

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS



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

May 1997

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APPENDIX A - CJRA Membership List

I. INTRODUCTION

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 third annual assessment. A second committee (the Committee) was appointed in August 1995. A list of the Committee members is found in Appendix A.

The Committee was asked to recommend appropriate actions that might be taken by the Court to further reduce delay and cost in civil litigation. The Committee reviewed the actions taken by the Court in response to the second annual assessment, reviewed statistical reports and analysis prepared by the District Clerk's Office, met with representatives of the Court to discuss areas of particular concern, and established subcommittees to consider additional changes regarding alternative dispute resolution, motion practice, case handling, and Internet opportunities. These subcommittees carefully reviewed existing practices and procedures and submitted formal reports to the entire Committee for its approval. The recommendations adopted by the Committee are presented in Section IV of this report.

II. COURT'S RESPONSE TO THE 1995 ADVISORY COMMITTEE RECOMMENDATIONS

The Advisory Committee's 1995 recommendations were initially reviewed by the Court's Local Rules Committee. They expressed appreciation for the thoroughness of the Advisory Committee's report and its thoughtful recommendations. However, because the Local Rules Committee is sensitive to a proliferation of local rules, they recommended to the Court only those changes they regarded as necessary. They supported many of the Advisory Committee's recommendations but felt the *Civil Justice Expense and Delay Reduction Plan* itself did not need to be changed. Instead, they encouraged individual attention of each judge to specific recommendations. The actions and decisions by the Court are described below.

A. Mediation

1. Use of Mediation Surveys

The Court asked the District Clerk to develop a proposal for implementing a plan to use the recommended surveys for attorneys and litigants in cases referred to mediation. She will present this proposal to the Rules Committee. If her proposal is approved, the surveys will be sent out quarterly.

After six months she will review the results of the surveys with the Local Rules Committee to determine their value and how often they should be sent.

2. Create and Monitor a District-wide Mediator List

The Court did not approve the recommendation to create and monitor a district-wide mediator list because of the varying practices of the judges.

3. Strengthen Language Requiring Submission of the ADR Summary Form

Although several judges have taken action to ensure that these forms are returned, the percentage of those returned has not measurably increased. The report the Clerk is required to prepare annually continues to be statistically invalid because of incomplete information. The Clerk will request additional assistance from the judges.

B. Use of Magistrate Judges

1. Allow Blind Consents

The revised form and procedures for blind consents to proceedings before a magistrate judge were referred to the Local Rules Committee.

2. Encourage Magistrate Judges to Increase Their Visibility

The Clerk was asked to explore methods of providing information that will help increase the visibility of magistrate judges.

C. Discovery Disputes

The Committee suggested that a telephone “hotline” be made available to litigants. The judges agreed that a magistrate judge “hotline” might be helpful. However, they felt that use of a “hotline” should be left up to the judge who refers the case.

D. Rule 26

Adoption of a uniform policy on Rule 26 was suggested by the Committee. On May 31, 1996 the Court adopted Local Rule 6.2 that states, “Unless the Presiding Judge otherwise directs by order or other appropriate notice issued in a civil action, or the parties otherwise stipulate, the parties shall not comply with the initial disclosure requirements of Fed. R. Civ. P. 26(a)(1).”

E. Local Rules

1. Make Local Rules and Specific Miscellaneous Orders Available on PACER (Public Access to Court Electronic Records)

The Local Rules are now available on PACER. However, because of the large number of Miscellaneous Orders, none of them have yet been placed on the

system. The Advisory Committee was asked to identify those that would be most beneficial to attorneys. The Clerk's Office has prepared a brochure that describes PACER and the information available.

2. Incorporate into the Local Rules Requirements from the *Civil Justice Expense and Delay Reduction Plan Concerning Motions for Continuance and Attorney Applications for Pro Hac Vice Status*

Local Rule 5.2(e) was amended to provide that motions for continuance of a trial setting be signed by the party as well as by the attorney of record. Local Rule 13.3(b) was amended to provide that an attorney applying for *pro hac vice* status shall affirm in writing that the attorney has read *Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n*, 121 F.R.D. 284 (N.D. Tex. 1988) (en banc), and the Local Rules, and that the attorney will comply with the standards of practice adopted in *Dondi*, and with the Local Rules. The Local Rules Committee is also considering a change to include a local rule that references the *Civil Justice Expense and Delay Reduction Plan*.

F. Case Handling

The Committee suggested the judges should confer regularly on the best ways to administer the Court's dockets as outlined in the Plan. The judges agreed that a district judges retreat was a good idea and would be helpful in facilitating an exchange of information among the judges. A retreat is tentatively planned for 1997.

III. ASSESSMENT OF CONDITIONS IN THE DISTRICT

A. Condition of the Docket

The primary source of data used in this, the third annual assessment of the implementation of the Civil Justice Expense and Delay Reduction Plan (the Plan), is the Administrative Office of the United States Courts (AO). Data provided by the AO is only as recent as the year ending September 30, 1995; therefore, it has been supplemented with data collected from statistics maintained by the District Clerk's Office. This supplemented data includes the latest figures on filings, terminations, pending caseloads, trial hours, consent cases, and Alternative Dispute Resolution.

1. The Present State of the Docket

a. Median Times

In statistical year 1994, the Northern District ranked twenty-seventh (27th) among the ninety-four U.S. District Courts with a median time from filing to disposition of eight months for civil cases. The District's median time decreased to seven months in statistical year 1995, improving its ranking to twelfth (12th). It should be noted that the median

time from filing to trial increased by one month in 1995. The median disposition time from filing to trial for civil cases increased slightly to seventeen months, which ranked twenty-sixth (26th) among U.S. District Courts in statistical year 1995.

The disposition time of criminal cases has remained stable. In 1995, the median disposition time for criminal felony cases was 5.7 months, which ranked twenty-fourth (24th) compared to a ranking of thirtieth (30th) in 1994, among U.S. District Courts (*See Table I*). The judges in the Northern District improved their ranking despite the fact that current felony disposition times remained the same as the previous year. Because of the complexity of the white-collar crime and drug conspiracy prosecutions brought in the Northern District of Texas, this trend in disposition times for criminal matters is expected to continue.

Table I
Northern District of Texas
Median Disposition Times (Months)
Statistical Years* 1992 - 1995

	1992	1993	1994	1995
Civil Cases Filing to Disposition**	8	8	8	7
Civil Cases Filing to Trial***	18	17	15	17
Criminal Felony Cases Filing to Disposition	5.1	5.4	5.7	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).

