) With the agreement of all parties, either by written motion or their oral motion in court entered upon the record, or

(b) Upon the judicial officer's determination that a summary jury trial would be appropriate, even in the absence of the agreement of all the parties.

3. There shall be six (6) jurors on the panel, unless the parties agree otherwise.

4. The panel may issue an advisory opinion regarding:

   (a) The respective liability of the parties, or

   (b) The damages of the parties, or

   (c) Both the respective liability and damages of the parties.

   Unless the parties agree otherwise, the advisory opinion is not binding and it shall not be appealable.

5. Neither the panel's advisory opinion nor its verdict, nor the presentations of the parties, shall be admissible as evidence in any subsequent proceeding, unless otherwise admissible under the rules of evidence. Additionally, the occurrence of the summary jury trial shall not be admissible.

B. Other Alternatives

1. Other methods of ADR seem more effective than non-binding summary bench trials or minitrials.

2. The judicial officer may convene a non-binding mini-trial upon the agreement of all parties, either by written motion or their oral motion in open court entered upon the record.

3. Each party, with or without the assistance of counsel, shall present his or her position before:

   (a) selected representatives for each party, or

(b) an impartial third party, or

(c) both selected representatives for each party and an impartial third party.

4. An impartial third party may issue an advisory opinion regarding the merits of the case.

5. Unless the parties agree otherwise, the advisory opinion of the impartial third party is not binding.

6. The impartial third party's advisory opinion is not appealable.

7. Neither the advisory opinion of an impartial third party nor the representations of the parties shall be admissible as evidence in any subsequent proceeding, unless otherwise admissible under the rules of evidence. Additionally, the occurrence of the mini-trial shall be not admissible.

C. Settlement Weeks

During a settlement week, the court designates a specific time period during which many cases are referred to settlement discussions with neutral attorneys. Cases are generally referred after discovery has been completed. The purpose of settlement week is to increase the chances of settlement and to prompt earlier settlements in cases that are ready for trial. "Settlement Week Conferences" should be scheduled at regular intervals and not less than three times in a calendar year by each Judge.

SECTION FIVE: OTHER FEATURES

I. Prisoner/Pro Se Cases

No change from current system which seems to be working.

II. Practitioner's Handbooks

The court will publish and distribute to all lawyers and litigants in federal court cases a pamphlet informing them about their rights and obligations in federal court litigation and will make it required reading for each party in every lawsuit. The court will include a code of professional courtesy or similar guidelines for attorney conduct in this pamphlet.

III. Role of the Courtroom Clerk

This should be left to each Judge.

IV. Procedures for Monitoring the Court's Caseload

No change from current system which seems to be working.

V. Use of Visiting Judges

No change from current system which seems to be working.

VI. Telephone Conferencing and Video Depositions

A. The court may hold pretrial and other conferences, and any scheduled oral arguments on motions by telephone when requested and when that practice saves the attorneys, parties, or court time and money.

B. The videotaping of the testimony of expert witnesses is encouraged.

VII. Trial Provisions: Rotation of Criminal Duty

A. Plan for Rotation of Criminal Docket. The Advisory Group found that some of the problems with the civil docket in this district are largely caused by the

priority criminal docket. While the judges cannot control the number of indictments or criminal trials, the Court can try to manage the valuable resource of judicial time differently so that each judge can have some period of freedom from the responsibility of criminal trials. This should enable judges to schedule civil cases with a firm trial date and should give judges some uninterrupted time in chambers to deal with civil motions, settlement conferences, and other civil case matters. In order to achieve these goals, the judges should adopt a plan for rotation of the criminal docket for at least a two month continuous period each year for each Judge to work exclusively on civil matters.

VIII. Control of Legal Fees

No change from current system which seems to be working.

APPENDIX A

1991 Statistics of Administrative Office
of United States Courts

Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990

SY91 Statistics Supplement

October 1991

Prepared for the United States District Court for the Northern District of Mississippi

NOTES:

The pages that follow provide an update to section IIb of the February 28, 1991 "Guidance to Advisory Groups" memorandum, incorporating data for Statistical Year 1991 (the twelve months ended June 30, 1991). The pages have been formatted exactly like the corresponding pages of the original memorandum, and may replace the corresponding pages in the original. There are no changes to the text of the document, except for a few references to the dates covered by the data. Certain discrepancies may be apparent between the original document and this update, as follows:

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

- contract actions other than student loan, veterans' benefits, and collection of judgment cases
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- patent and copyright cases
- ERISA cases
- labor law cases
- tax cases

- securities cases
- other actions under federal statutes; e.g., FOIA, RICO, and banking laws

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

Chart 1: Distribution of Case Filings, SY89-91

Northern District of Mississippi

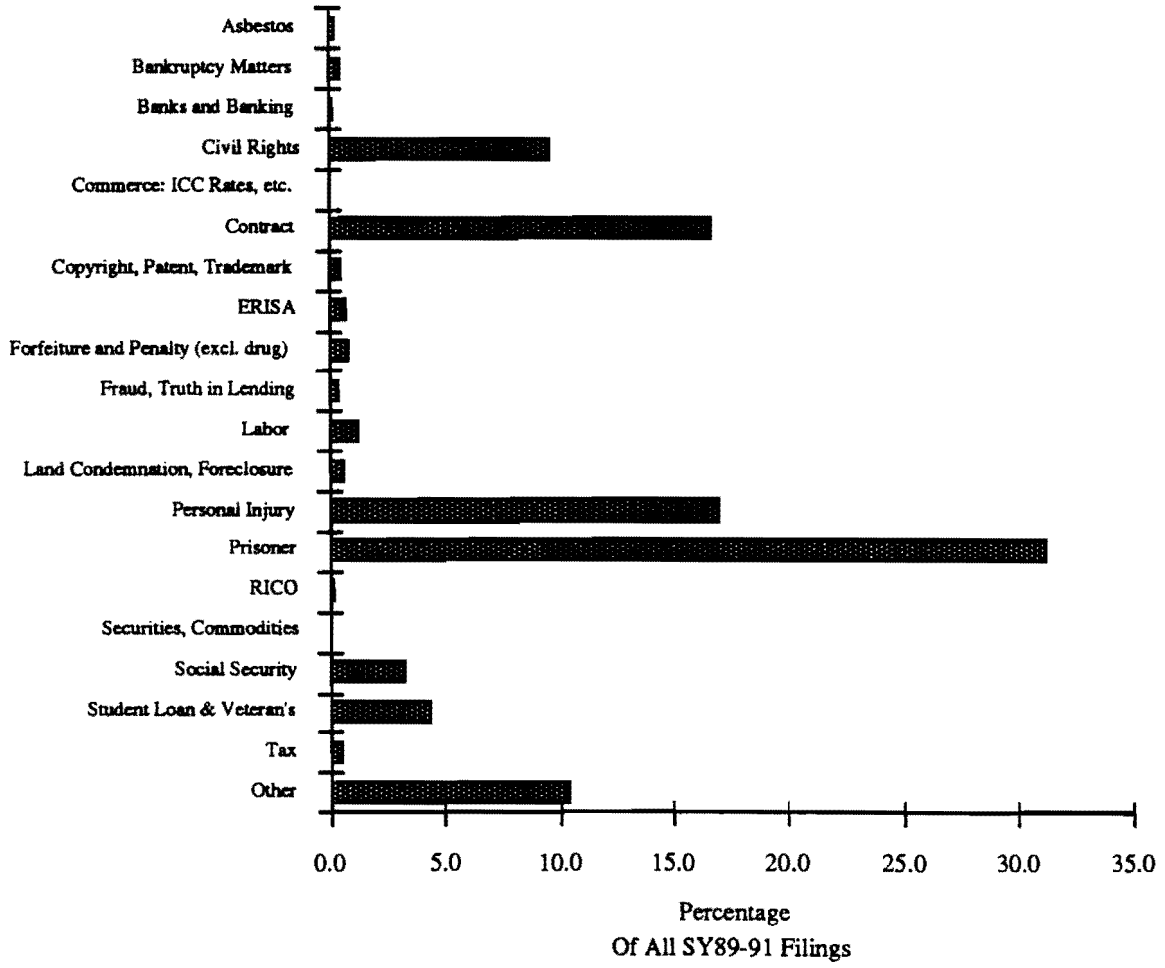


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY82-91
Northern District of Mississippi

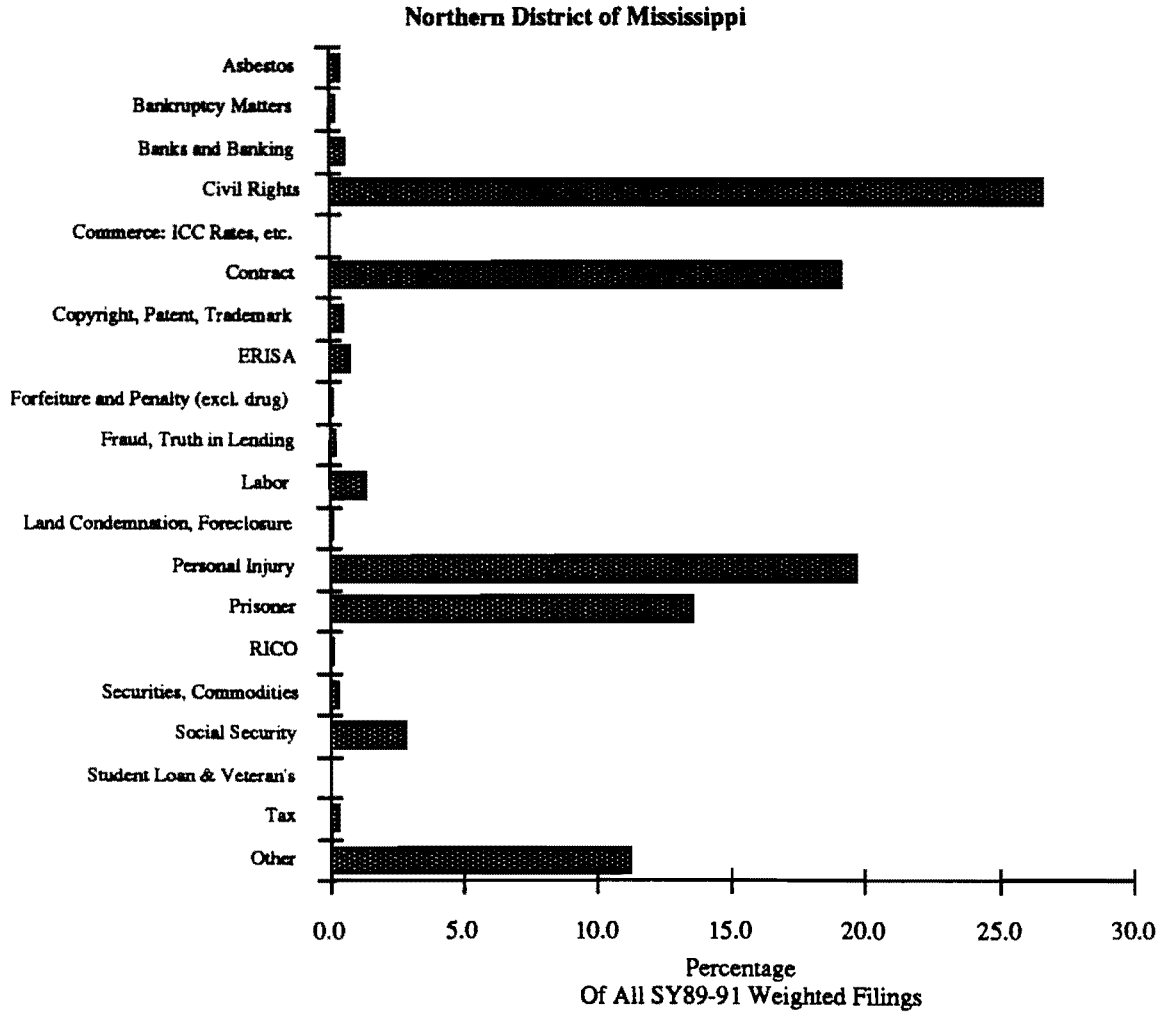
Table 1: Filings by Case Types, SY82-91

Northern District of Mississippi

	82	83	84	85	86	87	88	89	90	91
Asbestos	0	0	28	72	23	17	8	6	4	1
Bankruptcy Matters	4	6	11	6	3	3	12	9	5	6
Banks and Banking	1	5	0	0	1	1	1	1	1	5
Civil Rights	115	96	134	139	97	89	77	120	111	98
Commerce: ICC Rates, etc.	5	3	1	1	0	0	9	2	1	1
Contract	274	292	252	248	283	264	218	219	169	178
Copyright, Patent, Trademark	3	5	12	8	8	12	4	6	4	8
ERISA	1	0	0	0	2	0	3	5	7	14
Forfeiture and Penalty (excl. drug)	3	0	1	4	9	1	3	13	8	11
Fraud, Truth in Lending	10	8	10	13	10	8	7	7	4	3
Labor	22	8	15	17	25	15	12	18	13	14
Land Condemnation, Foreclosure	53	33	16	8	13	17	20	8	5	10
Personal Injury	200	198	193	219	222	207	233	212	169	195
Prisoner	152	187	207	164	267	268	185	328	457	274
RICO	0	0	0	0	0	0	3	3	3	1
Securities, Commodities	4	7	4	1	5	2	4	4	2	0
Social Security	64	77	167	78	50	74	67	47	36	29
Student Loan and Veteran's	86	282	254	331	173	36	55	69	49	31
Tax	11	9	9	4	6	4	5	8	3	10
All Other	110	91	109	109	108	92	121	95	162	97
All Civil Cases	1118	1307	1423	1422	1305	1110	1047	1180	1213	986

