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May 18, 1992

The Honorable Barefoot Sanders
Chief Judge
United States District Court
Northern District of Texas
1100 Commerce Street, No. 15D28A
Dallas, Texas 75242

Re: Report, Civil Justice Reform Act of 1990 Advisory Committee, Northern District of Texas

Dear Judge Sanders:

On behalf of the Advisory Committees from the Dallas, Fort Worth and West Texas Divisions of the Northern District, I am pleased to present you our combined report. I know you are aware the Committee took its responsibility seriously and considerable effort went into the preparation of the report.

While many committee members made outstanding contributions throughout the process, I would be remiss if I did not single out Nancy Doherty for special commendation. She certainly earned the respect of us all for her dedication to this project.

As the report concludes, litigants in the Northern District of Texas do not experience excessive delays that often occur in other districts. The Committee believes this is largely due to the exceptional quality of our judiciary. But we do hope our recommendations will assist the Judges provide an even better federal civil justice system for those who use it.

Although the delivery of this report completes our assignment, we are available to help in whatever way is useful in developing the Cost and Delay Reduction Plan required by the Act.

Respectfully yours,

Darrell Jordan

Darrell E. Jordan

DEJ/jw.2300
cc: United States District Judges, Northern District of Texas
United States District Magistrate Judges, Northern District of Texas
Members of the Advisory Committee

United States District Court
Northern District of Texas

Nancy Doherty
Clerk of Court

1100 Commerce Street
Dallas, Texas 75242

June 11, 1992

Mr. Abel Mattos
Court Administration Division
Administrative Office of the U. S. Courts
1120 Vermont Avenue NW
Washington, DC 20544

SUBJECT: CIVIL JUSTICE REFORM ACT ADVISORY COMMITTEE REPORT FOR THE NORTHERN DISTRICT OF TEXAS

Dear Abel:

Enclosed is a copy of the CJRA Advisory Committee Report for the Northern District of Texas. The report has been given to the court but at this time no action has been taken on a plan. Chief Judge Sanders has briefly discussed this matter with the court and will appoint a committee soon.

Please let me know if you have any questions.

Sincerely,

Nancy Doherty

Enclosure

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Civil Justice Reform Act Advisory Committee Report

May 7, 1992

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The Advisory Committee has not found "excessive" delay associated with the federal civil and criminal dockets in the Northern District of Texas. Rather, the Committee finds that the performance of the Dallas, Fort Worth, and West Texas (i.e., Abilene, Amarillo, Lubbock, San Angelo, and Wichita Falls) Divisions generally is very good, in terms of effectively allocating limited judicial resources and timely responding to the needs and desires of litigant, lawyer, and judge alike. However, from the litigant's perspective, all Divisions experience more cost and delay than is believed either necessary or desirable in federal civil litigation. All Divisions, too, can benefit from implementing and uniformly enforcing a Civil Justice Expense and Delay Reduction Plan ("Plan") which aims to alleviate or, at least, to reduce resistant bastions of cost and delay which hamper our federal dockets.

The Advisory Committee has assembled and analyzed a broad array of statistics that reflect and measure the various demands made upon the Court's resources and facilities, and the resulting condition of our dockets. The Committee has studied and evaluated the number and types of cases filed, pending and terminated; case durations from the time of filing to docket call, to resolution and termination; and the performance and practices of district judges, magistrate judges, practicing and staff attorneys, and court personnel.

The diagnoses offered in the Report and the prescriptions proposed in the report are the result, in part, of coordinated, comprehensive, face-to-face interviews and discussions with individual district and magistrate judges, as well as litigants and practicing attorneys.

Each interview was conducted along structured lines by members of the Advisory Committee. Moreover, the broad spectrum of interests and experience represented by the Advisory Committee's members, as well as its members' efforts to solicit and report to the Committee the observations, criticisms, and recommendations of their colleagues, should help ensure both the relevance of this report and the practicality and acceptability of the Plan.

Importantly, to give but one example, the Advisory Committee's interviews validated results obtained elsewhere: by and large, lawyers want judges to be more aggressive in disposing of pending motions and promoting settlement prospects which favorably impact cost and delay considerations. Judges appear to be stepping more willingly into the desired role of active judicial management.[1] The Advisory Committee firmly supports the adoption of Local Rules and initiatives to facilitate this transition to a more efficient, "hands-on" approach to judicial management.

Nevertheless, all of the Divisions report that certain aspects of federal civil litigation are unduly expensive and time-consuming. In general, the Advisory Committee finds that the principal causes of avoidable costs and delay are attributable to:

- delays in filling judicial vacancies;

[1] See Miller, The Advisory Systems: Dinosaur or Phoenix, 69 Minn. L. Rev. 1, 21 (1984); see also, Peckham, Judicial Response to the Cost of Litigation: Case Management, Two-Stage Discovery Planning, and Alternative Dispute Resolution, 37 Rutgers L. Rev. 253, 253-59 (1985).

- the dramatic rise in criminal prosecutions and filings; the alarming federalization and preemption of state causes of actions and state crimes; expansion in the types of federal crimes imposing capital punishment; and the unintended consequences of imposing uniform minimum sentencing guidelines;

- sub-optimal utilization of magistrate judges, both to limit discovery use and control its abuse and, to supervise and entirely determine certain types of cases when all parties so agree;

- a sporadic approach to referring suitable cases for alternative dispute resolution;

- as noted above, non-uniform court practices that frustrate a more efficient, judicial "hands-on" approach to case management and inhibit otherwise efficient, ministerial communications between counsel and law clerks;

- abusive discovery practices.

I INTRODUCTION

This report is the product of the Civil Justice Advisory Committee for the Northern District of Texas, the members of which were appointed by Chief Judge Barefoot Sanders pursuant to his responsibility under the Civil Justice Reform Act of 1990. The Act is a significant legislative effort by the Congress to attempt to reduce unnecessary cost and delay in civil litigation in the federal courts. The ultimate goal of the Act is for each United States District Court to develop a plan to reduce cost and delay.

The recommendations contained in this report have been submitted to the Judges of the Northern District of Texas to assist in the development of a "civil justice expense and delay reduction plan". These recommendations include proposed local rules and procedural changes. The plan will be reviewed by all of the Chief District Judges in the Fifth Circuit and the Chief Judge of the Fifth Circuit. Following their approval, the plan will be sent to the Judicial Conference of the United States for their review and approval. The final plan must be approved and ready for implementation no later than December 1, 1993.

The Northern District of Texas is an expansive and diverse jurisdiction which covers 100 counties and includes 7 divisions. For these reasons, this district utilized a unique approach to comply with the Civil Justice Reform Act requirements. This district is the only one in the country with multiple advisory committees. Chief Judge

Sanders appointed three separate committees; one for the Dallas Division, one for the Fort Worth Division, and one for the West Texas divisions (Abilene, Amarillo, Lubbock, San Angelo, and Wichita Falls). Each committee submitted a report with recommendations which were then melded together by the Dallas Committee into one report for the entire district. A drafting committee composed of Darrell Jordan, Nancy Doherty, Robin Hartmann, and Terry Oxford, undertook and accomplished this important task. With significant input from Robert Travis representing the Fort Worth Committee and Charles Watson representing the West Texas Committee, the Dallas Committee debated, revised, and ultimately adopted this report. The three advisory committees will be referred to, collectively, as the Advisory Committee.

The membership of the Advisory Committee included people with a variety of backgrounds and affiliations. Each member was selected for his or her unique perspective in the civil justice system. A list of the members of the Advisory Committee can be found in Appendix A. There were also two *ex officio* non-voting members appointed to assist the Committee. Magistrate Judge William Sanderson, Jr., who has served in his position for over 13 years, provided invaluable guidance to the Committee; Nancy Doherty, Clerk of Court, served as the Committee's reporter and was responsible for preparation of the docket assessment portion of the report, compiling information, and the preparation of the final report. The Committee also wishes to express its appreciation to two staff members of the Clerk's office.

Mike O'Brien, Assistant Administrative Manager and former CJRA Analyst has been very involved in the preparation of this report. Also, Ann Collins, current CJRA Analyst has been very helpful. The Committee wishes to express its gratitude to each for their dedication to this project.

II DESCRIPTION OF THE COURT

The United States District Court for the Northern District of Texas serves a 100-county area in northern and western Texas that encompasses a population of over four million people. Dallas is the headquarters office for the district, and divisional offices have been established in Abilene, Amarillo, Fort Worth, Lubbock, San Angelo, and Wichita Falls. Court is held in each of these divisions.

As previously discussed, the Northern District of Texas is a large and diverse jurisdiction, serving both urban and rural counties. The Dallas-Fort Worth metropolitan area is one of the most populous in the country. In addition to serving one of the nation's largest urban areas, the district's jurisdiction extends all the way to the Texas borders with Oklahoma and New Mexico. The approximate distances from the Dallas headquarters to the divisions are*:

Amarillo	-	359 miles
Lubbock	-	318 miles
San Angelo	-	250 miles
Abilene	-	180 miles
Wichita Falls	-	144 miles
Fort Worth	-	35 miles

* It should be noted that there are no direct commercial flights between most of the divisions outside of Dallas.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Civil Justice Reform Act
Advisory Committee
Report

May 7, 1992

The district has twelve authorized district judgeships. Eight of these twelve judgeships are assigned to the Dallas Division. Two of those judgeships are currently vacant. The Dallas Division is served by three full-time magistrate judges. The Fort Worth Division is assigned two district judges and one full-time magistrate judge. In addition, two senior judges are located at the Fort Worth Division (one of these judges handles the Wichita Falls docket). One district judge serves the Amarillo Division; another district judge serves Abilene, Lubbock, and San Angelo. A senior judge is also located at the Lubbock Division and handles the San Angelo civil docket. The Amarillo and Lubbock divisions each have one full-time magistrate judge, while one part-time magistrate judge is located at each of the Abilene, San Angelo, and Wichita Falls divisions.

There are seven permanently staffed divisional Clerk's offices in the Northern District of Texas. Also, the divisions at Abilene, San Angelo, and Wichita Falls lack separate Bankruptcy Clerk's office facilities and must handle original bankruptcy petitions in addition to their civil and criminal caseload. The district's most recent allocation of 85 and one-half authorized deputy clerk positions is as follows: Abilene (2 full-time), Amarillo (5 full-time), Dallas (59 full-time), Fort Worth (11 full-time, 1 part-time), Lubbock (5 full-time), San Angelo (1 full-time, 1 part-time), Wichita Falls (1 full-time, 1 part-time). To meet the authorization level set by the Administrative Office of the United States Courts, the district may lose at least three of these positions through attrition in 1992.

III ASSESSMENT OF THE CONDITIONS IN THE DISTRICT

A. Condition of the Docket

Members of the Advisory Committee interviewed judges and court staff throughout the district and reviewed statistical data for the period 1986-1991. The data and comments of judges and their staff support the conclusion that by far the greatest impact on the civil docket is the increase in attention required to handle criminal cases. This is a problem which the Civil Justice Reform Act fails to address. It appears that the impact of the criminal docket on disposition of civil cases will increase in the next several years, particularly if Congress passes proposed legislation federalizing traditionally state criminal offenses. With respect to the civil docket and the flow of cases, the Committee found in discussions with the judges and practicing federal court attorneys that the performance of the district's judges has been outstanding. There are obviously exceptions, but cases move through the system in an expeditious manner and despite isolated complaints, the civil justice system seems to be working well.[1]

The Court's Dondi opinion was intended to have a salutary effect on pretrial disputes, although abuses still exist. The full text of the Dondi opinion, July 14, 1988, is contained in Appendix B. In Dondi, the en banc United States District Court for the Northern District of Texas adopted standards of litigation conduct that apply to

[1] This is despite an acute shortage of authorized judges. The Dallas Division has generally worked at least one judge short since 1982, and until Judge Solis was recently sworn in, the division was three judges short.

civil cases. The Court determined that incivility among litigators had resulted in excessive litigation costs and unreasonable delay in reaching the merits of civil cases. The Court adopted eleven guidelines that it derived from the Dallas Bar Association's *Guidelines of Professional Courtesy and Lawyer's Creed.* Violators of the standards are subject to monetary and non-monetary sanctions. The standards are intended to reduce unnecessary litigation costs and activities that contribute to delay.

A common theme found in the attorney interviews and expressed by some judges was the positive effect reasonable access to the judges or law clerks can have on the movement of civil cases.[2] Magistrate judges can be used for trial of shorter cases. Many of the judges view this as a matter of educating the bar. Civil cases are also expedited by face-to-face meetings of lawyers and clients (i.e. preliminary case analysis plus report to the Court, settlement and pre-trial order).

1. The Present State of the Docket

All statistical data used in analyzing the Court's docket can be found in the charts in Appendix C.

a. Median Times

In 1990, the median time from filing to disposition for civil cases was 8 months, which ranked fifteenth (15th) among the 94 U.S. District Courts, 1 month faster than the national average of 9 months.[3] Although this measure ranks in the

[2] Not only have we had a shortage of judges, the judges in this district have carried a very high weighted caseload, as described in subsequent sections of this report.

[3] 1990 Federal Court Management Statistics, prepared by the Administrative Office of the United States Courts.

upper one-sixth of federal courts, the delay from issue (the time when an answer is filed) to trial is considerably longer. The median time from issue to trial for civil cases in the Northern District of Texas was 17 months, which ranked fiftieth (50th).

Excluding land condemnation cases, prisoner petitions, and deportation reviews, the district had an even faster median disposition time of 7 months, compared with a national average of 8 months.[4] An analysis of civil median disposition times by the nature of the suit in 1990 displays that in most categories of filings, the Northern District of Texas performed better than the national average (See **CHART 1: MEDIAN TIME INTERVALS IN MONTHS FROM FILING TO DISPOSITION OF CIVIL CASES TERMINATED IN STATISTICAL YEAR 1990**). The district processes most antitrust and tort actions rather quickly. There were, however, several suit categories in 1990 in which the median disposition times in this district exceeded the national average. These categories included:

UNITED STATES CASES
Contract Actions, Real Property, and Tax Suits

FEDERAL QUESTION
Real Property, Civil Rights, Fair Labor Standards Act, Labor Litigation, Patent, and Trademark

DIVERSITY OF CITIZENSHIP
Contract Actions and Motor Vehicle Personal Injury

[4] Statistical Data for the Northern District of Texas, prepared by Administrative Office of the United States Courts, Statistics Division.