*** For civil cases *except* land condemnation, going to trial, this figure shows the time interval in months for the middle (median) cases. Time is computed from the date the case is filed to the date trial begins.

b. Weighted Filings

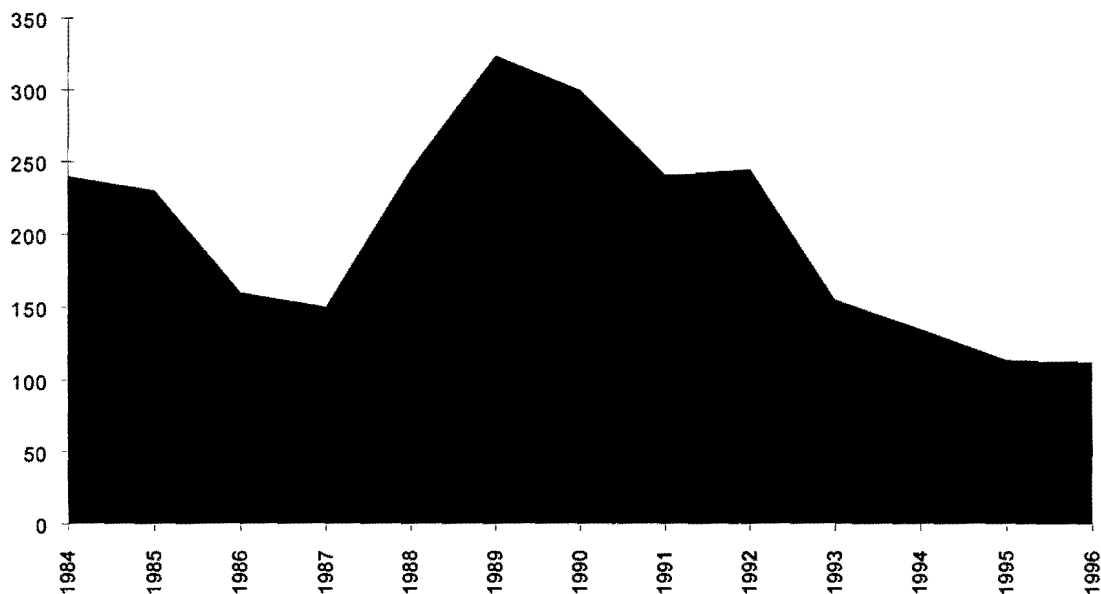
The Federal Judicial Center developed a system of “weighting” cases based on their differences in complexity and difficulty in comparison to normal or standard weighted cases. This system is used to determine which districts have more complicated and time-consuming cases. In statistical year 1995, the Northern District of Texas had a weighted caseload per authorized judgeship of 530. Although this figure is significantly higher than the 471 recorded in 1994, it did not top the District’s high of 565 in 1989. Nevertheless, the Northern District of

Texas' ranking in 1995 was the seventeenth (17th) highest average in the country which continues to indicate a disproportionate share of difficult or complicated cases.

c. Age of Pending Caseload

The number of cases pending three years or more continues to decrease in the Northern District of Texas (*See Chart A*). As of June 30, 1996, the District had 112 such cases. This figure represents 2.7% of the total pending civil caseload. The current number of cases pending three years or more is the lowest in thirteen years and has decreased 38.4% since the Plan was implemented in 1993. The Plan may be a significant part of this downward trend in the number of older civil cases. Although the number of cases pending more than three years has declined, the increased number of civil filings and the increased number of criminal trial hours suggests that this trend is not likely to continue.

Chart A
Northern District of Texas
Civil Cases Pending Over Three (3) Years
Statistical Years* 1984 - 1996



* 12-month period ending June 30th.

d. Consent Cases

The Northern District continues to experience a significant increase in the number of consent cases. In statistical year 1996, there were 309 cases reassigned to magistrate judges for final hearing and determination, a 37.3% increase over 1995 (*See Table II*). The Abilene Division experienced the most dramatic increase in consent cases with a growth from 22 to 74 in statistical year 1996. Most significant in this

figure is the fact that all 74 were prisoner civil rights filings. Of the 139 consent cases in the Dallas Division, 40% were civil rights cases, 19% contract cases, 14% torts, and 5% prisoner petitions. Of the 170 consent cases in the other divisions 91% were prisoner petitions. The continued growth in the number of consent cases reflects an increased use of magistrate judges to dispose of cases.

Table II
Northern District of Texas
Civil Consent to Magistrate Judge Trials
Statistical Years* 1991 - 1996

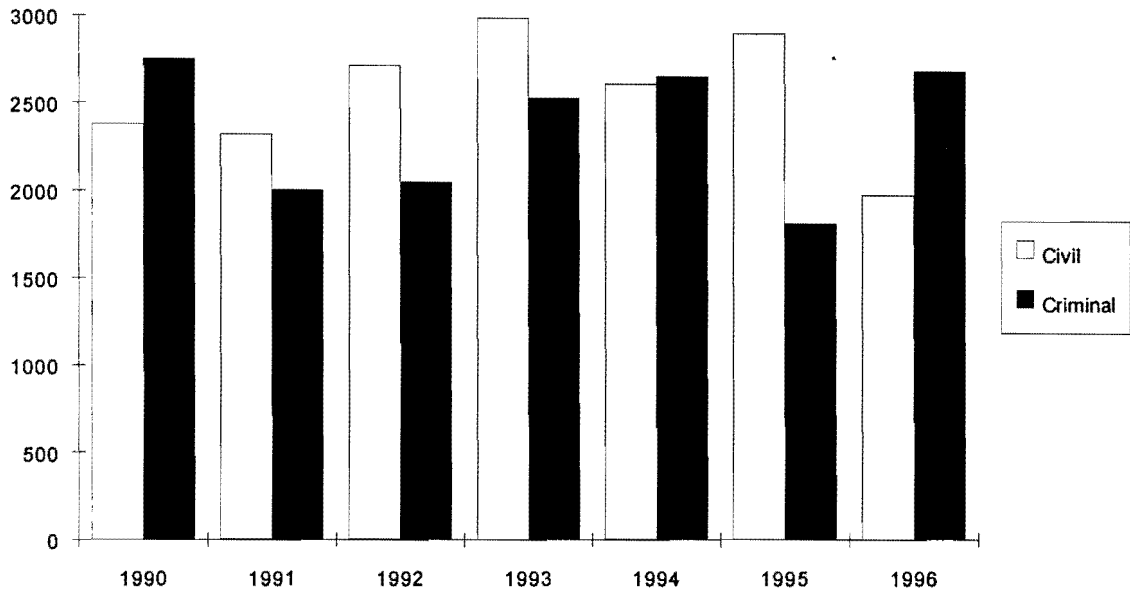
Division	1991	1992	1993	1994	1995	1996
Abilene	1	3	0	2	22	74
Amarillo	1	5	52	44	53	61
Dallas	75	43	47	53	127	139
Fort Worth	16	7	10	10	13	12
Lubbock	3	16	14	0	3	13
San Angelo	2	5	5	0	2	8
Wichita Falls	0	0	2	0	5	2
Total	98	79	130	109	225	309

* 12-month period ending June 30th.

e. Trial Hours

Although total trial hours remained relatively unchanged from 1995 to 1996, there was a significant change in the ratio of those hours from civil to criminal (*See Chart B*). In statistical year 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. In 1996, 57.7% were criminal and 42.3% were civil. Although criminal trial hours in statistical year 1995 declined to a five year low, disposition times were the same in 1995 and 1994.

Chart B
Northern District of Texas
Civil & Criminal Trial Hours
Statistical Years* 1990 - 1996



* 12-month period ending June 30th.

