

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS



Second Annual Report on the Impact of the
Civil Justice Expense and Delay Reduction Plan

December 1995

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I. EXECUTIVE SUMMARY

The Civil Justice Expense and Delay Reduction Plan was implemented July 1, 1993, as required under the Civil Justice Reform Act of 1990 (CJRA). The Act also provides that each district court is to conduct an annual assessment in consultation with its advisory committee. This report is the second annual assessment. Because the CJRA requires that members of the district's advisory committee (the Committee) serve only four years (except for the U.S. Attorney), a new committee was appointed in August 1995. A list of the Committee members is found in Appendix A.

The Committee was charged with recommending appropriate actions that might be taken by the Court to reduce delay and cost in civil litigation. The Committee extensively studied and discussed ways to improve litigation management practices in the Northern District of Texas. In making its assessment, the Committee reviewed materials prepared by the Clerk's Office regarding the condition of the docket.

The Committee divided into six subcommittees to study the following topics:

- 1) Alternative Dispute Resolution procedures; 2) case handling by magistrate judges;

3) reduction of discovery disputes; 4) procedures under the 1993 amendments to Rule 26 of the Federal Rules of Civil Procedure; 5) practice under the Local Rules of the Northern District; and 6) general considerations regarding case management. The subcommittees carefully reviewed existing practices and procedures in each of these areas and submitted formal reports to the entire Committee for its approval. The recommendations adopted by the Committee are presented in Section III of this report.

Overall, the Committee found that judges in the Northern District of Texas continue to handle caseloads well above the national average. The average number of weighted filings per judge in the Northern District of Texas was the twenty-fifth highest in the country in statistical year 1994. The number of weighted filings per actual active judge in the Northern District was 513 when adjusted to account for vacancy months. (The recognized national standard is 430 cases per judgeship). The judgeship created in 1990 still remains vacant.

The data available indicate that: 1) civil cases are being processed more rapidly than in the previous year; 2) the number of cases pending over three years continues to decrease; 3) dispositive motions are being ruled on more quickly than in the two previous years; 4) the number of consent cases assigned to magistrate judges more than doubled between 1994 and 1995; and 5) the number of cases referred to mediation increased from 1994 to 1995.

The recommendations of the Committee closely parallel several of those made by the original CJRA Committee. The Committee, however, made a number of recommendations that will strengthen the Alternative Dispute Resolution program and further enhance the use of magistrate judges.

Reduction in discovery cost and delay remains a major concern. The Committee made several recommendations regarding the 1993 amendments to Rule 26 of the Federal Rules of Civil Procedure and current Court practices that it believes will be useful in reducing discovery costs.

Ruling promptly on motions, conferring with counsel on trial limitations, and providing fair notice of judge-specific requirements to litigants were identified as problem areas by the Committee. Additionally, the Committee expressed interest in publicizing the Court's Public Access to Court Electronic Records (PACER) system. The Committee believes that savings can be realized by litigants using PACER to gain rapid and convenient access to case records.

This assessment is respectfully presented to the Court for use in determining appropriate changes to its Civil Justice Expense and Delay Reduction Plan.

II. ASSESSMENT OF CONDITIONS IN THE DISTRICT

A. Condition of the Docket

This report provides a vast amount of data in assessing the impact of the second year of the implementation of the Civil Justice Expense and Delay Reduction Plan (the Plan). The data used are primarily from statistics supplied by the Administrative Office of the United States Courts (AO), which includes data only as recent as the year ending September 30, 1994. In many instances, we have supplemented this data with additional statistics to provide the latest figures on filings, terminations, pending caseloads, trial hours, consent cases, dispositive motions, and Alternative Dispute Resolution.

1. The Present State of the Docket

a. Median Times

The median time from filing to disposition for civil cases is the same as in 1993 and has remained stable since 1989. For statistical year 1994, the median time from filing to disposition was eight months for civil cases, which ranked twenty-seventh (27th) among the ninety-four U.S. District Courts. It should be noted, however, that the median time

from issue (when the answer is filed) to trial, has been decreasing since it reached a high point of nineteen months in 1991. The median disposition time from issue to trial for civil cases in statistical year 1994 was fifteen months, which ranked seventeenth (17th) among U.S. District Courts. This reflects a trend that has continued since adoption of the Plan.

Although there appears to have been improvement in reducing time to trial in civil matters, the disposition time of criminal cases has been increasing. The median disposition time for criminal felony cases in 1994 was 5.7 months, which ranked thirtieth (30th) among U.S. District Courts, compared to a ranking of twenty-fourth (24th) in 1992 and twenty-sixth (26th) in 1993 (*See Table I*). It is likely that median disposition times for criminal matters will continue this trend because of: 1) the additional time required for complex fraud, drug, and multi-defendant cases; 2) the impact of the sentencing guidelines; and 3) the continuing district judge vacancy.

Table I
Northern District of Texas
Median Disposition Times (Months)
Statistical Years* 1992 - 1994

	1992	1993	1994
Civil Cases Filing to Disposition**	8	8	8
Civil Cases Issue to Trial†	18	17	15
Criminal Felony Cases Filing to Disposition	5.1	5.4	5.7

* 12-month period ending September 30th.

** Includes all civil cases *except* land condemnation, prisoner petitions, recovery of overpayments, enforcement of judgments, and deportation reviews terminated during the year (whether by trial or other disposition).

† Includes civil cases going to trial, *except* land condemnation. This figure shows the time interval in months for the middle (median) case.

b. Weighted Filings

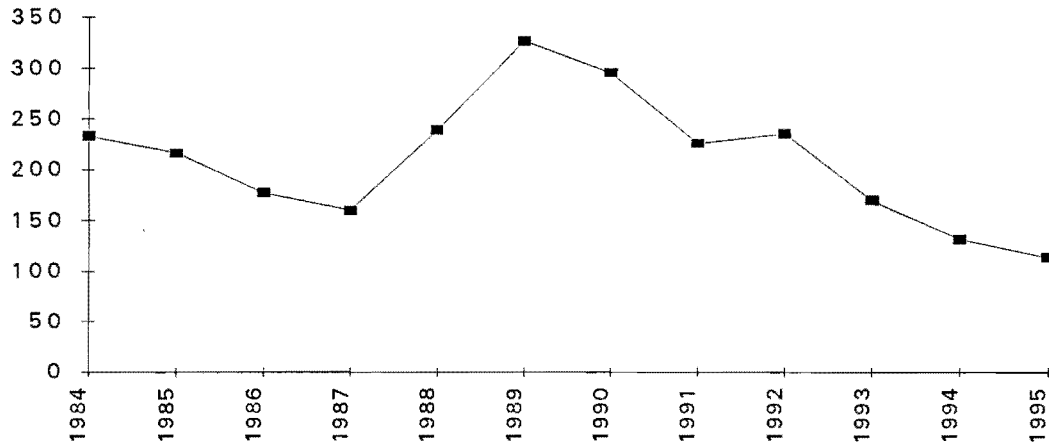
To reflect differences in complexity and difficulty, the Federal Judicial Center has developed a system in which each type of case is "weighted" against a normal or standard weight case. Therefore, districts with more complicated and time-consuming cases have higher weighted filings. For statistical year 1994, the Northern District of Texas had a weighted caseload per authorized judgeship of 471, which is down significantly from a high of 565 in 1989. Nonetheless, this was the twenty-fifth (25th) highest average in the country and indicates a

disproportionate share of difficult or complicated cases. The slight drop in weighted caseload may be attributed partially to corresponding decreases in civil contract filings and criminal felony filings.

c. Age of Pending Caseload

As of June 30, 1995, the Northern District of Texas had 114 cases pending three years or more, representing 3.0% of the total pending civil caseload. This is a decrease from the previous year when there were 132 pending three-year-old cases (representing 3.5% of the pending civil caseload). Currently, there are fewer three-year-old pending cases than at any other time during the past eleven years. Moreover, there has been a 33% decline in pending three-year-old civil cases in just the first two years of the implementation of the Plan. This continued downward trend in the number of older civil cases may have been enhanced by implementation of the Plan (*See Chart A*).

Chart A
Civil Cases Pending Over Three (3) Years
Statistical Years* 1984 - 1995



* 12-month period ending June 30th.

d. Consent Cases

There was a major increase in the number of consent cases during statistical year 1995. Cases reassigned to magistrate judges for final hearing and determination more than doubled to 225. The largest increase in consent cases was experienced by the Dallas Division, with a growth from 53 to 127 in statistical year 1995 (*See Table II*). Of these 127 consent cases, 28% were contract cases, 28% civil rights cases, and 11% prisoner petitions. Of the 98 consent cases in the other divisions, 84% were prisoner petitions.