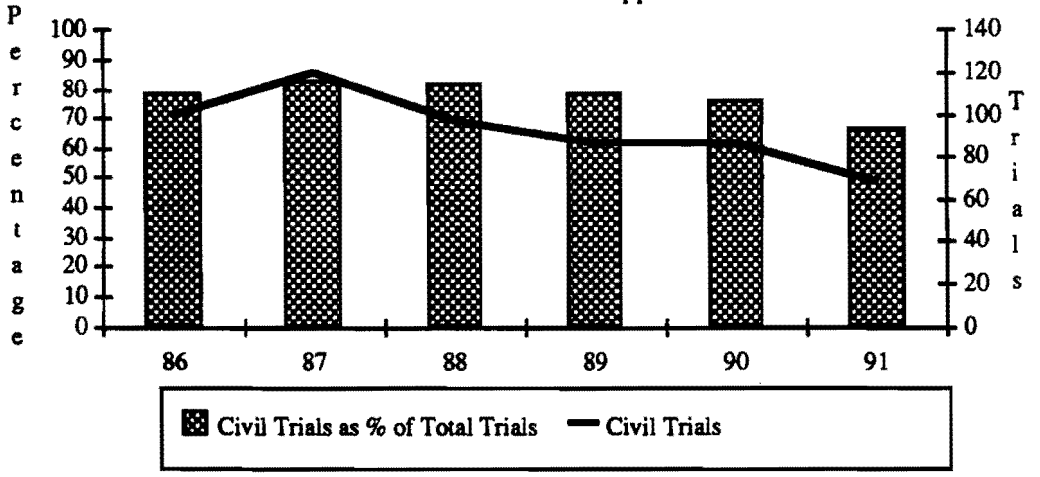
c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases.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

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



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

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



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

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

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

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

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

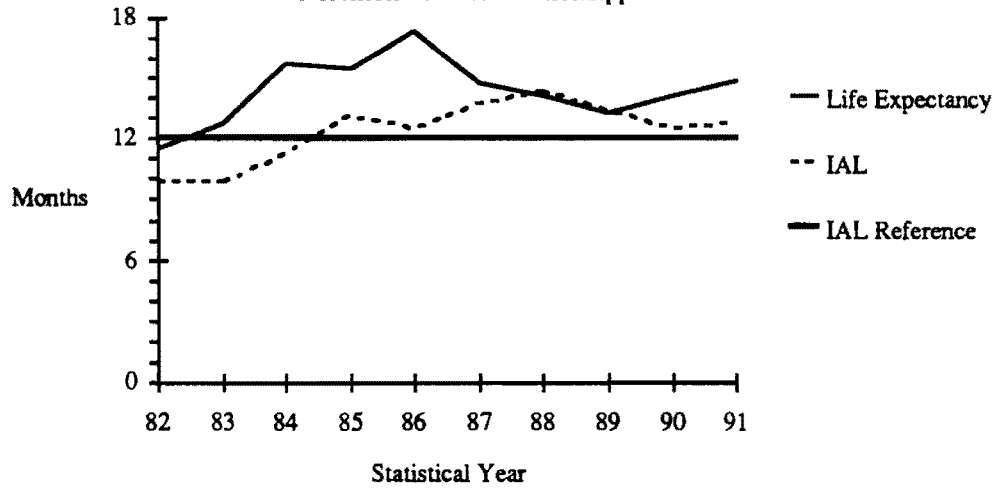
Note that these measures serve different purposes. Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts; it is corrected for changes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

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

Northern District of Mississippi

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

Northern District of Mississippi



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

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

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

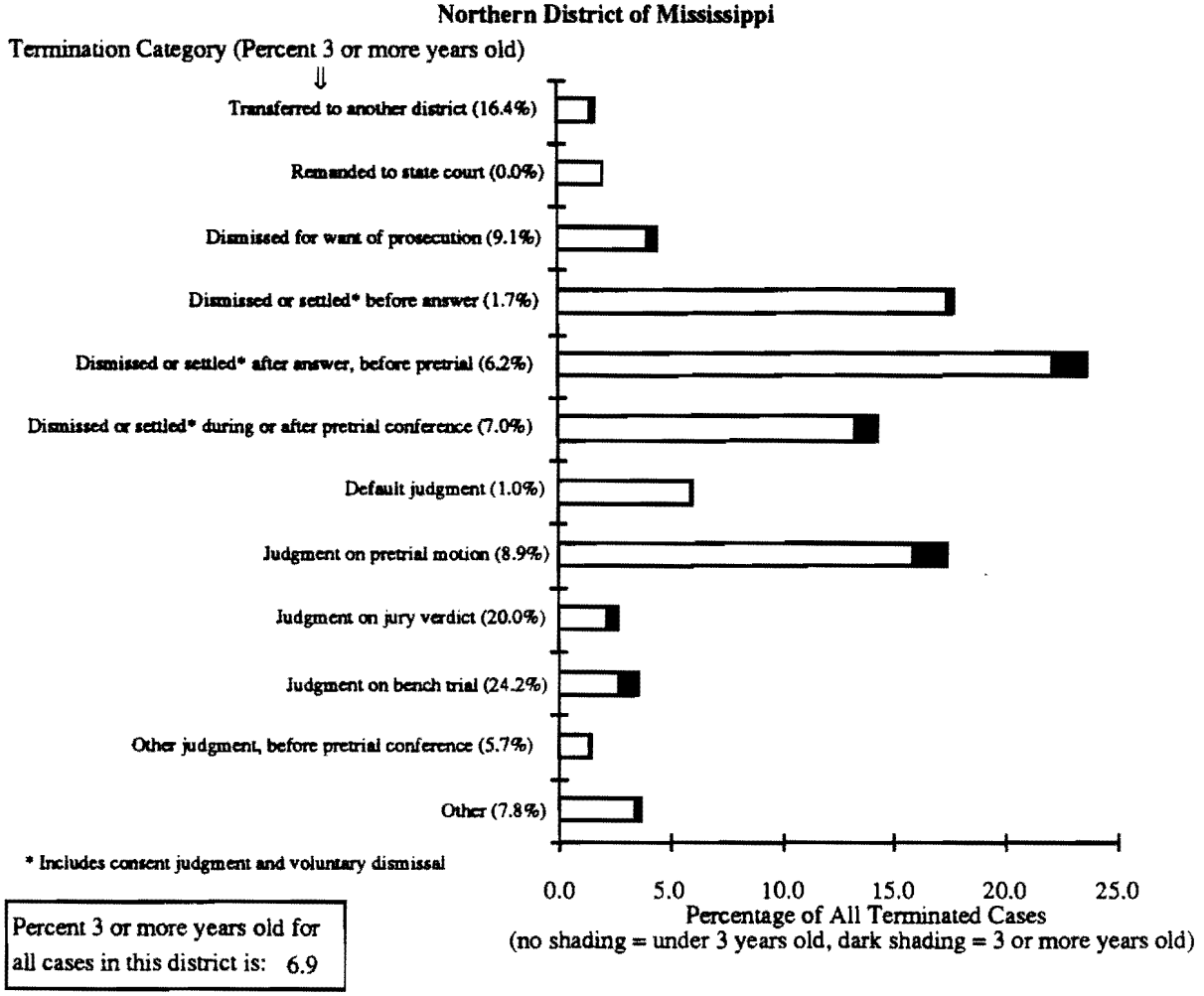
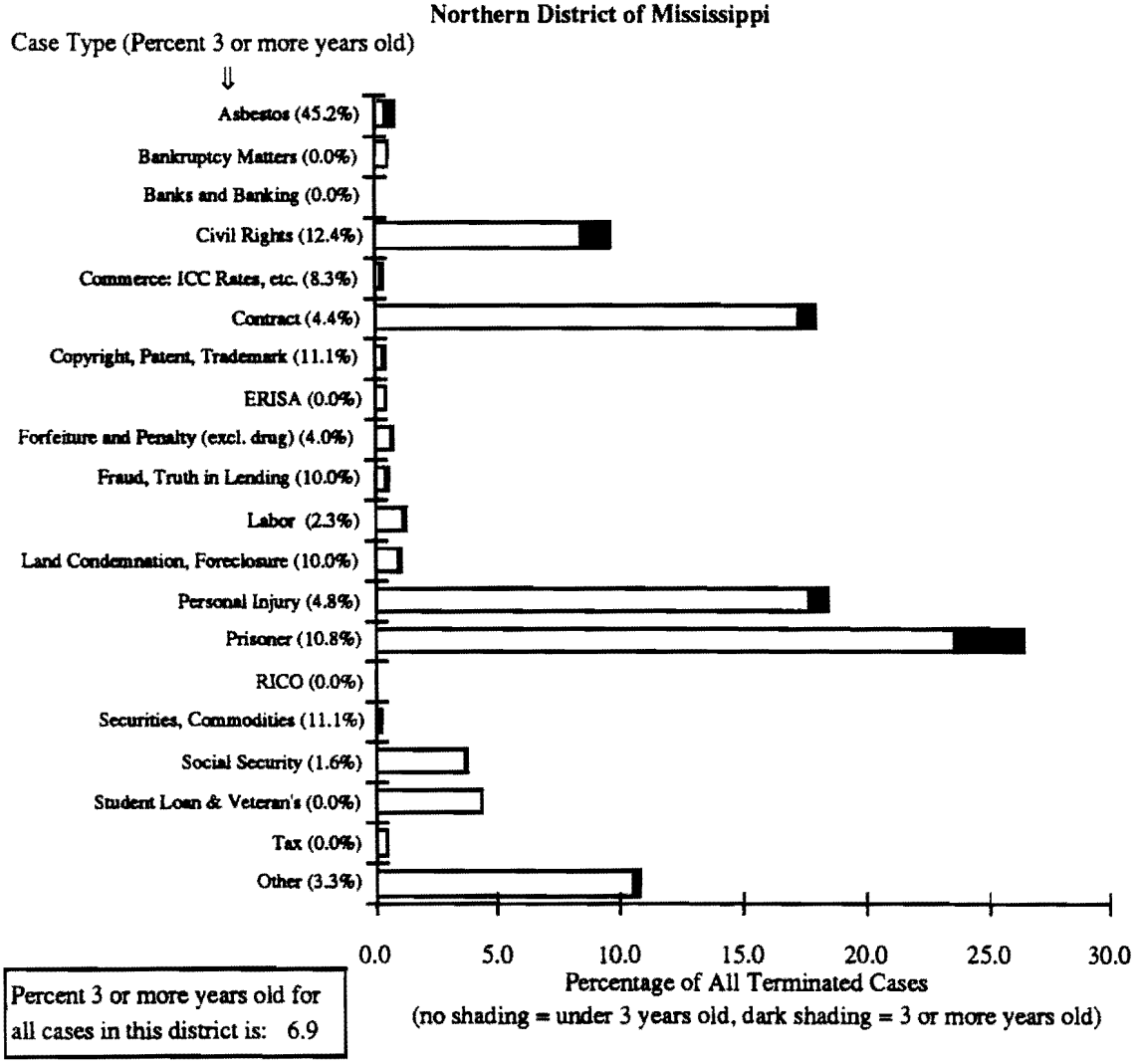


