UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

CIVIL JUSTICE REFORM ACT OF 1990
REPORT OF THE ADVISORY GROUP

July 1992
Supplemented March 1993

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

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EASTERN DISTRICT OF MICHIGAN

Civil Justice Reform Act of 1990
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

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I. DESCRIPTION OF THE COURT

The Eastern District of Michigan includes approximately 70% of the State's population and stretches from the Ohio border to the tip of the lower peninsula. The Eastern District is divided by law into two divisions (28 U.S.C. § 102). The Southern Division is made up of 13 counties and court is held in Detroit, Flint, Port Huron and Ann Arbor. The Northern Division consists of 21 counties and court is held in Bay City.

The Eastern District operates on an individual judge calendar system. Each case is assigned to a specific district judge at the time of filing and normally remains with that judge until final disposition. The Eastern District is currently authorized 15 district judgeships and eight magistrate judgeships. Five senior district judges presently round out the judicial officer complement for the Eastern District. The caseload for a senior judge (as well as the Chief Judge) is generally one-half that of the caseload assigned to an active district judge.

II. ASSESSMENT OF THE DOCKET

A. The Civil Docket

At the present time, the Eastern District's civil caseload, measured in terms of "weighted filings,"[1] is slightly above the national average. The number of weighted filings per judge has varied considerably over the last twelve years ranging from 376 per judge in 1979 to a peak of 599 in 1984, and slowly declining to 376 again in 1990. In 1991, there was an average of 389 weighted filings per judge compared with the nationwide average of 386, ranking the Eastern District 35th out of 94 districts.

WEIGHTED FILINGS PER JUDGESHIP

YEAR	NUMBER	RANKING AMONG DISTRICTS
1979	376	13th
1980	401	22nd
1981	461	19th
1982	517	13th
1983	572	12th
1984	599	17th
1985	492	23rd
1986	471	36th
1987	492	24th
1988	496	26th
1989	429	47th
1990	376	65th
1991	389	35th

[1] "Weighted filings" is a measurement used by the Administrative Office of the United States Courts to adjust the actual number of case filings per judge so as to take into account cases known to be more difficult and time-consuming. Unless otherwise noted, the statistics provided in this section are derived from the Administrative Office's annual statistical reporting for the federal courts.

In 1985, the Eastern District received an additional two judgeships (from 13 to 15), which helped to ease the heavy demands on the Court. Also, in the peak year of 1984, social security disability appeals and routine collection cases, which are less demanding on judicial time than other cases, accounted for over 40% of the filings. In 1991, these two categories accounted for only 16.7% of the filings. Thus, the decline in civil filings since 1984, although part of a national trend,[2] does not evidence any significant decrease in judicial workload in the Eastern District.

The Civil Justice Reform Act requires looking at several indicators to ascertain how well or poorly the Eastern District was disposing of its case filings. Despite the small increase in weighted filings since 1979, the Eastern District was able to diminish the median time for civil cases to go to trial after an answer was filed, and to stay below the national average in the median time necessary for disposition of all civil cases.

MEDIAN TIMES (IN MONTHS)

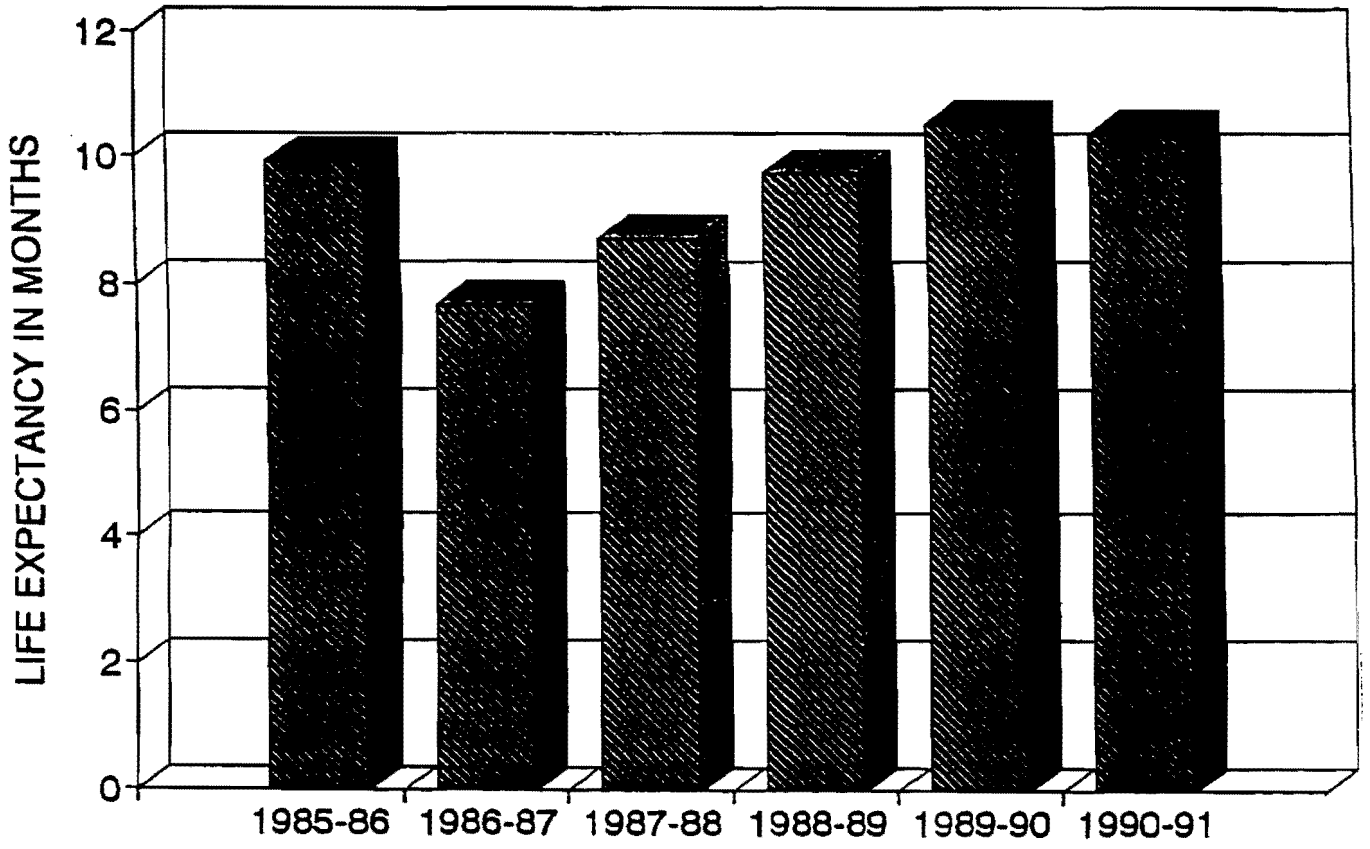
	1991	1988	1985	1982	1979
Issue to trial (EDMI)	14	17	20	18	21
Issue to trial (Nat'l)	14	14	14	14	14
Filing to Disposition (EDMI)	8	8	10	8	8
Filing to Disposition (Nat'l)	9	9	9	7	9