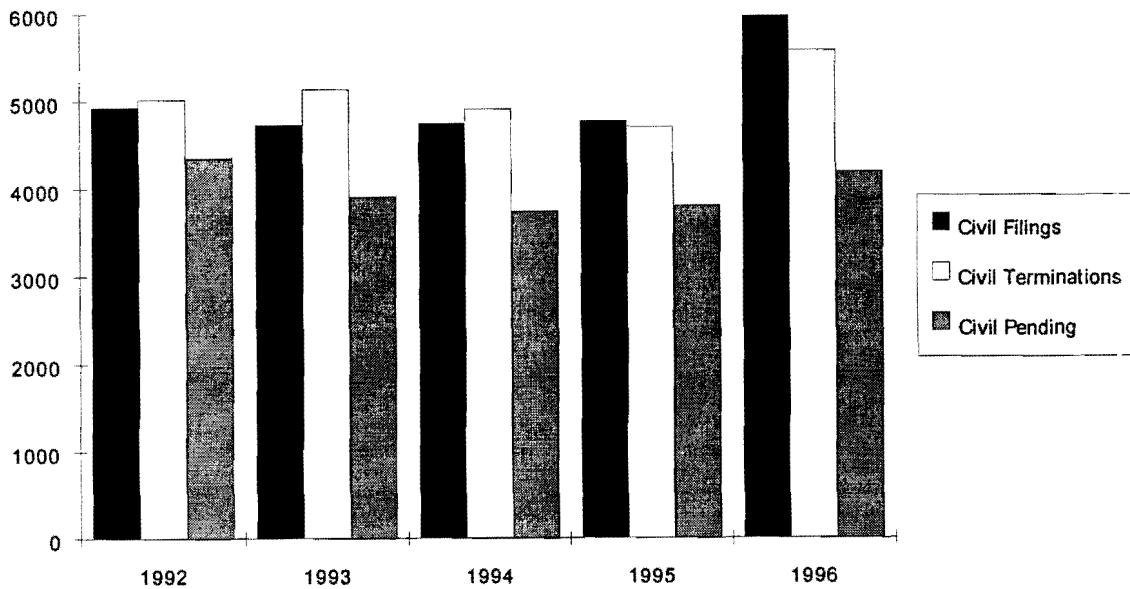
2. Trends in Case Filings

a. Civil Caseload

Although the number of civil case filings in the Northern District of Texas remained relatively stable during the last several years, in the 12-month period ending June 30, 1996, the District experienced a five-year high for civil filings (*See Chart C*). When compared to the same period in 1995, civil case filings increased from 4,778 to 5,976 (25.1%),

while civil terminations increased from 4,712 to 5,585 (18.5%) in 1996. This surge in the number of civil filings can be attributed primarily to increases in prisoner petitions and civil rights cases.

Chart C
Northern District of Texas
Trends in Civil Caseflow
Statistical Years* 1992 - 1996



* 12-month period ending June 30th.

(1) Prisoner Petition Filings

The largest segment of the civil caseload in the Northern District of Texas remains that of prisoner petitions (*See Chart D*). Between 1989 and 1995, the number of prisoner petitions filed

increased 104.9%. Prisoner petitions accounted for 32% of the District's total civil workload for the 12-month period ending June 30, 1995 (*See Table III*). This figure increased to 36.9% for the 12-month period ending June 30, 1996. The increase in the number of prisoner petitions is not unique to the Northern District of Texas; it is a trend being experienced by courts nationwide.

Although the increase in prisoner petitions can be partially attributed to new prison construction within the District, construction has stabilized. According to the Texas Department of Criminal Justice, there have been eighteen (18) new prison facilities opened in the Northern District since 1993. These eighteen facilities have a capacity of more than 21,000 beds. An additional eight facilities, with a total capacity in excess of 3,500 beds, are in the planning stages with opening dates still to be determined.

The Prison Litigation Reform Act (PLRA) of 1995 became effective April 26, 1996. The law substantially changes many aspects of prisoner civil rights litigation, including procedures for filing and reviewing *in forma pauperis*

applications. The PLRA prohibits a prisoner from filing a new civil rights complaint if the prisoner has three previous cases (including appeals) that were dismissed on the grounds they were frivolous, malicious, or failed to state a claim on which relief could be granted. Additionally, a prisoner seeking to file an action *in forma pauperis* is required to pay the full amount of the filing fee if funds are available. If a prisoner does not have sufficient funds, the district court must collect an initial partial filing fee. Payments must thereafter be made in installments until the filing fee is paid.

It is expected that the PLRA will curtail the filing of multiple frivolous suits. Districts that have fully implemented the provisions of the PLRA report declines of 20 - 30% in prisoner civil rights filings. Similar results are likely in the Northern District. However, despite any positive impact the law has on the Court's docket over time, the Clerk's Office must grapple with numerous administrative burdens placed on it. The Clerk's Office now has increased responsibilities in collecting, receipting, and tracking fee payments as a result of the PLRA.

Chart D
Northern District of Texas
Trends in Prisoner Petition Filings
Statistical Years* 1989 - 1995



* 12-month period ending September 30th.

Table III
Northern District of Texas
Prisoner Petitions Filings v. Total Civil Filings
Statistical Years* 1989 - 1995

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%
1995	1,578	4,937	32.0%

* Statistical years 1989 - 1991 are based on 12-month periods ending June 30th. Statistical years 1992 - 1995 are based on 12-month periods ending September 30th.

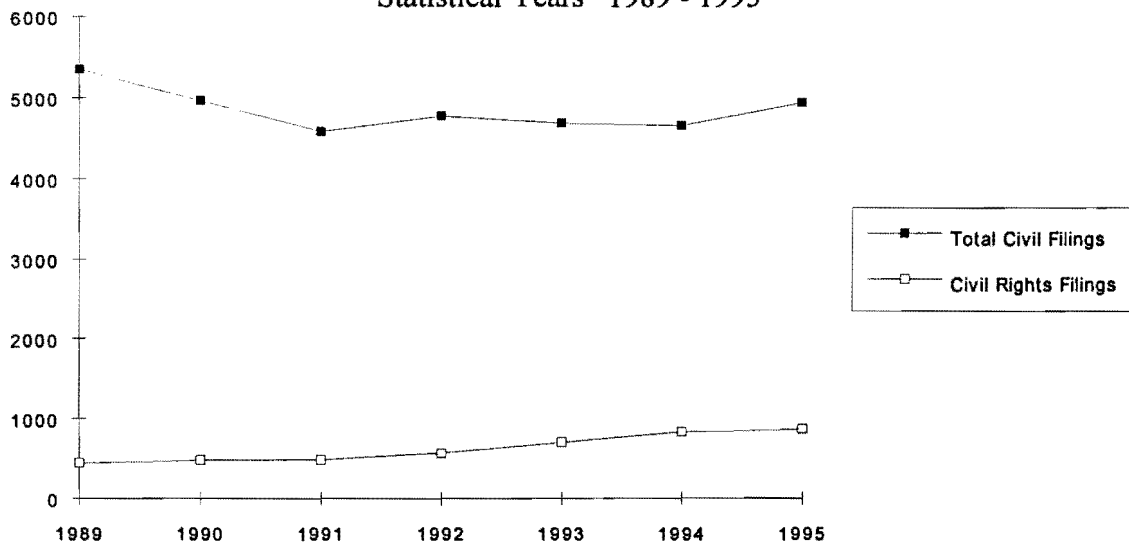
NOTE: There have been 2,204 prisoner petitions filed in the 12-month period ending June 30, 1996.

(2) Civil Rights Filings

Civil rights filings remain the second largest segment of the civil caseload mix in the Northern District of Texas (*See Chart E*). In 1989, there were 444 civil rights filings. This figure jumped to 862 in 1995, an increase of 94.1% in just six years. Civil rights filings now account for 17.5% of civil cases; up from only 8.3% in 1989. Several factors may be contributing to this

trend in increased civil rights filings including the growth in litigation under the Age Discrimination and Employment Act (Title VII) and the Americans with Disabilities Act (ADA). Changes to Title VII include allowing jury trials and compensatory and punitive damages. Under the ADA, a whole new class of civil rights cases have begun to reach the point of litigation in federal courts.