In criminal matters, the median disposition time for felony cases in 1990 was 5.1 months, which ranked thirtieth (30th) among the 94 U.S. District Courts. Over a five-year period, criminal median disposition times increased 45.7%, from the 3.5 month measure in 1986. This trend has also occurred in many other jurisdictions across the country. Even with the increase in the disposition time, the Northern District of Texas compares favorably against other courts of similar size (See **CHART 2: UNITED STATES DISTRICT COURTS COMPARABLE IN NUMBER OF JUDGES AND/OR NUMBER OF TOTAL FILINGS, TRENDS IN CRIMINAL MEDIAN DISPOSITION TIMES (MONTHS) STATISTICAL YEARS 1986-1990).**

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 1990, the Northern District of Texas had a weighted caseload per authorized judgeship of 577. This was the eleventh (11th) highest average in the country and indicates a disproportionate share of difficult and complicated cases. This district has consistently possessed heavy weighted caseloads and in 1989 ranked as high as fifth (5th) in that workload measurement category (out of 94 District Courts). It should be noted that despite the relatively high weighted caseload, the Northern District of Texas was ranked seventh (7th) in the nation for number of terminations per judgeship in 1990.

c. Civil Caseload Mix

Civil case filings may be analyzed for complexity by broad category. Type I civil cases are usually handled in a somewhat routine manner (student loan collection cases, habeas corpus petitions, bankruptcy court appeals, etc.). Type II cases follow varied paths to disposition and may require special handling (tax, patent, labor law, personal injury, etc.). The Northern District of Texas has a higher percentage of Type II cases than the national average. For example, Type II cases constituted 70.7% of the civil caseload for this district in 1990, while these cases have accounted for approximately 60% of national civil filings over the past ten years. The Dallas Division appears to have a higher concentration of Type II filings in comparison to the other divisions in the district (See **CHART 3: NORTHERN DISTRICT OF TEXAS, DISTRIBUTION OF CASE FILINGS BY BROAD CATEGORY, STATISTICAL YEAR 1990**). In 1990, the more complex Type II filings contributed to 73.7% of the total civil caseload in the Dallas Division and averaged 65.3% for the other divisions. The percentage of Type II case filings has significantly increased from the 57.1% ratio in 1986 (See **CHART 4: NORTHERN DISTRICT OF TEXAS -DALLAS DIVISION, DISTRIBUTION OF CASE FILINGS BY BROAD CATEGORY, STATISTICAL YEARS 1986-1990**). It seems that complex cases are becoming an increasing portion of the civil caseload for the district, particularly in the Dallas Division.

d. Trials And Trial Hours

From 1985 to 1990, while the total number of trials conducted per year dropped from 402 to 382, the reduction was entirely in civil trials. Civil trials (319)

accounted for nearly 80% of all trials in 1985, but accounted for only 56% (212) in 1990. This represents a 34% reduction in the number of civil trials. Over the same period, the number of criminal trials conducted increased from only 83 in 1985 to 170 in 1990. This reflects an increase of 105% in the number of criminal trials conducted annually.

While the total number of trials decreased between 1985 and 1990, the total number of trial hours increased by 27% from 4,344 to 5,518. During this five year interval there was a 14% decrease in civil trial hours from 3,137 to 2,700. Criminal trial hours, however, increased 133% from 1,207 to 2,818 during the same period. **By 1990, criminal trial hours had begun to constitute a majority of judicial trial hours at 51%.**

e. Age of Pending Caseload

As of June 30, 1990, the Northern District of Texas had 296 pending three-year-old cases, representing 5.8% of the total pending civil caseload (42nd out of 94 District Courts). This displays a **net decrease of 31 three-year-old cases** from the previous year. In 1990, the national average percentage of cases pending over 3 years was 10.4%. As of the writing of this report, the Court had reduced the number of these cases to 241. In comparison to the national average and to other courts of similar size, the Northern District of Texas has a relatively small percentage of three-year-old pending cases (See: **CHART 5: UNITED STATES DISTRICT COURTS**

COMPARABLE IN NUMBER OF JUDGES AND/OR TOTAL NUMBER OF FILINGS, CIVIL CASES PENDING OVER THREE (3) YEARS AS OF JUNE 30, 1990).

f. Life Expectancy of Civil Cases

Life expectancy is an important consideration when analyzing the age of cases terminated. Case life expectancy is a predictor of the length of time for a new case to progress from filing to termination. The national average for time to disposition in United States District Courts is approximately 12 months. The life expectancy for new cases in the Northern District of Texas has remained close to that average throughout the last decade. There is, however, some variation in the life expectancy of cases when time to disposition is isolated by division (See **CHART 6: NORTHERN DISTRICT OF TEXAS, LIFE EXPECTANCY OF CIVIL CASES BY DIVISION, STATISTICAL YEARS 1981-1990**). The life expectancy of civil cases in the Fort Worth Division is slightly longer than the rest of the district. This slower case processing may be the result of the division's high percentage of criminal cases, which consume the Court's resources that otherwise would have been available for the civil caseload.

2. Trends in Case Filings

a. Civil Caseload

Nationwide civil filings have declined since 1986 due to the dramatic reduction in government recovery filings. In the Northern District of Texas these filings have declined from a high of 1,649 cases in 1986 to only 300 in 1990. Because of this

decline total civil filings in the Northern District of Texas reflect a decrease from 5,450 in 1986 to 4,962 in 1990. However, when simple and routine government recovery cases are excluded, the district saw an increase of 22.7% for the period 1986 to 1990. For that five-year period, the district experienced a steady increase in civil filings (except for a slight decline due to the change in diversity jurisdiction in 1989). In 1989, the amount-in-controversy in diversity cases was raised from $10,000 to $50,000, resulting in a decline in diversity case filings from a high of 1,763 cases in 1987 to 1,027 cases in 1990. Based upon the increase in civil filings during 1991, this trend seems to have leveled out and diversity filings are increasing. Several important categories of civil suits have either increased or remained relatively stable. These are contract cases, prisoner petitions and civil rights cases.

(1) Contract Cases

The largest category of civil cases for the Northern District of Texas is that of contract filings. These relatively complex cases have consistently made up a significant portion of the civil caseload for this district (See **CHART 7: NORTHERN DISTRICT OF TEXAS, CONTRACT FILINGS v. TOTAL CIVIL FILINGS, STATISTICAL YEARS 1986-1990**). Since 1987, contract cases have constituted between 24% and 31% of civil filings. Although there has been a drop in the percentage of contract cases since 1989, this might be attributable to the increase in the amount-in-controversy requirement for diversity jurisdiction. The high volume of contract cases in this district constitute a more substantial segment of the overall civil caseload for the

Northern District of Texas than many other courts of similar size (See **CHART 8: UNITED STATES DISTRICT COURTS COMPARABLE IN NUMBER OF JUDGES AND/OR NUMBER OF TOTAL FILINGS, TRENDS IN CONTRACT SUIT FILINGS, STATISTICAL YEARS 1986-1990**).

(2) Prisoner Petitions

The second largest category of civil case filings for the Northern District of Texas includes prisoner petitions. From 1986 to 1990, the number of prisoner petitions filed increased by 48.9% from 552 to 822 (See **CHART 9: UNITED STATES DISTRICT COURTS COMPARABLE IN NUMBER OF JUDGES AND/OR NUMBER OF TOTAL FILINGS, TRENDS IN PRISONER PETITION FILINGS, STATISTICAL YEARS 1986-1990**). This increase may be attributable to increasing prison populations.

(3) Civil Rights Cases

The third largest category of civil cases for the Northern District of Texas involves civil rights filings. The number of annual filings in this category has remained relatively stable over the past few years at approximately 480 cases. It appears that this district has more of these complex cases than many other courts of similar size (See **CHART 10: UNITED STATES DISTRICT COURTS COMPARABLE IN NUMBER OF JUDGES AND OR/NUMBER OF TOTAL FILINGS, TRENDS IN CIVIL RIGHTS FILINGS, STATISTICAL YEARS 1986-1990**).

b. Criminal Caseload

The criminal workload has become an increasing drain on judicial resources. Although annual criminal felony case filings (between 600 and 700) and defendants filed (between 900 and 1000) have remained relatively stable until recently, the total number of hours devoted to criminal trials has increased significantly. From 1986 to 1990 there was a steady increase in both the number of criminal trials and in criminal trial hours (See **CHART 11: NORTHERN DISTRICT OF TEXAS, TRENDS IN CRIMINAL CASEFLOW, STATISTICAL YEARS 1986-1990**). This increase in criminal workload has paralleled an increase in the criminal median disposition times. Most likely, the criminal cases that fail to settle before trial tend to be more complex, resulting in longer trials. It should also be noted that the sentencing guidelines of the Sentencing Reform Act of 1984 now apply to all federal offenses committed after November 1, 1987. The judges interviewed believe these guidelines have had an impact on the length of criminal dispositions and increased trial hours.

The largest category of criminal felony cases for the Northern District of Texas is comprised of fraud filings (24.7% of criminal cases filed in 1990). Fraud prosecutions reached a peak of 204 case filings in 1987. Drug cases make up the second largest group of case filings (marijuana & controlled substances, and narcotics). In 1990, the district's 110 drug cases constituted 16.1% of criminal filings. Since 1986, forgery and counterfeiting filings have steadily decreased. On the other hand, during the same period prosecutions for both immigration, and weapons

& firearms offenses have expanded into larger segments of the criminal caseload (See **CHART 12: NORTHERN DISTRICT OF TEXAS, TRENDS IN CRIMINAL FILINGS, STATISTICAL YEARS 1986-1990).**

Another aspect of the criminal workload that deserves analysis concerns the trends in the number of defendants filed by case type. It is common for drug cases, especially those related to importation and distribution, to have multiple defendants. For the Northern District of Texas, the largest clusters of defendants contain those prosecuted for drug offenses and fraud. In 1990, the district's 262 drug defendants constituted 26.2% of criminal defendants charged. The district's 225 defendants charged with fraud constituted 22.5% of defendants in 1990. Other significant defendant categories include larceny, weapons & firearms, and immigration (See **CHART 13: NORTHERN DISTRICT OF TEXAS, TRENDS IN NUMBER OF DEFENDANTS FILED PER OFFENSE CATEGORY, STATISTICAL YEARS 1987-1990).**

Of particular concern, as of the writing of this report, is the dramatic increase in the number of criminal filings for the first three months of 1992 compared with the district's past experience. Between January and March of 1992, the number of criminal cases filed was approximately 63% higher than in 1991, (288 cases compared to 177 cases). The number of defendant filings showed a similar increase. Defendant filings increased from 258 in the first three months of 1991 to 390 in the first three months of 1992, an increase of 51%. The creation and continued growth of the Bank Fraud Task Force and the large increase in the number of assistant United States

attorneys from 35 in 1986 to 68 in 1991 (a 94% increase), correlates directly with the trend of increased criminal filings.

3. Trends in Court Resources

a. District Court Judges

In recent years, this district has consistently maintained high national rankings for weighted caseload per judgeship. While carrying such a heavy workload, the district has experienced a serious problem regarding judicial vacancies. **From 1986 to 1990, there were 44 total vacant judgeship months. In 1990, two additional judgeships were authorized but not filled, resulting in 39.2 vacant judgeship months for Statistical Year 1991.** These vacancies translate to almost 7 years of judge time for the 6-year period. As of the writing of this report, the President has made one nomination, but the district still projects 24 vacant judgeship months for Statistical Year 1992 or almost 9 years of judge time in a 7-year period.

Even with the addition of two judgeships, the Northern District of Texas still ranked twelfth (12th) in the country in weighted caseload per authorized judgeship in 1991. Utilizing a formula to calculate the estimated impact of vacant judgeship months, an assessment of available judge power can be determined (See **CHART 14: NORTHERN DISTRICT OF TEXAS, JUDICIAL WORKLOAD PROFILE**). For several years, the judges in this district have been handling a workload that significantly exceeds the recognized standard of 400 weighted cases per judgeship. Despite the

vacancy situation, the judges have managed to process cases efficiently. It should be noted that in 1991, the district achieved a ranking of tenth (10th) in the nation for terminations per authorized judgeship in a year during which 39.2 vacant judgeship months occurred.

Judicial vacancies have resulted in a disproportionately heavy caseload for the Northern District of Texas. The actual number of filings per judge was 599 cases in 1991, compared with the national average of 372. It was only through the noteworthy effort of the judges in terminating 664 cases per judge that the district was able to keep up with the pending caseload, (as compared with the national average of 371 terminations per judgeship in 1991). Such a high case termination rate is significant, especially when the district's high weighted caseload is considered. This district had 619 weighted filings per actual active judge in 1991, compared with a national average of 386 weighted filings per authorized judgeship.

Given the exceptional productivity and efficiency of the judges in this district, it is likely that 12 district judges are sufficient. However, because the Court has seldom operated at full capacity and is experiencing a tremendous growth in the criminal caseload, the Advisory Committee cannot state with full assurance that 12 is an adequate number of judges.

b. Senior Judges

The Northern District of Texas currently has three senior judges. These senior judges have provided valuable assistance in processing a significant percentage of the district's caseload. In 1991, senior judges terminated 475 student loan cases, 992 miscellaneous civil cases, and 180 criminal cases, or 28.3% of the total cases terminated.

c. Magistrate Judges

As previously discussed in the introduction, the Northern District of Texas is served by a total of six full-time and three part-time magistrate judges. Because of judicial vacancies, the number of magistrate judges has been adequate to assist the current number of district judges. However, once the vacant judgeships are filled, the Court will need an additional magistrate judge in Dallas. Anticipating this need, the Court recently approved a request to add this position in the Dallas Division. An official request is being prepared for submission to the Magistrate-Judges Division at the Administrative Office of the United States Courts. Preliminary discussions with this office indicate that the Court can expect approval of this request. However, funding will not be available before Fiscal Year 1994 (October 1, 1993).

The magistrate judges serve the Court by processing all petty offenses, preliminary felony matters, and certain pre-disposition civil and criminal matters.

Clerk's office could not compete with the private sector in Dallas and Fort Worth in recruiting and retaining employees. Therefore, turnover has been very high. Because the positions in the Clerk's office require extensive training, the high level of turnover has had a negative impact on the ability of the staff to keep up with the increasing workload. Even though most of the Clerk's operations are now automated, the increase in workload has outstripped any increase in productivity. To meet the current standards of quality set up in the Clerk's office, the Clerk estimates that her staff should be expanded by at least 11 positions.

e. Law Clerks and Staff Attorneys

Each active judge (except for the Chief Judge) has two law clerks; the Chief Judge has three. Each full-time magistrate judge is assigned one law clerk. On several occasions in the past, additional law clerks have been assigned to assist judges on a temporary basis. Because of the heavy caseloads of the Dallas judges, this additional assistance has been essential.

Two full-time staff attorneys are employed at the Dallas Division of the Clerk's office to assist the Court. The staff attorneys are responsible for the review of pro se cases filed with the Court as well as motions for leave to proceed in forma pauperis and advising the Court as to the appropriate disposition of those matters. As directed by the magistrate judges, the staff attorneys conduct legal research and prepare draft reports and recommendations for approval and entry in pro se cases. In addition, the staff attorneys assist the deputy clerks in their dealings with pro se

litigants and respond to inquiries from such persons. Currently, there are no staff attorneys to provide these services to the Fort Worth or West Texas divisions. The Clerk is exploring alternative use of the existing positions to aid the magistrate judges in these divisions.

f. Probation Officers

Due to the impact of increasing criminal filings on the workload of the Court, the role of the probation officer warrants attention. The work measurement formula for the probation offices has recently been revised, resulting in an additional allocation of 22 officers since 1986. However, funding is not yet available to provide for full staffing. Generally, judges have been satisfied with the number of officers assigned court responsibilities. Nevertheless, the scope of the work that is assigned probation officers has been expanded significantly in recent years. Probation officers' duties now include electronic monitoring, enhanced supervision, and complex calculations required by sentencing guidelines.

g. Facilities

The lack of adequate facilities has been an on-going problem in the Northern District of Texas for several years. Of particular concern, is the lack of courtrooms and chambers for recently authorized judges, senior judges, and visiting judges.