[2] Nationwide filings peaked in 1985, when there were 299,164 case filings, excluding criminal misdemeanor cases. By 1991, this number had declined to 241,420.

The Average Life Expectancy Chart below shows that during the statistical years 1985 through 1991, the Eastern District was effective in terminating civil cases, staying comfortably below the national average of 12 months.

AVERAGE LIFE EXPECTANCY CHART[3]

Statistical Years 1985 - 1991



[3] The average life expectancy for civil cases is calculated by dividing the total number of cases pending by the total number of cases terminated in a given statistical year, and multiplying the result by 12 for a result in months. If the average is 12 months or less, the district is considered to be effective in avoiding case backlog.

Although these statistics reflect well on the professionalism and work ethic of the Eastern District, one note of caution is in order. The percentage of the Eastern District's civil caseload over three years old almost doubled from 1990 (3.4% of the caseload) to 1991 (6.5% of the caseload). While the 1991 figure is still much better than the national average (11.8% of the national caseload is over three years old), the recent spurt in the Eastern District's caseload may be affecting the Court's ability to resolve its thornier cases.

It is still too early to tell if the 1991 upsurge in civil filings is a temporary spike or represents the beginning of another long-term increase in the Eastern District's caseload. If it is the latter, the Court's present ability to offer relatively early trial dates in civil cases could be compromised.

B. The Criminal Docket

Although the focus of the Civil Justice Reform Act of 1990 is cost and delay in civil litigation, no rational solution to these problems can be offered without some evaluation of how the federal criminal caseload affects the civil caseload. Despite the importance of civil rights claims that are or may be vindicated in

civil litigation, Congress has made the judgment through the Speedy Trial Act that criminal cases should have priority over civil cases, and that a crowded court docket shall not excuse a court from failing to meet the deadlines of the Act. See 18 U.S.C. § 3161 et seq. Therefore, a court's criminal docket could adversely affect the timeliness with which many civil cases reach trial due to the simple unavailability of civil trial time.

Since the Eastern District resolves its civil cases faster than the national average, one would expect that its criminal caseload would be at a manageable level. This, in fact, is true. Despite a nearly 40% increase in criminal felony filings over the last five years in the Eastern District, the criminal felony filings per judge are slightly below the national average.

CRIMINAL FELONY FILINGS PER JUDGE

Year	Eastern District	National Average
1987	46	50
1988	36	51
1989	33	53
1990	38	58
1991	45[4]	52

[4] This is not the figure contained in the Administrative Office's 1991 statistical report, but represents an adjustment based on an overcount by the Administrative Office that has since been corrected.

The recent trend is not so positive. Although criminal filings dropped nationally last year, the Eastern District experienced an increase. The increase is due to a surge in drug and firearms cases and reflects national U.S. Department of Justice priorities to combat illegal drugs and the use of firearms in violent crimes.[5] The number of criminal cases going to trial has also increased since the implementation of the guidelines arising under the Sentencing Reform Act, further stretching judicial resources.

Projecting future criminal caseloads is somewhat easier than forecasting civil caseloads. Yearly criminal filings are affected by the staffing level of the United States Attorney's Office in the Eastern District since that office is responsible for virtually all of the criminal indictments filed. The Criminal Division of the U.S. Attorney's Office has expanded significantly in the last five years, growing by 73% to 52 attorneys in Detroit alone. Despite an uncertain budget climate, the U.S. Attorney may receive an allocation of an additional 2 or 3 Assistant U.S. Attorneys in 1992. If that occurs, the new positions would lead to additional criminal filings.