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

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



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

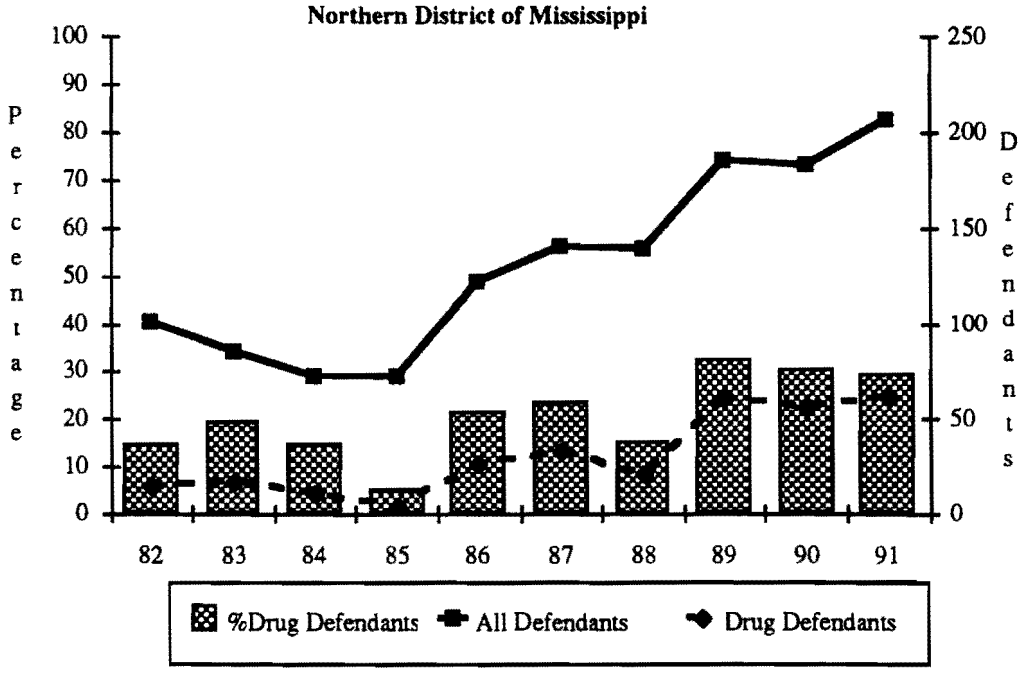
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

2. The Criminal Docket

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

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

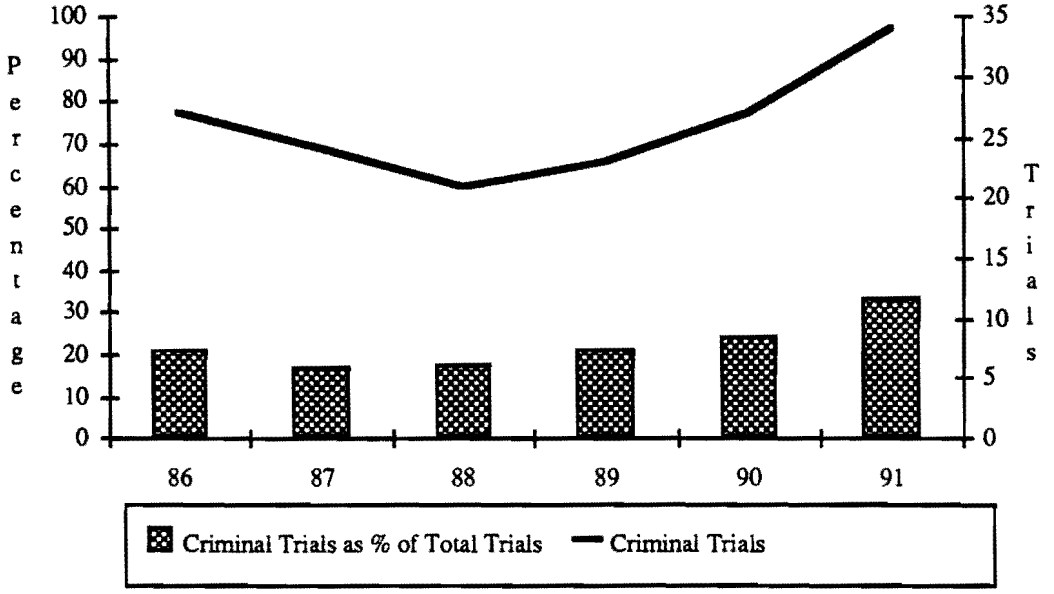
Chart 9: Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants, SY82-91



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

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

Northern District of Mississippi



For more information on caseload issues

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

APPENDIX B

Analysis of Statistics from 1988 - 1992

United States District Court
Northern District of Mississippi

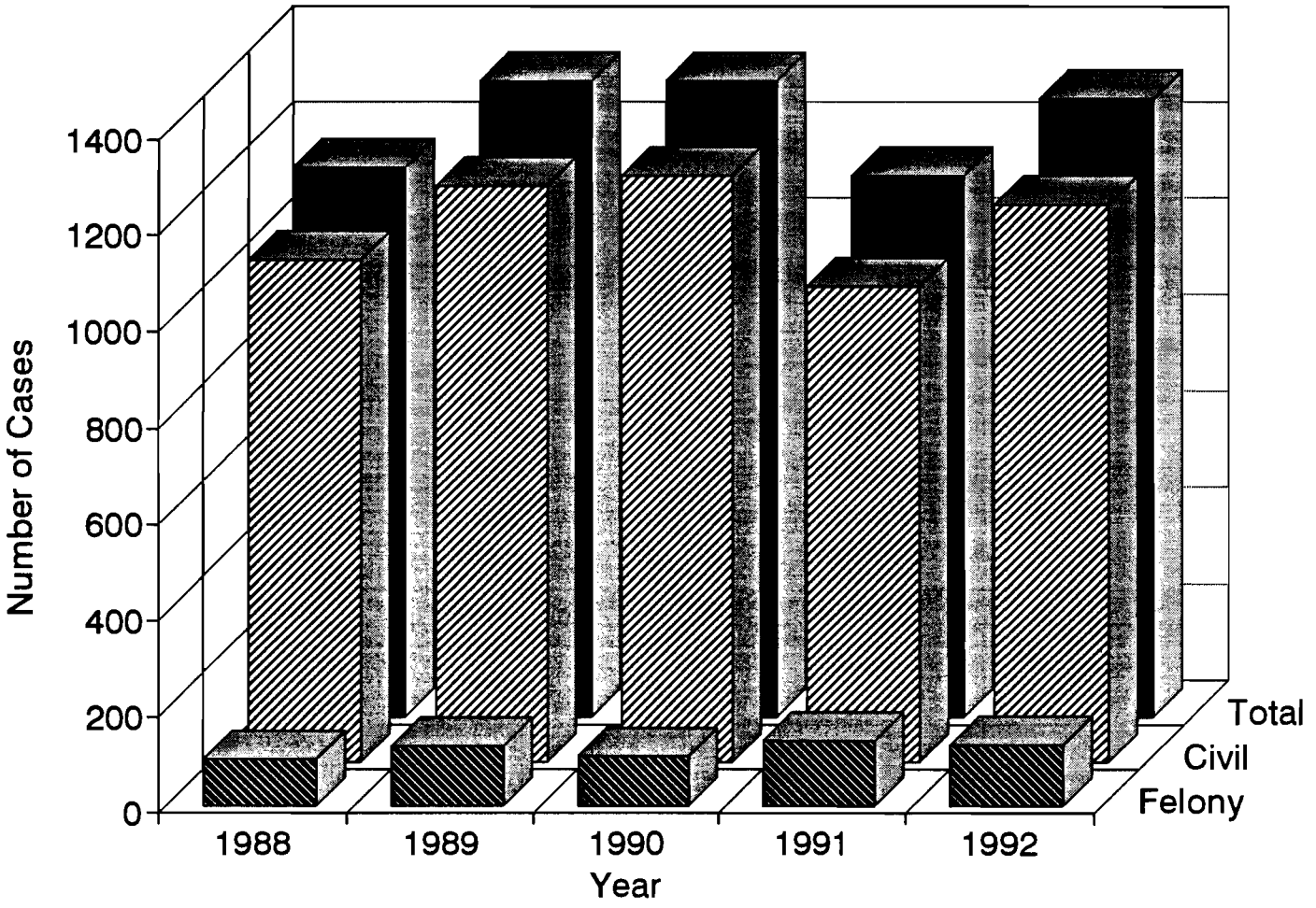
	1988	1989	1990	1991	1992
Total Filings	1139	1319	1319	1123	1283
Civil Cases	1042	1193	1214	987	1156
Felony Cases	97	126	105	136	127
Total Pending	1391	1338	1420	1350	1522
Total Terminations	1356	1370	1245	1190	1105

Civil Cases					
Prisoner	185	337	472	286	404
Contract	271	298	221	211	201
Tort	273	246	195	217	186
Civil Rights	80	123	110	98	160
Labor	15	24	20	28	41
Real Property	73	48	53	39	43
Forfeiture/Tax	8	22	60	23	15
Social Security	67	47	36	29	41
Copyright/Patent	4	6	4	8	11
Other	66	42	43	48	54

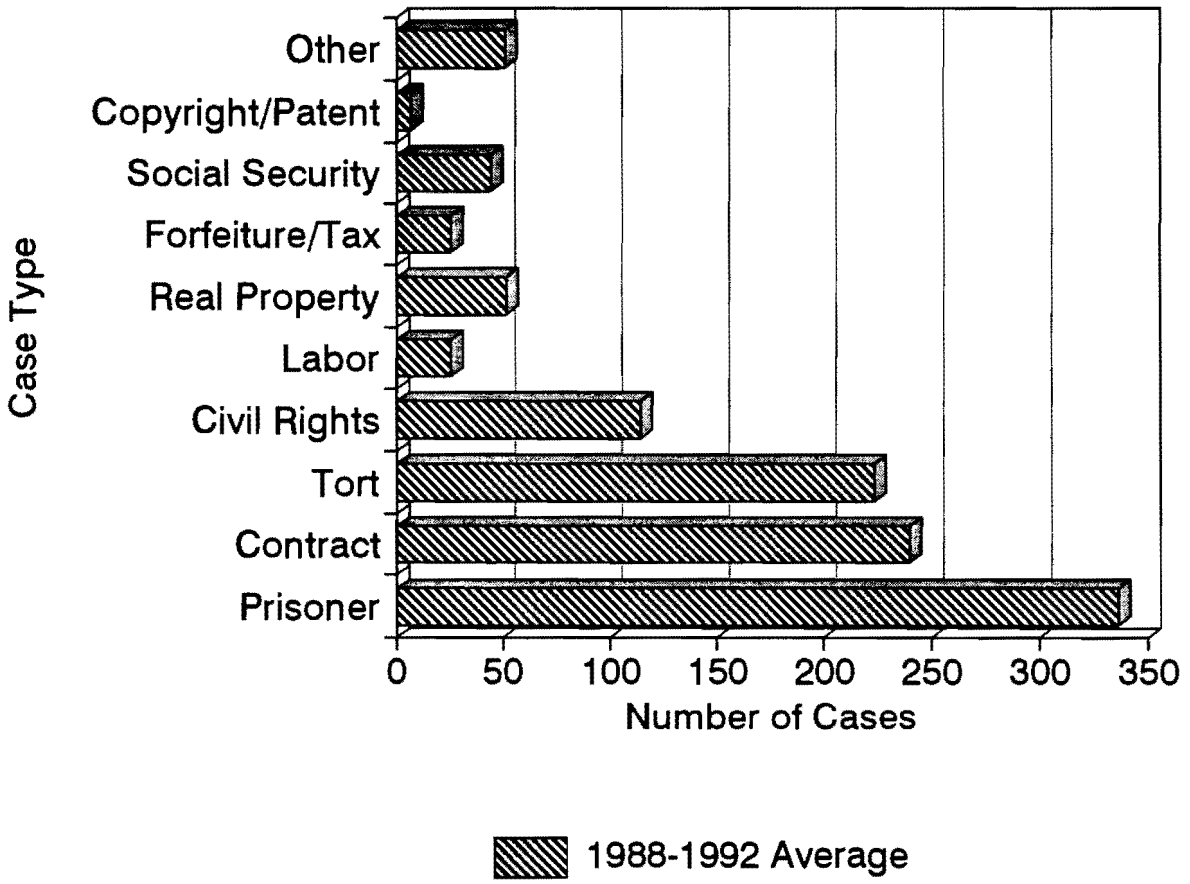
Felony Cases					
Drugs	11	21	27	23	43
Fraud	28	27	21	38	17
Weapons/Firearms	6	12	11	21	17
Immigration	0	0	0	0	1
Other (and Transfers)	52	66	46	54	49

Statistics in this report are based upon a twelve-month statistical year ending June 30th.