Fort Worth. There is a critical shortage of courtroom space in the Fort Worth Courthouse. Currently, five judicial officers share three courtrooms, one of which is

designed for use by the magistrate judge. Two full-size courtrooms and chambers are in need of substantial repair. Also, the amount of space in one of the chambers is inadequate, but no funding is available to add space and make appropriate renovations. An additional courtroom is currently under construction. A fifth courtroom is still in the planning stages, and cannot be constructed until other offices are relocated. The space provided for the Clerk's office is woefully inadequate. Although plans have been drawn, no funding is yet available to relocate the Clerk's office to space vacated by the United States Attorney.

Dallas. There is currently one small hearing room and one small judge's chambers available for use by visiting judges. Facilities have not yet been completed for the two vacant judgeships. However, three additional courtrooms are planned for the Dallas Courthouse. Construction will begin this summer on a courtroom on the 13th floor. Two additional courtrooms have been designed for the 16th floor, with one scheduled for construction in late 1992. The other cannot be built until the United States Attorney's office is relocated, a move estimated to take another year. This third courtroom is planned for use by a senior judge or visiting judge.

Lubbock. There are two resident district court judges in Lubbock, but only one full-size courtroom. These two judges and the magistrate judge must coordinate schedules to share their two courtrooms. The magistrate judge's courtroom, is located on a different floor. The long-range facility plan provides for an additional courtroom near the two judges' chambers and relocation of the magistrate judge to the same

floor. The Clerk's office has outgrown its space. The long-range plan also provides that the Clerk's office be relocated to larger quarters on the same floor. Since there are no special facilities for jurors, a small jury assembly room is also part of the plan. The Lubbock Division is currently undergoing an asbestos abatement program which precludes any space alterations until its completion.

Amarillo. There are no facilities for visiting judges in this division. Planning is under way to build a senior judge's chambers and a full-size courtroom. The space deficiencies of the Clerk's office and jury facilities are similar to that of Lubbock. This office will be located on the first floor as part of the renovation work associated with building the new chambers and courtroom. A small jury assembly room is also planned.

Abilene, San Angelo, and Wichita Falls. Generally, these chambers and courtrooms are adequate. There are severe acoustical problems in the Abilene courtroom, however. Funding has been requested, but none provided to fix the problems. Also, the Wichita Falls courtroom is in need of repair, caused by water damage. This repair is not scheduled until Fiscal Year 1994.

h. Automation

Over the past two years the Northern District of Texas has made a successful transition from manual docketing to electronic docketing for civil cases. The district implemented the Integrated Case Management System (ICMS) as an on-line electronic

docketing and case management system to replace various manual procedures. ICMS provides automated docket sheet maintenance, case status inquiry, document and deadline tracking; generates standard reports to assist in monitoring case activity and quality assurance. This UNIX based case processing system is designed to enable the docket clerks, courtroom deputies, and law clerks to perform their duties more efficiently. The system provides a means to locate documents and allow multiple users quick and convenient access to case information.

The Court has also made additional improvements to its automation capabilities. All judges, magistrate judges, and their staff in this district have access to personal computers for word processing and legal research (Lexis, Westlaw). The public and bar may now also inquire into case records through Public Access to Court Records (PACER). Chambers Access to Court Records (CHASER) is in the planning stages for implementation next year and is designed to allow the judges and law clerks to access case management information in chambers via the computer. In addition, electronic docketing and case management for criminal cases is currently being developed and is forecasted for implementation in late 1992.

B. Analysis of Cost and Delay

Recognizing that there are inherent costs and some delay in almost all litigation and lacking any established standards which identify and/or define "excessive" cost and delay, the Committee did not spend a great deal of time debating

this issue. The Committee did, however, identify several sources which clearly contribute to delay, and in many cases to the escalating costs of civil litigation. These sources are described below:

1. Criminal Docket

The primary source of delay is the burgeoning criminal docket throughout the district. This growth is caused by: 1) a national trend toward the federalization of the prosecution of an increasing number of crimes; 2) heightened enforcement of firearms prohibitions and drug prosecutions; 3) the Speedy Trial Act, 18 U.S.C. § 3161; 4) the Sentencing Reform Act of 1984; and 5) the establishment of the United States Sentencing Commission.

The federalization trend and heightened law enforcement activity has led to a 94% increase in the number of assistant United States attorneys in the district since 1986. There has also been a substantial enlargement of the staffs of federal law enforcement agencies in the district. A significant portion of the increase in criminal filings is due to the mandatory sentences provided for in federal weapons cases. Cases which were formerly filed in state court are now filed in federal court because of the stiffer penalties provided by federal law.

The Speedy Trial Act provides for specific time limitations for the filing of indictments and the commencement of trials in criminal cases. Because the consequences of not meeting such deadlines may result in the dismissal of the case,

judges must give preference to criminal cases over civil cases. The civil docket is adversely affected not only by the number of these cases, but by their complexity and corresponding increase in trial hours. The majority of criminal filings are comprised of complex conspiracy and bank fraud cases.

The Sentencing Guidelines that went into effect November 1, 1987, have greatly complicated the sentencing process. The Guidelines specify a step-by-step process to be followed in calculating a determinate sentence, taking into consideration pertinent factors including the nature of the offense, the defendant's role in the offense, any prior criminal records, and whether the defendant has accepted responsibility for his or her conduct. The limited amount of accumulated case law to resolve issues regarding the Guidelines further contributes to the drain on judicial resources. Additionally, several of the judges interviewed believed that the increase of criminal trials is attributable, in part, to the chilling effect the Sentencing Guidelines have had upon terminations of criminal proceedings through plea bargaining. Their view is supported by the fact that the amount of judge time devoted to criminal trials increased from 25% to over 50% of total trial time during a period when the number of criminal case filings remained fairly stable.

2. Legislation Affecting Civil Jurisdiction

Civil jurisdiction has been greatly expanded by the enactment of 195 statutes in the past 20 years. *See generally, Report of the Federal Courts Study Committee (1990).* In the Northern District of Texas, legislatively created cases filed pursuant to

the Employment Retirement Income Security Act of 1974, ("ERISA"), 29 U.S.C. §§1001-1461, Title IX of the Organized Crime Control Act, known as the Racketeer Influenced and Corrupt Organization Act ("RICO"), and the Financial Institutions Reform, Recovery and Enforcement Act of 1989, ("FIRREA") have had an enormous impact on our dockets' congestion.

Congress has not, however, considered the impact of these statutes on the court system. The expansion of federal civil jurisdiction and the increase in federal prosecution activity have distressed our already overburdened federal judicial system. Unless this increase in responsibilities is accompanied by an infusion of judicial resources, the administration of justice will surely be hampered.

3. Increases in Prisoner Petitions

Another area which has a significant impact on the Court's resources is the increase in prisoner petition filings. These habeas corpus and civil rights actions increased approximately 49% in the last five years. Because of the construction of new state prisons in the panhandle and western parts of Texas, further increases are expected for the Amarillo and Abilene divisions. These cases are typically referred to magistrate judges. They are very time consuming both for the Clerk's offices and for magistrate judges.

4. Judicial Practices and Adherence to Local Rules

A common problem throughout the district is the lack of uniform practices and procedures among the judges. Even though the Court has adopted local rules, there are many exceptions and the extra requirements of individual judges. This problem is particularly acute in the Fort Worth and Dallas Divisions where there are ten judges. For example, Local Rule 8.1(a) and (b) provide for the exchange of exhibits, lists of exhibits and witnesses and designation of portions of the depositions to be offered at trial all three days before trial. However, in one division there are three separate deadlines for filing similar materials and the matters to be filed or exchanged are different. The Committee believes that the variation in requirements adds to litigation costs in preparing cases in the Northern District of Texas.

5. Judicial Vacancies

Based upon the assessment of the docket, there is a perceptible need for a commitment of additional judicial resources to civil cases in the Northern District of Texas. Yet, at a time when the workload of the Court calls for additional judges, two of the 12 judgeships allotted to the district (both of which are in the Dallas Division) remain unfilled as of this date. A substantial cause of unnecessary delay and expense is the failure of the President to nominate and the Senate to confirm the number of allotted district judges to handle the increasing caseload in this district.

6. Physical Facilities

The physical facilities for the timely hearing and handling of federal cases within the district are inadequate. Presently, in the Fort Worth Division, there is a critical shortage of courtrooms available for use by the division's sitting judges. Chambers and courtrooms are also not available for the judgeships created in 1990 in the Dallas Division. In addition, none of the divisions have full-size courtrooms available to house the visiting judges from other courts or districts. Against this backdrop, the Advisory Committee's recommendation to reduce current caseloads by greater reliance on visiting judges and magistrate judges, is not a viable option unless adequate courtroom facilities exist for this purpose. Short-term and long-range space allocation and planning in the district must adequately accommodate the needs of visiting judges.

7. Abusive Litigation Practices

a. Dondi

Since the Dondi decision, judges and practitioners report disparate results. Some report a reduction both in unnecessary litigation and in the premature resort to litigation, attributable, in part, to the threat and judicious use of Rule 11 and Rule 16 sanctions. Many judges, attorneys and clients have experienced a noticeable and long-overdue increase in civility and collegial cooperation in the Northern District of Texas. The use of a standard Dondi order by one judge has helped avoid time-consuming hearings on unwarranted discovery disputes and, pursuant to court order,

has enabled clients to avoid being billed the unnecessary fees thereby generated. The Advisory Committee applauds the Dondi opinion as a step in the right direction, but a problem still persists. The Committee views abusive tactics, particularly in the discovery phase as still presenting a cause of unnecessary cost and delay.

b. Client/Attorney Abuse of the System for Purposes of Delay

The Advisory Committee feels that a recent niche has been created for attorneys that are willing to engage in "scorched earth" or "Rambo" tactics solely for the purpose of buying time for clients that have motives that put a premium on delay. This seems to have led certain clients to retain attorneys whose principal task has been to frustrate and delay the litigation process. Owing to the huge premium such clients put on delay and the sometimes large financial stakes, it may have become preferable, in some cases, to pay substantial legal fees to avoid resolution on the merits. A portion of this problem may originate in the economic hard times where numerous businesses have been faced with debts which could not be paid.

c. Admission of Attorneys *Pro Hac Vice*

The Advisory Committee perceives a problem in admission of attorneys ***pro hac vice***. Some attorneys who may not appear before a particular judge again, do not seem to be as interested in abiding by Dondi as local attorneys. They may also engage in delaying or abusive tactics simply because they come from a jurisdiction that countenances a different standard of conduct.

IV RECOMMENDATIONS

In the course of its work, the Advisory Committee analyzed some of the, now vast, literature[5] in the area of docket management techniques; the reports of other Advisory Committees concerning comparable districts; and the results of the Advisory Committee's interviews. The Advisory Committee has benefitted greatly from the informed comments of experienced and respected practitioners. As a result of our studies and statistical survey of docket conditions, the Committee strongly recommends the adoption and uniform enforcement of a number of specific, practical local rules and procedural changes. In some cases, the recommendations address a specific problem. However, there are a number of recommendations which focus on methods to provide more time for judges to take the "hands-on" approach advocated throughout this report. The Committee has also included several recommendations which do not require court action.

Many of these changes can immediately help provide the Court and attorneys alike with the supplementary tools required to regain control over persistent, identifiable pockets of unacceptable cost and delay. It is, of course, long-settled that

[5] This literature, for example, includes the ABA Blueprint for Improving the Civil Justice System (Feb. 1992), the Proposed Amendments to the Federal Rules of Civil Procedure, and the Federal Rules of Evidence (Aug. 1991), the "Justice for All" report of the Brookings Institution (1989), the agenda for Civil Justice Reform in America Report from the President's Council on Competitiveness (Aug. 1991), and "A Judicial Response to the Cost of Litigation: Case Management, Two-Stage Discovery Planning and Alternative Dispute Resolution," 37 Rutgers L. Rev. 253 (1985).

the district court has "well-acknowledged," inherent power to control its docket.[6] Indeed, the ***Federal Rules of Civil Procedure*** explicitly provide[7] that, "each district court... may... make and amend rules governing its practice not inconsistent with" the other Federal Rules.

A. Proposed Rules and Procedures

Although the Advisory Committee is aware that local rules cannot cure all ailments, the proposed local rules are designed to remedy particular and recurrent sources of cost and delay, without themselves giving rise to a new set of peripheral problems or collateral delays. After their adoption, the recommended local rules have the additional advantage of not requiring congressional or other action to begin ameliorating the causes and effects of unnecessary cost and delay. In addition to the above cited local rules, the Committee also identified a number of procedural changes which will help reduce cost and delay in processing civil cases.

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[6] Link v. Wabash R. R. Co. 370 U. S. 626, 629-632 82 S. Ct. 1386, 1388-1390, (1962) (even in absence of congressional authorization, court has inherent power to dismiss case for attorney's failure to appear). See also Frazier v. Heebe, 482 U. S. 641, 644-646, 107 S. Ct. 2607, 2611 (1987) ("district court may adopt local rules that are necessary to carry out" its business); Petrol Shipping Corp. v. Kingdom of Greece, 360 F 2nd 103, 108 (2nd Cir. 1966) ("when there is no Federal Rule, and no local one, the court may fashion one not inconsistent with the Federal Rules).

[7] Fed. R. Civ. Pro. 83 (as amended in 1985), Rules 83 also reads:

> [i]n all cases not provided for by rule, the ***district judges and magistrates*** may regulate their practice in any manner not inconsistent with these rules or those of the district in which they act. (emphasis supplied)

1. Summary Judgments

The time required to dispose of summary judgments could be reduced if the issues were narrowed in both motions and responses. Many of the motions pending over six months are motions for summary judgment. A recurrent theme from interviews with law clerks is the failure of motions and responses to join issues in any meaningful way. The Committee, therefore, recommends the following change in the rules which would expedite the handling of these motions.

PROPOSED RULE: Rule 5.2(a) should be amended as follows:

Motions and responses shall separately identify each question of law and each legal theory or affirmative defense at issue. Motions asserting the ability or inability to prove a theory of recovery or affirmative defense shall set forth the following:

1) The theory of recovery or affirmative defense at issue; and

2) Whether the movant or non-movant bears the burden of proof on the issue.

When the movant bears the burden of proof on the claim or defense at issue:

1) The movant shall identify all essential elements of the claim or defense;

2) The movant shall briefly summarize evidence establishing each element together with references to the record containing the evidence;

3) The non-movant shall identify any disagreement with the movant's statement of essential elements of the claim or defense; and

4) The non-movant shall state any objection or disagreement with the movant's evidence and shall briefly summarize any evidence, with references to the record, showing that there is a genuine issue for trial.

When non-movant has the burden of proof on the claim or defense at issue:

1) The movant shall identify all essential elements of the claim or defense;

2) The movant shall specifically point out the absence of evidence supporting one or more essential elements of the claim or defense;

3) The non-movant shall identify any disagreement with the movant's statement of essential elements of the claim or defense; and

4) The non-movant shall briefly summarize, with record references, any evidence showing that there is a genuine issue for trial on the challenged elements.

Parties shall endeavor to minimize and organize the record supporting or proposing the motion. Only such evidence as is necessary to establish the existence or non-existence of identified issues shall be filed.

Any request for additional time for discovery shall identify the specific discovery required to respond to the motion and expedited schedule of discovery.

No motion for summary judgment may be filed within forty-five (45) days of the trial date scheduled in a particular case.