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[5] Although the "War on Drugs" is already ingrained on the public consciousness, Attorney General Thornburgh announced a new program, "Operation Triggerlock," which directs United States Attorneys to bring state cases into federal courts by using federal laws punishing the use of firearms to commit violent crimes. A similar program was in place in the Eastern District prior to the Attorney General's announcement, and this head start may in part account for the more rapid increase in the per judge criminal felony filings in the district over the past year.

The FBI has also recently announced that some agency resources formerly devoted to counter-intelligence tasks would be redirected to health care fraud and street gang activity, resulting in a net increase in agent resources in Michigan. This, too, could lead to a rise in the number of criminal indictments in the coming years.

The Advisory Group concludes that, despite the recent increase in criminal felony indictments, there are no strong indications that the Eastern District's criminal docket will expand enough in the next few years so as to interfere with the Court's ability to schedule and hear most civil trials in a timely manner.

III. COST AND DELAY

Because the initial assessment of the Eastern District's civil docket showed it to be in satisfactory condition, the Advisory Group could not immediately isolate any clear-cut causes of cost and delay. To assist in uncovering hidden factors affecting cost and delay, the Advisory Group relied heavily on surveys administered to judicial officers and attorneys.

A. Judicial Officer Surveys

Few problems involving cost and delay were noted in the surveys of judicial officers. A majority said that they use all the tools of effective case management which they indicated in order of importance (personal involvement, enforcement of deadlines, issuance of scheduling orders, and firm trial dates). If a case is identified as complex, most of the judges said they give it more intense attention, closer monitoring and more guidance during discovery. Interestingly, few judicial officers saw a detrimental effect on civil case processing from the imposition of the criminal sentencing guidelines.

There were two notable exceptions to the general blandness of responses by judicial officers. To the question regarding use of magistrate judges, most judges replied that although they would assign discovery matters to magistrate judges,

they were not inclined to use magistrate judges for civil trials or other dispositive matters. In contrast, all of the magistrate judges responding to the survey indicated that they felt that they were not used effectively.

The other interesting responses came on the subject of discovery. Most judges agreed that discovery cutoffs were the most difficult to enforce and that they constantly had to monitor attorneys to make sure they were obeyed. In addition, many of the judges felt that discovery abuse caused costs in cases to increase. The Advisory Group decided that these two areas deserved further exploration in the attorney survey.

B. Attorney Surveys

The attorneys randomly chosen for the survey[6] received an extensive set of questions. Some of the questions were to be answered with respect to a specific case identified on the cover letter, while other questions were more generally aimed at perceptions of cost and delay in the Eastern District. Because the attorney group was not large enough to be statistically significant of the population as a whole, the survey analysis was aimed at discovering concerns shared among many attorneys.

The problem mentioned most often by attorneys was the whole subject of slow rulings on motions. While many attorneys

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[6] See the methodology for the attorney survey in Appendix B following the report. It may be noted that a high percentage of attorneys who responded (45%) had litigated 10 or more cases in federal court and a large percentage (74%) had been in practice 10 years or more.

took care to mention that all judges did not suffer from this, quite a few noted that delay in motion rulings has a decided effect on cost in civil cases. Generally, attorneys seemed to feel that two or three months without a ruling from a judge was too long for parties to wait. Associated with this, but in a special category, were attorneys who identified dispositive motions as a particular problem. Taking a long time to rule on dispositive motions without adjusting or suspending discovery seemed to be particularly vexing to the bar. In addition, several attorneys noted the tendency of some judges to omit oral argument which seemed to them to increase delay because the judges apparently were not then motivated to rule promptly on the motions.

Many attorneys mentioned that more effective use of telephone conferences would greatly reduce cost and delay. Some stressed that the frequency and informality of such a technique would encourage parties to come to a quicker resolution of discovery disputes before positions harden and motions are filed.

A significant number of attorneys focused on the need for early pretrial conferences where realistic and firm schedules should be set. They thought the first pretrial conference should be face-to-face and that the Court should not send out a scheduling order without consultation with the attorneys. One attorney stated that such a conference causes opposing counsel to meet and discuss the case. The establishment of this dialogue early on in the case can only help resolve the case. In addition, the judge can also use the conference to narrow issues, bifurcate trial, limit

discovery pending the disposition of jurisdictional motions, etc., thereby limiting the costs of litigation.

Another topic that was mentioned often was the use of alternative dispute resolution (ADR), primarily to force attorneys to focus on the case at an earlier time than they might otherwise. The use of mediation[7] is encouraged by most judges in the Eastern District and generally meets with approval by the bar. Several survey attorneys mentioned the decision in Tiedel v. Northwestern Michigan College, 865 F.2d 88 (6th Cir. 1988) which disallowed mediation sanctions, a decision which the attorneys said limits the effectiveness of that procedure.

The last prevailing Court practice in the Eastern District which generated negative comment by the bar was many judges' use of the trailing docket. Almost all attorneys said that this practice created havoc with their schedules and caused extra cost and delay. Witnesses had to be put on standby and other cases had to suffer from a lack of attention while attorneys were in limbo as to whether and when they would be called to court for trial.

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[7] Mediation in the Eastern District is patterned on the state procedure (Michigan Court Rule 2.403) and is really a settlement evaluation procedure. Studies have shown it to be quite effective in encouraging parties to settle cases by giving them a neutral evaluation figure with which to bargain. However, the process generally takes place somewhat late in the case, after discovery has been completed.