Chart E
Northern District of Texas
Total Civil Filings v. Civil Rights Filings
Statistical Years* 1989 - 1995

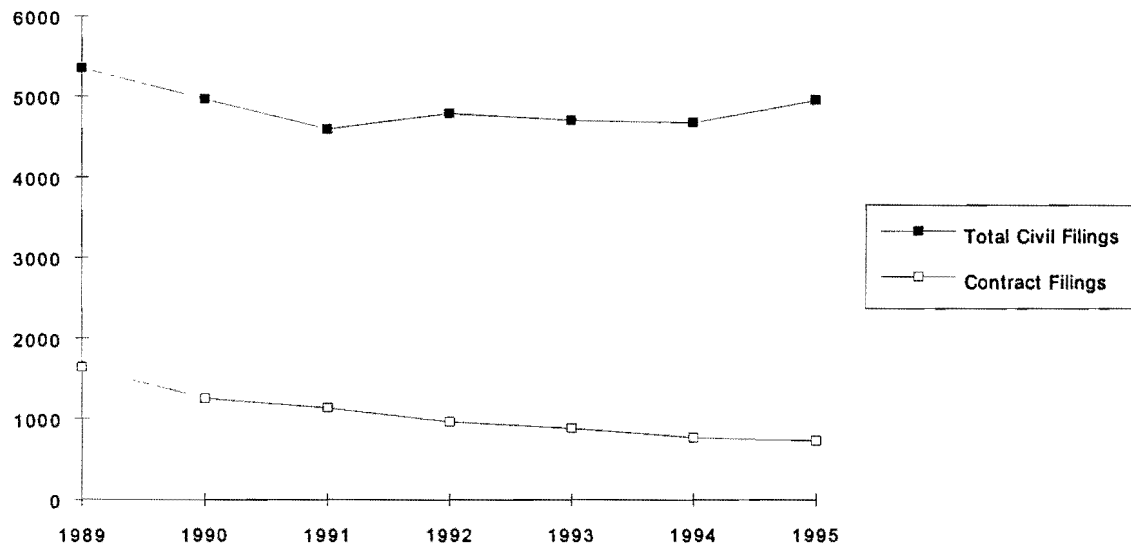


* Statistical years 1989 - 1991 are based on 12-month periods ending June 30th. Statistical years 1992 - 1995 are based on 12-month periods ending September 30th.

(3) Contract Filings

Following prisoner petitions and civil rights filings, the next largest category of civil filings is that of contract suits. Although contract filings constituted the largest segment of the civil caseload in 1990, they have continued a trend of steady decline and have dropped 44.2% in just six years (*See Chart F*). This drop in contract filings is attributable primarily to a decrease in the number of cases involving the United States as plaintiff, especially in cases for recovery of overpayments related to defaulted student loans and veteran's benefits because of the increased use of wage garnishment. This downward trend in the number of contract filings is being experienced by district courts nationwide.

Chart F
Northern District of Texas
Contract Filings v. Total Civil Filings
Statistical Years* 1989 - 1995

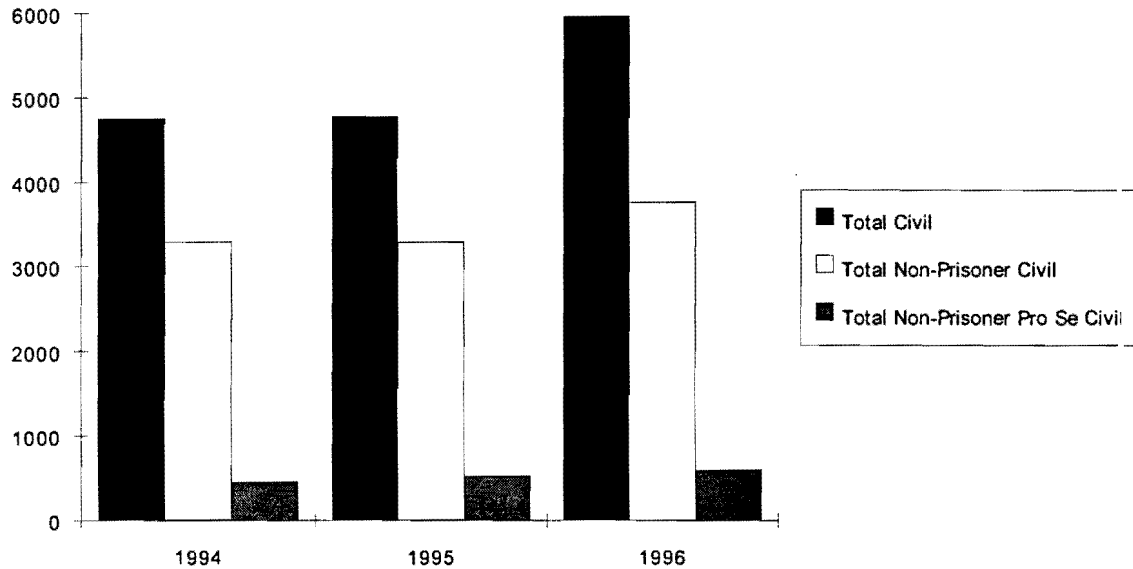


* Statistical years 1989 - 1991 are based on 12-month periods ending June 30th. Statistical years 1992 - 1995 are based on 12-month periods ending September 30th.

(4) Non-prisoner *Pro Se* Filings

Non-prisoner *pro se* filings comprised 12% of total civil cases and 19% of the non-prisoner civil caseload for the twelve-month period ending June 30, 1996 (*See Chart G*). This category of filings continues to rise and because special attention by the Clerk's Office is required in cases involving *pro se* parties, the increase has a significant impact on the pace of civil litigation in the Northern District of Texas.

Chart G
Northern District of Texas
Non-Prisoner *Pro Se* v. Total Civil & Total Non-Prisoner Civil
Statistical Years* 1994 - 1996



* 12-month period ending June 30th.

b. Criminal Caseload

Criminal filings during the twelve-month period ending June 30, 1996 were down 11.9% from the same period a year ago. Since the Plan was implemented in 1993, criminal filings have decreased by 22.8%, and criminal terminations have dropped 24.9%. The number of criminal cases pending has remained relatively stable in recent years. They decreased only 3.6% in the past three years (*See Table IV*). Criminal defendant filings and terminations have also continued to decline. The Northern

District of Texas reached a peak number of criminal defendant filings and terminations in 1993. Compared to the 1993 high, for the same time period in 1996, the District has experienced a 19.8% reduction in the number of criminal defendant filings and a 12.8% reduction in the number of criminal defendant terminations. With a decrease of only 5% during the past three years, the number of criminal defendants pending remains relatively unchanged (*See Chart H*). There are no indications that the Northern District will reach the peak levels experienced during statistical years 1992 and 1993 in the immediate future.