2. Limitations on Discovery

The Committee's research indicates that a large portion of the cost of litigation results from discovery. Furthermore, judges, as well as practitioners and clients, in this district generally favor some limitations on discovery. The Committee believes that there are four areas where the Court, through the adoption of local rules, can help curtail the escalating costs of discovery.

a. Limit Number of Interrogatories

The local rules in many districts limit the number of interrogatories a party can serve. See, e.g., Local Rule 5D.(S.D. Tex.). The Texas Rules of Civil Procedure contain a similar limitation. See, Tex. R. Civ. P. 168(5). The Local Rules of the Northern District of Texas currently do not limit the number of interrogatories; to parallel the Texas Rules of Civil Procedure the Advisory Committee suggests the following:

PROPOSED RULE: Without leave of Court or written stipulation, a party may serve upon any other party written interrogatories, not exceeding 60 in number including all sub-parts. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Federal Rule 26(b)(2).

b. Limit Number and Duration of Depositions

The Advisory Committee recognizes that the number and duration of depositions can significantly contribute to the costs of litigation. Although the Advisory Committee does not recommend the adoption of a standard rule placing arbitrary limits on the number or duration of depositions, the Advisory Committee does recommend the following:

PROPOSED RULE: Upon motion of any party, the Court shall, consistent with the principles of Federal Rule 26(b)(2), set limits on the number or duration of depositions.

c. Reduce the Amount of Discovery

The Advisory Committee also believes that, with appropriate support from the Court, attorneys should convince their clients to reduce the amount of discovery and correspondingly reduce the cost of litigation.

PROPOSED RULE: In its discretion, upon the filing of responsive pleadings by all parties, the Court may issue the following order at the inception of any case: "Discovery procedures cause an inordinate amount of the expense of litigation. Although discovery procedures may somewhat reduce the uncertainty of litigation, the costs of such procedures frequently outweigh any marginal returns they may afford. In addition, monitoring discovery disputes unduly taxes the resources of the Court. The Court therefore urges the parties to consider entering into an agreement to forego formal discovery in this case. Doing so will facilitate a prompt, efficient, and in the Court's opinion, fair resolution of the action without prejudicing the substantive rights of any party. Counsel are instructed to discuss this Order with their respective clients and, within 30 days of this Order, file a written report with the Court stating whether the parties can agree to proceeding without discovery and, if not, why such an agreement could not be reached. A party entering into such an agreement may nevertheless request, for good cause shown, an enforcement of or relief from such an agreement".

PROPOSED RULE: A party opposing a Rule 12 or Rule 56 motion on the ground that such party needs more discovery should state in detail precisely what discovery it contemplates undertaking before responding to the motion. A continuance of the submission date of the motion should be for the limited purpose of conducting the reasonable discovery necessary to oppose the motion.

Local Rule 5.2(d) typifies the current policy of encouraging discovery to identify matters that should be clear from the pleadings. Notice pleading was a good idea when dockets were uncrowded and discovery inexpensive. Today, even basic facts supporting claims or defenses are often developed by discovery rather than by pre-investigations and pleadings.

PROPOSED CHANGE: Local Rule 5.2(d) should be deleted.

d. Discourage Reopening of Discovery

To reduce the costs and delay of reopening discovery, the Advisory Committee favors a rule in which a continuance of the trial date would not result in an extension of any deadlines that have already passed.

PROPOSED RULE: The continuance of the trial of an action does not extend or revive any deadlines that have already passed in the action unless good cause is shown.

3. Pre-trial Conferences and Trial Limitations

The Advisory Committee recommends a change to the Federal Rules of Civil Procedure so that the trial court has express authority to limit the length of trial, the number of witnesses each side may present, the number of exhibits the parties may offer into evidence, and the amount of time for each side to examine witnesses. This proposal can have a direct impact upon the amount of time available for judges to try civil cases.

PROPOSED RULE: The Presiding Judge, as a part of pretrial proceedings, may limit the length of trial, the number of witnesses each party may present for its case, the number of exhibits each party may have admitted into evidence, and the amount of time each party has to examine witnesses.

PROPOSED RULE: Pre-trial conferences should be held in all complex cases. The Presiding Judge may require designation of the nature and purpose of each exhibit and witness. Efforts may then be made to avoid unnecessary duplication of evidence.

4. Greater Use of Magistrate Judges

Magistrate judges should be used for discovery scheduling conferences and orders, discovery disputes, and recommended disposition of various classes of cases not resolved by mandatory Alternative Dispute Resolution. It must be clear that appropriate decisions of magistrate judges will be enforced by district judges. Early

indication of interest by the district judge in particularly volatile or complex cases can set an appropriate tone for the case.

The Advisory Committee strongly favors greater use of magistrate judges. Many judges currently refer matters of discovery disputes to a magistrate judge, but the practice should be codified into the Local Rules. The local rule should also specify time limits within which such a reference would occur.

In addition to their important pretrial functions, magistrate judges have authority to conduct civil trials with the consent of the parties. The Committee believes that the magistrate judges' current schedules could accommodate additional trials if more parties consented. Magistrate judges may be able to offer firm trial dates with more certainty than district judges. Therefore, the Committee recommends that the Clerk's *Notice of Right to Consent to Disposition of a Civil Case by a United States Magistrate Judge* be revised to encourage more frequent consent to trial by magistrate judges by publicizing the benefits of early and firm trial dates.

The Advisory Committee further recommends that a magistrate judge be assigned to handle all pretrial matters at the same time, and in the same manner, that a case upon filing is assigned to a district judge. Any trial, by consent, will be tried before the assigned magistrate judge unless the parties object, in which event the case will be assigned to another magistrate judge by random assignment.

PROPOSED RULE: Any discovery motion not decided within seven days of the completion of briefing shall be referred by a District Judge to a Magistrate Judge for determination.

5. Greater Use of Visiting Judges

The assignment of a visiting judge to serve in a district is handled on both formal and informal levels. The Chief Judge of the District may make a formal request to the Chief Judge of the Circuit for assignment of a district judge in that circuit. However, on a practical basis the Chief Judge may informally contact another Chief District Judge in the same circuit for assistance. The informal practice has been the most successful in the Northern District of Texas. Because of the two vacancies and the increase in criminal case filings the Northern District of Texas has a strong need for visiting judges.

The Advisory Committee proposes a rule change permitting greater use of visiting judges to dispose of matters pending on the district's docket. To accomplish this, the Advisory Committee suggests that judges be temporarily assigned to the Northern District of Texas.

PROPOSED RULE: After any case has been pending for three years, the Presiding Judge on his own motion, or motion of any party, may request that the Chief Judge of the Fifth Circuit assign a visiting judge to that case for expediting its resolution.

It should be noted that until additional facilities are made available for the increased use of visiting judges, the Advisory Committee proposes the use of visiting judges for trying non-jury civil cases or functioning as settlement judges.

6. More Effective Use of Settlement Conferences

Fed. R. Civ. P. 16(c) (7) specifically includes settlement discussions as a suitable agenda item for pretrial conferences. It is the opinion of the Advisory Committee that judicially assisted efforts can promote settlement, so long as care is taken to avoid impacting the subsequent decision-making process. Therefore, the Advisory Committee recommends that the district or magistrate judge move to initiate settlement discussions as soon as possible, and when appropriate, suggest a settlement number or a range within which a case should settle.

PROPOSED RULE: The District Judge or Magistrate Judge shall initiate settlement discussions as soon as practicable and may suggest a settlement number or range, within which a case should settle, when appropriate.

7. Alternative Dispute Resolution

The Committee believes that one of the most effective ways of helping reduce cost and delay in federal litigation is the encouragement of the use of Alternative Dispute Resolution (ADR) programs. The federal courts have taken steps to promote the use of ADR techniques through the Federal Rules of Civil Procedures 16(c)(7) which invites the parties to a lawsuit to consider "use of extrajudicial procedures to

resolve the dispute." The most widely used technique in this district has been mediation. The Committee has also considered other ADR methods in addition to mediation including arbitration, early neutral evaluation, summary jury trials, and mini-trials.

Arbitration. Only twenty federal courts are currently authorized to refer cases to non-binding arbitration. The Northern District of Texas is not one of these courts. The Committee does not recommend that the Court seek authorization to implement court-annexed arbitration unless the statute is changed to provide for binding arbitration.

Early Neutral Evaluation. This system provides that a neutral party participate at an early stage, preferably prior to any extensive discovery. It may be particularly useful in resolving complex scientific or technical issues by clarifying them and assisting in development of a case management plan.

Summary Jury Trial. In a summary jury trial, attorneys present a summary of the evidence to a panel of jurors who then render a verdict that is advisory only. In many cases, the parties, informed by the advisory jury's reaction to their case, are better able to negotiate a settlement and avoid an actual trial. The Advisory Committee recommends that the summary jury trial be an available ADR option.

Mini-Trial. Unlike summary jury trials or other forms of ADR, in mini-trials attorneys present their cases to the principals who have authority to settle the dispute.

In some instances, a neutral third party advisor may be employed. Parties may agree upon a summary or an abbreviated hearing with testimony and cross-examination. It is a private, confidential, non-binding procedure. Mini-trials appear to work best where there are a small number of parties involved and where a particular expertise is needed or where there is an overestimation by one party of the strength of its position or where policy issues exist which would benefit from a face-to-face presentation to decision makers. The Committee recommends that mini-trials be included in the Court's ADR program.

Mediation. This technique is used extensively throughout the federal judicial system. In mediation a neutral third party, called a mediator, listens to the parties' positions and then by careful listening, questioning, negotiating and generating options, helps the parties work out their own solution to their dispute. Any agreement reached can be made legally binding by reducing it to writing and having the agreement signed by the parties and their attorneys.

The Committee believes that the form of mediation used in the Northern District of Texas should closely, if not exactly, resemble the mediation procedure contained in Chapter 154 of the Texas Civil Practices and Remedies Code. Not only has this procedure generally met with favor among the various bar associations, members of these groups necessarily have a great deal of familiarity with this particular procedure. Adoption of the Texas form of mediation (ADR) would

contribute to uniformity of result and reduce confusion or uncertainty among attorneys who practice in both state and federal court. The Committee also suggests that the Court consider adopting guidelines for mediation similar to the rules of mediation used by the state courts in Dallas County.

The Committee also believes that the timing of mediation is important. Mediation could occur either too early to permit meaningful settlement discussions or too late to give the parties a realistic chance to settle and save expenses. Although a hard and fast rule may be unnecessary, appropriate times to order mediation would include any time the parties agree, at the pre-trial conference, as a condition to granting any continuance, when summary judgment is denied, or at the close of discovery. However, in order to reduce expense and delay, mediation should occur as soon as possible, after the minimum amount of discovery.

Mediation works best when the parties present have authority to complete a settlement. The Committee, nevertheless, recognizes that certain exceptions may exist. For example, United States Attorney offices have limited settlement authority, and municipalities often require approval of the City Council to settle a case. In these instances, the Committee suggests that the restricted party send to the mediation someone with authority to recommend a settlement and to advocate the acceptance of such a recommendation to those officials who do have the authority to approve such a recommendation.

The Advisory Committee recommends that the Northern District of Texas publish a pamphlet describing the various ADR techniques, their use by the Court, and their potential advantages to the litigants. The Clerk's office should distribute this pamphlet to the plaintiff's counsel (with the direction to send to all counsel), within 10 days of filing the complaint. The Committee further recommends that the judicial officer hosting the initial pretrial conference advise the litigants of the availability of possible alternatives to litigation and request from all counsel a response concerning the desirability of a referral to ADR.

PROPOSED RULE: This Court recognizes that Alternative Dispute Resolution (ADR) may facilitate settlement or narrowing of issues in certain civil actions. Therefore, the Court adopts the following ADR procedures:

A. ADR Referral

The Court may refer a case to ADR on the motion of any party, on the agreement of the parties, or its own motion. The Court will respect the parties' agreement unless the Court believes another ADR method or provider is better suited to the case and parties. The authority to refer a case to ADR does not preclude the Court from suggesting or requiring other settlement interviews.

B. Opposition to ADR Referral

A party opposing either the ADR referral or the appointed provider must file written objections with the Court within ten days of receiving notice of the referral or provider, explaining the reason(s) for any opposition.

C. ADR Methods Available

The Court recognizes the following ADR methods: mediation, mini-trial, and summary jury trial. The Court may approve any other ADR method the parties suggest or the Court believes is suited to the litigation.

D. Attendance

In addition to counsel, party representatives with the authority to negotiate a settlement and all other persons necessary to negotiate a settlement, including insurance carriers, must attend the ADR sessions.

E. Binding Nature

The results of ADR are non-binding, unless the parties agree otherwise.

F. Confidentiality: Privileges and Immunities

All communications made during ADR procedures are confidential and protected from disclosure and do not constitute a waiver of any existing privileges and immunities.

G. Administration

At the conclusion of each ADR proceeding the provider will complete a form supplied by the District Clerk which will include:

1. The style and civil action number of the case;
2. The names, addresses, and telephone numbers of counsel;
3. The type of the case;
4. The method of ADR proceeding;
5. Whether or not the case settled; and
6. The provider's fees.

The District Clerk annually shall tabulate, analyze, and report on the disposition of ADR proceedings.

8. Special Masters

Rule 53 of the Federal Rules of Civil Procedure authorizes the Court, in its discretion, to appoint a special master to assist in the resolution of legal disputes. A special master is a magistrate judge, private attorney, or specialist to whom a judge refers a specific litigation task, such as presiding over settlement negotiations or discovery. Special masters are rarely used in the Northern District of Texas; however, they have proven to be effective in conserving the Court's time, while advancing litigation. For example, patent cases, although a small percentage of the cases on this district's docket, require an inordinately large proportion of the Court's time. Reference of these cases to a special master would not only expedite the handling of these cases, but would also enable the Court to devote more attention to managing the remainder of its docket. Therefore, the Advisory Committee recommends that utilization of special masters be increased within the limitations of Rule 53(b), when in the Court's judgment, a special master is likely to play a useful role[8].

PROPOSED RULE: The Presiding Judge, upon motion by any party or upon his own motion, may refer any issue to a Special Master for a written recommendation. The order of reference shall contain the Presiding Judge's specific findings as to why such reference is necessary and how such reference will reduce cost and expedite the resolution of the litigation. Such order of reference shall also set deadlines for briefing, if any, and for the Special Master to file his recommendations.

[8] The Fort Worth Advisory Committee has recommended that with agreement of the parties, judges be allowed to refer a motion for summary judgment to an experienced volunteer attorney to review and make recommendations to the Court.

The parties shall, by agreement, select the Special Master under such order of reference. Failing such an agreement, the Presiding Judge shall select the Special Master.

9. Compliance With Dondi

The Committee perceived a problem with out-of-district attorneys not abiding by Dondi. To remedy this situation, the Committee recommends that the Court emphasize the responsibility of the local attorney who must sign pleadings and that the Court may consider, in extreme circumstances, the revocation of ***pro hac vice*** status.

PROPOSED RULE: Any out-of-district attorney applying for ***pro hac vice*** status must affirm in writing that he has read and is familiar with the Local Rules. The Presiding Judge may revoke such status for abuse of the Local Rules.

10. Adoption of Unified and Common Practices and Procedures Throughout the District

The Committee strongly recommends that the Court adopt and follow unified and common practices and procedures throughout the District. These procedures should be set forth in one set of Local Rules applicable regardless of the judge before whom the litigants appear.