C. Impact of Legislation

As stated in Part II, the Eastern District resolves its civil cases faster than the national average and its criminal caseload is at a manageable level. Consequently, the impact which state and/or federal legislation has on cost and delay appears minimal. The guidelines arising under the Sentencing Reform Act, as well as "Operation Triggerlock," force the Eastern District to place greater emphasis on reducing the criminal docket. However, the recent emphasis placed on resolving criminal cases does not seem to be adversely affecting the size of the civil caseload. Accordingly, the Eastern District is currently unable to analyze the impact that state and/or federal legislation may have on cost and delay. The Advisory Group noted that the Administrative Office of the United States Courts has responded to this statutory imperative by creating the Judicial Impact Office which closely monitors legislation and its effect on the Courts. The Office regularly draws on the Administrative Office program divisions for information. Those divisions, in turn, canvass the Courts for input.

IV. RECOMMENDATIONS AND JUSTIFICATIONS

Under Section 473 of the Civil Justice Reform Act of 1990, the Advisory Group is to consider the following principles and guidelines of litigation management and cost and delay reduction when formulating the Eastern District's case management plan:

(1) A systematic, differential treatment of civil cases.

(2) Early and ongoing judicial involvement of the pretrial process, including case planning, early and firm trial dates, control of discovery, and deadlines for motions.

(3) Discovery/case management conference(s) for complex or other appropriate cases, at which the judicial officer and parties explore the possibility of settlement; identification of the principal issues in contention; provision, if appropriate, for staged resolution of the case; preparation of a discovery plan and schedule; and setting of deadlines for motions.

(4) Encouragement of voluntary exchange among litigants and other cooperative discovery devices.

(5) Prohibition on discovery motions unless accompanied by certification by the moving party that a good-faith effort was made to reach agreement with opposing counsel.

(6) Authorization to refer appropriate cases to alternative dispute resolution programs.

In addressing the principles and guidelines presented above, the Advisory Group, where appropriate, has generally relied on the amendment of present Local Rules or the formulation of new Court practices.

A. Systematic, Differential Treatment of Civil Cases

The Eastern District currently uses differential case-tracking procedures for prisoner and social security cases by utilizing magistrate judges to process cases and submit a report and recommendation to the judge for entry of judgment (as stipulated under 28 U.S.C. § 636 and L.R. 72.1). Because the Eastern District is currently effective in terminating civil cases as described under Section II(A) of this report, the Advisory Group feels that further use of differential case-tracking is presently unnecessary. However, the Advisory Group intends to continue to monitor the condition of the docket and will not rule out the possibility of its use in the future. Furthermore, the Advisory Group is planning to evaluate the progress made by differential case-tracking methods used by pilot and demonstration districts.

B. Early and Ongoing Judicial Control of the Pretrial Process

The consensus among attorneys surveyed was that a pretrial conference scheduled early brings attorneys and conflicting parties together quickly, often leading to a speedy resolution of the case. Many attorneys also stated that the trailing docket used by judges contributed considerably to cost and

delay. Present federal and local rules regarding the early and ongoing control of the pretrial process fail to mention any particular deadlines in which an initial pretrial conference is to be held, the possibility of attorneys meeting before the conference to address important judicial issues, or any stipulations concerning the use of a trailing docket. The Advisory Group believes that judicial control of the pretrial process would be enhanced by amending both Local Rule 16.1 (Pretrial Conferences) and Local Rule 40.1 (Docketing of Cases for Trial). The proposed rule amendments and the rationale behind them are outlined as follows:

PROPOSED NEW LR 16.1(f) and (g)

LR 16.1 Pretrial Conferences

. . .

(f) Except in those cases set forth in (e), the assigned Judge or the assigned Magistrate Judge shall hold an initial pretrial conference within 120 days after filing of the complaint for the purpose set forth in Rules 16(a), (b) and (c), Fed. R. Civ. P. Counsel for all parties who have appeared in the case shall confer among themselves prior to the conference to discuss matters referred to in Rule 16(c), Fed. R. Civ. P.

(g) At the initial pretrial conference, the Judge or Magistrate Judge conducting the conference after consulting with counsel will limit the time to:

(1) join other parties and amend the pleadings,

(2) file and hear motions, and

(3) complete discovery.

The scheduling order then entered may also include the dates for a final pretrial conference and for trial. This order may also reflect and contain any stipulation of the parties or orders of the Court regarding any of the matters referred to in Rule 16(c), Fed. R. Civ. P.

ADVISORY GROUP COMMENT: *Proposed new LR 16.1(f) requires that a meaningful initial pretrial conference be held within 120 days of the case being filed. Those cases referred to in (e) are excepted. LR 16.1(f) also requires counsel to meet in advance of this initial pretrial conference to discuss the matters referred to in Rule 16(c), Fed. R. Civ. P. These matters include:*

(1) the formulation and simplification of the issues, including the elimination of frivolous claims and defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and cumulative evidence;

(5) the identification of witnesses and documents, the need

and schedule for filing and exchanging trial briefs, and the date or dates for further conferences and for trial;

(6) the advisability of referring matters to a magistrate judge or master;

(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(8) the form and substance of the pretrial order;

(9) the disposition of pending motions;

(10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(11) such other matters as may aid in the disposition of the action.

Proposed new LR 16.1(g) tracks and implements Rule 16(b), Fed. R. Civ. P.

The Advisory Group believes that the initial pretrial conference should provide an opportunity to discuss the various techniques and procedures that may be available to assist settlement and to select the most appropriate available method. These include the referral of the case to the Mediation Tribunal Association or special panel, binding or non-binding arbitration, summary jury trial, and the holding of a settlement conference by a judge or magistrate judge of the Court.