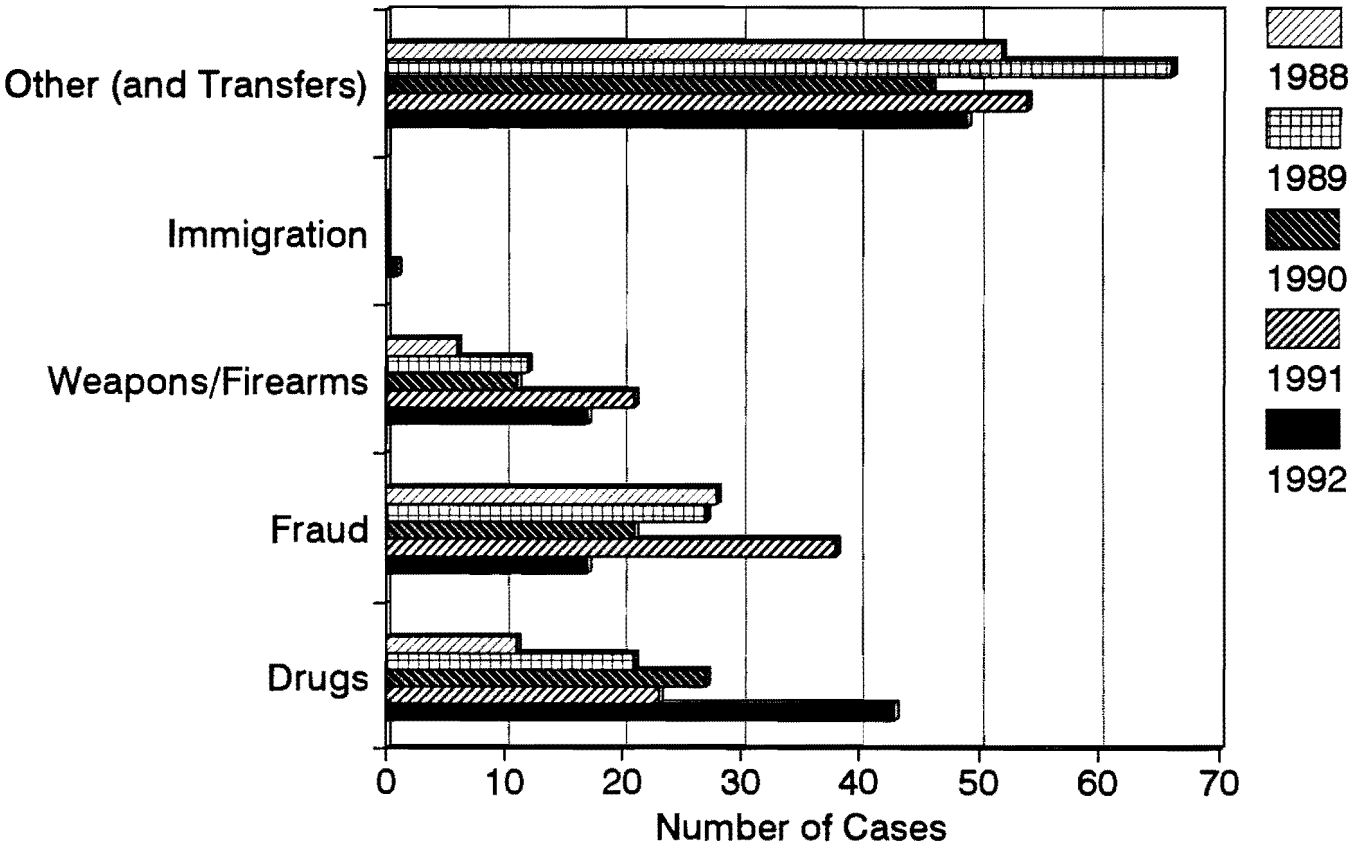
TOTAL, CIVIL, AND FELONY CASES



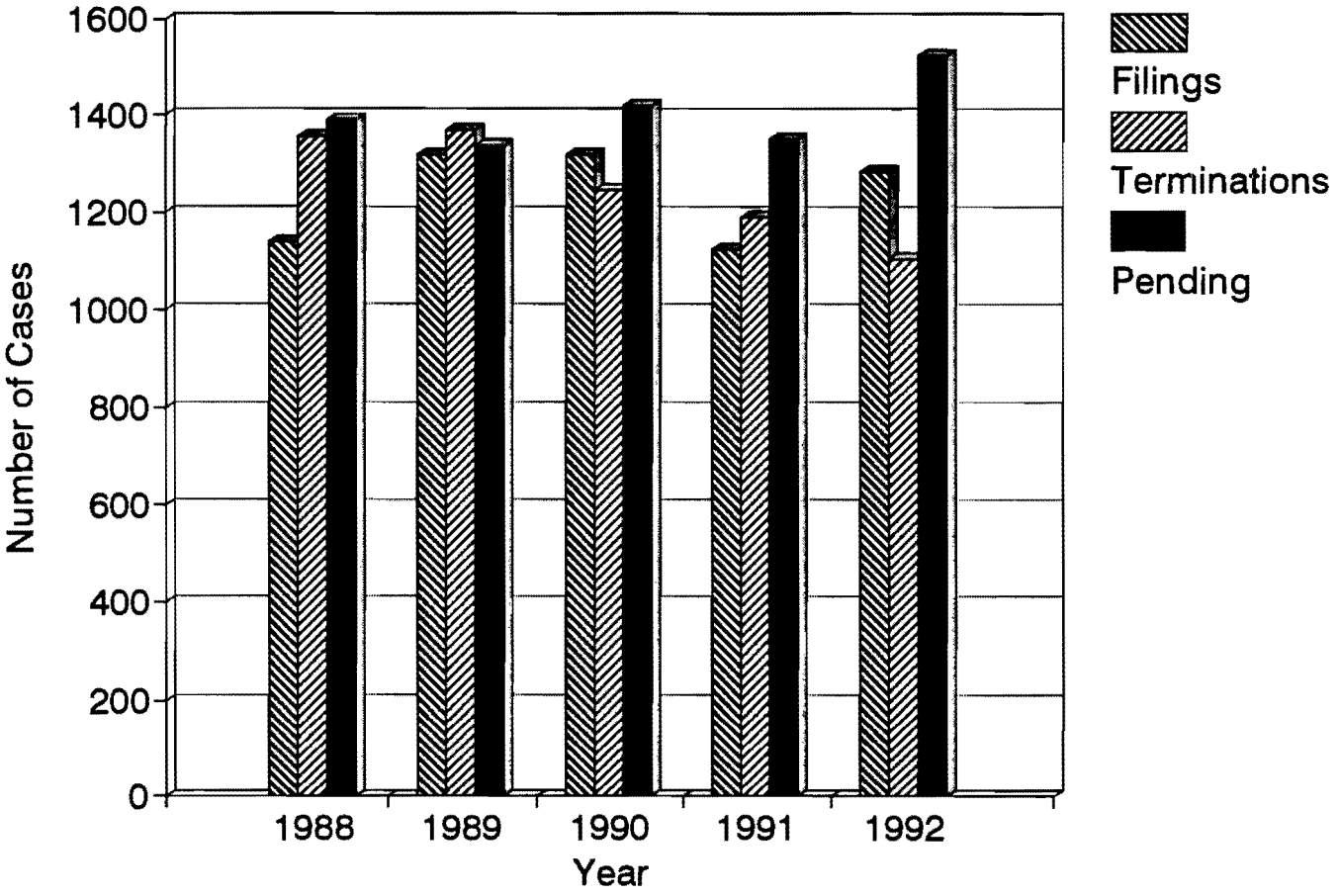
Civil Filings by Case Type



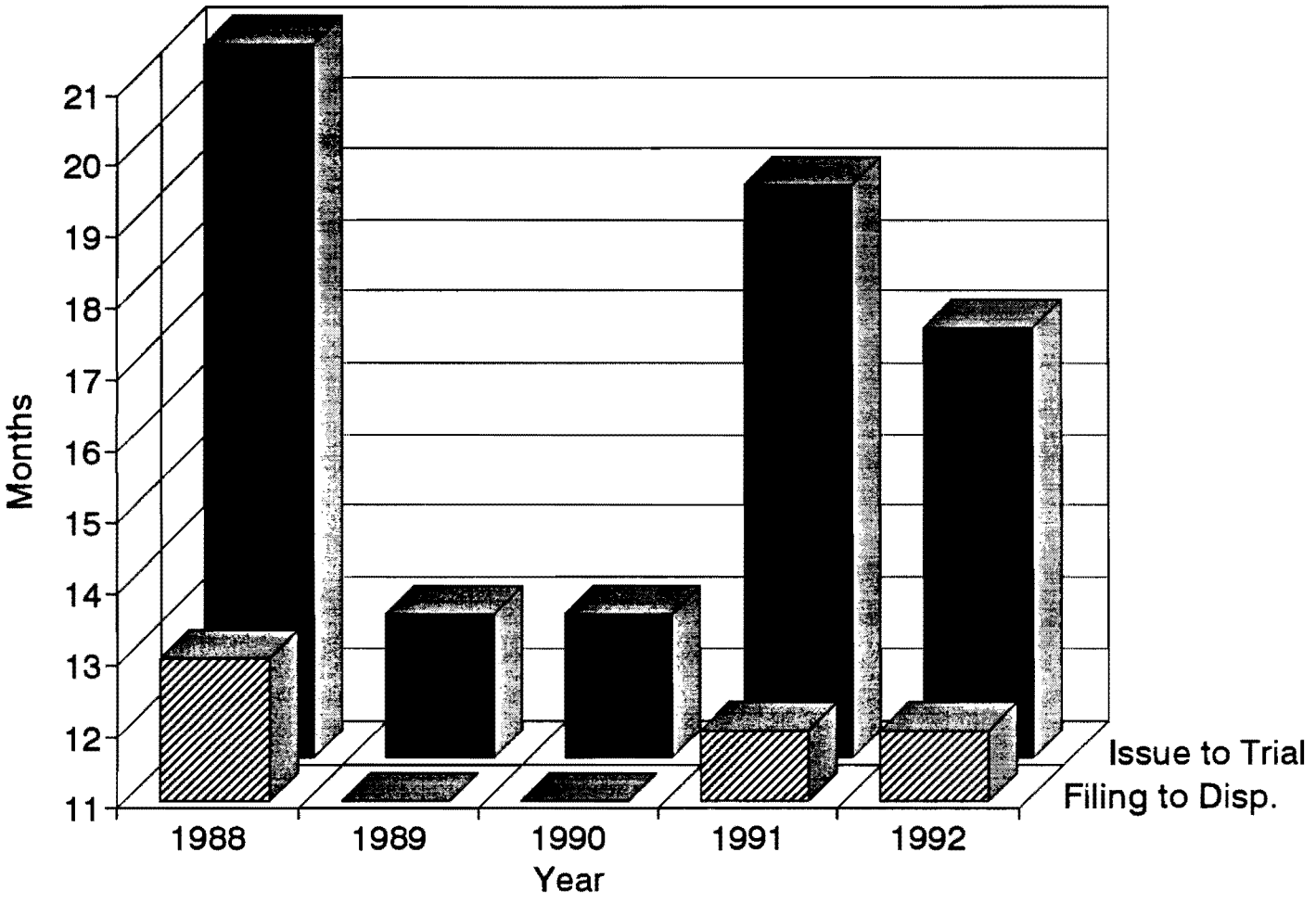
Felony Filings by Case Type



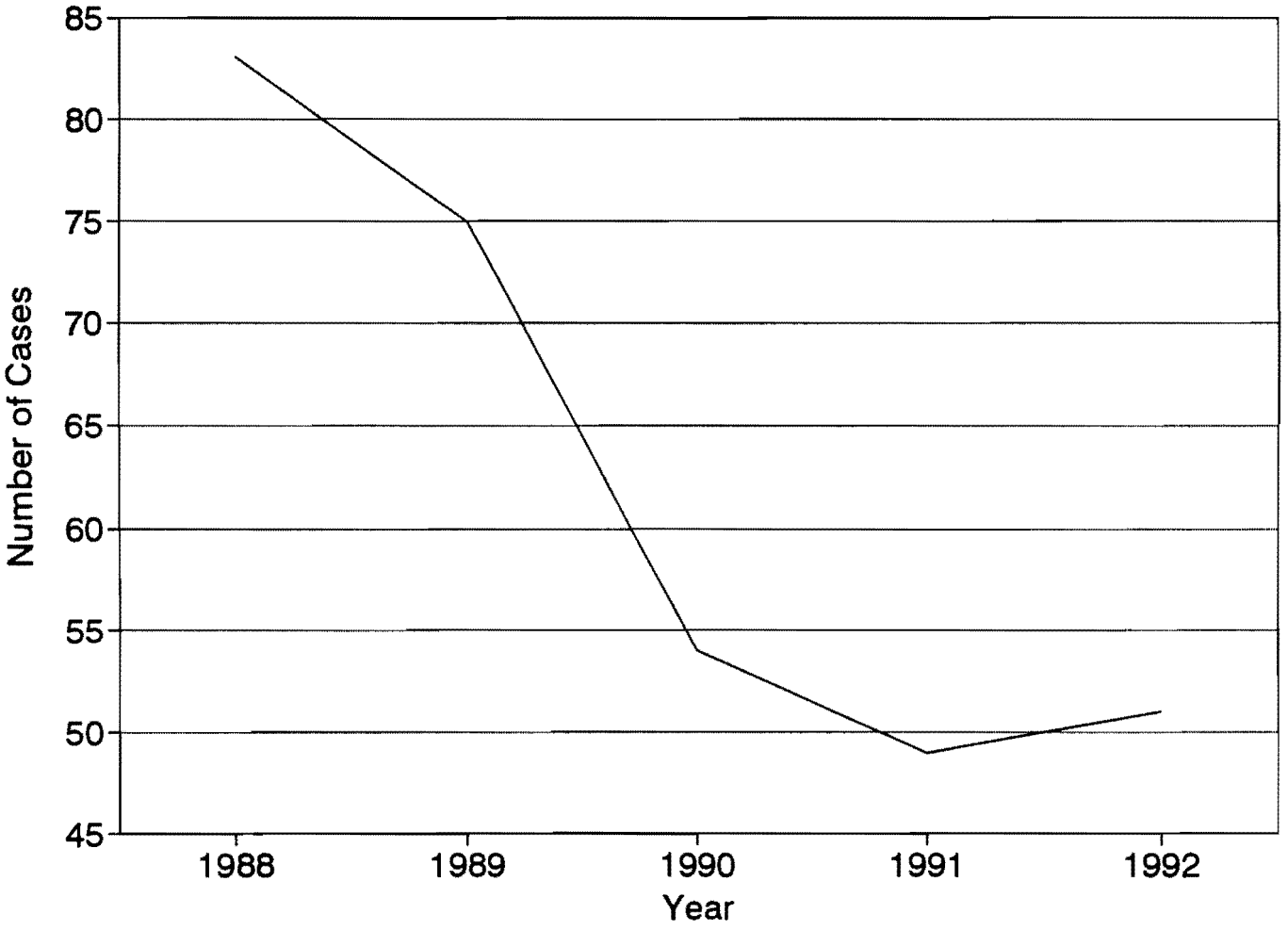
Total Cases


1600
1400
1200
1000
800
600
400
200
0
Number of Cases
1988
1989
1990
1991
1992
Year
Filings
Terminations
Pending