The tremendous growth experienced in the number of consent cases displays an increased use of magistrate judges to dispose of cases. Such a trend may have been affected by the implementation of the Plan and the addition of a fourth magistrate judge in Dallas in June 1994.

Table II
Northern District of Texas
Civil Consent to Magistrate Judge Trials
Statistical Years* 1991 - 1995

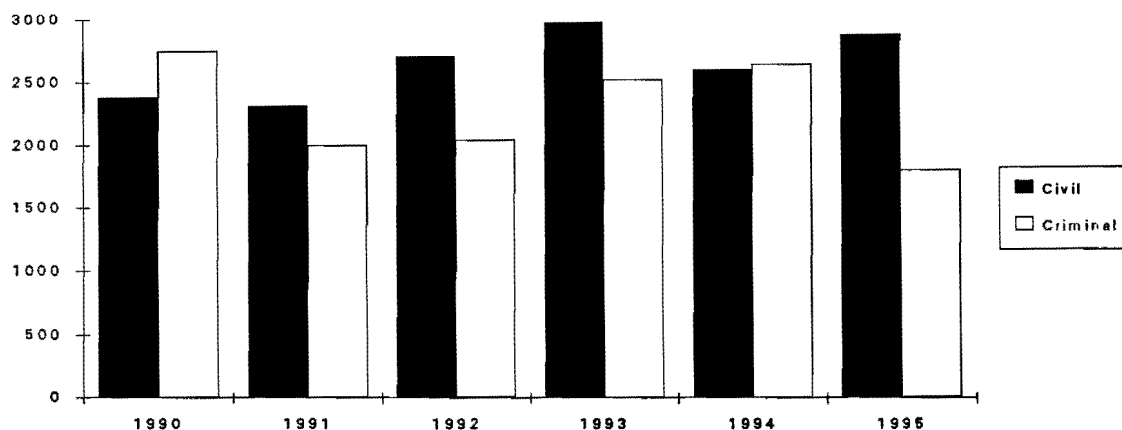
Division	1991	1992	1993	1994	1995
Abilene	1	3	0	2	22
Amarillo	1	5	52	44	53
Dallas	75	43	47	53	127
Fort Worth	16	7	10	10	13
Lubbock	3	16	14	0	3
San Angelo	2	5	5	0	2
Wichita Falls	0	0	2	0	5
Total	98	79	130	109	225

* 12-month period ending June 30th.

e. **Trial Hours**

Overall, total trial hours declined 10.5% in statistical year 1995. During the twelve-month period ending June 30, 1995, criminal trial hours accounted for 38.5% of total trial hours and civil trial hours accounted for 61.5% of total trial hours in the district. This contrasts with the previous year in which criminal accounted for 51% and civil 49% of total trial hours. Moreover, criminal trial hours in statistical year 1995 declined to a five year low. It can reasonably be expected that this reduction in criminal trial hours will result in a corresponding decrease in disposition times when the AO releases its figures for 1995 (*See Chart B*).

Chart B
Civil & Criminal Trial Hours
Statistical Years* 1990 - 1995



* 12-month period ending June 30th.

f. Dispositive Motions

During the two years of implementation of the Plan, the Northern District experienced a reduction in the amount of time required to process dispositive motions in non-prisoner civil cases. The average number of days from filing date to ruling date on motions for summary judgment declined 27.5% since 1993. Moreover, the average number of days from filing to ruling on motions to dismiss was reduced by 34.4% during the same period (*See Table III*). These findings are consistent with efforts by the Court to reduce delay in civil litigation.

Table III
Northern District of Texas
Trends in Dispositive Motions in Non-Prisoner Civil Cases
Statistical Years* 1993 - 1995

Statistical Year	Avg. # Days from Filing to Ruling on Motions for Summary Judgment	Avg. # Days from Filing to Ruling on Motions to Dismiss
1993	167	96
1994	152	73
1995	121	63

* 12-month period ending April 30th.

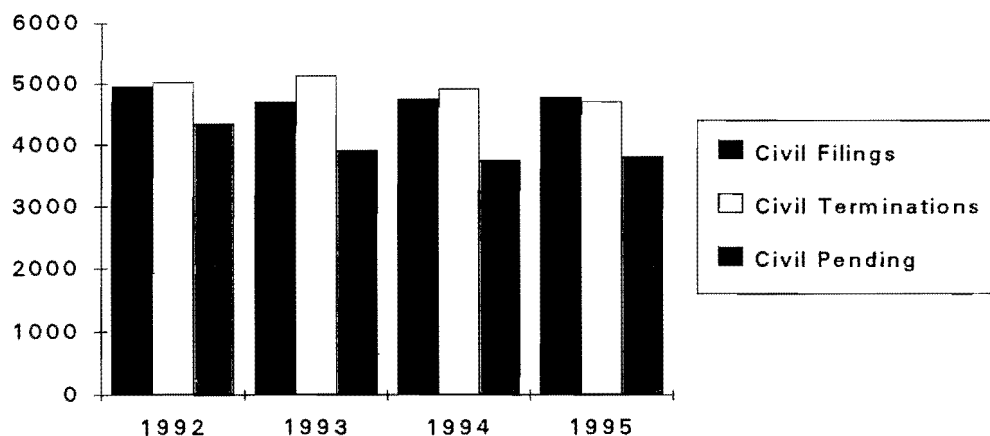
NOTE: Though rare, some motions were never ruled on, but were terminated as a result of the case terminating.

2. Trends in Case Filings

a. Civil Caseload

During the past four years, civil filings and terminations remained relatively stable. In the twelve-month period ending June 30, 1995, civil filings increased by 27 and terminations decreased by 203, compared to the previous year. It should be noted that there were 66 additional pending civil cases as of June 30, 1995, over the prior year. Since pending civil cases have been decreasing since 1992, this represents a recent change in the trend (*See Chart C*).

Chart C
Trends in Civil Caseflow
Statistical Years* 1992 - 1995



* 12-month period ending June 30th.

(1) Prisoner Petition Filings

The category of prisoner petitions continued its dramatic rise and remained the largest segment of the civil caseload in the Northern District of Texas. During the period 1989 - 1994, the number of prisoner petitions increased by 85% and grew in proportion of the workload from 14.4% to 30.6% of civil filings (*See Chart D*). During the twelve-month period ending June 30, 1995, there were 1,473 prisoner petitions filed or 30.8% of the total civil caseload for the second year of implementation of the Plan (*See Table IV*). This continuing trend of increased prisoner petition filings has been experienced by other district courts across the nation and shows no sign of slowing down. During the months of July and August 1995, for example, 277 prisoner petitions were filed. This sets a projected annual pace of 1,662 for the third year of implementation of the Plan.

The continued growth in prisoner filings can be attributed, at least partially, to the construction of new prisons within the boundaries of the Northern District of Texas. Since 1989, twenty-six (26) state prison facilities have been constructed within the District, including a large maximum security unit recently opened

in the Wichita Falls Division. Also, according to the Texas Department of Criminal Justice, new prison facilities are planned for Abilene, Amarillo, Snyder, Lamesa, Lubbock, Childress, and Colorado City. This expansion of state prison facilities should continue to affect the rate of prisoner filings in the Northern District over the next few years.