The Advisory Group also believes that the Eastern District should take necessary action to insure that the parties have the option of consenting to trial, either with or without a jury, before a magistrate judge, especially if the assigned judge is or may not be able to reach the case for trial on the date set. 28 U.S.C. § 636(c)(2) permits a district judge or magistrate judge to inform the parties of the availability of a magistrate judge to try a case and enter judgment, provided that the parties are also told that they are free to withhold consent without adverse substantive consequences.

PROPOSED AMENDMENT TO LR 40.1

LR 40.1 Docketing of Cases for Trial

~~Pursuant to Rule 40, Fed. R. Civ. P., cases shall be set for trial in the manner and at the time designated by the Judge before whom the case is pending.~~ The trial date of any case may be set in the original scheduling order entered after the holding of an initial pretrial conference pursuant to Rule 16, Fed. R. Civ. P. and LR 16.1. All other cases shall be set for trial on a date certain, or listed on a weekly or other short-term calendar by the assigned Judge at or prior to the holding of the final pretrial conference after consultation with counsel for the parties. If trial cannot commence on the date set, the Court shall endeavor to inform counsel at least 48 hours in advance. In cases listed on trailing calendars, at least 48 hours advance notice shall be given before the case is called up for trial.

***ADVISORY GROUP COMMENT**: The proposed amendment to LR 40.1 states that a trial date may be set in the original Rule 16 scheduling order. In all other cases, a trial date should be set not later than at or prior to the holding of a final pretrial conference. Cf. 18 U.S.C. § 3161, which embodies the Speedy Trial Act for criminal cases:*

> *. . .[T]he appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the government parties, set the case for trial on a weekly or other short-term trial calendar . . .so as to assure a speedy trial.*

The proposed amendment to LR 40.1 requires consultation with counsel before the setting of a trial date, and seeks to insure that, in any event, counsel will have at least two days (48 hours) notice of either cancellation or call-up.

The 48-hour notice provisions in civil cases should reduce cost and delay in several ways. Attorneys assigned to cases that are subject to sudden call-up from the trailing docket for trial are often immobilized from scheduling discovery or otherwise participating in other lawsuits, causing delays in those other cases. Attorneys on trailing dockets are also occasionally forced to prepare for trial on several occasions when other trials take priority or a given trial is delayed for other reasons. Expert and out-of-town witnesses must be paid

whether the trial is delayed or not. These extra costs are often passed on to the litigants. The 48-hour notice provisions should substantially eliminate these costs and delays.

The Advisory Group also urges the Eastern District to take necessary action to allow parties to consent to trial, with or without a jury, before a magistrate judge, at least in cases which cannot be heard by the assigned judge on the date set for trial.

C. Discovery/Case Management Conferences for Complex Cases

The Advisory Group believes that discovery/case management conferences should not be utilized solely for complex cases. Amendments to Local Rules allow for the utilization of discovery/case management conferences for all cases if and when necessary. The proposed amendments to LR 16.1 described above attempt to address the need for case management conferences for all cases. To address cost and delay factors arising out of the discovery process, the Advisory Group proposes the following amendment to LR 37.1:

PROPOSED AMENDMENT TO LR 37.1

LR 37.1 Motion to Compel Discovery

(a) [existing LR 37.1]

(b) Prior to filing a motion, but after a conference as provided in (a), the party seeking discovery or the entry of a protective order may request that the assigned Judge or, with the approval of that Judge, the assigned Magistrate Judge, hold a chambers or

telephone conference with counsel for the affected parties to resolve the matter in dispute.

ADVISORY GROUP COMMENT: *In recognition of the fact that many discovery disputes can be resolved by conferring with a judicial officer informally, proposed LR 37.1(b) specifically authorizes the party seeking action by the court to request such a conference. The Court, of course, may reject the request. The cost and delay benefit from a successful utilization of this procedure is obvious.*

D. Encouragement of Voluntary Exchange of Information Among Litigants; Other Discovery Methods

The Advisory Group encourages litigants to voluntarily exchange information when appropriate to facilitate the judicial process. Existing Local Rules, as well as proposed amendments to Local Rules, actually compel attorneys to meet before pretrial conferences to discuss key litigation issues and/or exchange information. LR 37.1 presently requires litigants to meet in advance of discovery motion hearings to narrow areas of disagreement, and proposed LR 16.1(f) requires counsel to meet in advance of an initial pretrial conference to discuss matters referred to in Rule 16(c), Fed. R. Civ. P. (See Part IV, Section B of this report.)

E. Prohibition on Discovery Motions

As previously mentioned, attorneys surveyed believed slow rulings on motions contributed greatly to cost and delay. The Civil Justice Reform Act of 1990 forces courts to consider instituting prohibitions on discovery motions unless accompanied by certification by the moving party that a good-faith effort was made to reach agreement with opposing counsel. The proposed amendment to LR 37.1 (as discussed in Part IV, Section C) attempts to mitigate costs and delays arising from the filing of discovery motions, but without instituting prohibitions on their use.

The Advisory Group does recognize, however, that the issues of cost and delay in motion practice are critical to effective case management and requests that the Eastern District adopt the following:

PROPOSED AMENDMENT TO LR 7.1(e)(1)

LR 7.1 Motion Practice

. . .

(e) Hearing on Motions.