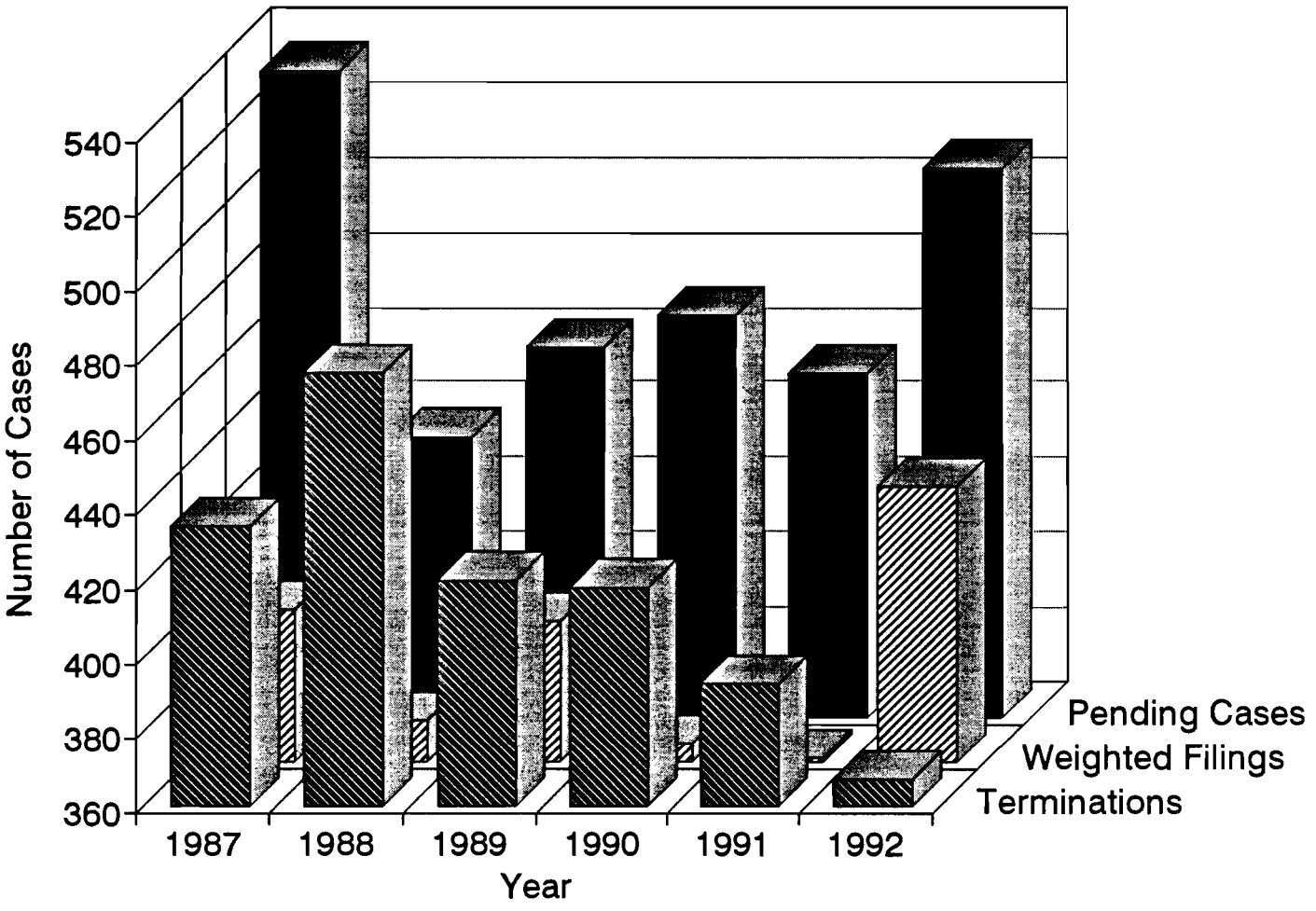
Median Times - Civil



Civil Cases Over 3 Years Old



ACTIONS PER JUDGESHIP



APPENDIX C

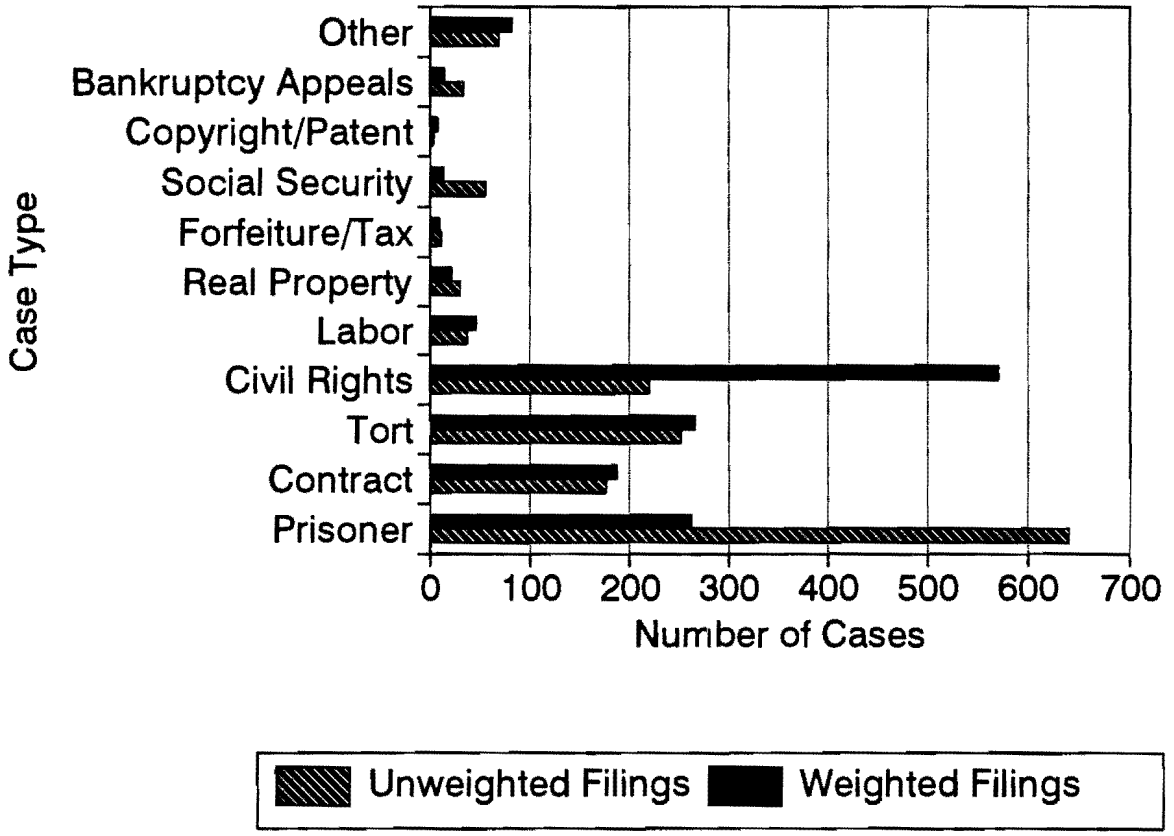
Analysis of Statistics as of June 30, 1993

JUDGE	PENDING CASES
Senter, L. T., Jr.	546
Biggers, Neal B.	528
Davidson, Glen H.	458
Wingate, Henry T. (S.D. Miss.)	1
Orlansky, J. David (consent)	3
Davis, Jerry A. (consent)	2
TOTAL	1,538

DISTRICT JUDGE	CASES WITH DISPOSITIVE MOTIONS	CASES STAYED AWAITING RULING ON DISP. MOT.
Senter, L. T., Jr.	105	16
Biggers, Neal B.	90	9
Davidson, Glen H.	75	9
TOTALS	270	34

MAGISTRATE JUDGE	1983 PRO SE PRISONER CASES	CASES WITH IFP PENDING
J. David Orlansky	322	240
Jerry A. Davis	220	18
TOTALS	542	258

Civil Filings by Case Type
Pending On June 30, 1993



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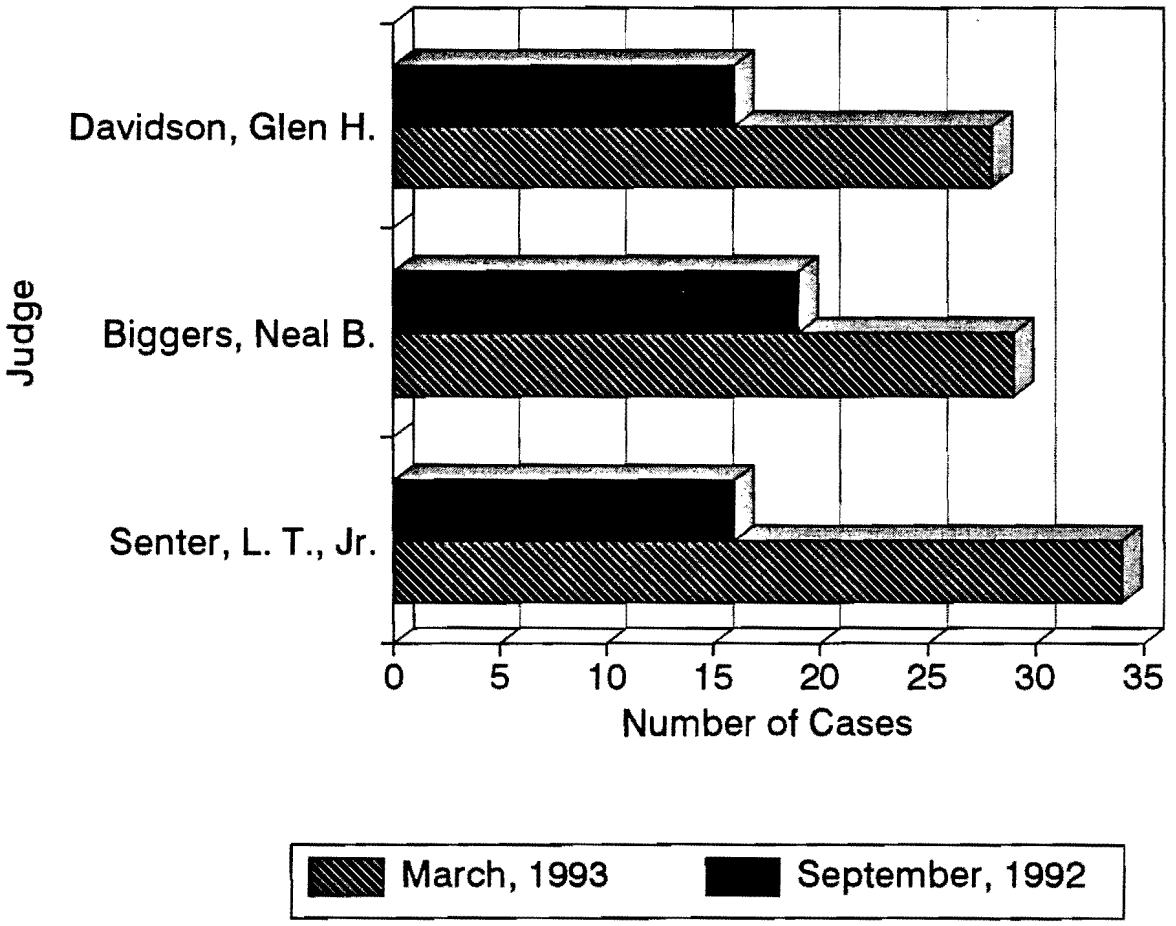

APPENDIX D

1992 Statistics of Administrative Office
of United States Courts

Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990

SY92 Statistics Supplement

September 1992

Prepared for the Northern District of Mississippi

NOTES:

(Except for the update to 1992 data and this parenthetical, this document is identical to the one entitled "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990 SY91 Statistics Supplement, October 1991.")