11. Increased Exchange of Information Practices and Procedures Among Judges

During interviews with the district judges a number of individualized procedures were identified which expedite the handling of cases and reduce cost and delay. It was also apparent that these advances in practice and procedure are not shared among the judges. The Committee feels that the district judges as a group would benefit through more frequent interaction and exchange of these "lessons learned" and procedures developed. The opportunity for a free interchange of ideas on a regular basis seems to be a good method of passing along judicial "lessons learned" to newer judges. The Committee suggests this interchange in the spirit of providing information and with no intent to impinge upon the independence of any judge.

12. A "Hands On" Approach

The Advisory Committee generally favors a "hands-on" approach by the district judges. The Northern District of Texas currently has judges who encompass a wide spectrum on this issue. It is the feeling of the Advisory Committee that considerable expense could be alleviated in civil litigation if the judges were to get "closer" to their cases. Timely intervention by the district judge would speed up most cases. Use of magistrate judges, perhaps even on a routine basis, is not inconsistent with district judges getting closer to their cases. Where discovery disputes become extreme, intervention can break the logjam and move the case along. Regularly calendared scheduling conferences or status conferences are a good idea, but only

have meaning if they are fully utilized by the trial judge and do not become a pro forma exercise. Access to the trial judge, while subject to overuse, is essential so that paper wars are avoided and the parties know that the trial judge is involved in the case.

13. Monitoring of the Discovery Process

The Committee feels that discovery should not control civil litigation. A uniform system of discovery control should be developed and enforced by all judges. At a minimum, discovery control should include:

1) An early scheduling conference before a magistrate judge in which a discovery scheduling order is developed in view of the specific needs of each case;

2) Parties should be encouraged to submit joint discovery scheduling orders;

3) Discovery scheduling conferences and orders should attempt to identify core information relevant to the dispute, including names and addresses of persons with information relevant to claims and defenses as well as the location and custodian of relevant documents;

4) Some discovery relating to the nature and extent of damages should be scheduled early in the litigation to assist all participants in analyzing the relative cost of litigation;

5) Document exchange upon appropriate routine requests for production should be encouraged early in the litigation.

B. Recommendations Not Involving Court Action

1. Request Congress Institute Legislative Impact Analysis

The Advisory Committee believes that prior to Congressional action, preparation of a "Judicial Impact Statement" should be required for each new piece of significant federal legislation and, for each new federal mandate, assessing any likely impact on existing federal judicial resources.

2. Restructuring Federal Jurisdiction

The Advisory Committee recommends that Congress work with the courts, legal scholars and practitioners, to assess whether federal jurisdiction can be restructured or limited by: 1) eliminating certain classes of cases from the federal docket altogether; or 2) repealing provisions for federal jurisdiction to adjudicate particular rights (thereby leaving the task to state courts); or 3) providing federal courts some discretion in hearing cases.

3. Request Judicial Vacancies be Filled

In recent years, the Northern District of Texas has rarely operated with a full staffing of authorized judgeships. During the same period, the criminal caseload has been placing increased demands on judicial time and the number of complex civil cases has also been steadily rising. While the judicial workload has been increasing, the district has had to keep up with the pending caseload through a tremendous effort by the judges in terminating cases.

The Committee believes that if the district maintained a full staffing of authorized judgeships, then civil case processing time could be reduced. Therefore, the Advisory Committee recommends that the President accelerate the nomination process for authorized district judgeships. Further, the Advisory Committee also recommends that the Senate take whatever steps necessary to complete consideration of nominees for such judgeships in a more timely manner.

4. Request Funding for Additional Clerk's Office Staff

The Clerk's office in the Northern District of Texas has a critical shortage of personnel necessary to ensure the efficient processing of Court documents. This situation is primarily attributable to an outdated work measurement formula to allocate authorized positions. This formula is undergoing revision, however, and will not be changed in the near term. The Advisory Committee recommends that once the work formula is revised, Congress provide funding for the full staffing of Clerk's office positions.

5. Request Funding for Renovations and Expansion of Court Facilities

To enable more efficient processing of civil cases, the facilities of the Court should be enhanced to allow for optimal utilization. New courtrooms and chambers will be required for newly appointed district judges and magistrate judges, senior judges, and visiting judges. In addition, several existing court facilities are in need of renovations.

The Advisory Committee recommends that Congress provide full funding to both the Northern District of Texas and the General Services Administration (GSA) for Court facility renovations and expansion. Further, the Advisory Committee also recommends that GSA be given additional staffing to assist the Court in project planning, design, contracting, and construction.

C. Roles

The Court should be more aware of the effect its actions have on the cost of litigation, including the amount of time taken to decide motions, and individual filing requirements. Attorneys must recognize their professional obligation associated with their litigation practices and procedures impacting cost and delay . Litigants should also accept responsibility for exploring with counsel the development of litigation policies aimed at achieving efficient, cost effective, and professionally responsible practices.

The recommendations of the Advisory Committee specify the roles for the Court, the litigants, attorneys, the Executive Branch, and Congress to play in reducing cost and delay. In addition, the Advisory Committee endorses the Dondi opinion and its recommendations for and admonitions to litigants and their attorneys.

To prevent discovery abuse from becoming an increasing cause of cost and delay, a graduated system of sanctions for discovery abuse, particularly discovery motion abuse, should be developed and consistently enforced. The Advisory

Committee endorses the approach expressed by Fifth Circuit Judge Sam Johnson that, in the application of sanctions, the district courts should employ the "least severe sanction adequate," that is, the least burdensome sanction that will accomplish the Court's goal. *See* "The Least Severe Sanction Adequate: Reversing the Trend in Rule 11 Sanctions," - Tex. B.J. 952 (Oct. 1991). The imposition of a greater sanction would tend to encourage litigants to bring sanction proceedings, whether Rule 11, Dondi, or otherwise, in hopes of scoring the decisive blow in a case on something other than the merits. The risk of creating a whole realm of satellite litigation on sanctions motions justifies careful consideration and judicious selection of sanctions tailored to the particular circumstances.

D. Six Principles of Litigation Management

A significant purpose of the Advisory Committee's recommendations is to increase the access of the litigants to the judicial system. By filling all authorized judgeships promptly, by encouraging litigants to consent to trial by magistrate judges, by making greater use of visiting judges, and by facilitating references to special masters, the Advisory Committee has recommended measures designed to enhance the probability that disputed matters will receive prompt attention and that trial setting can be kept.

1. Differential Case Management

The Committee recommends this approach only to a limited degree. In general the Advisory Committee opposes the imposition of techniques that in themselves pose the likelihood of delay. For example, an early hearing in a case to determine which of a number of discovery tracks should be adopted may well impose additional delay associated with such a hearing itself. On the other hand, the Advisory Committee encourages the continued practice in the Northern District of Texas of routinely referring to the magistrate judges matters of habeas corpus petitions, Social Security claims, and discovery.

2. Early and Ongoing Judicial Control of the Pretrial Process

The Advisory Committee believes that its recommendations will increase each district judge's efficiency and ameliorate the Court's docket to enable early and firm trial settings. The Advisory Committee has recommended ready access to the Court for resolution of logjams and automatic reference of discovery disputes to the magistrate judges.

The Committee believes that an early, "hands on" approach by the district judge will prevent logjams that can delay litigation for months or even years and can help set precedents that will assist the litigants in resolving discovery disputes without requiring further judicial assistance[9].

[9] The West Texas Advisory Committee recommends that all new civil cases be promptly screened by staff attorneys or law clerks. Questions of jurisdiction, venue, or service should be identified and resolved on affidavits prior to the commencement of discovery whenever possible. Post-answer screening should identify

Moreover, early meetings with the Court and Court-ordered mediation increase the chances that a case will settle. Early settlements reduce litigation costs, both for the particular litigants who settled and for the litigants in other cases who accordingly have greater access to the Court.

3. Deliberate Monitoring of the Discovery Process

The Committee has recommended five steps under **Proposed Rules and Procedures** which it believes will provide for deliberate monitoring of the discovery process.

4. Cooperative Discovery Devices

The Advisory Committee encourages the continued observance of the principles the Northern District of Texas judges unanimously adopted in Dondi. In that opinion, the Court adopted eleven standards of litigation conduct intended to reduce unnecessary litigation costs and activities that contribute to delay. These standards are enforceable through both monetary and non-monetary sanctions. The Committee has also recommended a local rule which encourages informal discovery.

5. Certification of Good-Faith Effort to Reach Agreement

Local Rule 9.1(a) requires a Good-Faith effort to settle civil actions. Also, Local Rule 5.1(c) requires that all opposed motions include a certificate which states that a conference was held and which indicates the date of the conference, the

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cases as complex, requiring close supervision, candidates for ADR and candidates for recommended trial before a magistrate judge.

attorneys who conferred, and the *reasons why an agreement could not be reached.* If a conference was not held, the certificate must contain an explanation of why a conference was not held. The Committee thoroughly endorses both of these rules and does not feel additional rules are necessary.

6. Authorization to Refer Cases to Alternative Dispute Resolution

The Committee's recommendations include a proposed comprehensive Alternative Dispute Resolution (ADR) rule. Early involvement of the Court and formalization of mediation procedures should increase the chances for out-of-court settlements. The ADR programs made available pursuant to the Proposed Local Rules structure the pretrial process to encourage parties to resolve their disputes more quickly themselves and, provide for timely court or other neutral intervention if they do not.

E. Recommendation for a Cost and Delay Reduction Plan

The Advisory Committee believes that the recommendations contained in this report will provide the basis for an effective cost and delay reduction plan. Therefore, the Committee recommends that the Northern District of Texas develop its own plan, as opposed to adopting a model plan. The Committee believes that a plan based on the **Proposed Rules and Procedures** section of this report will facilitate the Court's: 1) deliberate adjudication of civil cases on the merits, 2) monitoring of discovery, 3) improving litigation management, and 4) ensuring just, speedy, and inexpensive resolution of civil disputes.

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Appendix B. Dondi Opinion

ern District of Texas convened en banc for purpose of establishing standards of litigation conduct to be observed in civil actions in district. The District Court held that standards of litigation conduct would be adopted.

Ordered accordingly.

1. Federal Civil Procedure ⇐25

Standards of litigation conduct to be observed in civil actions litigated in Northern District of Texas would be adopted. 28 U.S.C.A. § 2072.

2. Federal Civil Procedure ⇐1636

Plaintiffs' failure to comply with magistrate's previous discovery orders did not require dismissal of civil action presenting complex legal and factual theories involving hundreds of thousands of documents, absent showing of intentional or willful conduct on part of plaintiffs or their counsel. Fed.Rules Civ.Proc.Rule 37(b), 28 U.S.C.A.

3. Attorney and Client ⇐24

Attorney's failure to identify himself or his client to prospective witness prior to making inquiries about transaction pertinent to client's civil action did not require sanctions. U.S.Dist.Ct.Rules N.D.Tex., Rule 5.1(a).

4. Federal Civil Procedure ⇐1105

Filing reply brief without district court's permission did not require that brief be stricken, where court had not yet considered underlying substantive motions. U.S.Dist.Ct.Rules N.D.Tex., Rules 5.1, 5.1(a, c-f).

DONDI PROPERTIES CORPORATION and the Federal Savings and Loan Insurance Corporation as Receiver for Vernon Savings and Loan Association, FSA, Plaintiffs,

v.

COMMERCE SAVINGS AND LOAN ASSOCIATION, et al., Defendants.

Jean Rinard KNIGHT, Plaintiff,

v.

PROTECTIVE LIFE INSURANCE COMPANY, Defendant.

Civ. A. Nos. CA3-87-1725-H, CA3-87-2692-D.

United States District Court, N.D. Texas, Dallas Division.

July 14, 1988.

At request of one its members, the United States District Court for the North-

Don T. O'Bannon of Arter, Hadden & Witts, Dallas, Tex., and Jerome A. Hochberg and Douglas M. Mangel of Arter &

Hadden, Washington, D.C., for Dondi Properties Corp., et al.

Ernest E. Figari, Alan S. Loewinsohn, and James A. Jones of Figari & Davenport, Dallas, Tex., for Gerald Stool, et al.

Gordon M. Shapiro, Michael L. Knapek, and Patricia J. Kendall of Jackson & Walker, Dallas, Tex., for Commerce Sav. Assn.

Paul E. Coggins and Weston C. Loegering of Davis, Meadows, Owens, Collier & Zachry, Dallas, Tex., for W. Deryl Comer.

Randall L. Freedman, Dallas, Tex., for Jack Franks.

Christopher M. Weil and Amy Brook Ganci of Weil & Renneker, P.C., Dallas, Tex., for R.H. Westmoreland.

Mark T. Davenport of Figari & Davenport, Dallas, Tex., for Jean Rinard Knight.

David M. Kendall of Thompson & Knight, Austin, Tex., for Protective Life Ins. Co.

Before PORTER, Chief Judge, SANDERS, Acting Chief Judge, and WOODWARD, MAHON, BELEW, ROBINSON, BUCHMEYER, FISH, MALONEY, FITZWATER, and CUMMINGS, District Judges.

PER CURIAM:

We sit en banc to adopt standards of litigation conduct for attorneys appearing in civil actions in the Northern District of Texas.

I.

Dondi Properties is a suit for recovery based upon civil RICO, common law and statutory fraud, the Texas Fraudulent Transfer Act, federal regulations prohibiting affiliate transactions, civil conspiracy, negligent misrepresentation, and usury, arising in connection with activities related to the failed Vernon Savings and Loan Association. *Knight* is an action for violations of the Texas Insurance Code and Texas Deceptive Trade Practices—Consumer Protection Act, and for breach of duty of good faith and breach of contract, arising from defendant's refusal to pay plaintiff the proceeds of a life insurance policy.

In *Dondi Properties*, the following motions have been referred to the magistrate pursuant to 28 U.S.C. § 636(b) and N.D. Tex.Misc.Order No. 6, Rule 2(c): the Stool defendants'[1] third motion for sanctions or, in the alternative, to compel (and supplement to the motion); the third motion for sanctions of defendant, Commerce Savings Association (and supplement to the motion); defendant, W. Deryl Comer's, first motion for sanctions or, in the alternative, motion to compel (and supplement to the motion); the Stool defendants' motion for sanctions against plaintiffs' attorney; defendant, Jack Franks', first motion for sanctions or, in the alternative, motion to compel; defendant, R.H. Westmoreland's, motion for sanctions and, in the alternative, to compel; and various submissions containing additional authorities in support of the motions and briefs already filed. Plaintiffs have responded to the motions, and the Stool defendants have filed a motion for leave to file reply to plaintiffs' response.

The sanction motions complain of plaintiffs' failure to answer interrogatories, failure to comply with prior orders of the court pertaining to discovery, misrepresenting facts to the court, and improperly withholding documents. The magistrate had previously entered orders on March 29, 1988 and April 28, 1988 and defendants contend plaintiffs' conduct with respect to prior orders of the magistrate warrants dismissing their action or awarding other relief to movants.

In *Knight*, there is pending before a judge of this court plaintiff's motion to strike a reply brief that defendant filed without leave of court. On April 8, 1988, defendant filed four motions, including motions for separate trials and to join another

1. The Stool defendants are Gerald Stool, Donald F. Goldman, AMF Partnership, Ltd., Park Cosmopolitan Associates, Duck Hook Associates,

party.[2] On April 27, 1988, plaintiff filed her response to the motions. Thereafter, without leave of court, defendant, on May 26, 1988, filed a reply to plaintiff's response. On June 8, 1988, plaintiff filed a motion to strike the reply, to which motion defendant has filed a response.