Chart D
Trends in Prisoner Petition Filings
1989 - 1994

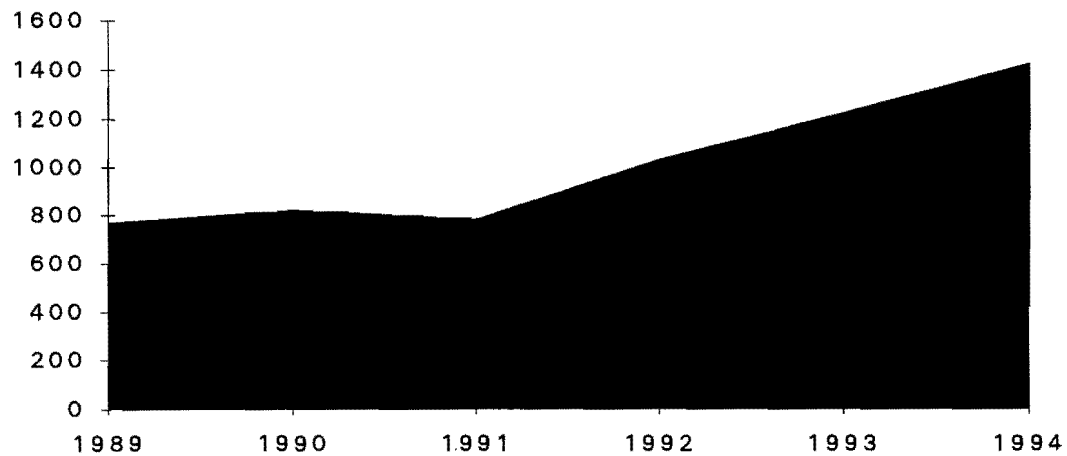


Table IV
Northern District of Texas
Prisoner Petition Filings v. Total Civil Filings
Statistical Years* 1989 - 1994

Year	Prisoner Petition Filings**	Total Civil Filings	Percentage Of Prisoner Petition Filings
1989	770	5,346	14.4%
1990	822	4,962	16.6%
1991	783	4,586	17.1%
1992	1,032	4,776	21.6%
1993	1,228	4,690	26.2%
1994	1,427	4,658	30.6%

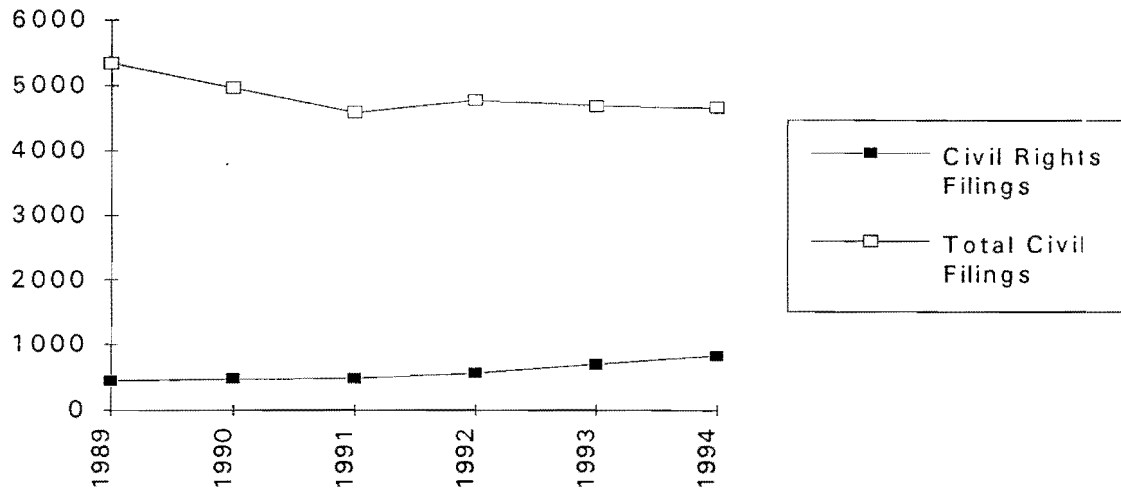
* Statistical years 1989 - 1991 are based on 12-month periods ending June 30th. Statistical years 1992 - 1994 are based on 12-month periods ending September 30th.

** There have been 1,473 prisoner petitions filed in the 12-month period ending June 30, 1995.

(2) Civil Rights Filings

The second largest segment of the civil caseload mix belongs to the category of civil rights filings. These cases have progressively grown as a percentage of the caseload since 1989, from 8.3% to 17.8% of civil cases (*See Chart E*). This data reflects an 86.7% increase in civil rights filings in just five years. According to the formula used by the AO to evaluate the complexity of cases, civil rights filings comprised nearly 30% of weighted civil filings during statistical years 1993 - 1995.

Chart E
Civil Rights Filings v. Total Civil Filings
Statistical Years* 1989 - 1994



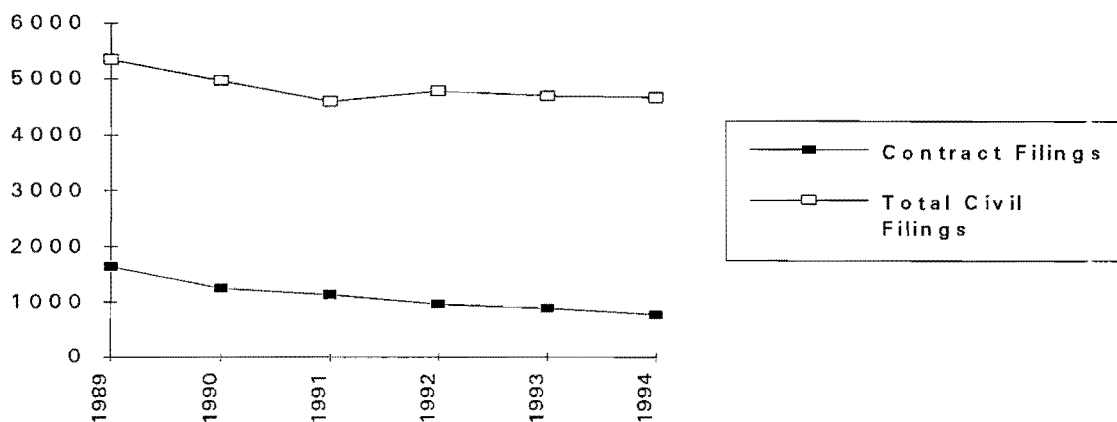
* Statistical years 1989 - 1991 are based on 12-month periods ending June 30th. Statistical years 1992 - 1994 are based on 12-month periods ending September 30th.

As a component of this trend in civil rights filings, there are some factors that may be contributing to the growth in litigation under the Age Discrimination and Employment Act (Title VII), and the Americans with Disabilities Act. In 1991, Title VII was amended to allow for jury trials and compensatory and punitive damages. Further, the Americans with Disabilities Act recently created a whole new class of civil rights litigation in the federal courts that are now beginning to reach the point of litigation.

(3) Contract Filings

The third largest category of civil filings is that of contract suits. Contract filings have continued a trend of steady decline since 1990, when they constituted the largest segment of the civil caseload. Contract filings reached a high point of 1,640 in 1989, but dropped to only 763 cases in 1994. Over a period of five statistical years, the number of contract cases dropped 53.5% (*See Chart F*). Much of the decline in recent years in contract filings can be attributed to a decreased number of cases involving the United States as plaintiff. This situation is most evident in the decline of civil filings for recovery of overpayments related to defaulted student loans and veteran's benefits. In particular, marked declines in student loan filings have occurred since the implementation of Public Law 102-164, which authorized the collection of student loans through wage garnishment. Additionally, veteran's benefit filings have decreased due to efforts by the Department of Veteran's Affairs to recover these overpayments through administrative action. The downward trend of contract filings in the Northern District is consistent with the experience of other district courts during the same period.

Chart F
Contract Filings v. Total Civil Filings
Statistical Years* 1989 - 1994

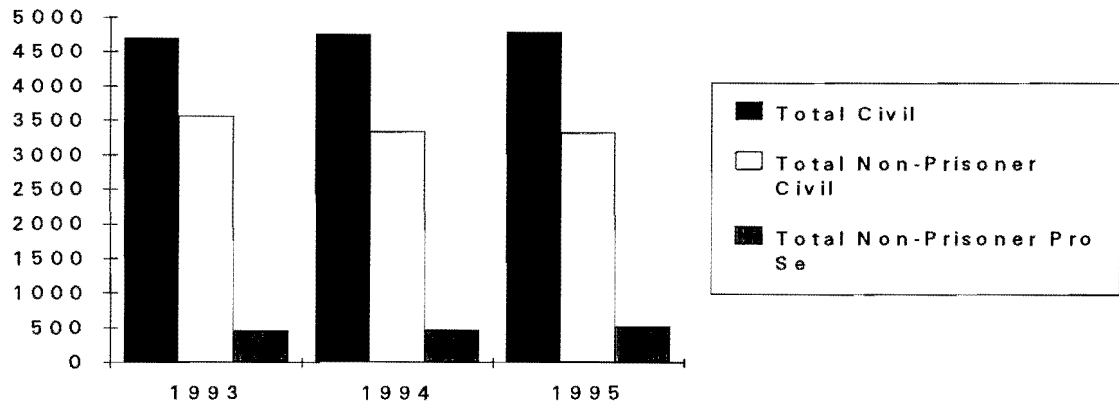


* Statistical years 1989 - 1991 are based on 12-month periods ending June 30th. Statistical years 1992 - 1994 are based on 12-month periods ending September 30th.