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- patent and copyright cases
- ERISA cases
- labor law cases
- tax cases

- securities cases
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Chart 1: Distribution of Case Filings, SY90-92

Northern District of Mississippi

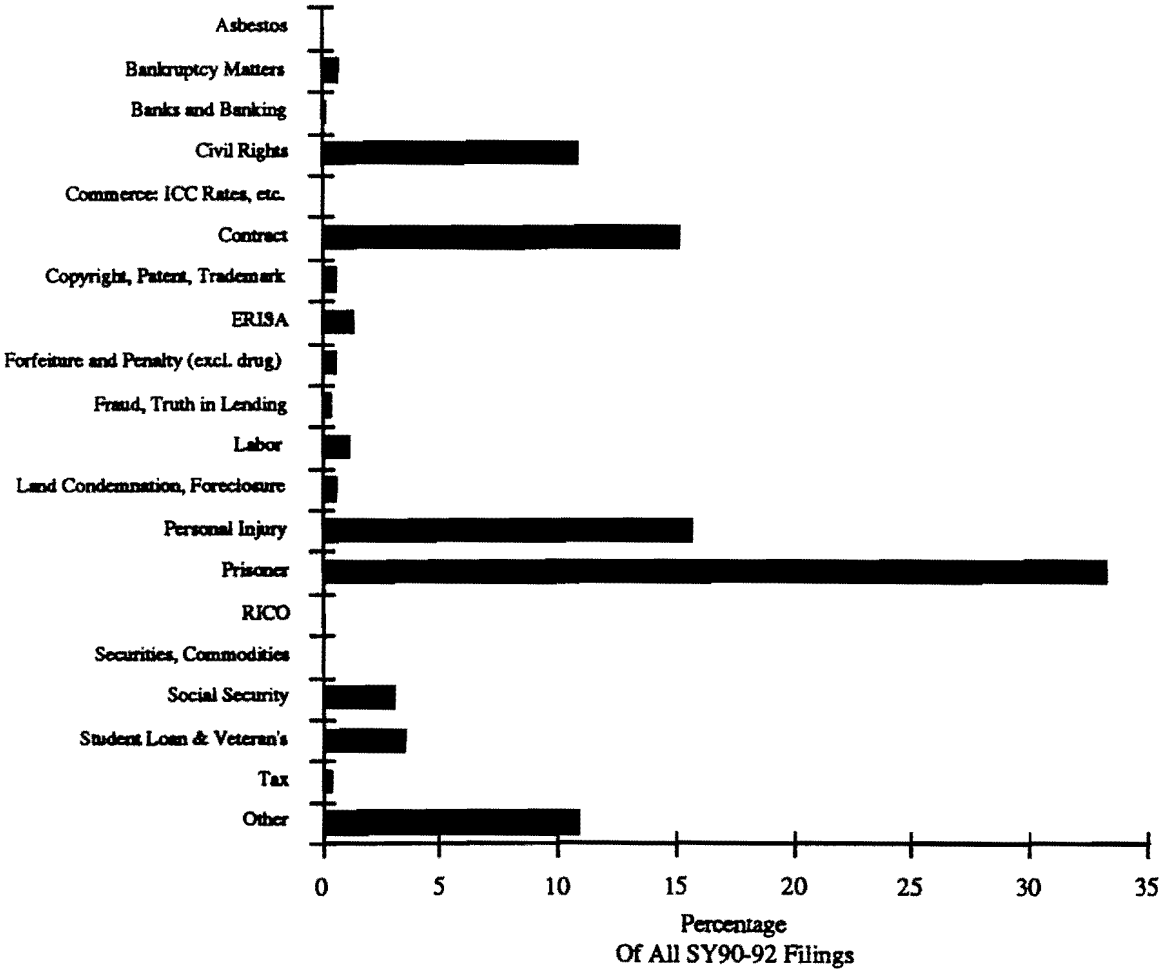


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY83-92
Northern District of Mississippi

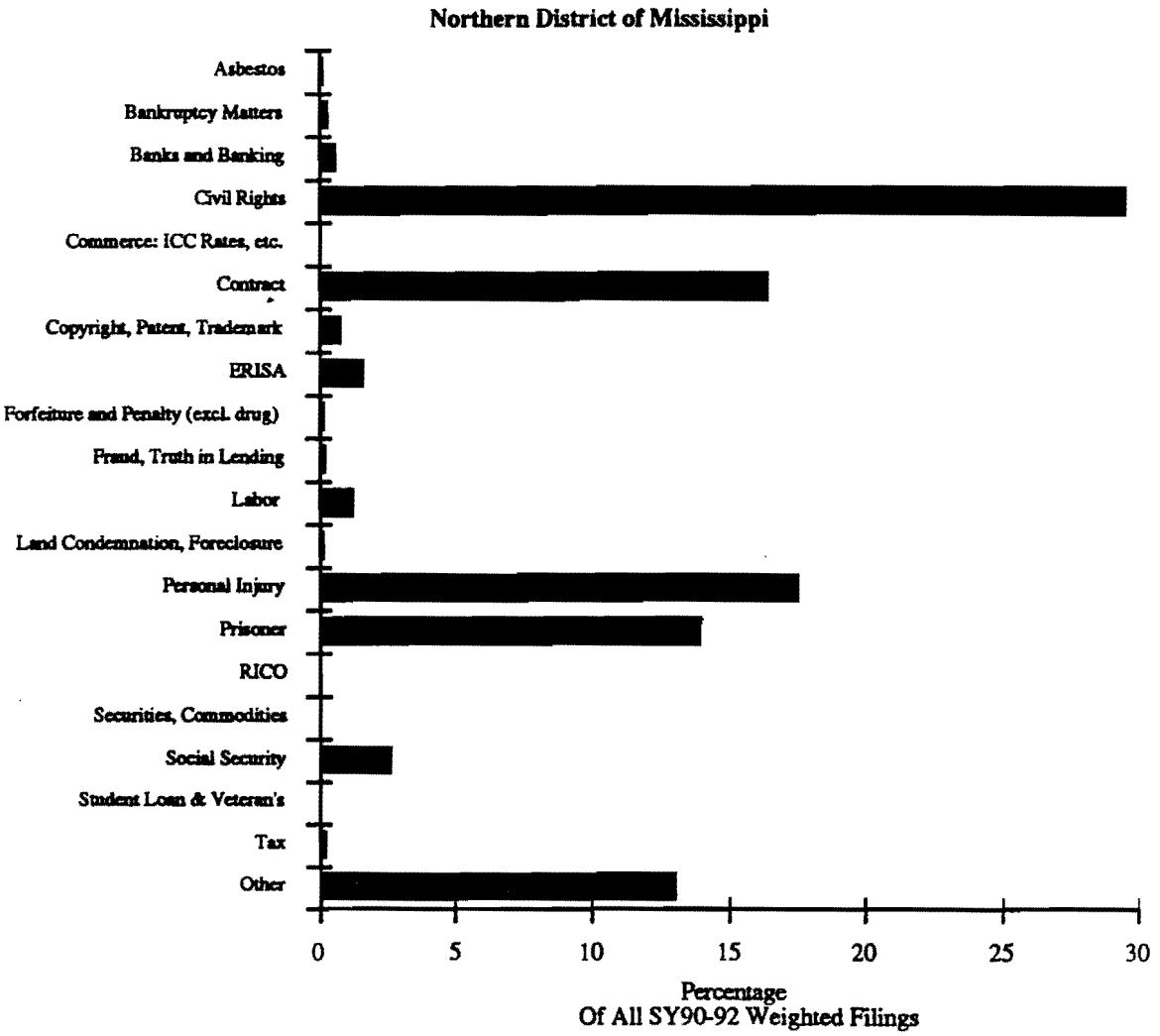
Table 1: Filings by Case Types, SY83-92

Northern District of Mississippi

	YEAR									
	83	84	85	86	87	88	89	90	91	92
Asbestos	0	28	72	23	17	8	6	4	1	0
Bankruptcy Matters	6	11	6	3	3	12	9	5	6	15
Banks and Banking	5	0	0	1	1	1	1	1	5	1
Civil Rights	96	134	139	97	89	77	119	111	98	160
Commerce: ICC Rates, etc.	3	1	1	0	0	9	2	1	1	4
Contract	292	252	248	283	264	218	218	170	179	161
Copyright, Patent, Trademark	5	12	8	8	12	4	6	4	8	11
ERISA	0	0	0	2	0	3	5	7	14	27
Forfeiture and Penalty (excl. drug)	0	1	4	9	1	3	13	8	11	5
Fraud, Truth in Lending	8	10	13	10	8	7	7	4	3	7
Labor	8	15	17	25	15	12	18	13	14	14
Land Condemnation, Foreclosure	33	16	8	13	17	20	8	5	10	8
Personal Injury	198	193	219	222	207	233	211	168	194	166
Prisoner	187	207	164	267	268	185	329	458	276	384
RICO	0	0	0	0	0	3	3	3	1	1
Securities, Commodities	7	4	1	5	2	4	4	2	0	0
Social Security	77	167	78	50	74	67	47	36	29	41
Student Loan and Veteran's	282	254	331	173	36	55	69	49	31	38
Tax	9	9	4	6	4	5	8	3	10	2
All Other	91	109	109	108	92	121	95	162	97	108
All Civil Cases	1307	1423	1422	1305	1110	1047	1178	1214	988	1153

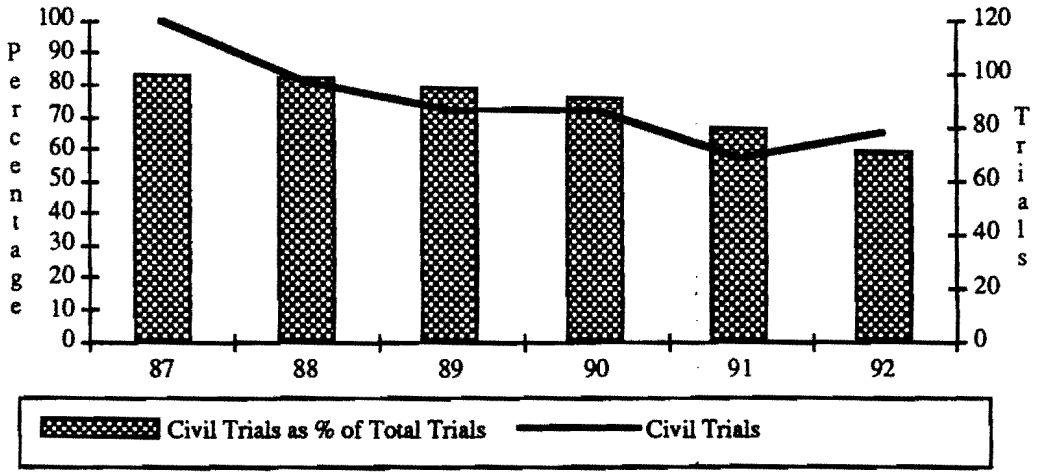
c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases.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

Chart 3: Distribution of Weighted Civil Case Filings, SY90-92



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

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY87-92
Northern District of Mississippi