Plaintiff contends the reply brief should be stricken because defendant did not, as required by Local Rule 5.1(f), obtain leave to file a reply, because defendant failed to seek permission immediately upon receipt of plaintiff's response, and, alternatively, because defendant's reply was filed in excess of 20 days after plaintiff filed her response. In the event the court does not strike the reply, plaintiff requests leave to file an additional response.

At the request of a member of the court, we convened the en banc court[3] for the purpose of establishing standards of litigation conduct to be observed in civil actions litigated in the Northern District of Texas. In section II of the opinion we establish such standards. In section III the magistrate decides the *Dondi Properties* motions, and in section IV a judge of the court decides the *Knight* motion, in accordance with the standards we adopt.[4]

II.

[1] The judicial branch of the United States government is charged with responsibility for deciding cases and controversies and for administering justice. We attempt to carry out our responsibilities in the most prompt and efficient manner, recognizing that justice delayed, and justice obtained at excessive cost, is often justice denied.[5]

We address today a problem that, though of relatively recent origin, is so pernicious that it threatens to delay the administration of justice and to place litigation beyond the financial reach of litigants. With alarming frequency, we find that valuable judicial and attorney time is consumed in resolving unnecessary contention and sharp practices between lawyers. Judges and magistrates of this court are required to devote substantial attention to refereeing abusive litigation tactics that range from benign incivility to outright obstruction. Our system of justice can ill-afford to devote scarce resources to supervising matters that do not advance the resolution of the merits of a case; nor can justice long remain available to deserving litigants if the costs of litigation are fueled unnecessarily to the point of being prohibitive.

As judges and former practitioners from varied backgrounds and levels of experience, we judicially know that litigation is conducted today in a manner far different from years past. Whether the increased size of the bar has decreased collegiality, or the legal profession has become only a business, or experienced lawyers have ceased to teach new lawyers the standards to be observed, or because of other factors not readily categorized, we observe patterns of behavior that forebode ill for our system of justice.[6] We now adopt standards designed to end such conduct.

A.

We begin by recognizing our power to adopt standards for attorney conduct in

Turnpike Waldrop Joint Venture, Alamo Associates, and Seven Flags Partnership.

2. The other motions are motions to compel and for protective order.

3. We concede the unusual nature of this procedure. We note, however, that the U.S. District Court for the Central District of California recently sat en banc to decide the constitutionality of the sentencing guidelines promulgated pursuant to the Sentencing Reform Act of 1984. *See United States v. Ortega Lopez*, 684 F.Supp. 1506 (C.D.Cal.1988) (en banc).

4. While we adopt en banc the standards for civil litigation conduct, the decisions regarding the particular motions are those of the magistrate and district judge, respectively, before whom the motions are pending.

5. We do so in the spirit of Fed.R.Civ.P. 1, which provides that the federal rules "shall be construed to secure the just, speedy, and inexpensive determination of every action."

6. Nor are we alone in our observations. In December 1984 the Texas Bar Foundation conducted a "Conference on Professionalism." The conference summary, issued in March 1985, recounts similar observations from leading judges, lawyers, and legal educators concerning the subject of lawyer professionalism.

civil actions and by determining, as a matter of prudence, that we, rather than the circuit court, should adopt such standards in the first instance.

By means of the Rules Enabling Act of 1934, now codified as 28 U.S.C. § 2072, Congress has authorized the Supreme Court to adopt rules of civil procedure. The Court has promulgated rules that empower district courts to manage all aspects of a civil action, including pretrial scheduling and planning (Rule 16) and discovery (Rule 26(f)). We are authorized to protect attorneys and litigants from practices that may increase their expenses and burdens (Rules 26(b)(1) and 26(c)) or may cause them annoyance, embarrassment, or oppression (Rule 26(c)), and to impose sanctions upon parties or attorneys who violate the rules and orders of the court (Rules 16(f) and 37). We likewise have the power by statute to tax costs, expenses, and attorney's fees to attorneys who unreasonably and vexatiously multiply the proceedings in any case. 28 U.S.C. § 1927. We are also granted the authority to punish, as contempt of court, the misbehavior of court officers. 18 U.S.C. § 401. In addition to the authority granted us by statute or by rule, we possess the inherent power to regulate the administration of justice. *See Batson v. Neal Spelce Associates, Inc.*, 805 F.2d 546, 550 (5th Cir.1986) (federal courts possess inherent power to assess attorney's fees and litigation costs when losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons); *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866, 875 (5th Cir.1988) (en banc) (district court has inherent power to award attorney's fees when losing party has acted in bad faith in actions that led to the lawsuit or to the conduct of the litigation).

We conclude also that, as a matter of prudence, this court should adopt standards of conduct without awaiting action of the circuit court. We find support for this approach in *Thomas*, where, in the Rule 11 context, the Fifth Circuit noted the singular perspective of the district court in deciding the fact intensive inquiry whether to impose or deny sanctions. The court noted that trial judges are "in the best position to review the factual circumstances and render an informed judgment as [they are] intimately involved with the case, the litigants, and the attorneys on a daily basis." 836 F.2d at 873. We think the circuit court's rationale for eschewing "second-hand review of the facts" in Rule 11 cases may be applied to our adopting standards of litigation conduct: " 'the district court will have a better grasp of what is acceptable trial-level practice among litigating members of the bar than will appellate judges.' ". *Id.* at 873 (quoting *Eastway Construction Corp. v. City of New York*, 637 F.Supp. 558, 566 (E.D.N.Y.1986)).

B.

We next set out the standards to which we expect litigation counsel to adhere.

The Dallas Bar Association recently adopted "Guidelines of Professional Courtesy" and a "Lawyer's Creed" [7] that are both sensible and pertinent to the problems we address here. From them we adopt the following as standards of practice [8] to be observed by attorneys appearing in civil actions in this district:

(A) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.

(B) A lawyer owes, to the judiciary, candor, diligence and utmost respect.

(C) A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

(D) A lawyer unquestionably owes, to the administration of justice, the fun-

7. We set out in an appendix pertinent portions of the guidelines and the creed in the form adopted by the Dallas Bar Association.

8. We also commend to counsel the American College of Trial Lawyers' Code of Trial Conduct (rev. 1987). Those portions of the Code that are applicable to our decision today are set out in the appendix.

damental duties of personal dignity and professional integrity.

(E) Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

(F) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

(G) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

(H) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client.

(I) Lawyers will be punctual in communications with others and in honoring scheduled appearances, and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.

(J) If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent.

(K) Effective advocacy does not require antagonistic or obnoxious behavior and members of the Bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

Attorneys who abide faithfully by the standards we adopt should have little difficulty conducting themselves as members of a learned profession whose unswerving duty is to the public they serve and to the system of justice in which they practice.[9] Those litigators who persist in viewing themselves solely as combatants, or who perceive that they are retained to win at all costs without regard to fundamental principles of justice, will find that their conduct does not square with the practices we expect of them. Malfeasant counsel can expect instead that their conduct will prompt an appropriate response from the court, including the range of sanctions the Fifth Circuit suggests in the Rule 11 context: "a warm friendly discussion on the record, a hard-nosed reprimand in open court, compulsory legal education, monetary sanctions, or other measures appropriate to the circumstances." *Thomas*, 836 F.2d at 878.[10]

We do not, by adopting these standards, invite satellite litigation of the kind we now see in the context of Fed.R.Civ.P. 11 motions. To do so would defeat the fundamental premise which motivates our action. We do intend, however, to take the steps necessary to ensure that justice is not removed from the reach of litigants either because improper litigation tactics interpose unnecessary delay or because such actions increase the cost of litigation beyond the litigant's financial grasp.[11]

Similarly, we do not imply by prescribing these standards that counsel are excused from conducting themselves in any manner otherwise required by law or by court rule. We think the standards we now adopt are a

9. We note that these standards are consistent with both the American Bar Association and State Bar of Texas Codes of Professional Responsibility. *See, e.g.*, ethical considerations EC 7-10, EC 7-36, EC 7-37, and EC 7-38 set out in the appendix.

10. We draw the parallel to Fed.R.Civ.P. 11 with the *caveat* that we are not adopting Rule 11 jurisprudence in the context presented here.

11. We note, by way of example, the Dallas Bar Association guideline that eliminates the necessity for motions, briefs, hearings, orders, and other formalities when "opposing counsel makes a reasonable request which does not prejudice the rights of the client." This salutary standard recognizes that every contested motion, however simple, costs litigants and the court time and money. Yet our court has experienced an increasing number of instances in which attorneys refuse to agree to an extension of time in which to answer or to respond to a dispositive motion, or even to consent to the filing of an amended pleading, notwithstanding that the extension of time or the amended pleading would delay neither the disposition of a pending matter nor the trial of the case.

necessary corollary to existing law, and are appropriately established to signal our strong disapproval of practices that have no place in our system of justice and to emphasize that a lawyer's conduct, both with respect to the court and to other lawyers, should at all times be characterized by honesty and fair play.

III.

The *Dondi Properties* motions referred to the magistrate for determination raise issues concerning plaintiffs' compliance with prior discovery orders of the court and the conduct of one of plaintiffs' attorneys in contacting a possible witness.

A.

Discovery Issues

[2] Although in excess of 20 pleadings and letters from counsel have been presented to the court involving various defendants' motions for sanctions, the common denominator of all is whether or not plaintiffs have complied with the previous discovery orders of the magistrate.

The case at hand presents complex legal and factual theories involving hundreds of thousands of documents. The logistical problems presented in discovery are compounded by several factors, among them being that (a) none of the Receiver (FSLIC)'s employees were employed by either Vernon Savings and Loan Association, FSA, or its predecessor; (b) prior to the Receiver's receipt of documents they were not kept in a complete and orderly manner; (c) that plaintiffs have had three sets of attorneys of record in this case; and (d) plaintiffs and their counsel, past and present, have not taken adequate measures to assure compliance with the court's prior orders.

In seeking dismissal of plaintiffs' case, the moving defendants have categorized plaintiffs' conduct and that of their counsel as being in "bad faith" and "in defiance" of the court's prior orders. Such characterization of a party opponent's conduct should be sparingly employed by counsel and should be reserved for only those instances in which there is a sound basis in fact demonstrating a party's deliberate and intentional disregard of an order of the court or of obligations imposed under applicable Federal Rules of Civil Procedure. Such allegations, when inappropriately made, add much heat but little light to the court's task of deciding discovery disputes.

Although there are conceded instances of neglect on the part of plaintiffs and their counsel and instances of lack of communication or miscommunication among counsel for the parties in the present discovery disputes, there is no showing of intentional or willful conduct on the part of plaintiffs or their counsel which warrants dismissal under Rule 37(b), Federal Rules of Civil Procedure. However, the disputes which exist amply demonstrate an inadequate utilization of Local Rule 5.1(a).[12]

Local Rule 5.1(a) implicitly recognizes that in general the rules dealing with discovery in federal cases are to be self-executing. The purpose of the conference requirement is to promote a frank exchange between counsel to resolve issues by agreement or to at least narrow and focus the matters in controversy before judicial resolution is sought. Regrettably over the years, in many instances the conference requirement seems to have evolved into a *pro forma* matter. With increased frequency I observe instances in which discovery disputes are resolved by the affected parties after a hearing has been set—sometimes within minutes before the hearing is to commence. If disputes can be resolved after motions have been filed, it follows that in all but the most extraordinary circumstances, they could have been resolved in the course of Rule 5.1(a) conferences.

A conference requires the participation of counsel for all affected parties. An attorney's refusal to return a call requesting a Rule 5.1(a) conference will not be

12. In part Local Rule 5.1(a) reads as follows: "Before filing a motion, counsel for a moving party shall confer with the counsel of all parties affected by the requested relief to determine whether or not the contemplated motion will be opposed."

tolerated. Of course, the conference requirement may be satisfied by a written communication as well. The manner in which the conference is held and the length of the conference will be dictated by the complexity of the issues and the sound judgment of attorneys in their capacities as advocates as well as officers of the court, with the objective of maximizing the resolution of disputes without court intervention. Properly utilized Rule 5.1(a) promotes judicial economy while at the same time reducing litigants' expenses incurred for attorneys' time in briefing issues and in preparing and presenting pleadings.[13]

Because the present controversies may well be resolved, or appreciably narrowed, following further communications among counsel and because the court is not presented with circumstances which warrant dismissal under Rule 37, the movant defendants' motions will be denied at this time.

B.

Motion for Sanctions

[3] In their motion filed on May 18, 1988, defendants, Goldman, Stool, AMF Partnership Ltd., et al. (the Stool defendants) seek an order sanctioning the conduct of David Hammond, an attorney practicing with the firm which is counsel of record for plaintiffs.

The undisputed facts are that on or about May 9, 1988, plaintiffs' attorney had a telephone conversation with Carl Edwards in which the attorney made inquiries about transactions pertinent to the present case, but the attorney did not identify himself as an attorney representing the plaintiffs.

As stated in the opinion issued in *Ceramco, Inc. v. Lee Pharmaceuticals*, 510 F.2d 268, 271 (2d Cir.1975): "the courts have not only the supervisory power but also the duty and responsibility to disqualify counsel for unethical conduct *prejudicial to his adversaries.*" (Emphasis added). However, in the present case movants do not seek to disqualify plaintiffs' counsel nor have they shown any prejudice resulting from the communication. Except in those instances in which an attorney's conduct prejudicially affects the interests of a party opponent or impairs the administration of justice, adjudication of alleged ethical violations is more appropriately left to grievance committees constituted for such purpose. Deferring to such bodies permits proper resolution of attorneys' conduct while at the same time relieving courts of deciding matters which are unrelated or at most peripheral to the cases before them. As reflected in the pleadings pertinent to this motion, there are both legal issues and factual conflicts which must be resolved in deciding whether ethical standards were violated. Indeed, following the filing of the motion movants have sought to depose the attorney whose conduct is at issue, which has in turn precipitated a motion for protective order filed by the plaintiffs.

Insuring that members of the legal profession comply with ethical standards should be a matter of concern to all attorneys, and alleged breaches should be brought to the attention of the grievance committee by an attorney without charge to a client, which is appropriate only when resolution by a court is warranted. *Ceramco, Inc., supra.* By the same token, absent a motion to disqualify, which if granted would adversely affect his client's interests, an attorney whose conduct is called into question must himself bear the cost of defending his actions before a grievance committee.

For the foregoing reasons movants' motion for sanctions will be denied, but without prejudice to their counsel's right to present the allegations of misconduct to the grievance committee. The refusal to grant sanctions should not be understood as condoning an attorney's failure to identify himself and his client to a prospective witness. Had the attorney done so in the present case, the present issue may not

13. When Rule 5.1(a) conferences result in agreements, counsel may wish to memorialize such agreements in writing.

have arisen. An attorney is held to a higher standard of conduct than non-lawyers, and unlike non-lawyers, if rebuffed by a prospective witness, the attorney may use available discovery procedures to obtain the information sought.

It is, therefore, ordered that the defendants' motions relating to discovery are denied, but without prejudice to their right to file subsequent motions, if disputes remain after their counsel and plaintiffs' counsel have engaged in a Rule 5.1(a) conference consistent with this order.