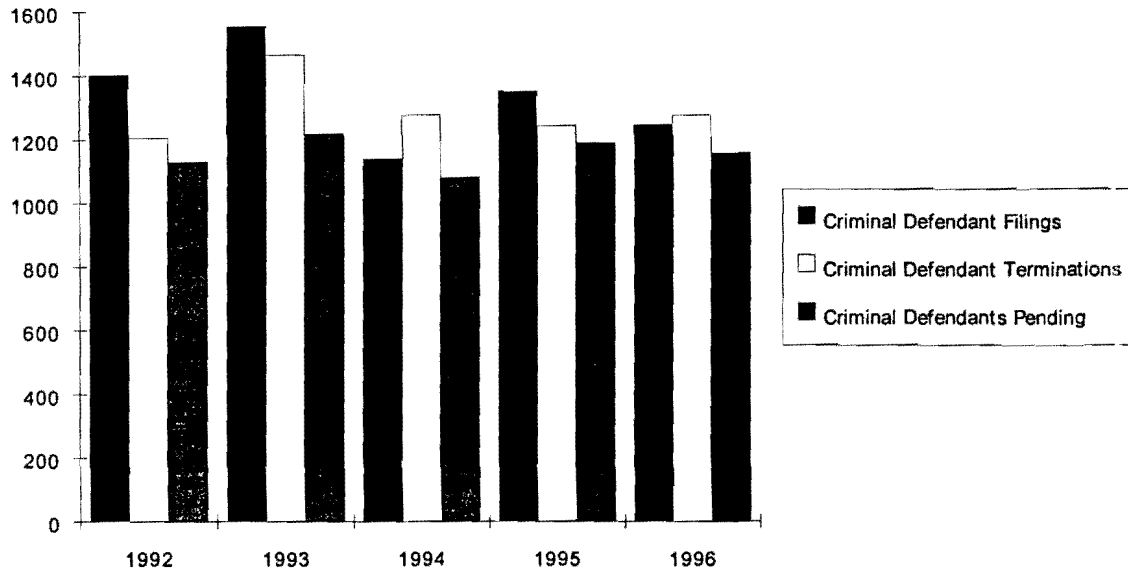
Table IV
Northern District of Texas
Trends in Criminal Caseflow
Statistical Years* 1992 - 1996

Statistical Year	Criminal Filings**	Criminal Terminations	Criminal Pending
1992	980	782	785
1993	917	933	769
1994	726	748	747
1995	804	818	733
1996	708	700	741

* 12-month period ending June 30th.

** Figures include felony and misdemeanor offenses.

Chart H
Northern District of Texas
Trends in Criminal Defendant Caseload
Statistical Years* 1992 - 1996



* 12-month period ending June 30th.

Although overall the criminal caseload mix has remained stable in recent years, there are some specific categories that experienced significant changes in 1995. These include Burglary/Larceny that went down 41.7% and Homicide/Assault that went up 233.3%. Fraud remains the largest category of criminal filings with 220, or 31.5% of the criminal caseload in 1995 (*See Table V*).

Table V
Northern District of Texas
Trends in Criminal Felony Filings
Statistical Years* 1990 - 1995

Criminal Case Type	1990	1991	1992	1993	1994	1995
Immigration	61	45	43	60	83	80
Embezzlement	30	30	36	30	17	21
Weapons/Firearms	113	56	157	88	87	83
Escape	35	20	29	15	13	14
Burglary/Larceny	69	44	65	48	60	35
Marijuana/Controlled Substances	36	79	44	75	94	113
Narcotics	74	66	129	62	25	**
Forgery/Counterfeiting	21	10	13	32	23	21
Fraud	169	183	213	192	206	220
Homicide/Assault	3	12	8	10	3	10
Robbery	19	31	28	22	24	22
All Other Criminal Felony Cases	53	66	101	89	62	79
Total Criminal Felony Filings	683	642	866	723	697	698

* Statistical years 1990 - 1991 are based on 12-month period ending June 30th. Statistical years 1992 - 1995 are based on 12-month period ending September 30th.

** Beginning in 1995, data for all criminal filings involving drug laws are reported in the Marijuana/Controlled Substances category.

Because law enforcement agencies within the Northern District report falling crime rates and the United States Attorney reports that criminal case referrals for prosecution have fallen over the last several

years, the number of criminal case filings is expected to remain at the fairly static levels maintained since 1990. It is likely, however, that the criminal caseload will include a higher proportion of complex health care fraud cases. The projected activity by the Northern District's Health Care Fraud Task Force is expected to increase the number of such complex cases. According to prosecuting agencies, the high number of criminal filings in statistical years 1992 and 1993 can be attributed to savings and loan prosecutions and a firearms violation initiative.

B. Trends in Court Resources

1. District Court Judges

With an average weighted caseload of 530 per authorized judgeship, the judges in the Northern District of Texas continue to maintain a workload in excess of the recognized standard of 430 weighted cases per judgeship (*See Table VI*). The increasing workload can be attributed in part to the fact that the District has had one judicial position vacant since December 1990, and another that was vacated when Judge Barefoot Sanders took senior status in January 1996. Taking the judicial vacancies into account, the judges averaged a weighted caseload per **actual active judge** of 578. Despite this increased workload, the judges ranked seventeenth (17th) in the country in terminations per authorized judgeship in statistical year 1995.

Table VI
Northern District of Texas
Judicial Workload Profile
Statistical Years* 1991 - 1995

	1991		1992		1993		1994		1995	
	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	Per Authorized Judgeship (12)	Per Actual Active Judge
Filings Total	435	626	472	552	453	494	447	487	471	513
Civil	381	549	398	466	391	426	388	423	411	448
Criminal Felony	54	78	74	87	62	68	59	64	60	65
Defendants	81	117	126	147	105	114	89	97	108	118
Pending	407	586	402	470	377	411	365	398	380	414
Weighted Filings	431	621	528	618	496	541	471	513	530	578
Terminations	485	698	479	560	471	513	460	501	453	494
Trials Completed	35	50	36	42	39	43	35	38	33	36

* 12-month period ending September 30th.

2. Senior Judges

Currently, there are two senior judges taking cases in the Northern District of Texas. A third judge terminated three cases in the twelve-month period ending June 30, 1996, but is no longer taking cases. The two active senior judges were responsible for 7.4% of criminal terminations and 7.8% of civil terminations. It should be noted that this significant increase in terminations by senior judges was achieved despite the fact that one of the judges did not take senior status until January 1996.

Senior judges terminated a variety of civil cases, but the majority of them were prisoner petitions (39.1%), civil rights (16.8%), and contract (11.5%). In 1996, the number of civil and criminal terminated cases by senior judges increased 269% compared to the same period in 1995.

3. Magistrate Judges

The magistrate judges of the Northern District of Texas 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.

The number of magistrate judges in the Northern District of Texas remained unchanged in 1996. There are seven full-time magistrate judges in the District. Four are located in the Dallas Division, with the other three in the Fort Worth, Amarillo, and Lubbock Divisions. In addition, there are three part-time magistrate judges in the District. These magistrate judges are located in Abilene, San Angelo, and Wichita Falls.

The magistrate judges continue to make significant contributions to the workload in the Northern District. As discussed in Section II.A. - Conditions of the Docket, the number of consent cases continued its upward trend. Since 1991, the number of consent cases increased from 98 to 309 or 215%.

4. Office of the Clerk of Court

The Clerk's Office continued to operate at approximately 81% of its work measurement formula in fiscal year 1996. During this period, the workload grew as evidenced by the 25.1% increase in civil filings. Funding for additional positions will be available in fiscal year 1997 to help cope with the increased demand. By adding appropriate staff, the Clerk's Office will be better able to meet established quality standards.