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

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

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

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

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

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

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY83-92

Northern District of Mississippi

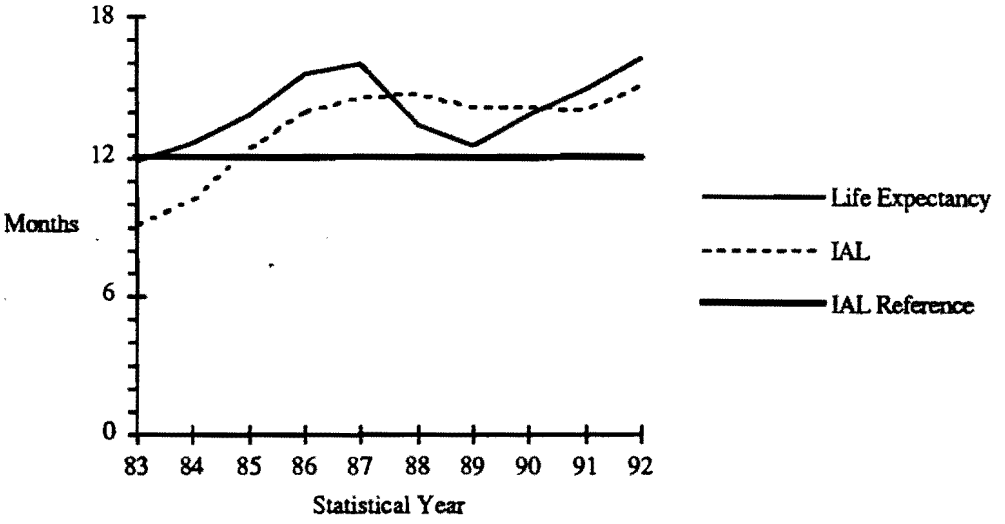
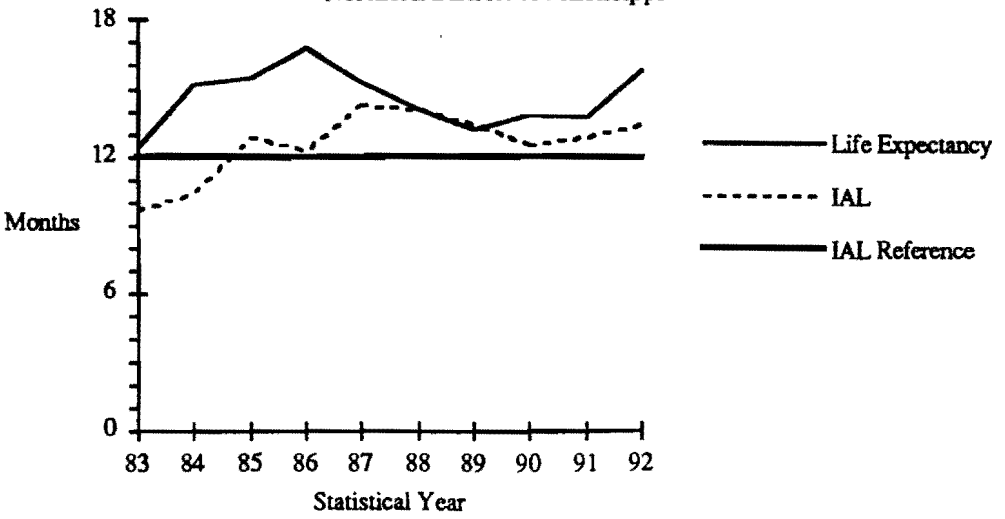


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY83-92

Northern District of Mississippi



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

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

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

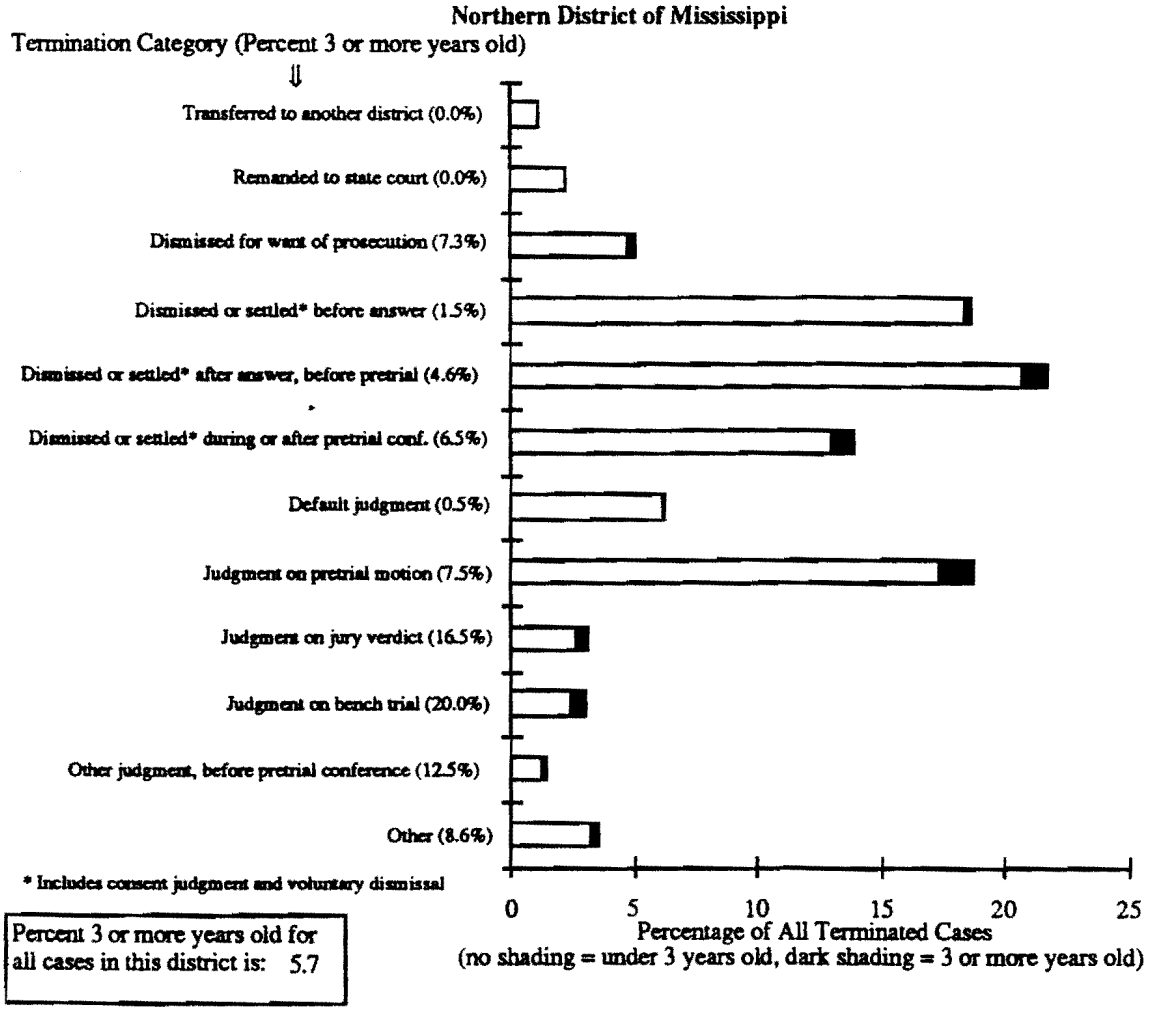
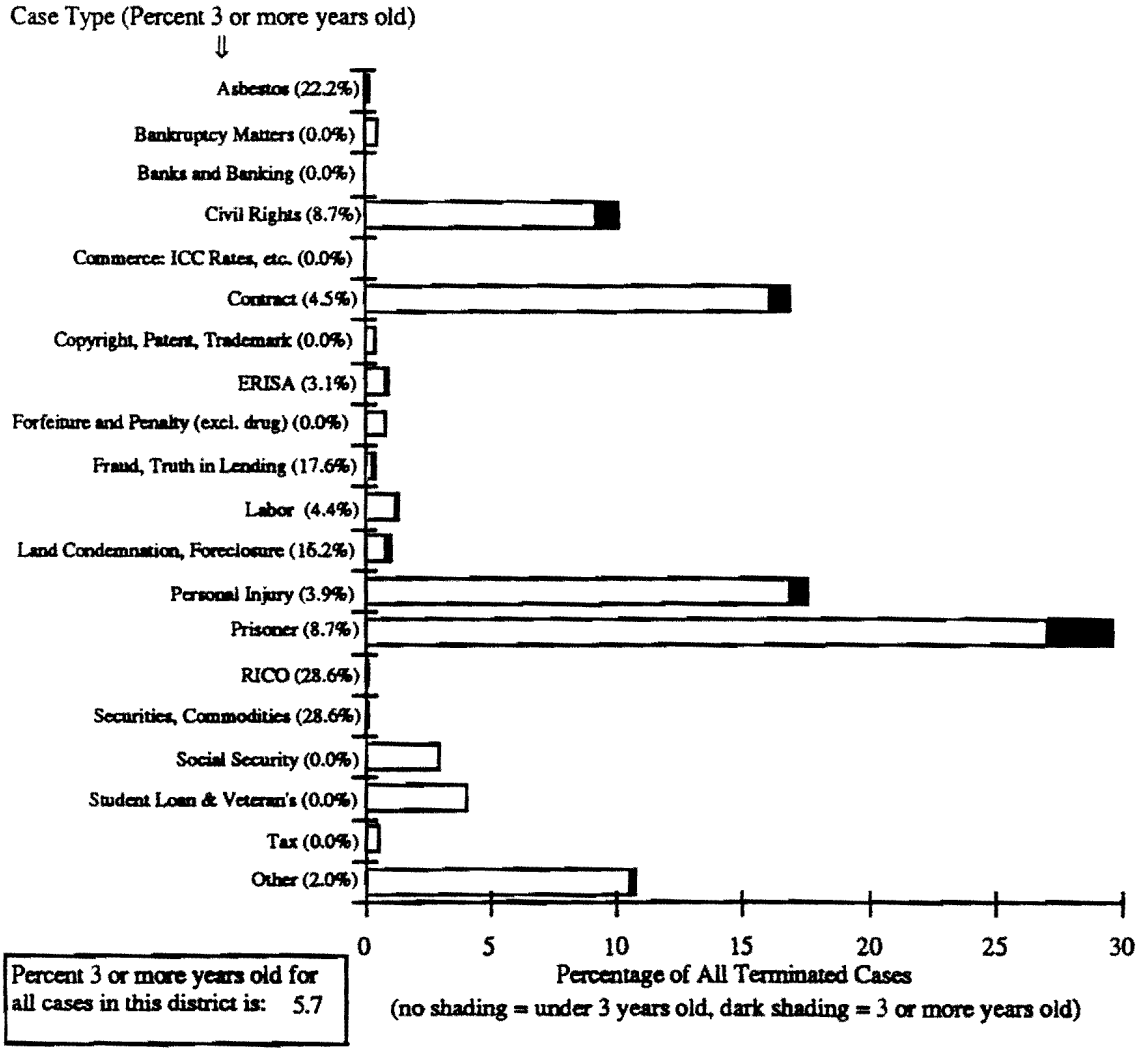


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY90-92, By Case Type and Age

Northern District of Mississippi



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

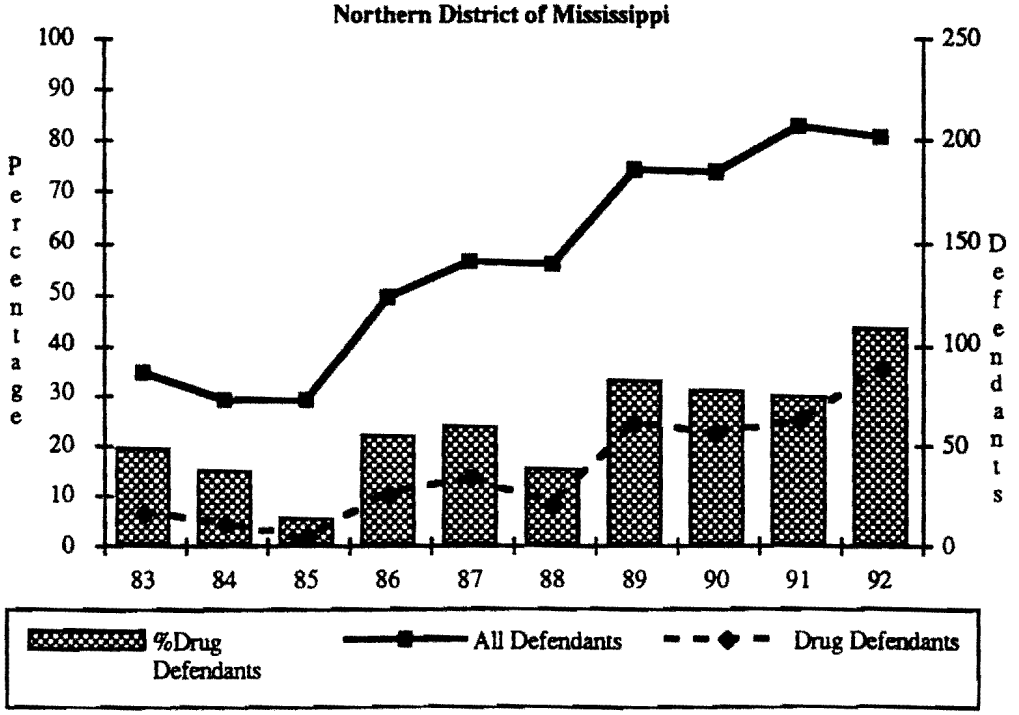
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