(1) Oral hearings on motions for rehearing or reconsideration, motions for reduction of sentence, motions filed in social security disability cases, and motions in civil cases where a party is in custody shall not be held unless ordered by the assigned Judge.

(2) Oral hearings on all other motions shall be held unless the Judge ~~at any time prior to the hearing orders their submission and determination without oral hearing on the briefs filed as~~

~~required by this Rule~~ makes a written determination, to be served on all counsel, that the motion can be decided fairly and more expeditiously on the briefs filed as required by this Rule without oral hearing.

ADVISORY GROUP COMMENT: *LR 7.1(e)(1) is amended to recognize that hearings in social security disability cases, which represent a significant number of cases before the court, are traditionally decided by most of the judicial officers of the Eastern District without oral argument. Judges should not be required to make a separate determination in each social security case that oral argument would not advance a decision in the case. The proposed amendment LR 7.1(e)(2) is designed to strengthen the presumption that oral argument will be held in the great majority of motions not exempted by (e)(1). Perhaps the most consistent recommendation made to the Advisory Group by attorneys was the desire to argue the merits of motions directly before the deciding judicial officer. The recommendations also find support in the case law, where courts have indicated that hearings on most dispositive motions filed pursuant to Rules 12(b) and 56, Fed. R. Civ. P. are necessary. See, Cook v. Providence Hospital, 820 F.2d 176, 178 (6th Cir. 1987); 5A Wright and Miller, Federal Practice and Procedure, § 1373 (1990).*

The proposed amendment is intended to do more than simply satisfy the subjective feelings of the parties who want to see a judge actually considering their arguments. The delay in deciding potentially dispositive motions has been identified by the Advisory Group as a primary cause of undue discovery expense sustained by parties in litigation. Judges who entertain oral arguments are more likely to render speedy bench decisions on those motions, thereby reducing these costs. Thus, the Advisory Group believes that encouraging oral arguments in appropriate cases will eventually reduce the cost of litigation in the Eastern District.

Although the existing LR encourages oral arguments in most cases, judges may unilaterally decide that the motion be decided on the briefs. The proposed amendment to LR 7.1(e)(2) makes the presumption in favor of oral arguments stronger by requiring the judge to consider potential delay in deciding not to hear motions. Of course, the ultimate discretion to waive oral argument still rests with the judicial officer, as under the existing rule.

PROPOSED NEW LR 7.1(e)(4) and (e)(5)

LR 7.1 Motion Practice

(e) Hearing on Motions.

. . .

(4) Any party may request that the assigned Judge, or the Magistrate Judge to whom the motion has been referred, conduct the hearing on the motion by a telephone conference call.

(5) At or prior to the hearing of any dispositive motion referred to a Magistrate Judge for a recommended decision pursuant to 28 U.S.C. § 636(b)(1)(B), the parties may consent to the motion being decided by the Magistrate Judge. Unless stipulated to the contrary by all counsel prior to the hearing, no review of the decision of the Magistrate Judge will be made by the District Judge in such cases.

ADVISORY GROUP COMMENT: Proposed LR 7.1(e)(4) codifies a practice already engaged in by many judicial officers, i.e., hearing motions by a telephone conference call. The judicial officer may, of course, reject the request of counsel. The cost and delay benefits are obvious, especially when out-of-town attorneys are involved.

LR 7.1(e)(5) would allow magistrate judges to decide dispositive motions, provided the parties consent. The judge is free, of course, to withdraw the reference prior to the hearing date. The Advisory Group believes many attorneys will welcome the option of consenting to a decision in order to eliminate the cost to the client of

a second round of briefings after the magistrate judge's report and recommendation is filed. See generally LR 72.1(d)(2). The elimination of delay is obvious, since the process of reviewing objections to the report and recommendation, and the additional briefs filed to support or oppose the objections, can be lengthy. Unless specifically stipulated to the contrary, review of the magistrate judge's decision would only be conducted as part of an appeal of the case to the Sixth Circuit, and not by the judge.

PROPOSED NEW LR 7.1(i)

LR 7.1 Motion Practice.

. . .

(i) Prompt Disposition of Motions

In the event that a motion filed by one or more of the parties is not decided within 60 days of its filing, all pretrial deadlines established by the Court, including discovery and motion cut-off dates, and dates for the submission of the final pretrial order, the final pretrial conference and the trial for the case shall be suspended. When a motion is decided after the 60th day, and if the case is still pending after the motion is decided, the court shall enter a new order extending these deadlines for such period of time that the decision on the motion exceeds 60 days.

ADVISORY GROUP COMMENT: *Proposed LR 7.1(i) is intended to reduce the costs caused by inordinate delay in the disposition of some civil motions. As noted above,*

parties with viable dispositive motions are often required to engage in full and expensive discovery while the motions are under advisement. Although motions for protective order are available in most circumstances, the filing of these motions is also a litigation cost, and the delayed disposition of motions for a protective order can negate their intended effect. Also, a motion for a protective order does not obviate a party from complying with all of the details attendant to the filing of a final pretrial order, which normally assumes full discovery by both parties.

Proposed LR 7.1(i) provides that if a judicial officer takes more than 60 days to decide a motion filed by a party, then the discovery and motion cut-off dates and dates for the final pretrial order, conference, and trial date would be suspended for such period of time that the decision on the motion exceeds 60 days. The proposed LR contemplates that the judicial officer would issue an order extending the previous court deadline when the rule is invoked.