It is further ordered that the Stool defendants' motion for sanctions against plaintiffs' attorney is denied, but without prejudice to presentation of the issues raised to the appropriate grievance committee.

It is further ordered that neither the Stool defendants' counsel nor the plaintiffs' attorneys will charge their clients for any time or expenses incurred relating in any manner to the Stool defendants' motion for sanctions against plaintiffs' attorney.

IV.

[4] In *Knight*, plaintiff moves to strike a reply brief that defendant filed without the court's permission. In the alternative, plaintiff seeks leave to file a response to the reply brief.

A.

It is undisputed that defendant did not obtain court permission to reply to plaintiff's response to defendant's motions for separate trials and to join a party. Defendant explains in its response to the motion to strike that "because of the flurry of activity in this case, it failed to secure permission from the Presiding Judge to file the reply." Although defendant clearly violated a Local Rule of this court, the court concludes that the error did not warrant plaintiff's filing a motion to strike.

The en banc court has adopted standards of civil litigation conduct that apply to attorneys who practice before this court. One standard requires that attorneys cooperate with one another in order to promote "the efficient administration of our system of justice." This and the other standards adopted by the court attempt to satisfy the goals of reducing litigation costs and expediting the resolution of civil actions. The attorneys in *Knight* did not cooperate in connection with the filing of the reply brief, and there resulted a dispute that has presumably increased counsel's fees to their clients, has unquestionably required of the court an unnecessary expenditure of time, and has not materially advanced the resolution of the merits of this case.

In Local Rule 5.1 we have established the briefing and decisional regimens for contested motions. Rules 5.1(a), (c), and (d) prescribe the movant's obligations. Rule 5.1(e) dictates the deadline for filing a response and provides when contested motions shall be deemed ready for disposition. A movant may not, as of right, file a reply to a response; instead, Rule 5.1(f) requires the movant to obtain permission to do so immediately upon receipt of a response. In the present case, defendant's counsel failed to cooperate with plaintiff's counsel because he did not ask him to agree [14] to the filing of a reply. Plaintiff's counsel failed to cooperate when he filed the motion to strike the reply.[15]

While our court has decided that the determination whether to permit a reply is discretionary with each judge, the principle is well-established that the party with the burden on a particular matter will normally be permitted to open and close the briefing. *See, e.g.*, Sup.Ct.R. 35(3); Fed.R.App.P. 28(c). It should thus be rare that a party

14. The court is not to be understood as holding that the parties can, by agreement, bind the presiding judge to grant permission to file a reply. Where the parties have so agreed, however, the court will usually grant such permission.

15. Plaintiff's motion to strike contains a certificate of conference that states that defendant and plaintiff could not agree regarding the motion to strike. Defendant disputes in its response that plaintiff and defendant had such a conference, but states that had there been one, defendant would have opposed the motion to strike.

who opposes a motion will object to the movant's filing a reply.

In the present case, the parties have presumably incurred the expense of preparing, and the court has expended time considering, pleadings that go *not* to a question that will advance the merits of this case but instead to a collateral determination whether the court should consider a particular pleading. In isolation, such expenditures may appear inconsequential. Considered in the proper context of numerous civil actions and frequent disputes, it is apparent that cooperation between opposing counsel is essential to the efficient operation of our justice system.

B.

Turning to the merits of the motion to strike, the court concludes that the reply brief should not be stricken and that plaintiff should not be permitted to file a further response. Although defendant did not immediately seek permission to file a reply, the court has yet to consider the underlying substantive motions; it thus will not interfere with the court's decisional process to consider the reply. The court declines to permit plaintiff to file a further response because the burden on the motions is upon the defendant, who should thus be given the opportunity to open and close the argument.

SO ORDERED.

APPENDIX

Excerpts from the Dallas Bar Association Guidelines of Professional Courtesy

PREAMBLE

A lawyer's primary duty is to the client. But in striving to fulfill that duty, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.

A lawyer owes, to the judiciary, candor, diligence and utmost respect.

A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

In furtherance of these fundamental concepts, the following Guidelines of Professional Courtesy are hereby adopted.

COURTESY, CIVILITY AND PROFESSIONALISM

1. General Statement

(a) Lawyers should treat each other, the opposing party, the court and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

(b) The client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

(c) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

2. Discussion

(a) A lawyer should not engage in discourtesies or offensive conduct with opposing counsel, whether at hearings, depositions or at any other time when involved in the representation of clients. In all contacts with the court and court personnel, counsel should treat the court and its staff with courtesy and respect and without regard to whether counsel agrees or disagrees with rulings of the court in any specific case. Further, counsel should not denigrate the court or opposing counsel in private conversations with their own client. We should all remember that the disrespect we bring upon our fellow members of the Bar and the judiciary re-

APPENDIX—Continued

flects on us and our profession as well.

(b) Lawyers should be punctual in fulfilling all professional commitments and in communicating with the court and fellow lawyers.

DEPOSITIONS, HEARINGS, AND DISCOVERY MATTERS

1. General Statement

(a) Lawyers should make reasonable efforts to conduct all discovery by agreement.

(b) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or his client.

(c) Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case.

2. Scheduling Lawyers should, when practical, consult with opposing counsel before scheduling hearings and depositions in a good faith attempt to avoid scheduling conflicts.

3. Discussion

(a) General Guidelines

(1) When scheduling hearings and depositions, lawyers should communicate with the opposing counsel in an attempt to schedule them at a mutually agreeable time. This practice will avoid unnecessary delays, expense to clients, and stress to lawyers and their secretaries in the management of the calendars and practice.

(2) If a request is made to clear time for a hearing or deposition, the lawyer to whom the request is made should confirm that the time is available or advise of a conflict within a reasonable time (preferably the same business day, but in any event before the end of the following business day).

(3) Conflicts should be indicated only when they actually exist and the requested time is not available. The courtesy requested by this guideline should not be used for the purpose of obtaining delay or any unfair advantage.

(b) Exceptions to General Guidelines

(1) A lawyer who has attempted to comply with this rule is justified in setting a hearing or deposition without agreement from opposing counsel if opposing counsel fails or refuses promptly to accept or reject a time offered for hearing or deposition.

(2) If opposing counsel raises an unreasonable number of calendar conflicts, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

(3) If opposing counsel has consistently failed to comply with this guideline, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

(4) When an action involves so many lawyers that compliance with this guideline appears to be impractical, a lawyer should still make a good faith attempt to comply with this guideline.

(5) In cases involving extraordinary remedies where time associated with scheduling agreements could cause damage or harm to a client's case, then a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

APPENDIX—Continued

4. Minimum Notice for Depositions and Hearings

(a) Depositions and hearings should not be set with less than one week notice except by agreement of counsel or when a genuine need or emergency exists.

(b) If opposing counsel makes a reasonable request which does not prejudice the rights of the client, compliance herewith is appropriate without motions, briefs, hearings, orders and other formalities and without attempting to exact unrelated or unreasonable consideration.

5. Cancelling Depositions, Hearings and Other Discovery Matters

(a) General Statement Notice of cancellation of depositions and hearings should be given to the court and opposing counsel at the earliest possible time.

(b) Discussion

(1) Calling at or just prior to the time of a scheduled hearing or deposition to advise the court or opposing counsel of the cancellation lacks courtesy and consideration.

(2) Early notice of cancellation of a deposition or a hearing avoids unnecessary travel and expenditure of time by opposing counsel, witnesses, and parties. Also, early notice of cancellation of hearings to the Court allows the time previously reserved to be used for other matters.

* * * * * *

TIME DEADLINES AND EXTENSIONS

1. General Statement Reasonable extensions of time should be granted to opposing counsel where such extension will not have a material, adverse effect on the rights of the client.

2. Discussion

(a) Because we all live in a world of deadlines, additional time is often required to complete a given task.

(b) Traditionally, members of this bar association have readily granted any reasonable request for an extension of time as an accommodation to opposing counsel who, because of a busy trial schedule, personal emergency or heavy work load, needs additional time to prepare a response or comply with a legal requirement.

(c) This tradition should continue; provided, however, that no lawyer should request an extension of time solely for the purpose of delay or to obtain any unfair advantage.

(d) Counsel should make every effort to honor previously scheduled vacations of opposing counsel which dates have been established in good faith.

* * * * * *

Dallas Bar Association Lawyer's Creed:

1. I revere the Law, the System, and the Profession, and I pledge that in my private and professional life, and in my dealings with fellow members of the Bar, I will uphold the dignity and respect of each in my behavior toward others.

2. In all dealings with fellow members of the Bar, I will be guided by a fundamental sense of integrity and fair play; I know that effective advocacy does not mean hitting below the belt.

3. I will not abuse the System or the Profession by pursuing or opposing discovery through arbitrariness or for the purpose of harassment or undue delay.

4. I will not seek accommodation from a fellow member of the Bar for the rescheduling of any Court setting or dis-

APPENDIX—Continued

covery unless a legitimate need exists. I will not misrepresent conflicts, nor will I ask for accommodation for the purpose of tactical advantage or undue delay.

5. In my dealings with the Court and with fellow counsel, as well as others, my word is my bond.

6. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

7. I recognize that my conduct is not governed solely by the Code of Professional Responsibility, but also by standards of fundamental decency and courtesy.

8. I will strive to be punctual in communications with others and in honoring scheduled appearances, and I recognize that neglect and tardiness are demeaning to me and to the Profession.

9. If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, I will not arbitrarily or unreasonably withhold consent.

10. I recognize that effective advocacy does not require antagonistic or obnoxious behavior, and as a member of the Bar, I pledge to adhere to the higher standard of conduct which we, our clients, and the public may rightfully expect.

The American College of Trial Lawyers' Code of Trial Conduct (rev. 1987) provides, in pertinent part:

PREAMBLE

Lawyers who engage in trial work have a specific responsibility to strive for prompt, efficient, ethical, fair and just disposition of litigation....

* * * * * *

To his client, a lawyer owes undivided allegiance, the utmost application of his learning, skill and industry, and the employment of all appropriate legal means within the law to protect and enforce legitimate interests. In the discharge of this duty, a lawyer should not be deterred by any real or fancied fear of judicial disfavor, or public unpopularity, nor should he be influenced directly or indirectly by any considerations of self-interest.

To opposing counsel, a lawyer owes the duty of courtesy, candor in the pursuit of the truth, cooperation in all respects not inconsistent with his client's interests and scrupulous observance of all mutual understandings.

To the office of judge, a lawyer owes respect, diligence, candor and punctuality, the maintenance of the dignity and independence of the judiciary, and protection against unjust and improper criticism and attack, and the judge, to render effective such conduct, has reciprocal responsibilities to uphold and protect the dignity and independence of the lawyer who is also an officer of the court.

To the administration of justice, a lawyer owes the maintenance of professional dignity and independence. He should abide by these tenets and conform to the highest principles of professional rectitude irrespective of the desires of his client or others.

This Code expresses only minimum standards and should be construed liberally in favor of its fundamental purpose, consonant with the fiduciary status

APPENDIX—Continued

of the trial lawyer, and so that it shall govern all situations whether or not specifically mentioned herein.

* * * * * *

12. DISCRETION IN COOPERATING WITH OPPOSING COUNSEL

The lawyer, and not the client, has the sole discretion to determine the accommodations to be granted opposing counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments and admission of facts. In such matters no client has a right to demand that his counsel shall be illiberal or that he do anything therein repugnant to his own sense of honor and propriety.

13. RELATIONS WITH OPPOSING COUNSEL

(a) A lawyer should adhere strictly to all express promises to and agreements with opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom. When he knows the identity of a lawyer representing an opposing party, he should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed.

(b) A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel, and should remain wholly uninfluenced by any ill feeling between the respective clients. He should abstain from any allusion to personal peculiarities and idiosyncracies of opposing counsel.

* * * * * *

American Bar Association and State Bar of Texas Codes of Professional Responsibility ethical considerations:

EC 7-10. The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7-36. Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of proceedings. While maintaining his independence, a lawyer should be respectful, courteous, and above-board in his relations with a judge or hearing officer before whom he appears. He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7-37. In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7-38. A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be punctual in fulfilling all professional commitments.

EC 7-39. In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of the tribunal and make their decisional processes prompt and just, without impinging upon the obligation of the lawyer to represent his client zealously within the framework of the law.

Appendix C. Charts Used In Docket Assessment

CHART 1: MEDIAN TIME INTERVALS IN MONTHS FROM FILING TO DISPOSITION OF CIVIL CASES TERMINATED IN STATISTICAL YEAR 1990

	TEXAS NORTHERN	NATION
TOTAL CASES	7	8
UNITED STATES CASES	7	6
CONTRACT ACTIONS		
Negotiable Instruments	7	5
Recovery of Overpayments and Enforcement of Judgements	6	3
Other Contracts	8	5
REAL PROPERTY	8	6
TORT ACTIONS		
Marine, Personal Injury	-	14
Motor Vehicle, Personal Injury	-	9
Other Personal Injury	9	13
Other Torts	6	8
ACTIONS UNDER STATUTES		
Antitrust	-	5
Civil Rights		
Employment	8	11
Other Civil Rights	-	6
Liquor Forfeitures	-	-
Other Forfeiture & Penalty Suits	6	6
Fair Labor Standards Act	-	8
Other Labor Litigation	-	5
Selective Service Act	-	-
Social Security Laws		
Health Insurance	-	10
Black Lung	-	2
Disability Insurance	6	10
Supplemental Security Income	-	10
Retirement & Survivor Benefits	-	10
Other	-	-
Tax Suits	13	9
ALL OTHER U.S. ACTIONS	5	6

NOTE: Time intervals are computed only where there are ten (10) or more cases.

CHART 1: MEDIAN TIME INTERVALS IN MONTHS FROM FILING TO DISPOSITION OF CIVIL CASES TERMINATED IN STATISTICAL YEAR 1990

(Continued)

	TEXAS NORTHERN	NATION
FEDERAL QUESTION	6	8
CONTRACT ACTIONS		
Marine	-	7
Miller Act	-	7
Other Contracts	8	8
REAL PROPERTY	8	7
TORT ACTIONS		
Employers' Liability Act	-	12
Marine, Personal Injury	-	12
Other Personal Injury	2	11
Other Torts	8	9
ACTIONS UNDER STATUTES		
Antitrust	5	14
Civil Rights		
Employment	14	12
Other Civil Rights	10	10
Fair Labor Standards Act	18	11
Labor Management Relations Act	-	7
Other Labor Litigation	8	6
Copyright	4	6
Patent	18	10
Trademark	8	6
CONSTITUTIONALITY OF STATE STATUTES	-	6
ALL OTHER FEDERAL QUESTION	4	7

Continued

CHART 1: MEDIAN TIME INTERVALS IN MONTHS FROM FILING TO DISPOSITION OF CIVIL CASES TERMINATED IN STATISTICAL YEAR 1990

(Continued)

	TEXAS NORTHERN	NATION
DIVERSITY OF CITIZENSHIP	8	10
CONTRACT ACTIONS		
Insurance	10	10
Negotiable Instruments	6	8
Other Contracts	10	9
REAL PROPERTY	4	5
TORT ACTIONS		
Marine, Personal Injury	-	9
Motor Vehicle, Personal Injury	15	10
Other Personal Injury	7	13
Other Torts	11	11
ALL OTHER DIVERSITY	-	19

CHART 2: UNITED STATES DISTRICT COURTS

COMPARABLE IN NUMBER OF JUDGES AND/OR NUMBER OF TOTAL FILINGS

TRENDS IN CRIMINAL MEDIAN DISPOSITION TIMES (MONTHS) * STATISTICAL YEARS 1986-1990

Court	1986	1987	1988	1989	1990
Texas Northern	3.5	3.7	4.2	4.6	5.1
Florida Middle	3.8	4.0	4.1	5.3	5.9
Maryland	5.1	5.1	5.4	6.4	6.2
Massachusetts	4.2	5.2	5.0	7.5	7.4
New York Eastern	4.4	5.1	5.8	6.7	6.7
New Jersey	4.7	5.8	5.3	6.7	6.7
Virginia Eastern	2.9	3.1	3.2	3.8	3.6

* Median disposition times (months) for criminal felony cases, from filing to disposition.