(4) Non-prisoner *Pro Se* Filings

In recent years, the Northern District has experienced a growth in non-prisoner cases filed involving *pro se* parties as either plaintiffs or defendants. During the twelve-month period ending June 30, 1995, non-prisoner *pro se* filings comprised 11% of total civil cases and 15% of the non-prisoner civil caseload (See Chart G). Since cases involving *pro se* parties often require special attention by the Clerk's Office, the growth in these filings has an impact on the pace of civil litigation.

Chart G
Total Non-Prisoner *Pro Se* v. Total Civil & Total Non-Prisoner Civil
1993 - 1995



b. Criminal Caseload

Criminal filings during the twelve-month period ending June 30, 1995, were slightly higher than the previous statistical year. Compared with the first year of the implementation of the Plan, criminal filings were up by 10.7% and criminal terminations were 9.4% higher (See Table V). During this same period there were concurrent increases in criminal defendant filings, terminations, and pending criminal defendants (See Chart H). Although the Northern District experienced slight increases recently in criminal case and criminal defendant filings, the criminal caseload did not reach the peak levels attained during statistical years 1992 and 1993.

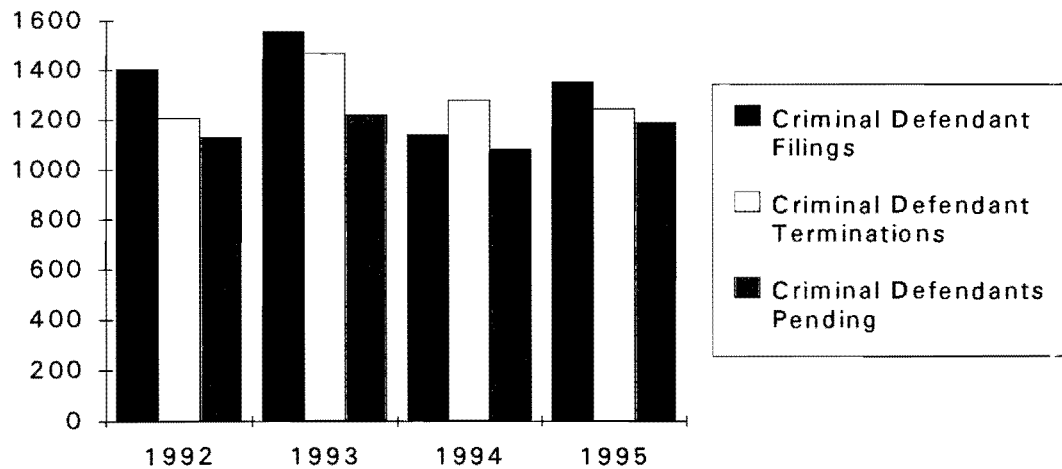
Table V
Northern District of Texas
Trends in Criminal Caseflow
Statistical Years* 1992 - 1995

Statistical Year	Criminal Filings**	Criminal Terminations	Criminal Pending
1992	980	782	785
1993	917	933	769
1994	726	748	747
1995	804	818	733

* 12-month period ending June 30th.

** Figures include felony and misdemeanor offenses.

Chart H
Trends in Criminal Defendant Caseflow
Statistical Years* 1992 - 1995



* 12-month period ending June 30th.

The criminal caseload mix has remained relatively stable in recent years. Fraud continues to be the largest category of criminal filings, comprising 30% of criminal cases filed in statistical year 1994 (*See Table VI*).

Table VI
Northern District of Texas
Trends in Criminal Felony Filings
Statistical Years* 1990 - 1994

Criminal Case Types	1990	1991	1992	1993	1994
Immigration	61	45	43	60	83
Embezzlement	30	30	36	30	17
Weapons/Firearms	113	56	157	88	87
Escape	35	20	29	15	13
Burglary/Larceny	69	44	65	48	60
Marijuana/Controlled Substances	36	79	44	75	94
Narcotics	74	66	129	62	25
Forgery/Counterfeiting	21	10	13	32	23
Fraud	169	183	213	192	206
Homicide/Assault	3	12	8	10	3
Robbery	19	31	28	22	24
All Other Criminal Felony Cases	53	66	101	89	62
Total Criminal Felony Filings	683	642	866	723	697

* Statistical years 1990 - 1991 are based on 12-month periods ending June 30th. Statistical years 1992 - 1994 are based on 12-month periods ending September 30th.

Even though there was a slight increase in the criminal caseload during the second year of the Plan, it is projected that filings are unlikely to meet the levels experienced in 1992 and 1993 during the next few years. The peak period of criminal prosecution activity in 1992 and 1993 was inflated by: 1) a national prosecutorial initiative on weapons cases; and 2) criminal bank fraud filings generated by a thirty-prosecutor task force investigating savings and loan failures. Due to expected budget restrictions, staffing levels are not likely to change in the next few years. Since the criminal caseload is directly related to staffing levels, filings should remain relatively stable also.

B. Trends in Court Resources

1. District Court Judges

In reviewing statistical information from 1992 to present, it is clear that the eleven judges in the Northern District continue to perform at an exceptional level. The Northern District has one judicial position that has been vacant since December 1990 and another position that will be vacant in January 1996 when Judge Barefoot Sanders takes senior status. The judges in the Northern District maintain a workload that exceeds the recognized standard of 430 weighted cases

per judgeship. The average weighted caseload per authorized judgeship is 471, whereas the average weighted caseload per **actual active judge is 513** (*See Table VII*). For statistical year 1994, the judges in the Northern District ranked nineteenth (19th) in the country in terminations per authorized judgeship despite their large caseloads.

Table VII
Northern District of Texas
Judicial Workload Profile
Statistical Years* 1990 - 1994

	1990		1991		1992		1993		1994	
	Per Authorized Judgeship (10)	Per Actual Active Judge	Per Authorized Judgeship (12)	Per Actual Active Judge	Per Authorized Judgeship (12)	Per Actual Active Judge	Per Authorized Judgeship (12)	Per Actual Active Judge	Per Authorized Judgeship (12)	Per Actual Active Judge
Filings Total	566	657	435	626	472	552	453	494	447	487
Civil	498	578	381	549	398	466	391	426	388	423
Criminal Felony	68	79	54	78	74	87	62	68	59	64
Defendants	102	118	81	117	126	147	105	114	89	97
Pending	567	658	407	586	402	470	377	411	365	398
Weighted Filings	542	629	431	621	528	618	496	541	471	513
Terminations	562	652	485	698	479	560	471	513	460	501
Trials Completed	38	44	35	50	36	42	39	43	35	38

* 12-month period ending September 30th.

2. Senior Judges

The senior judges in the Northern District of Texas were responsible for slightly over 3% of the total cases terminated in the twelve-month period ending June 30, 1995. This is a significantly lower percentage than was seen in statistical year 1994, when terminations by senior judges equaled 9% of total terminations. The terminations for statistical year 1995, are made up of 48 student loan cases, 109 civil cases, and 23 criminal cases.

The reduction in terminations by senior judges from 1994 to 1995, can be largely attributed to the number of senior judges taking cases. Until early 1995, the Northern District was supported by three senior judges. Currently, only one senior judge is assigned cases.

3. Magistrate Judges

The magistrate judges of the Northern District serve the Court by processing petty offenses, preliminary felony matters, and certain pre-disposition civil and criminal matters; performing the initial review of *in forma pauperis* and *pro se* pleadings, including primary review of prisoner *habeas corpus* petitions; and trying civil cases which have been assigned to them with the consent of the parties. As discussed in Section II.A. - Condition of the Docket, the number of consent cases more than doubled from statistical year 1994 to 1995.

The Northern District currently has seven full-time and three part-time magistrate judges. Four of the full-time magistrate judges are located in the Dallas Division. The other three are located in the Fort Worth, Amarillo, and Lubbock Divisions. Part-time magistrate judges are located in the San Angelo, Wichita Falls and Abilene Divisions.

4. Office of the Clerk of Court

Staffing levels were exceptionally low in fiscal years 1993 and 1994 because of a hiring freeze and equalization program. The Clerk's Office operated at between 70% and 76% of its work measurement formula until fiscal year 1995. During the same period, the workload grew because of an increase in the number of judicial officers to be served and a steady increase in the number of court documents filed. The staffing level now is at approximately 81% of the work measurement formula.