Based on a dramatic increase (approximately 28%) in prisoner filings in the District for the statistical period ending June 30, 1996, the work measurement formula indicates the need for additional *pro se* staff attorneys. 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. The District currently has eight staff attorney positions and authorization for one more. Five of the existing positions are in the Dallas Division. The remaining three positions are in the Fort Worth, Amarillo, and Lubbock Divisions. Until fiscal year 1995, only one such position was funded in the Northern District.

5. Automation

The Clerk's Office made several significant improvements in the area of automation in 1996. Most noticeably was the implementation of the Imaging Faxing System (IFS) in the Dallas Division. The system was implemented on May 1, 1996, for civil cases and on October 7, 1996 for criminal cases. IFS allows for the prompt distribution of orders and judgments via facsimile transmission to designated attorneys of record who complete an authorization form. In most instances, attorneys who agree to accept orders and judgments by

facsimile transmission receive them the same day they are signed. Although the system can only provide notices in cases pending in the Dallas Division at this time, it will eventually be expanded to include the other divisions in the Northern District. Current statistics indicate that IFS is responsible for 59% of civil notices and 91% of criminal notices. The criminal figure can be attributed to the fact that the Federal Public Defender, U.S. Attorney, U.S. Marshal, and Pretrial Services all participate in IFS.

The Court's PACER system was also updated with the addition of a bulletin board service (BBS). By accessing the BBS, PACER subscribers can download to their personal computer select forms, the Local Rules, the *Dondi* opinion, and the Attorney Handbook. Also available on the BBS are answers to common questions such as the Court's addresses and hours of operation.

After completion of a successful one-year pilot project, the Opinions Retrieval System (ORS) became available to all Dallas Division judicial chambers upon request. ORS allows judges and their staffs to electronically retrieve the indexed opinions of judges who have entered them on the system. There are approximately 10,000 civil and criminal opinions on the ORS.

C. Alternative Dispute Resolution

Since the Court endorsed Alternative Dispute Resolution (ADR) in its Plan three years ago, the number of cases being referred to ADR continues to increase. Three methods of ADR were adopted including mediation, mini-trial, and summary jury trial, but mediation is the only method utilized to date. Cases referred to mediation accounted for 13.6% of the 5,976 total civil filings, or 21.6% of the 3,772 total non-prisoner civil filings in the Northern District in 1996. The total number of cases referred to mediation in 1996 increased by 18.9% over 1995. To tabulate and analyze the disposition of ADR proceedings in the Northern District of Texas, the Clerk looked at the number of providers used, dispositions, and a summary of those cases disposed including fee information. 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.

1. Providers

In 1996, the judges in the Northern District of Texas used 91 known different providers (*See Table VII*). Although this was a slight increase over the number of known providers in 1995, the number of unknown providers continues to remain high. The identity of the provider is unknown if the provider fails to file an ADR summary form with the District Clerk.

Table VII
Northern District of Texas
Alternative Dispute Resolution Providers
July 1, 1995 to June 30, 1996

Judge	# of Cases Referred to ADR	# of Different Providers Per Judge	Highest % of Cases Referred to Single Provider	# Of Cases w/ Unknown Provider*
Buchmeyer	71	15	62%	3
Robinson	84	18	27%	35
Fish	88	14	24%	1
Maloney	137	11	17%	119
Fitzwater	69	10	29%	52
Cummings	6	5	20%	1
McBryde	1	1	100%	0
Solis	46	27	13%	0
Means	59	18	16%	28
Kendall	143	21	39%	1
Sanders	91	41	6%	5
Mahon	0	0	0%	0
Sanderson	1	1	100%	0
Tolle	4	3	33%	1
Warnick	0	0	0%	0
Averitte	3	2	66%	0
Boyle	6	4	33%	0
Kaplan	4	3	33%	1
TOTAL	813	91**	11%***	247

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

** The total number of different providers district wide.

*** Highest % of cases referred to a single provider district wide.

2. Disposition

In 1996, 59.3% of the 1,145 cases pending or referred to mediation were disposed of (*See Table VIII*). Of these cases, 484 were known to have been disposed of before or in mediation, or as the result of a stipulation of dismissal, agreed order, or administratively. Even taking into account incomplete or missing ADR summary forms, mediation appears to be having a positive impact on disposing of civil litigation in the Northern District of Texas.

Table VIII
Northern District of Texas
Alternative Dispute Resolution Disposition
July 1, 1995 to June 30, 1996

Judge	Pending as of 7/1/95	# of Cases Referred to ADR	Settled			Judgment	Other**	Total Disposed	Pending as of 6/30/96
			Before ADR	During ADR	Unknown*				
Buchmeyer	34	71	6	22	23	4	10	65	40
Robinson	25	84	1	24	32	16	2	75	34
Fish	34	88	9	39	16	17	4	85	37
Maloney	3	137	0	13	24	29	7	73	67
Fitzwater	70	69	0	16	45	18	2	81	58
Cummings	1	6	0	2	3	1	0	6	1
McBryde	0	1	0	0	0	0	0	0	1
Solis	13	46	1	13	10	11	0	35	24
Means	36	59	0	14	9	24	0	47	48
Kendall	76	143	9	14	66	26	1	116	103
Sanders	34	91	6	36	23	14	2	81	44
Mahon	0	0	0	0	0	0	0	0	0
Sanderson	2	1	0	0	0	3	0	3	0
Tolle	1	4	0	2	2	0	0	4	1
Warnick	0	0	0	0	0	0	0	0	0
Averitte	0	3	0	0	0	0	0	0	3
Boyle	2	6	0	2	1	3	0	6	2
Kaplan	1	4	0	0	1	1	0	2	3
Total	332	813	32	197	255	167	28	679	466

* 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, remanded to another court, and stayed or vacated ADR orders.

3. Summary

In statistical year 1996, 325 of the 679 mediation cases disposed did not file an ADR summary form with the District Clerk (*See Table IX*). The average provider's fee of the 354 mediation cases in which an ADR summary form was filed was \$1,559. The number of summary forms filed has increased, but the failure of some providers to file the document continues to hinder the Court in accurately assessing the full impact of ADR on civil litigation.

Although some cases may not be disposed of entirely because of ADR, it can greatly reduce the number of issues in dispute, thus reducing the time and resources the Court must devote to resolving the litigation. Inasmuch as criminal trial hours increased and the number of cases pending three years or more decreased, the benefits of ADR may be greater than available ADR disposition figures reflect.