Proposed LR 7.1(i) will encourage the early filing of motions since a motion decided on the 62nd day will not appreciably extend any of the Court's deadlines for the case. Of course, the Court would retain its existing discretion to adjourn pretrial deadlines for good cause shown if the grant or denial of motions within 60 days

still reasonably delayed the parties in preparing for trial.

The Advisory Group realizes that it is not customary to create incentives for judges to decide motions in a timely manner. Judges typically establish their own schedules for deciding motions and cases. The Advisory Group also recognizes that judicial officers have many cases assigned to them and that there are particular pressures under the Speedy Trial Act to give priority to criminal cases. The Advisory Group is also not unmindful that proposed LR 7.1(i) will undoubtedly create additional work for the Clerk's Office in regularly identifying those motions that are ripe for decision. However, the trade-offs achieved by this proposed LR do not seem unfair. Motions that languish tend to slow down the entire litigation process and make litigation more expensive for everyone. A 60-day period to decide motions is not an undue burden in most instances. Judges are never ***required*** *to decide motions in 60 days. The only negative consequence is that the Court's previously-issued litigation deadlines for the parties are temporarily suspended after 60 days until the motion is decided. The automatic suspension should relieve the pressure on the parties to engage in potentially needless discovery caused by the looming deadlines during the pendency of motions.*

F. Alternative Dispute Resolution (ADR) Programs

The Eastern District currently possesses a very successful mediation program that predates almost any existing in the country. To augment this successful mediation program, the Advisory Group recommends the institution of this ADR proposal:

Proposed Alternative Dispute Resolution (ADR) Policy

1. The Advisory Group recommends that the Eastern District adopt and offer to litigants in civil cases alternative formulas and approaches for the resolution of disputes consonant with the cost and delay considerations set forth in the Civil Justice Reform Act of 1990.

   a. The Civil Justice Reform Act of 1990 specifically provides that each district "shall consider and may include" in its costs and delay reduction plan "authorization to refer appropriate cases to alternative dispute resolution programs." 28 U.S.C. § 473(a)(6).

   b. The Advisory Group believes that a comprehensive but efficient alternative dispute resolution (ADR) program will decrease the costs associated with litigation by achieving early resolution of cases without resort to the full panoply of litigation procedures, will enhance the overall management of the Court's docket by reducing caseload volume and allowing early trial dates, but will not interfere with an individual judge's prerogative with respect to control over his/her docket or any specific case on the docket.

c. The Advisory Group further believes that an ADR program will not stifle independent and/or innovative settlement initiatives by the parties or the Court but rather will serve as a structure which encourages and facilitates settlement.

2. Prior to the initial scheduling conference pursuant to Rule 16, Fed. R. Civ. P., or the entry of a scheduling order in the event that a scheduling conference is not held, each party in a civil case should be asked to select and, if possible, to agree upon at least one of a number of ADR options.[8]

a. Each party's ADR selection should be incorporated into the proposed discovery plan, Rule 26(f), Fed. R. Civ. P., which is to be submitted to the Court prior to the initial scheduling conference or prior to the entry of a scheduling order.

b. At least one form of ADR should be utilized in almost every case.[9] If a party does not select an ADR option, the party should indicate in the proposed discovery plan

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[8]The Advisory Group's ADR proposal is based upon the assumption that the Judicial Conference's proposed amendments to the Federal Rules of Civil Procedure, including the proposed amendments to Rules 16 and 26, will become effective December 1, 1993.

[9]The Advisory Group believes that there are certain categories of cases which may be excluded from ADR procedures, e.g., social security, collections, habeas corpus and unrepresented prisoner cases.

the reason why the party feels that ADR is not appropriate.

c. Even if the parties are in agreement as to their ADR selection, their selection should be approved by the judicial officer authorized to enter the scheduling order. The judge to whom the case is assigned or his designee for purposes of entering a scheduling order should be vested with final authority to decide whether ADR will be utilized and, if so, the ADR option(s) to be utilized.

3. The ADR options to be offered are: early neutral evaluation, mediation, special mediation, arbitration, summary jury trial, and settlement conference.[10]

a. Where possible, the judge to whom the case is assigned should not participate in ADR.

b. ADR deliberations which do not involve the judge to whom the case is assigned should be shielded from the purview of the judge, and only in extraordinary circumstances should the judge be informed of the result of a mediation, arbitration, summary jury trial, or other ADR proceeding.

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[10]The Advisory Group discussed other forms of ADR, including settlement weeks, Rule 53 special masters, mini-trial with participation by management from each party, and combinations of various forms.

4. Early Neutral Evaluation

   a. The purpose of early neutral evaluation is to give the parties an opportunity to settle the case before they have incurred considerable costs and expenses. Consequently, early neutral evaluation should occur within 60 days after the entry of a scheduling order.[11]

   b. Persons who should be considered to preside over the early neutral evaluation conference include a magistrate judge or a lawyer from a court-approved list with expertise in the subject matter.

   c. The presiding officer should decide (1) the type of documents to be submitted, (2) whether the parties should be present, (3) whether it is feasible to negotiate a reduced discovery plan or a narrowing of the issues, and (4) whether there are issues which would expedite settlement if immediately ruled upon by the Court.

5. Mediation

   a. Mediation is considered to be the Wayne County Circuit Court mediation process which is presently available to litigants in federal court.