Five new positions have been allocated to *pro se* staff attorney positions. Among other things, the *pro se* staff attorneys assist with the large number of prisoner filings received by the Court each year (see Section II.A. - Condition of the Docket) by screening new cases for the magistrate judges, preparing orders regarding motions for leave to proceed *in forma pauperis*, and reviewing cases for possible summary disposition. Two of the new *pro se* staff attorney positions

are in the Dallas Division. The other three positions are in the Fort Worth, Amarillo, and Lubbock Divisions. Until recently, only one such position was funded in the Northern District.

5. Automation

In April 1995, the Clerk's Office installed the Data Communications Network (DCN) in the Dallas Division. The DCN allows direct access between judicial chambers and the Integrated Case Management System (ICMS). It also allows personnel to communicate and transmit data between the Northern District of Texas and other federal court units. The Clerk's Office is currently enhancing the capabilities of the DCN to include rapid communications for access to computer assisted legal research applications and more rapid data exchange between the divisions of the Northern District as well as with the Fifth Circuit.

An Opinions Retrieval System (ORS) was implemented as a one-year pilot project in February 1995. This system allows judges and their staffs to electronically retrieve the indexed opinions of judges who have entered them on the system. After the pilot stage is satisfactorily completed, OPS will be available to all judicial chambers on request.

PACER was brought on-line with newer computer hardware and additional modems in June, 1995. The result is an increased volume in PACER user activity. The number of PACER subscribers at any given time holds relatively steady at around 2,000. The Clerk's Office is in the process of developing a bulletin board service for PACER users. The bulletin board service will include options to download forms, Local Rules, and other information from PACER directly to the personal computers of its users.

C. Alternative Dispute Resolution

The Court endorsed three methods of Alternative Dispute Resolution (ADR) in its Plan: mediation, mini-trial, and summary jury trial. Of these options, only mediation has been used since the Plan was adopted. The number of cases referred to mediation increased from 580 in 1994 to 684 in 1995 (an increase of 18%). Cases referred to mediation accounted for 14% of the 4,778 total civil filings or 21% of the 3,305 total non-prisoner civil filings in the Northern District in 1995. Because prisoner cases are not considered suitable for mediation, this second figure is a significant finding. To tabulate and analyze the disposition of ADR proceedings in the Northern District of Texas, the Clerk looked at the number of providers used, providers' fees, referrals, and disposition. It should be noted that some statistical information is unavailable due to incomplete ADR summary forms or summary forms not being filed with the District Clerk. Not

included in the following mediation statistics are 17 cases in which the parties went to mediation without an order from the Court. According to the ADR summary forms filed with the District Clerk in these cases, 11 settled in mediation.

1. Providers

The Judges in the Northern District used 84 different providers in the 684 cases referred to mediation. The large number of cases with an unknown provider can be attributed to ADR summary forms not being filed with the District Clerk (*See Table VIII*). Of the 554 cases disposed, providers in 296 cases (53%) did not file an ADR summary form.

Table VIII
Northern District of Texas
Alternative Dispute Resolution Providers
July 1, 1994 to June 30, 1995

Judge	# of Cases Referred to ADR	# of Different Providers Per Judge	Highest % of Cases Referred to Single Provider	# Of Cases w/ Unknown Provider*
Buchmeyer	91	20	18	20
Sanders	87	35	6	2
Robinson	76	25	20	32
Fish	86	19	22	3
Maloney	12	4	41	4
Fitzwater	119	13	22	101
Cummings	5	4	40	0
McBryde	4	4	25	0
Solis	27	19	12	2
Means	49	20	10	27
Kendall	114	17	51	2
Woodward	0	0	0	0
Mahon	0	0	0	0
Belew	0	0	0	0
McGlinchey	0	0	0	0
Sanderson	3	2	50	1
Tolle	2	1	100	0
Warnick	0	0	0	0
Averitte	0	0	0	0
Boyle	7	4	40	2
Kaplan	2	2	50	0
TOTAL	684	189	N/A	196

* Provider not identified by ADR Summary or other documents filed in the case record.

** The total number of different providers district wide is 84.

2. Providers' Fees

According to information provided on the ADR Summary form, the average fee of a provider in the Northern District of Texas was \$1,483 in statistical year 1995. Of the 231 cases in which an ADR Summary form was filed, 13% did not include fee information (*See Table IX*).

Table IX
Northern District of Texas
Alternative Dispute Resolution Disposed Cases
July 1, 1994 to June 30, 1995

Judge	Pending/ Referred	Total # of Cases Disposed*	# of Cases Disposed w/ No Summary Form	# Cases Disposed W/ Summary Form			Pending
				No Fee	W/ Fee	Avg. Fee	
Buchmeyer	109	75	47	1	23	\$1,753	34
Sanders	105	71	29	15	23	\$1,297	34
Robinson	90	66	23	8	36	\$1,000	24
Fish	116	82	37	1	37	\$1,645	34
Maloney	14	11	4	0	6	\$1,650	3
Fitzwater	140	68	52	0	16	\$1,233	72
Cummings	9	8	2	0	6	\$1,211	1
McBryde	5	5	4	0	1	\$1,200	0
Solis	31	18	6	1	11	\$1,825	13
Means	78	42	19	4	19	\$2,310	36
Kendall	172	96	67	2	15	\$1,875	76
Woodward	0	0	0	0	0	\$0	0
Mahon	1	1	1	0	0	\$0	0
Belew	0	0	0	0	0	\$0	0
McGlinchey	0	0	0	0	0	\$0	0
Sanderson	4	2	1	0	1	\$3,200	2
Tolle	3	2	1	0	1	\$200	1
Warnick	0	0	0	0	0	\$0	0
Averitte	0	0	0	0	0	\$0	0
Boyle	8	6	3	0	3	\$1,400	2
Kaplan	2	1	0	0	1	\$1,500	1
TOTAL	887	554*	296	32	199	\$1,483	333

* Includes 27 cases disposed before ADR.

3. Referrals

Pursuant to the Plan, a judge may refer a case to ADR on the motion of any party, on the agreement of the parties, or on the judge's own motion. Referral to mediation by the Court remains the most common form of assignment to ADR (89%). Joint motion accounted for 9%, plaintiff's motion for 1%, and defendant's motion for less than 1% of referrals (*See Table X*).

Table X
Northern District of Texas
Alternative Dispute Resolution Referrals
July 1, 1994 to June 30, 1995

Judge	# of Cases Referred to ADR	Referred By			
		Court	Joint	Plaintiff	Defendant
Buchmeyer	91	89	1	1	0
Sanders	87	85	1	0	1
Robinson	76	74	1	1	0
Fish	86	85	0	1	0
Maloney	12	9	2	1	0
Fitzwater	119	82	36	1	0
Cummings	5	2	3	0	0
McBryde	4	1	3	0	0
Solis	27	19	6	1	1
Means	49	40	9	0	0
Kendall	114	112	1	1	0
Woodward	0	0	0	0	0
Mahon	0	0	0	0	0
Belew	0	0	0	0	0
McGlinchey	0	0	0	0	0
Sanderson	3	2	1	0	0
Tolle	2	2	0	0	0
Warnick	0	0	0	0	0
Averitte	0	0	0	0	0
Boyle	7	6	1	0	0
Kaplan	2	2	0	0	0
TOTAL	684	610	65	7	2

4. Disposition

Of the 887 cases pending or referred to mediation, 530 of them were disposed in statistical year 1995. Although most of these cases fell into the "Unknown" category (29%), it can be deduced that mediation was a factor in their disposition (*See Table XI*).