2. The Criminal Docket

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

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

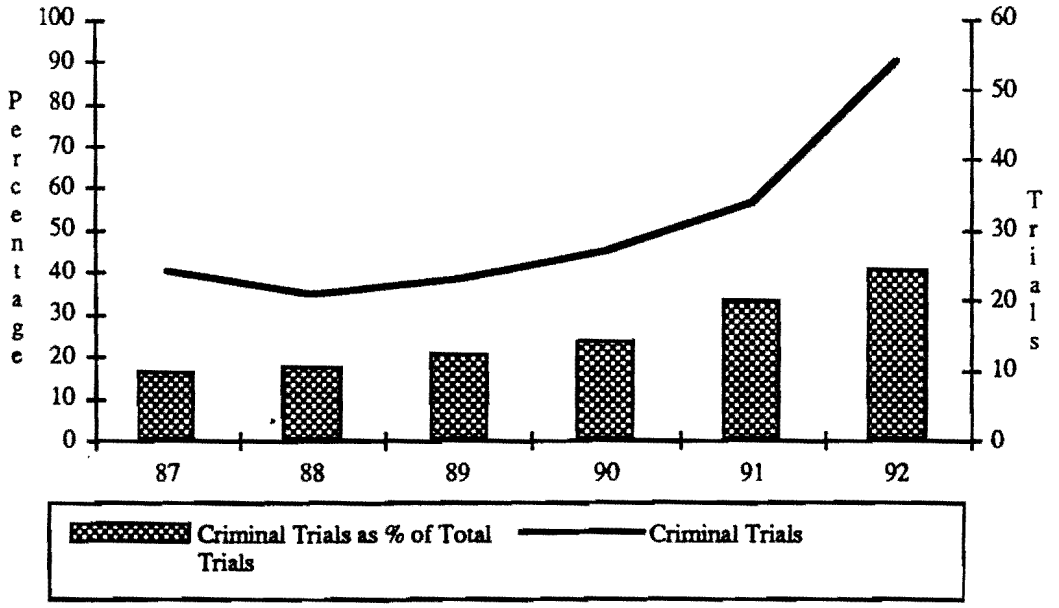
Chart 9: Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants, SY83-92



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

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

Northern District of Mississippi



For more information on caseload issues

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

APPENDIX E

1992 Judicial Workload Profile

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

MISSISSIPPI NORTHERN

			TWELVE MONTH PERIOD ENDED SEPTEMBER 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		1,266	1,128	1,284	1,331	1,131	1,239		
	Terminations		1,101	1,178	1,256	1,263	1,429	1,306		
	Pending		1,520	1,355	1,405	1,378	1,304	1,598		
	Percent Change In Total Filings Current Year	Over Last Year		12.2					26	2
		Over Earlier Years			-1.4	-4.9	11.9	2.2	44	5
	Number of Judgeships		3	3	3	3	3	3		
	Vacant Judgeship Months**		.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	422	376	428	444	377	413	34	4
		Civil	378	344	383	402	346	376	29	4
		Criminal Felony	44	32	45	42	31	37	55	4
	Pending Cases		507	452	468	459	435	533	13	2
	Weighted Filings**		434	361	365	398	371	401	30	4
	Terminations		367	393	419	421	476	435	60	8
	Trials Completed		47	37	38	35	37	45	10	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.8	5.7	6.4	4.8	5.6	4.3	42	8
		Civil**	12	12	11	11	13	15	76	5
	From Issue to Trial (Civil Only)		17	19	18	18	21	21	48	4
OTHER	Number (and %) of Civil Cases Over 3 Years Old		51 3.5	49 3.7	54 4.1	75 5.7	83 6.7	93 6.1	30	4
	Average Number of Felony Defendants Filed per Case		1.5	1.5	1.6	1.5	1.3	1.6		
	Jurors	Avg. Present for Jury Selection**	28.18	29.25	22.40	22.63	25.05	25.94	21	4
		Percent Not Selected or Challenged**	23.3	27.0	23.4	23.0	26.1	28.0	26	4

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

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

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1135	40	37	400	18	32	35	151	196	10	151	15	50
Criminal*	130	1	4	18	2	7	21	25	14	19	1	2	16

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

APPENDIX F

Questionnaire

SURVEY OF THE DISTRICT COURT JUDGES AND MAGISTRATES
OF THE NORTHERN DISTRICT OF MISSISSIPPI

Questions for the Court from the Advisory Group under the Civil Justice Reform Act of 1990

This questionnaire is designed to identify sources of delay and cost in litigation and to develop specific rules or guidelines to attack the problems identified

I. CASE MANAGEMENT

1. Tracking

As part of their plan for reducing delay and costs under the Civil Justice Reform Act, some districts have implemented a case management tracking system.

(a) Some tracking systems limit the kinds and amount of discovery allowed. (See Article One of the plan for the Eastern District of Texas attached)

(1) What do you think of this kind of tracking system?

(2) Should there be a greater number of tracks? How would you break down the different levels of discovery?

(3) Do you think there should be guidelines for determining which kinds of cases fall into each of the tracks?

Please list the kinds of cases that would fall under each track or the criteria you would use to determine whether a case fell into a particular track.

(b) In other tracking systems, each track has a different schedule for proceeding to trial. The tracks have deadline dates for discovery, for filing dispositive motions, and for trial. The tracks correspond to particular kinds of cases with different scheduling needs.

Districts usually have a Standard Management track which schedules trial within 12 months, a Special Management track for cases that need special or intense management by the Court which schedules trial for 18 months, and other tracks for particular kinds of cases that have non-standard scheduling needs. For instance, in the Eastern District of Pennsylvania, the Court uses the following tracks: Habeas Corpus, Social Security, Arbitration, Asbestos, Special Management, and Standard Management.

(1) What do you think of this kind of tracking system?

(2) In this kind of system the districts have developed a set of criteria for determining which cases should be assigned to the Special Management track. Some of the factors considered by the Court are whether the case involves a large number of parties, a large number of claims, complex factual issues, large volume of evidence, problems with locating or preserving evidence, extensive discovery, an exceptionally long time needed to prepare for disposition, a decision needed within an exceptionally short time, or a need to decide preliminary issues before final disposition.

Should other factors be included in determining whether a case should be placed in the Special Management track?

(c) Of the categories of cases listed below, what particular categories of cases, if any, cause more delay in your calendar than others?

Would you assign any of them to a particular track in the system described in part (a) of this question above?

Should any of them be placed in a separate track of their own in the system described in part (b) of this question?

Asbestos	Labor
Bankruptcy	Land Condemnation, Foreclosure
Banks and Banking	Personal Injury
Civil Rights	Prisoner
Commerce: ICC Rates, etc.	RICO
Contract	Securities, Commodities
Copyright/Patent/Trademark	Social Security
Criminal	Student Loan and Veterans
ERISA	Tax
Forfeiture and Penalty	Fraud, Truth in Lending
Other	

(d) Who should assign the cases to the appropriate track, and would it assist to have the cover sheet amended to allow plaintiff's attorney to suggest the appropriate track?

2. Pre-Trial Conferences

(a) Some districts have required that the magistrate or district judge hold a scheduling conference immediately after the issues are joined. At the scheduling conference the presiding judicial officer would prepare a scheduling order that set cut-off dates for discovery, for identifying witnesses and exhibits, and for filing dispositive motions, and set dates for future pre-trial conferences.

(1) What do you think of this plan?

(2) Would you consider holding this scheduling conference over the telephone in order to reduce costs?

(3) It has been suggested by members of our Committee that either the Magistrate or District Judge at the scheduling conference or initial pre-trial conference (at an early date after answer is filed) review the issues in the case, determine the scope and extent of discovery that immediately appears to address those issues, and to limit discovery to those areas. The Court could then provide that no further discovery would be permitted except by further order of the Court.

What do you think of this suggestion, and if you feel that it might be beneficial, who would you suggest to make the determination to limit discovery?

(4) What do you think of a rule that allows the judge to require the presence of an attorney with power to bind the litigant at any pre-trial conference or settlement conference?

(5) Some of the districts have included firm trial dates in the scheduling orders. What do you think of this practice?

(6) Are there any cases which should be exempt from the requirement of a pre-trial scheduling conference?

(b) Some districts require a status conference after discovery is commenced to encourage settlement of the dispute. What do you think of this practice?

3. <u>Trial Scheduling</u>

(a) Some districts set firm trial dates in the pre-trial scheduling orders. Several trials are scheduled to begin on the same day (stacking). The judges are charged with the responsibility of releasing cases as soon as it appears certain that the cases will not be tried as scheduled.
What do you think of this practice?

(b) Other districts require the judge to reschedule a new trial date which will pose no undue hardship to the litigants or, with the permission of the parties and their counsel, to allow the case to be assigned to an available magistrate judge which has been identified to the parties. **What do you think of this procedure?**

(c) State courts stack cases for trial but make this known to the attorneys, who then can contact attorneys ahead of them as to likelihood of trial or settlement and thereby avoid expensive witness commitment. **What objections would you have to this?**

(d) Some state court judges advise attorneys of their trial calendars and inquire if they will accept less than a first setting, because some cases do not involve experts or long distance witnesses. **What objections would you have to this?**

(e) When a trial is bumped within two weeks of its setting, litigants have uselessly incurred major expenses. If a local rule of court penalized a party in a first setting civil case who accepted a settlement within two weeks of trial, it might prevent or at least reduce bumping. **What would you think of such a rule?**

(f) If criminal and civil cases could be assigned to special weeks (or terms) for each judge, it might reduce bumping. **What would you think of this?**

4. **Involvement of judicial officers in the pre-trial process.**

(a) Advisory groups in many districts have found that the Court's failure to monitor cases, motions under advisement, and pending motions regularly gives rise to delay in litigation. Under our present case management system the docket clerks use courtroom deputies to advise the judges of delays which result from failure to issue and serve process, of requests for entering default judgments, and of scheduling order deadlines.

Do you believe this procedure should continue?

(b) Some districts have proposed that the district judge or the magistrate judge become directly involved in the pre-trial process by monitoring service of process, requests for default judgment, and entry of scheduling orders at scheduling conferences. **What do you think of this proposal?**

(c) To increase judicial involvement in monitoring cases, some of these districts have installed "chambers access" computerized record keeping to give judges access to all pertinent case information. **If such a resource were made available, would you use it?**

II. DISCOVERY

1. Self-Executing Disclosure

Some districts have implemented rules requiring self-executing disclosure. A duty of self-disclosure requires each party, without waiting for a discovery request, to provide every other party with information that "bears significantly on" any claim or defense in the case within 30 days of service of the answer to the complaint. (See Article Two of the plan for the Eastern District of Texas attached).

(a) What do you think of this requirement?

(b) The kinds of information that must be disclosed within 30 days include insurance agreements, persons with information, data and tangible things which bear significantly on the claims or defenses of the parties, and a computation of damages.

Do you think that any of the categories should be narrowed?

Do you think the time frame for disclosure should be expanded?

(c) Some districts require the identification of expert witnesses and a written report prepared and signed by the witness to be submitted 90 days before trial is scheduled to begin. The report includes a complete statement of all opinions to be expressed at trial, the basis and reasons for the opinion, all data and information relied on, exhibits to be used, the witness's qualifications, and a list of all cases at which the witness has testified.

What do you think of this requirement?

(d) In some districts a party is not allowed to seek discovery from any source until it has first disclosed the required information itself. **What do you think of this rule?**

(e) It has been suggested that absent a protective order for good cause, each party should be allowed to depose the other experts without having to pay fees and expenses.

Do you think that such a practice would reduce costs or delays?

(f) **Do you think the disclosures should be signed by the attorney for the disclosing party?**

(g) **Do you think the parties should be subject to Rule 11 sanctions for failure to disclose?**

2. **Required case management plan proposal**

In large complex cases some districts have required the parties to supply the court with a proposed case management plan prior to the scheduling conference. A case management plan was to address the following issues: deposition guidelines, protective orders, identification of summary disclosure and its timing, possible Federal Rule of Civil Procedure 12 or summary judgment motions and a proposed timetable for briefing, the possibility of bifurcation.

What do you think of this requirement for large complex cases?

Should a case management plan proposed by the parties address any other issues?

III. Alternate Dispute Resolution

1. Do you think court-annexed ADR is an effective way to reduce costs and delay in litigation?

2. Do you think litigants are supplied with sufficient information about ADR?

3. Early Neutral Evaluation programs allow litigants to present their case to a neutral expert on the particular type of litigation to obtain an assessment of the case for settlement purposes. **What would you think about such a program being instituted in the Northern District of Mississippi?**

IV. Miscellaneous

1. Should the court get involved in setting or restricting attorney's fees?

2. Do you think it would be useful for the court to develop a standard pro se complaint form?

3. Do you have any further suggestions that will aid the advisory committee in preparing a Civil Justice Expense and Delay Reduction Plan pursuant to the Civil Justice Reform Act of 1990?

DATE _____ SIGNATURE _____