Table IX
Northern District of Texas
Alternative Dispute Resolution Summary
July 1, 1995 to June 30, 1996

Judge	Pending/ Referred	Total # of Cases Disposed	# of Cases Disposed w/ No Summary Form	# Cases Disposed W/ Summary Form			Pending as of 6/30/96
				No Fee	W/ Fee	Avg. Fee	
Buchmeyer	105	65	29	9	27	\$1,552	40
Robinson	109	75	25	4	46	\$986	34
Fish	122	85	20	11	54	\$1,624	37
Maloney	140	73	53	2	18	\$2,096	67
Fitzwater	139	81	57	0	24	\$1,564	58
Cummings	7	6	0	0	6	\$1,508	1
McBryde	1	0	0	0	0	\$0	1
Solis	59	35	13	1	21	\$2,391	24
Means	95	47	20	1	26	\$1,404	48
Kendall	219	116	80	9	27	\$1,324	103
Sanders	125	81	23	14	44	\$1,777	44
Mahon	0	0	0	0	0	\$0	0
Sanderson	3	3	0	2	1	\$1,000	0
Tolle	5	4	2	0	2	\$1,100	1
Warnick	0	0	0	0	0	\$0	0
Averitte	3	0	0	0	0	\$0	3
Boyle	8	6	2	1	3	\$1,089	2
Kaplan	5	2	1	1	0	\$0	3
TOTAL	1,145	679	325	55	299	\$1,559	466

IV. RECOMMENDATIONS

The recommendations of the Committee presented below are respectfully submitted for the Court's consideration and action following the publication of this *Third Annual Report*. The Committee believes the recommendations will benefit the Court, the bar, and litigants, as well as offer practical solutions for addressing the causes of unnecessary cost and delay in litigation.

A. Alternative Dispute Resolution – Summary Jury Trials

The Civil Justice Expense and Delay Reduction Plan ("Plan") adopted effective July 1, 1993, provides for various alternative dispute resolution ("ADR") methods (Plan at III). One method authorized, but almost never used, is the non-binding summary jury trial. The Committee believes this method for resolving disputes in selected cases should be encouraged and the district judges should each select one case to test the efficacy of the concept.

1. The Format for the Trial

The individual district judge should determine whether a case is appropriate for this ADR method considering the factors discussed in section A-2

below. The following format is suggested for the initial case. Additional refinements can be made depending upon the individual judge's approach and the nature of the case.

- a. The Court would schedule the matter for a one-day trial and require parties or their representatives with authority to settle the case to be present for the trial.
- b. The presiding judge would preside at the trial.
- c. The Court would select a jury panel from those available to the federal court for that week.
- d. The Court would conduct a limited voir dire to eliminate disqualified, interested, or biased jurors.
- e. The jury would be advised that the case will be presented to them in one day and that its purpose is to help the Court and the parties resolve the matter without a lengthy trial.
- f. Each party would be allowed 20 minutes for opening statements.

- g. Each party would be allowed to present evidence in the form of exhibits, video or other depositions and attorney summaries in their case in chief. In a one-day trial each party would have 2½ hours. No live witnesses would normally be permitted.
- h. The parties would be allowed 45 minutes to rebut the opposing party's case in chief.
- i. Each party would be allowed 10 minutes for closing arguments.
- j. The Court would charge the jury (normally a simplified charge) and permit them to deliberate.
- k. After return of the verdict, the attorneys and the parties would be entitled to question the jurors regarding their verdict and the jurors would be allowed to comment on what they did in deliberations and how they perceived the evidence.

2. Considerations for Selecting Case

The following is a non-exhaustive list of factors the Court might consider in selecting cases for this ADR method.

- a. The case is likely to consume more than 10 days of trial time.
- b. The amount in controversy is sufficiently large to justify an extra day in Court and several days of preparation.
- c. The Court has ruled on all dispositive motions.
- d. Discovery is complete.
- e. The case has been mediated at least once and all parties are willing to state that the case will not or is very unlikely to settle.
- f. A pretrial order has been entered.
- g. The case is set for trial within 15 to 30 days after the summary jury trial.

3. Advantages and Disadvantages

There are significant reasons to employ this ADR method in selected cases. Although there are a few drawbacks, the advantages far outweigh the disadvantages.

- a. Advantages
 - (1) May reduce 10 days or more of limited trial time to 1 day.
 - (2) Saves the time of jurors and the Court.
 - (3) Reduces costs to the parties and the judicial system.
 - (4) Allows the parties to hear their case and the opposition case in full, probably for the first time.

- (5) Allows the parties and counsel to hear the reactions of 6 or 12 real jurors to their arguments and evidence.
 - (6) Requires counsel to sharply focus and condense the presentation of the case which should shorten trial presentation even if the case does not settle.
- b. Disadvantages (if case does not settle)
- (1) Requires a judge to spend a day in trial that would not otherwise be consumed.
 - (2) Possibly adds costs to the parties in preparing for summary jury trial. However, this preparation should aid in focusing the presentation for the real trial.
- c. Other Concerns
- (1) Lawyers may be concerned about disclosing how they are going to present their case prior to trial. However, at least in federal court the evidence, witnesses, and claims are set as of entry of the pretrial order.
 - (2) Judges, lawyers, and parties may also be reluctant to try an ADR method with which they are not familiar. Thus, educating both the bench and bar to the benefit of such a program will be essential.

B. Motion Practice

Because so much time is consumed by the Court, its staff, and the Clerk's Office in handling motions, the Advisory Committee was asked to make recommendations on methods to improve motion practice. The Committee recommends that the court amend Civil Local Rule 7.1 regarding certificate of conference requirements and add a new section on joint motion submission procedures.

1. Certificates of Conference

The Committee believes that certificates of conference are unnecessary if the joint submission rule is adopted. They would be required only for contested motions not covered by the new rule. Furthermore, the Committee recommends that the language requiring attorneys to state why agreement could not be reached be deleted because this requirement creates additional, unnecessary disputes. The Committee recommends the following changes to Civil Local Rule 7.1 (b):

(b) Certificate of Conference

(1) No change

(2) If a motion is opposed, the certificate must state that a conference was held and indicate the date of the conference, the attorneys who conferred, and that an agreement could not be reached [Delete: requirement that the certificate reflect the reasons why agreement could not be reached].

(3) No change

2. Joint Motion Submission

The Committee recommends adoption of procedures that require a movant to file each opposed motion and corresponding response and reply with the court as a single package unless otherwise directed by the presiding judge (referred to as "joint motion submission"). The Committee believes that adoption of these procedures will help: 1) reduce disputes over extensions of time and thus decrease the number of motions filed; 2) eliminate the need for a member of the judge's staff or the courtroom deputy to spend time monitoring each motion, response, and reply; 3) improve docketing accuracy and timeliness; and 4) result in quicker rulings on motions. Also, parties may be more likely to reach agreements on disputed issues prior to filing with the Court if the motion and opposition papers must be exchanged in advance.

The District Courts in New Jersey and New Mexico have implemented similar procedures. They confirmed the advantages cited above and report significant decreases in the amount of time devoted to motion practice.

The Committee further believes that joint motion submission should be discretionary with the presiding judge. Therefore, the proposed rule reflects this discretionary authority.

The Committee recommends that Civil Local Rule 7.1 be amended to include the following section on joint submission:

- (c) **Contested Motions.** *This rule will apply in all civil cases except those listed in subsection (5) or those exempted by the presiding judge.*
 - (1) **The Initial Filing.** *Each contested motion shall be accompanied by a proposed order and by a brief setting forth the movant's contentions of fact and law, unless a brief or proposed order is not required under subsection (h) [change to (e) if this new section is adopted] of this rule. Movant must initially serve on all parties (and not file with the Court) copies of the motion, supporting brief, proposed order, affidavits, and all other papers related to the motion. On the date of service of the foregoing papers, the movant shall file with the Court only an original and one copy of a notice of the motion, which notice shall (i) only list all of the pleadings being served and (ii) be served upon all parties. The date of the Court's receipt of the notice shall be treated as the filing date for purposes of all timetables.*
 - (2) **Response.** *The original and one copy of the opposition papers are to be served by the responding party upon the movant within 20 days of the responding party's receipt of the movant's papers. If the opposition papers cannot be prepared within the specified reply period, the parties may agree to a reasonable extension. If the parties cannot*

so agree, they should telephone chambers of the presiding judge to obtain the time within which the opposition papers must be prepared. On the date that the responding party serves his papers upon the movant, the responding party shall also file with the Court a notice of the filing which shall (i) only list the pleadings being served and (ii) be served upon all parties.