Table XI
Northern District of Texas
Alternative Dispute Resolution Disposition
July 1, 1994 to June 30, 1995

Judge	Pending 7/1/94	# of Cases Referred to ADR	Settled			Judgment	Other**	Total Disposed	Pending 6/30/95
			Before ADR	During ADR	Unknown*				
Buchmeyer	18	91	4	18	42	10	1	75	34
Sanders	18	87	4	23	31	9	4	71	34
Robinson	14	65	1	20	23	11	3	58	21
Fish	30	86	6	23	37	15	1	82	34
Maloney	2	6	0	0	2	3	0	5	3
Fitzwater	21	115	0	11	40	12	3	66	70
Cummings	4	5	0	3	2	3	0	8	1
McBryde	1	4	0	0	1	4	0	5	0
Solis	4	22	0	6	8	0	0	14	12
Means	29	47	0	7	19	13	1	40	36
Kendall	58	113	12	9	50	20	4	95	76
Woodward	0	0	0	0	0	0	0	0	0
Mahon	1	0	0	0	0	1	0	1	0
Belew	0	0	0	0	0	0	0	0	0
McGlinchey	0	0	0	0	0	0	0	0	0
Sanderson	1	3	0	0	1	1	0	2	2
Tolle	1	2	0	0	1	1	0	2	1
Warnick	0	0	0	0	0	0	0	0	0
Averitte	0	0	0	0	0	0	0	0	0
Boyle	1	6	0	0	4	1	0	5	2
Kaplan	-	2	0	0	0	1	0	1	1
Total	203	654	27	120	261	105	17	530	327

* Includes cases in which no ADR Summary was filed with the Clerk's Office - Closed by Stipulation of Dismissal, Agreed Order, or Administratively. Also includes cases that were reported as not settling on the ADR Summary, but were subsequently closed in the same manner.

** Includes cases transferred to another district, or remanded to another court.

With an increase of 104 cases referred to mediation over 1994, it would appear that both the Court and attorneys in the Northern District feel that ADR is a viable alternative to litigation. To improve the accuracy of the ADR statistics, methods to enhance the gathering of information should be explored. The next section of this report will include several recommendations to improve the information available on ADR in the Northern District for use in evaluating its impact.

III. RECOMMENDATIONS

The recommendations of the Committee presented below are for the Court's consideration and action following the publication of this assessment. Some of the recommendations require changes to the Local Rules and the Plan, while others can be easily implemented through procedural changes. The Committee believes the recommendations offer practical solutions for addressing the causes of unnecessary cost and delay in litigation.

A. Alternative Dispute Resolution

The Committee recommends the following changes to the ADR program which are intended to increase the use of and satisfaction with mediation:

1. **Allow the parties an opportunity to select their mediator.** In the judge's ADR order, he/she should give the parties an opportunity to agree upon their mediator within a specified period of time. If the parties agree upon a mediator, they will advise the judge and the Clerk's Office of the mediator selected. If the parties cannot agree upon a mediator within a specified time period, the judge should make the selection. In the event the mediator is selected

by the judge, the parties should be allowed ten days to object to the mediator. The Committee encourages judges to make their selections from the mediator list described in Section III.A.2 of this report.

The Committee believes that cases are more likely to settle if the parties have chosen their mediator, and that the above procedure will improve the success rate of mediation. Successful mediation will move cases more quickly through the system and reduce costs.

2. Create and monitor a district-wide mediator list. The list should include information on areas of expertise, fee structure, number of mediations handled, mediation training, language specialities, and information on whether the mediator would be willing to offer his/her services on a *pro bono* or discounted basis (and, if so, under what terms and conditions). The list would allow parties and judges to make more informed choices regarding the selection of mediators, thus contributing to a successful mediation process. Also, controlling expense in litigation would be aided if judges and the parties were able to consider mediator fees. Parties should not be prohibited from agreeing on a mediator who is not on the list. The list would be maintained by the Clerk's Office, but would not be represented as a list of "approved" mediators. The Court may wish to consider a certification procedure for mediators at some time in the future.

3. **Consider objections to mediation on a case-by-case basis and continue to monitor cases for future ADR referrals.** The current Plan requires a party opposing the referral to mediation and/or to the appointed mediator to file written objections within ten days of the entry of the order explaining the reason(s) for the opposition. The Committee believes this procedure is proper; however, objections should not necessarily result in cancellation of the mediation. Instead, the Court should evaluate objections on a case-by-case basis and, in any event, continue to monitor the case for possible future referral to mediation.

4. **Send survey forms to attorneys and litigants in cases referred to mediation.** The surveys (Appendix B and Appendix C) should be sent to attorneys and litigants by the Clerk's Office approximately thirty (30) days after receipt of the ADR summary form or case closure, whichever occurs first. The information gathered from the surveys would be useful in determining the success of mediation in terms of expense and delay reduction. Over time, information obtained from the surveys should also assist the Court and parties in identifying the types of cases best suited to mediation and the appropriate timing of mediation.

5. **Strengthen language requiring submission of the ADR summary forms and revise the form to contain more complete information on fees.** A sample revised form is found in Appendix D. The collection and analysis of mediation data are hindered by the failure of providers to complete and submit the ADR summary form. Also, a cost/benefit analysis of mediation cannot be done without complete data on the fees being charged. The Committee recommends that the wording of the current Plan be revised as follows:

Within ten days of the conclusion of each ADR proceeding or within ten days of being notified by the litigants that they will not be using mediation, the selected or appointed provider must complete and file with the District Clerk a form supplied by the Clerk which will include:

1. Civil action number, style, and nature of suit of the case;
2. Method of ADR used;
3. Date ADR occurred;
4. Outcome of ADR;
5. Provider's fee and duration of ADR;

6. List of those in attendance; and
7. Names, addresses, and telephone numbers of counsel.

Repeated failure to supply the summary form will result in removal of the mediator's name from the mediator list maintained by the Clerk's Office.

B. Use of Magistrate Judges

The Committee feels strongly that a number of changes in the use of magistrate judges could significantly increase judicial efficiencies and reduce the cost of civil litigation. In addition to input from its members, the Committee based its recommendations on information derived from a survey conducted by a non-CJRA *ad hoc* committee on magistrate judges.

- 1. Authorize magistrate judges to conduct case management conferences.** To facilitate efficient case handling and reduce discovery disputes, a standing order of reference for discovery to the assigned magistrate judge should be used at the beginning of the case. Unless the magistrate judge determines that a conference is unnecessary, the magistrate judge should conduct

a case management conference as contemplated by Rules 16(b) and 26(f) within 30 days after the defendant appears. Prior to the conference, counsel should meet face-to-face to consider those matters to be addressed at the conference. A plan should be formulated for handling the case, scheduling ADR, and establishing procedures for resolving discovery disputes at the case management conference.

2. Encourage referrals to magistrate judges.

a. Revise the notice in the initial mailing to attorneys regarding the option to consent to trial before a magistrate judge. The current notice is attached as Appendix E, and a recommended notice is found in Appendix F. The district judges should send subsequent letters, as needed, to remind parties of the consent procedure.

b. Encourage district judges to honor consent referrals. Once litigants agree to have their case tried before a magistrate judge, the district judge should accept the agreement absent extenuating circumstances.

c. Include alternatives for blind consent in the initial consent notice. Some Committee members believe that open discussion of the issue of trial by consent might hinder litigants' ability to reach an agreement to trial before a magistrate judge. Therefore, each litigant should be allowed to submit a consent form to the Clerk's Office separately. If each side submits a form that indicates a willingness to consent to trial before a magistrate judge (either by blind or by joint consent), the Clerk's Office would notify the presiding district judge so the order of reassignment can be made. In this event, the magistrate judge would also handle all pre-trial matters.

d. Encourage magistrate judges to increase their visibility. The Committee encourages magistrate judges to publish their opinions and communicate with attorneys through local bar associations about their methods of handling cases and trials. Also, information on magistrate judges' education, experience, and number of cases tried should be made available to litigants through the Clerk's Office.

e. Develop case tracking information for magistrate judges. The Clerk should work with the AO and the magistrate judges to further refine reports previously developed. Specifically, information on the time

it takes magistrate judges to rule on dispositive motions and dispose of cases should be made available to litigants.

C. Discovery Disputes

In addition to the recommendations set forth above regarding case management, the Committee recommends the following.

1. **Require face-to-face meetings.** Counsel should be required, when feasible, to have face-to-face meetings to resolve discovery disputes prior to filing any motions under Rule 37.
2. **Make a telephone “hotline” available to litigants.** Magistrate judges should be encouraged to resolve discovery disputes through telephone conferences (similar to the “hotline” in the Eastern District of Texas) prior to the filing of motions to compel and/or for sanctions. At the request of any party, the telephonic conference should be on the record.

These procedures would reduce the number of pending motions and would decrease the likelihood of abusive discovery tactics.

D. Rule 26

1. **Adopt a uniform policy.** The Committee strongly urges the Court to adopt a uniform Local Rule regarding the application of Rule 26.