CHART 3: NORTHERN DISTRICT OF TEXAS

DISTRIBUTION OF CASE FILINGS BY BROAD CATEGORY

STATISTICAL YEAR 1990

Division	Number Of Type I Civil Case Filings *	Number Of Type II Civil Case Filings **	Total Civil Case Filings	Percentage Of Type II Case Filings **
Dallas	831	2331	3162	73.7%
Fort Worth	287	606	893	67.9%
Western Texas	337	570	907	62.8%
All Divisions	1455	3507	4962	70.7%

* Type I civil cases are usually handled in a somewhat routine manner including student loan collection cases; cases seeking recovery of overpayment of veterans' benefits; appeals of Social Security Administration benefit denials; condition-of-confinement cases brought by state prisoners; habeas corpus petitions; appeals from bankruptcy court decisions; land condemnation cases; and asbestos product liability cases.

** Type II civil cases follow varied paths to disposition and may require special handling including contract actions other than student loan, veteran's benefit, and collection of judgement cases; personal injury cases other than asbestos; non-prisoner civil rights cases; patent and copyright cases; ERISA cases; labor law cases; tax cases; security cases; and other actions under federal statutes.

CHART 4: NORTHERN DISTRICT OF TEXAS - DALLAS DIVISION

DISTRIBUTION OF CASE FILINGS BY BROAD CATEGORY

STATISTICAL YEARS 1986-1990

Year	Number Of Type I Civil Case Filings *	Number Of Type II Civil Case Filings **	Total Civil Case Filings	Percentage Of Type II Case Filings **
1986	1321	1755	3076	57.1%
1987	1063	1972	3035	65.0%
1988	825	2213	3038	72.8%
1989	824	2541	3365	75.5%
1990	831	2331	3162	73.7%

* Type I civil cases are usually handled in a somewhat routine manner including student loan collection cases; cases seeking recovery of overpayment of veterans' benefits; appeals of Social Security Administration benefit denials; condition-of-confinement cases brought by state prisoners; habeas corpus petitions; appeals from bankruptcy court decisions; land condemnation cases; and asbestos product liability cases.

** Type II civil cases follow varied paths to disposition and may require special handling including contract actions other than student loan, veteran's benefit, and collection of judgement cases; personal injury cases other than asbestos; non-prisoner civil rights cases; patent and copyright cases; ERISA cases; labor law cases; tax cases; security cases; and other actions under federal statutes.

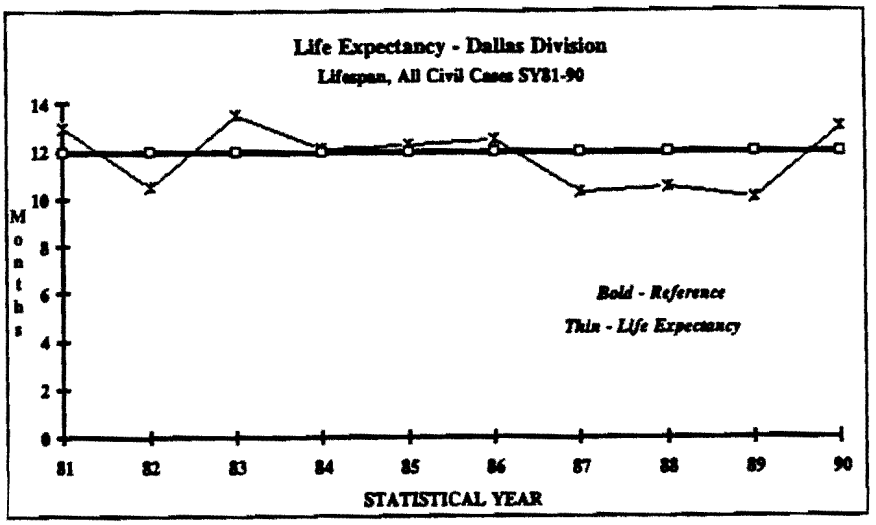
CHART 5: UNITED STATES DISTRICT COURTS
COMPARABLE IN NUMBER OF JUDGES AND/OR TOTAL NUMBER OF FILINGS

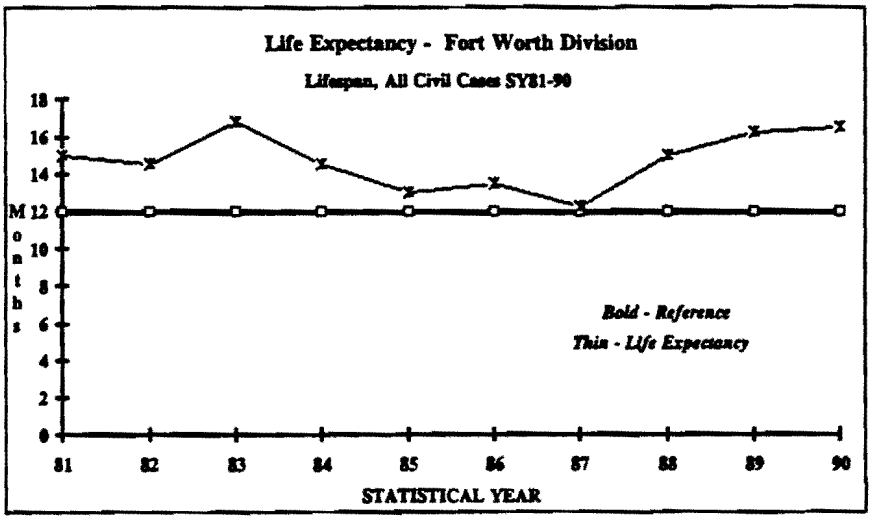
CIVIL CASES PENDING OVER THREE (3) YEARS
AS OF JUNE 30, 1990

Court	Number Over 3 Years	Percentage * Over 3 Years
Texas Northern	296	5.8%
Florida Middle	257	6.0%
Maryland	351	10.2%
Massachusetts	2,293	30.8%
New York Eastern	762	13.1%
New Jersey	303	5.9%
Virginia Eastern	772	23.2%

* The national average percentage of cases pending over 3 years is 10.4%

CHART 6: NORTHERN DISTRICT OF TEXAS
LIFE EXPECTANCY OF CIVIL CASES BY DIVISION
STATISTICAL YEARS 1981-1990





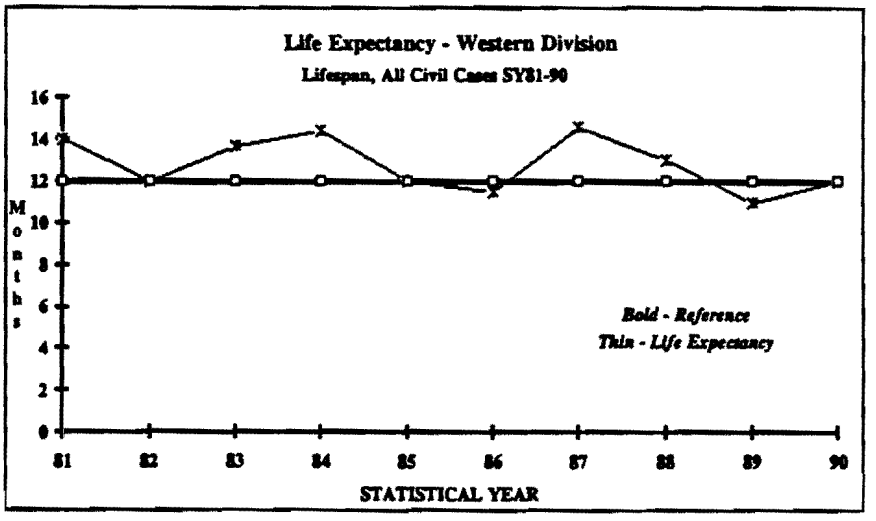


CHART 7: NORTHERN DISTRICT OF TEXAS

CONTRACT FILINGS v. TOTAL CIVIL FILINGS

STATISTICAL YEARS 1986-1990

Year	Contract Filings	Total Civil Filings	Percentage Of Contract Filings
1986	1073	5450	19.7%
1987	1156	4748	24.3%
1988	1351	4848	27.9%
1989	1640	5346	30.7%
1990	1248	4962	25.2%

CHART 8: UNITED STATES DISTRICT COURTS

COMPARABLE IN NUMBER OF JUDGES AND/OR NUMBER OF TOTAL FILINGS

TRENDS IN CONTRACT SUIT FILINGS, STATISTICAL YEARS 1986-1990

Court	1986	1987	1988	1989	1990
Texas Northern	1073	1156	1351	1640	1248
Florida Middle	795	821	879	777	744
Maryland	764	703	612	725	589
Massachusetts	713	655	667	670	628
New York Eastern	1021	897	840	880	720
New Jersey	1405	1449	1375	1497	1155
Virginia Eastern	751	729	800	909	713

CHART 9: UNITED STATES DISTRICT COURTS

COMPARABLE IN NUMBER OF JUDGES AND/OR NUMBER OF TOTAL FILINGS

TRENDS IN PRISONER PETITION FILINGS, STATISTICAL YEARS 1986-1990

Court	1986	1987	1988	1989	1990
Texas Northern *	552	603	746	770	822
Florida Middle	1061	1081	1169	1132	1191
Maryland	756	690	779	872	704
Massachusetts	188	216	228	274	175
New York Eastern	421	369	381	482	568
New Jersey	619	589	680	734	717
Virginia Eastern	958	844	891	1202	1020

* From 1986 to 1990, the Northern District of Texas experienced an increase in prisoner petitions of 48.9%.

CHART 10: UNITED STATES DISTRICT COURTS

COMPARABLE IN NUMBER OF JUDGES AND/OR NUMBER OF TOTAL FILINGS

TRENDS IN CIVIL RIGHTS FILINGS, STATISTICAL YEARS 1986-1990

Court	1986	1987	1988	1989	1990
Texas Northern *	386	397	481	444	480
Florida Middle	369	353	328	408	413
Maryland	345	307	300	347	322
Massachusetts	336	327	377	343	358
New York Eastern	411	362	372	326	291
New Jersey	524	490	559	562	534
Virginia Eastern	340	346	280	244	284

* In 1991, the Northern District of Texas had 484 civil rights case filings.

CHART 11: NORTHERN DISTRICT OF TEXAS

TRENDS IN CRIMINAL CASEFLOW, STATISTICAL YEARS 1986-1990

	1986	1987	1988	1989	1990
Criminal Felony Filings	630	658	632	645	683
Defendants	987	1108	933	993	999
Criminal Trials	121	134	153	168	170
Criminal Trial Hours	1247.5	1398	1850	1999.5	2817.5
Criminal Median Disposition * Times (Months)	3.5	3.7	4.2	4.6	5.1

* Median disposition times (months) for criminal felony cases, from filing to disposition.

CHART 12: NORTHERN DISTRICT OF TEXAS

TRENDS IN CRIMINAL FILINGS, STATISTICAL YEARS 1986-1990

Criminal Case Types	1986	1987	1988	1989	1990
Immigration	28	14	40	60	61
Embezzlement	47	41	34	37	30
Weapons & Firearms	43	58	60	78	113
Escape	30	22	62	44	35
Burglary & Larceny	60	42	44	47	69
Marijuana & Controlled Substances	36	42	49	52	36
Narcotics	84	93	109	84	74
Forgery & Counterfeiting	78	60	40	28	21
Fraud	158	204	122	146	169
Homicide & Assault*	-	-	-	-	3
Robbery*	13	22	30	23	19
All Other Criminal Felony Cases	53	60	42	46	53
Total Criminal Felony Filings	630	658	632	645	683

* Prior to 1990, Homicide & Assault cases were included in the Robbery category.

CHART 13: NORTHERN DISTRICT OF TEXAS
TRENDS IN NUMBER OF DEFENDANTS FILED PER OFFENSE CATEGORY
STATISTICAL YEARS 1987-1990

Offense Category	1987	1988	1989	1990
Homicide	-	2	-	-
Robbery	20	24	22	28
Assault	6	11	3	3
Burglary	1	1	-	4
Larceny	54	53	62	95
Embezzlement	46	42	45	34
Fraud	309	171	203	225
Auto Theft	24	24	20	25
Forgery And Counterfeiting	91	52	46	26
Marijuana	28	38	24	26
Narcotics	164	193	182	182
Controlled Substances	148	48	70	51
Other Drug Related Statutes	47	-	2	3
Extortion, Racketeering, Threats	16	19	6	3
Weapons And Firearms	62	92	88	127
Traffic	-	-	-	-
Other General Offenses	36	70	61	43
Immigration	16	58	93	78
Liquor, Internal Revenue	-	-	-	-
Postal Laws	5	-	2	1
Other Special Offenses	35	35	64	45
Total Defendants Filed	1108	933	993	999

CHART 14: NORTHERN DISTRICT OF TEXAS

JUDICIAL WORKLOAD PROFILE *

	1987		1988		1989		1990		1991	
	Per Authorized Judgeship (10)	Per Actual Active Judge	Per Authorized Judgeship (10)	Per Actual Active Judge	Per Authorized Judgeship (10)	Per Actual Active Judge	Per Authorized Judgeship (10)	Per Actual Active Judge	Per Authorized Judgeship (12)	Per Actual Active Judge
Filings Total	542	640	550	644	602	668	566	696	437	599
Civil	475	561	485	567	535	594	496	610	382	523
Criminal Felony	67	79	65	76	67	74	70	86	55	75
Defendants	111	131	93	109	99	110	99	122	84	115
Pending	564	666	531	621	557	618	570	701	425	582
Weighted Filings	604	713	586	686	626	695	577	710	452	619
Terminations	529	624	583	682	576	639	555	683	485	664
Trials Completed	43	51	44	51	42	47	37	46	34	47

* The actual active judge figures have been adjusted to reflect judicial vacancies and the extended illness of one active judge.

CHART 15: UNITED STATES DISTRICT COURTS

COMPARABLE IN NUMBER OF JUDGES AND/OR TOTAL NUMBER OF FILINGS

STATISTICAL YEAR 1990 FIGURES AND AUTHORIZED POSITIONS

Court	Number Of Judges	Number Of Filings	Number Of Terminations	Permanent Authorized Positions *
Texas Northern	10	5663	5545	76
Florida Middle	9	5059	4833	82
Maryland	10	3879	4339	75
Massachusetts	12	4460	3638	72
New York Eastern	12	5382	4687	100
New Jersey	14	5957	6175	96
Virginia Eastern	9	5263	5194	86

* Allocation of clerk's office positions to district courts authorized as of 11/12/90.