(3) *Reply Briefs.*

(i) The reply is due from the movant within 15 days from the movant's receipt of the opposition papers unless the parties otherwise agree or obtain another date from the presiding judge. If no reply is to be filed, the movant shall immediately file all papers with the Clerk of the Court as directed in subsection (ii) below.

(ii) When the reply is due, the movant shall (1) serve the reply upon all parties, and (2) file with the Clerk of the court, as a package, the original and one copy of all papers related to the motion, along with a transmittal letter that lists all documents filed with the Court and includes a certified statement that all documents have been filed in their entirety. The transmittal letter is to be served upon all parties.

(4) *Oral Argument.* *A statement must be included on the cover of the moving, opposition, or reply papers as to whether oral argument is requested. At the Court's discretion oral argument will be granted, either in person*

or by telephone conference call on the record. Absent a request for oral argument, the matter will be decided on the papers pursuant to FED. R. CIV. P. 78 unless the presiding judge directs otherwise.

(5) *Motions Exempt from Civil Rule 7.1 (c).* *This rule does not apply to motions concerning habeas corpus or in cases with one of more pro se plaintiffs or a sole pro se defendant, motions seeking expedited relief, motions in limine, and any motion enumerated in Rule 4(a)(4) of the Appellate Rules.*

(d) *Contested Motions Not Covered by Civil Rule 7.1(c).* *All of the requirements of Civil Rule 7.1(c) apply with the following exceptions: (i) an original and one copy of all papers are to be filed with the clerk of the Court, by the party filing same, at the time said papers are served upon the parties and (ii) no notice of filing need be filed with the Court.*

Changes to remaining sections would include: Delete subsections (c) Proposed Orders, (d) Briefs, (e) Time for Response, (f) Reply Briefs, and (g) No Oral Argument. These are covered in new subsection (c). Change subsection (h) to (e).

C. Summary Judgment Motions

The Committee believes that delays occur in processing motions for summary judgment because of the failure of motions and responses to join issues in meaningful ways. Therefore, the Committee recommends that Civil Local Rule 56 be revised as follows:

- (a) *Motions.* Any motion for summary judgment shall include the following:
 - (1) a concise statement of the elements of the claim or defense on which summary judgment is sought;
 - (2) if the movant bears the burden of proof, a concise statement of the undisputed material facts that establish each element;
 - (3) if the movant does not bear the burden of proof, a concise statement of the undisputed material facts showing why the non-movant cannot establish the elements.
- (b) *Responses.* A responding party shall set forth a concise statement of why there is a disputed issue for trial.
- (c) *General Requirements.* All motions and responses must be accompanied by a memorandum of argument and authorities. All material facts in support of or in opposition to the motion shall be numbered and shall refer to those portions of the record before the court on which the party relies. Any request for additional time for discovery shall contain a concise statement of the discovery needed to respond to the motion. No motion for summary judgment may be filed within 45 days of the trial date then scheduled in the particular case.

D. World Wide Web Home Page for the Court

The Committee recommends that the Court approve a Home Page on the World Wide Web which would include the following:

1. General Information

- a. Public Office Hours;
- b. Federal Holidays;
- c. Court Addresses;
- d. Court Telephone Directory;
- e. List of Counties Served;
- f. Attorney Admission Forms and Procedures; and
- g. Certificates of Good Standing.

2. Forms and Publications

- a. Local Court Rules;
- b. The Civil Justice Expense and Delay Reduction Plan;
- c. The *Dondi* Opinion; and
- d. Select Forms (e.g., Notice of Lawsuit and Request for Waiver of Service of Summons, Notice of Deficiency, Miscellaneous Order #29, Writ of Execution).

3. Services

- a. Public Access to Court Electronic Records (PACER);
- b. Imaging Faxing Service (IFS);
- c. Federal Records Center (FRC);
- d. Copy Services; and
- e. Document Certification.

4. Jury

- a. Payment;
- b. Information on Employment Protection; and
- c. Common Questions.

5. Employment

- a. Position Announcements;
- b. Application Forms; and
- c. Information on Benefits.

6. Judicial Biographies

- a. Law School;
- b. Previous Experience; and
- c. Years on the Bench.

E. Timed Trials

The Court asked the Committee to comment on their experiences with “timed” trials. In response, the Committee would like to provide both examples of experiences and recommendations.

Certain members reported that they had good experiences with timed trials, most particularly where:

1. the judge had given advance notice that the trial would be timed;
2. the judge worked with the attorneys to reach time allocations that were reasonable in light of the particularities of the specific case; and
3. the time allocation was done in such a manner that each party was given a specified allotment of time, with all time taken by that party or his counsel being counted against that time allotment.¹

Certain members also reported that they had had negative experiences with timed trials. In one example, the time requirements were announced on the first day of trial without input of counsel and without regard for the particular needs of the case. In another, the Court not only imposed time requirements, but dictated the order of the

¹ By way of example, if Defendant "Smith" were allotted 30 hours, then any time taken by Smith's counsel on direct examination of Smith's witnesses, cross examination of adverse witnesses, objections and arguments to the Court would be counted against the 30-hour allotment.

party's witnesses. In another case, a party brought 27 witnesses to Court, but the Court only allowed 8 witnesses to testify. In such circumstances, the litigants may conclude that the system works unfairly. Furthermore, to the extent that such procedures may be challenged and/or reversed on appeal, they may ultimately lead to delay.

The Committee recognizes and appreciates the efficiencies and cost savings that can be achieved by timed trials. However, the Committee is also concerned that, if not done correctly, the timing of trials can lead to public dissatisfaction with the judicial system and further delay. The Committee recommends where the trial is to be timed, that:

1. the Court announce, in advance of the due date of the pre-trial order, that the trial will be timed;
2. the parties provide, through agreement or separate proposals, suggestions on reasonable time requirements;
3. the Court, based upon the suggestions of counsel, determine the time limitations to be imposed at trial; and
4. the Court announce in the pre-trial order or another order, no less than seven days before trial, the time limitations to be imposed at trial.

The Committee believes that the foregoing recommendations will achieve the efficiencies sought by timed trials while preserving the public trust in the judicial system and avoiding the cost and delay of challenges to timed procedures.

F. Future of the Committee

CJRA Advisory Groups will be abolished on December 1, 1997, when the CJRA sunsets. The Committee understands from the judges that the Committee's input, provided since 1992, has been valuable and that the judges are interested in providing a mechanism for future dialogue. Accordingly, the Committee recommends that the Chief Judge appoint a district-wide liaison committee comprised of attorneys throughout the district and that the committee meet periodically to 1) review the procedures of the United States District Courts of the Northern District, and 2) provide an annual report with suggestions on how to further the goals of the Civil Justice Reform Act.

G. Note of Appreciation

Finally, the Committee wishes to acknowledge and thank Nancy Doherty, Clerk of Court and the Committee's reporter, Ann Collins, Mike O'Brien, and Karen Mitchell, without whose valuable assistance our work could not have been done.

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