2. **Consider the Committee's position on Rule 26.** The majority of Committee members believe Rule 26(a)(1) should not be applied because:
 - a. it does not reduce the expense of litigation;
 - b. it conflicts with the traditional notice pleading requirements in federal court; and
 - c. the particularized pleading standard for disclosure is imprecise and fails to provide workable criteria for determining what must be disclosed.

The Committee recommendation regarding Rule 26(a)(1) is consistent with comments made in the 1994 CJRA Assessment.

E. Local Rules

1. **Local Rules and specific Miscellaneous Orders should be available on PACER.** PACER is available 24 hours a day and is easily accessed with a minimal fee to attorneys. Information from PACER can be downloaded to the user's personal computer and printed locally. All revisions to the Local Rules and Miscellaneous Orders should be made available to attorneys as soon as they are approved and entered in the system. This will allow attorneys immediate access to changes to the Local Rules.

2. **Provide actual notice of judge-specific requirements to litigants in each case.** The Committee supports the Court's position that so long as fair notice of judge-specific requirements is provided (*e.g.*, in scheduling orders), a party is not disadvantaged and costs of litigation should not increase.

3. **Incorporate into the numbered Local Rules the requirements that (a) motions for continuance be signed by the party as well as by the attorney of record (p. 8 in the Plan) and (b) any out-of-district attorney applying for *pro hac vice* status affirm in writing that he/she has read and will comply with Dondi and the Local Rules (p. 10 in the Plan).** Even though these two requirements are identified in the Plan, they are not uniformly adhered to

throughout the District. By including them in the numbered Local Rules, they would be more visible and more likely to be observed.

F. Case Handling

1. Confer with counsel regarding trial procedures. The Committee believes that:

a. fair notice should be given of time or other limitations to be imposed at trial so that counsel have an adequate opportunity to prepare; and

b. the Court should confer with counsel in determining the limitations to be set. Certain procedures (such as Court-ordered stipulations) may sometimes increase the cost of litigation without achieving positive results.

2. Set substantive motions for hearing or decision within a reasonable amount of time after all briefing has been filed. A prompt resolution of motions will normally narrow the scope of the case, thereby reducing the need for excessive discovery. Since discovery is the most costly element of litigation, this would reduce litigation costs.

3. **Allow lawyers limited access to Court personnel.** The Committee believes that limited attorney access to briefing clerks and court coordinators would reduce cost and delay in civil litigation. Increased communication with Court personnel would expedite case administration and potentially eliminate unnecessary written submissions and court hearings.

4. **Judges should confer regularly on the best ways to administer the Court's dockets as outlined in the Plan (p. 12, #8).** The Committee observed that there are wide variances in how district judges administer their dockets. An internal sharing of information would contribute to improvements in this area.

5. **Increase the visibility and use of PACER and seek feedback from the Bar on additional information that should be available through PACER.** The burden on Court personnel can be reduced through expanded use of PACER. For this reason, increased use of PACER is recommended. Local Rules, select forms, the Dondi opinion, and docket sheets are now available on PACER. New features (such as Miscellaneous Orders) will be added in the near future to meet the needs of users. The Committee encourages the Clerk's Office to continue developing this useful tool and to publicize it through newsletters, continuing legal education events, and information packets provided when cases are filed.

IV. CONCLUSION

Efforts made by the Court pursuant to the Plan appear to be having positive results in the Northern District. There has been a 33% decline in three-year-old pending cases in the first two years of implementation of the Plan. Also, statistics show a reduction in the amount of time to process dispositive motions.

The Committee's recommendations are intended to further implement the goals of the Plan. The Committee believes that slight changes in case handling procedures will yield further efficiencies and expedite the adjudication of civil cases.

Toward this end, the Committee recommends changes in the role played by magistrate judges and in discovery procedures. The Committee also recommends certain refinements in ADR procedures.

The Committee believes that its recommendations build upon the excellent precedent set by the Plan and will lead to further reduction of cost and delay in the District.

APPENDIX

*Civil Justice Expense and
Delay Reduction Committee*

~ 1995 ~

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REPORTER

Nancy Doherty, Clerk
U.S. District Court
1100 Commerce St., #14A20
Dallas, TX 75242
214-767-9511

5. The provider was: Court selected.
 Agreed on by the parties

6. Do you favor court selection of the provider ? Yes
 No
 No opinion

Please explain your answer: _____

7. To what extent do you believe the views of attorneys are considered when ordering cases to mediation in this District?

- Always
- Usually
- Sometimes
- Rarely
- Never
- No opinion

8. At what stage was this case when it was referred to mediation?

- After the initial joint status report, but prior to discovery
- Prior to any discovery
- After discovery, but prior to settlement conference
- After settlement conference
- Other: _____

C. Effectiveness of Mediation

For each statement below, indicate to what extent you agree or disagree.

9. Overall, how helpful or detrimental was mediation in the resolution of this case?

- Very helpful
- Somewhat helpful
- Neither helpful nor detrimental
- Somewhat detrimental
- Very detrimental
- No opinion

10. How appropriate was mediation for the resolution of this case?

- Very appropriate
- Somewhat appropriate
- Somewhat inappropriate
- Very inappropriate
- No opinion

11. Was the amount of discovery conducted before the mediation conference appropriate?

- Too much discovery
- About the right amount of discovery
- Too little discovery
- No opinion

12. Was the timing of the mediation conference appropriate?

- Much too early
- About right
- Much too late
- No opinion

13. Was settlement a realistic goal for this case?

- Very realistic
- Somewhat realistic
- Neither realistic nor unrealistic
- Somewhat unrealistic
- Very unrealistic
- No opinion

14. What effect did mediation have on the cost of resolving this case?

- Greatly reduced
- Somewhat reduced
- No effect
- Somewhat increased
- Greatly increased
- No opinion

15. What effect did mediation have on the timeliness of the resolution in this case?

- Greatly lengthened
- Somewhat lengthened
- No effect
- Somewhat shortened
- Greatly shortened
- No opinion

16. How satisfied were you with the mediation process?

- Very satisfied
- Somewhat satisfied
- Neither satisfied nor dissatisfied
- Somewhat dissatisfied
- Very dissatisfied
- No opinion

17. How would you evaluate the skill and effectiveness of the mediator?

- Excellent
- Satisfactory
- Unsatisfactory
- Very poor

18. In your opinion, the mediator's fee was?

- Unacceptably high
- High, but acceptable
- Reasonable
- Low

D. General Perception of Mediation

19. Do you think mediation, as used in this District, is an effective way to resolve litigation?

- Yes
- No
- No Opinion

20. Do you think mediation, as used in this District, is an effective way to reduce litigation costs?

- Yes
- No
- No opinion

21. Would you favor using mediation in future cases?

- Yes
- No
- No opinion

E. Other

22. Have you considered using other forms of Alternative Dispute Resolution (ADR)?

- Yes
- No
- No opinion

If you answered "No," why? _____

23. In the space provided below, please provide any additional comments, complaints, or suggestions you would like to make about the Court's Alternative Dispute Resolution program.

United States District Court
Northern District of Texas

Litigant Survey

This survey was developed by the Office of the Clerk pursuant to Section III. G. of the Civil Justice Expense and Reduction Plan for the Northern District of Texas. *Responses to this survey will be used solely for the purpose of assessing the Court's Alternative Dispute Resolution Program, and only aggregate information will be reported.* Please file this completed survey with the Office of the Clerk at the following address:

Nancy Doherty, Clerk of Court
United States District Court
Northern District of Texas
1100 Commerce Street, Rm. 14A20
Dallas, Texas 75242

Please limit your responses in reference to case _____ ONLY. Thank you.

A. Effectiveness of Mediation

For each statement below, indicate to what extent you agree or disagree.

1. Overall, how helpful or detrimental was mediation in the resolution of this case?

- Very helpful
- Somewhat helpful
- Neither helpful nor detrimental
- Somewhat detrimental
- Very detrimental
- No opinion

2. How appropriate was mediation for the resolution of this case?

- Very appropriate
- Somewhat appropriate
- Somewhat inappropriate
- Very inappropriate
- No opinion

3. Was the timing of the mediation conference appropriate?

- Much too early
- About right
- Much too late
- No opinion

4. Was settlement a realistic goal for this case?

- Very realistic
- Somewhat realistic
- Neither realistic nor unrealistic
- Somewhat unrealistic
- Very unrealistic
- No opinion

5. What effect did mediation have on the cost of resolving this case?

- Greatly reduced
- Somewhat reduced
- No effect
- Somewhat increased
- Greatly increased
- No opinion

6. What effect did mediation have on the timeliness of the resolution in this case?

- Greatly lengthened
- Somewhat lengthened
- No effect
- Somewhat shortened
- Greatly shortened
- No opinion

7. How satisfied were you with the mediation process?

- Very satisfied
- Somewhat satisfied
- Neither satisfied nor dissatisfied
- Somewhat dissatisfied
- Very dissatisfied
- No opinion

8. How would you evaluate the skill and effectiveness of the mediator?

- Excellent
- Satisfactory
- Unsatisfactory
- Very poor

9. In your opinion, the mediator's fee was?

- Unacceptably high
- High, but acceptable
- Reasonable
- Low

B. General Perception of Mediation

10. Did the mediator adequately explain the mediation process to you?

- Yes
- No
- No Opinion

11. Do you think mediation, as used in your case, was an effective way to resolve litigation?

- Yes
- No
- No Opinion

12. Do you think mediation, as used in your case, was an effective way to reduce litigation costs?

- Yes
- No
- No opinion

13. Would you favor using mediation in future cases?

- Yes
- No
- No opinion

14. In the space provided below, please provide any additional comments, complaints, or suggestions you would like to make about the Court's Alternative Dispute Resolution program.

UNITED STATES DISTRICT COURT
Northern District of Texas

Appendix D

Alternative Dispute Resolution Summary

1. Civil action number: _____
2. Style of case: _____
3. Nature of suit: _____
4. Method of ADR used: Mediation Mini-Trial Summary Jury Trial
5. Date ADR session was held: _____
6. Outcome of ADR (*Select one*):
 Parties did not use my services. Settled, in part, as a result of ADR.
 Settled as a result of ADR. Parties were unable to reach settlement.
 Continuing to work with parties to reach settlement (*Note: provider must file supplemental ADR Summary Form at conclusion of his/her services*).
7. What was your TOTAL fee: \$ _____
8. Duration of ADR: _____ (i.e., one day, two hours)
9. Please list persons in attendance (including party association, i.e., defendant, plaintiff):

(Provider) _____

Please provide the name, address, and telephone number of counsel on the reverse of this form.

10. Provider information:

Signature

Date

Address

Telephone

Provider must file completed form, in duplicate, with the U.S. District Clerk upon completion of ADR.

Alternative Dispute Resolution Summary
Continued

Please provide the names, addresses, and telephone numbers of counsel:

Name: _____

Name: _____

Firm: _____

Firm: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Name: _____

Name: _____

Firm: _____

Firm: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Name: _____

Name: _____

Firm: _____

Firm: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

**NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF A CIVIL CASE
BY A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that the United States Magistrate Judges of this district court, in addition to their other duties, may, upon the consent of all the parties in a civil case, conduct any or all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgment. Copies of appropriate consent forms for this purpose are available from the clerk of the court.

You should be aware that your decision to consent, or not to consent, to the reassignment of your case to a United States Magistrate Judge for disposition is entirely voluntary and should be communicated solely to the clerk of the district court. No Judge or Magistrate Judge will be informed of a party's refusal to consent to trial of a case before a Magistrate Judge. If a consent form is not filed within twenty (20) days of the date that all parties have filed an answer or otherwise responded, the court will deem that failure as evidence that the parties wish that the cause of action proceed before the district judge to whom the case was assigned at the time it was originally filed. Should all the parties subsequently consent to trial by a magistrate judge, however, the district judge may in his/her discretion so order.

The provisions of 28 U.S.C. § 636(c)(3) and (4) permit alternative appeals procedures, either directly to the United States Court of Appeals for the Fifth Circuit or to the district judge that reassigned the case to the Magistrate Judge. Subject to the requirements of Fed.R.App.P. 5.1, an appeal to the district judge does not bar a party from thereafter seeking further review by the Fifth Circuit as provided by 28 U.S.C. § 636(c)(5). In the event that the parties consent to a trial before a Magistrate Judge, they must also agree to the method of appeal at the time the consent form is executed.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

_____ DIVISION

Plaintiff

v.

Docket No. _____

Defendant

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), the parties to the above captioned civil matter hereby waive their right to proceed before a judge of the United States District Court and consent to have a United States Magistrate Judge conduct any and all further proceedings in the above styled case (including the trial) and order entry of a final judgment.

The parties further agree and consent to the following method of appeal, in the event an appeal is sought from the judgment of the magistrate judge (check one):

_____ In accordance with 28 U.S.C. § 636(c), any appeal shall be taken to the United States Court of Appeals for the Fifth Circuit.

_____ In accordance with 28 U.S.C. § 636(c)(4), any appeal shall be taken to a judge of the district court. *

* Subject to the provisions of Fed.R.App.P. 5.1, an appeal under 28 U.S.C. § 636(c)(4) does not bar an appeal to the Fifth Circuit as provided by 28 U.S.C. § 636(c)(5). [See Wolff v. Wolff, 768 F2d 642 (5th Cir., 1985)]

Party or Counsel of Record

Date

NOTE: Return this form to the District Clerk only if it has been executed by parties to the case.

ORDER OF REASSIGNMENT

IT IS HEREBY ORDERED that the above captioned matter be reassigned to the United States Magistrate Judge _____ for the conduct of all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c) and the foregoing consent of the parties.

DATED: _____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

NOTICE OF RIGHT TO CONSENT TO PROCEEDINGS
BEFORE A UNITED STATES MAGISTRATE JUDGE

With the consent of all parties and upon referral by the presiding Judge, a full-time United States Magistrate Judge of this District Court may conduct **any or all** proceedings in a jury or non-jury civil matter and may order entry of judgment pursuant to 28 U.S.C. § 636(c) and Miscellaneous Order No. 6. **Consent to proceedings before a Magistrate Judge may allow you to expedite the handling of your case.**

Your decision to consent, or not to consent, to the reassignment of your case (or any portion thereof) to a United States Magistrate Judge is entirely voluntary and should be communicated solely to the Clerk of the District Court. No one, including the Judges or parties involved, will be informed by the Clerk of your refusal to consent to proceedings before a Magistrate Judge.

A copy of the consent form is attached. Consent forms may be filed with the Clerk separately or jointly by the parties. Trial before a Magistrate Judge does not diminish your right to a jury trial or to appeal to the United States Court of Appeals for the Fifth Circuit.

If a consent form is not filed within twenty (20) days of the date that all parties have filed an answer or otherwise responded, the Court will assume you wish the case to proceed before the District Judge to whom the case was assigned at the time it was originally filed. The parties may thereafter consent to any or all proceedings before a Magistrate Judge; in the event the parties do so, they should so advise the Clerk of the District Court.

The provisions of 28 U.S.C. § 636(c)(3) and (4) permit alternative appeals procedures, either directly to the United States Court of Appeals for the Fifth Circuit or to the District Judge that assigned the case to the Magistrate Judge. Subject to the requirements of Fed.R.App.P. 5.1, an appeal to the District Judge does not bar a party from thereafter seeking further review by the Fifth Circuit as provided by 28 U.S.C. § 636(c)(5). If you consent to trial before a Magistrate Judge, you must also agree to the method of appeal at the time the consent form is executed.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**
_____ **DIVISION**

Plaintiff

v.

Docket No.: _____

Check One: Joint Filing
 Separate Filing

Defendant

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), the party/parties to the above captioned civil matter hereby waive their right to proceed before a United States District Judge and consent to have a United States Magistrate Judge conduct the following proceedings in the above styled case (check one):

_____ Hear and determine all pretrial matters including dispositive motions.

_____ Conduct all proceedings, including trial.

The party/parties further consent to the following method of appeal, if an appeal is sought from the judgment of the magistrate judge (check one):

_____ In accordance with 28 U.S.C. § 636(c), any appeal shall be taken to the United States Court of Appeals for the Fifth Circuit.

_____ In accordance with 28 U.S.C. § 636(c)(4), any appeal shall be taken to a judge of the district court.*

* Subject to the provisions of Fed.R.App.P. 5.1, an appeal under 28 U.S.C. § 636(c)(4) does not bar an appeal to the Fifth Circuit as provided by 28 U.S.C. § 636(c)(5). [See Wolff v. Wolff, 768 F2d 642 (5th Cir., 1985)]

Party or Counsel of Record

Date

Return this form to the District Clerk only if it has been executed by a party/parties to the case. If both parties consent to proceed before a magistrate judge, the presiding judge will be informed by the Clerk's Office.