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[11]The Advisory Group did not rule out the possibility that early neutral evaluation could occur prior to the entry of a scheduling order if the parties choose to proceed in this expeditious manner.

b. Sanctions should not apply to the acceptance/rejection of a mediation award unless the parties agree otherwise.[12]

6. Special Mediation

a. The three-lawyer mediation panel should be selected and paid for by the parties. The plaintiff will select a plaintiff representative, the defendant will select a defendant representative, and the neutral will be selected in some manner which may include (1) agreement of the parties, (2) selection by the plaintiff's and defendant's representatives, or (3) selection by the Court.

b. The proceedings should continue as long as the parties and mediators believe the proceedings are productive.

c. The mediators should be given latitude in determining the scope of the mediation, the documents and other materials to be presented, the disclosure of information, and the participation of the parties.

d. As in mediation, no sanctions will apply unless the parties agree otherwise.

e. If the special mediation process does not result in a settlement, a party may request a "report back" session

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[12]This is consistent with present Sixth Circuit law as set forth in Tiedel v Northwestern Michigan College, 865 F.2d 88 (6th Cir. 1988). There was a minority view in the Advisory Group that sanctions should apply.

if the party does not feel that he has been fully advised by the mediators as to the current status of settlement negotiations or as to the relative merits of the competing claims.

7. Arbitration

a Both binding and non-binding arbitration should be available to the parties.

b. Arbitration should include these features:

(1) The Court will select a panel of arbitrators from an approved list of arbitrators, and the parties will select either one or three arbitrators from the list selected by the Court. (The parties can use a private arbitration service if they choose to do so).

(2) The rules of evidence (except for rules regarding privileged communications and attorney work product) will not apply.

(3) The arbitrators are free to meet and communicate separately with each party; except that in binding arbitration, this can be done only if the opposing party agrees.

(4) The arbitrators will set up the hearing and return an award.

8. Summary Jury Trial

   a. Summary jury trials should be available only when the actual trial of the matter is expected to exceed two weeks.

   b. The jury should be empaneled in the same manner as juries are empaneled for regular trials. If this creates a problem, it may be necessary to develop procedures for expedited jury selection.

   c. It should be left to the judicial officer conducting the summary jury trial to determine the length of the trial and the time allotted to each side.

   d. The jury verdict should be advisory only. The parties and their counsel should have at least as much access to the jury after it renders its verdict as they would have in ordinary trials.[13]

   e. Upon completion of the summary jury trial, a settlement conference should be held with the judicial officer who conducted the summary jury trial.

9. Settlement Conference

   a. A settlement conference should be available to the parties at either their request or upon order of the Court.

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[13]The Advisory Group considered but did not decide whether a more formalized "jury debriefing system" should be established or whether counsel should be able to observe the jury's deliberations.

b. Where possible, the settlement conference should be conducted by someone other than the judge to whom the case is assigned. The judicial officer who is assigned the responsibility of conducting the settlement conference should be given latitude to continue the proceedings until an impasse is reached.

c. Also, where possible, the settlement conference should occur after discovery close and rulings on dispositive motions but prior to the final pretrial conference.

d. The judge to whom the case is assigned may pursue any additional settlement initiatives he/she feels are appropriate during and after the final pretrial conference.

G. Other Recommendations

1) The Advisory Group recommends that the Eastern District approve a policy of strict adherence to Rule 56(d), Fed. R. Civ. P. This rule requires not only an oral hearing on all motions for summary judgment, whether fully or only partially dispositive of the case, but also an active interplay between the court and counsel to ascertain those material facts which exist without substantial controversy and to make findings of such facts in order that no further time and effort need be expended on the proof of such facts at trial. Implementation of this policy may include the imposition of a requirement that counsel submit annotated proposed findings or, where counsel agree, a joint statement of uncontested facts.

2) The Advisory Group recommends that the Eastern District arrange for publication in the Michigan Bar Journal and make available to any newspapers with statewide circulation and other interested print media the following information:

a. A summary, by Judge, abstracted from the Report of Motions Pending Over 6 Months/Bench Trials Submitted More Than 6 Months (JS-56), submitted by each judicial officer on March 31st and September 30th.

b. A summary, by Judge, of the Cases Three Years and Older Pending Report, issued annually by the Administrative Office of the U.S. Courts. The publication of this information may be misleading and may fail to explain any unusual patterns which may exist in the dockets of particular judges. To address this concern, the Advisory Group recommends that the following statement be issued with the information:

> The cases listed above may include remanded cases, complex litigation, multi-district litigation, cases reassigned to create a caseload for a new judge, etc. This information is not necessarily representative of any particular judge's efficiency in case disposition.

c. The number of pending cases per Judge based on the previous twelve months.

d. The average lifespan of the Court's caseload.

ADVISORY GROUP COMMENT: *Section 102 of the Civil Justice Reform Act of 1990 states:*

> *The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and*

delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

Timely, accurate and readable information about the condition of the Eastern District's docket must be available if cost and delay are to be kept in check. The Advisory Group believes that the Court has a role to play in dissemination of data about its performance to the constituencies outlined in Section 102 above.

Courts are often perceived by lay persons as secretive and mysterious institutions. Even though internal statistics are generated by the Court, few people, including members of the bar, know what information is available and where to find it. In recommending that summaries of these reports be published in the Michigan Bar Journal and made generally available to the print media, the Advisory Group expects to raise public and bar awareness of measures of Court performance and to provide through publicity a stimulus to individual judicial officers to strive for improvement of their own performances.

3) The Advisory Group believes that courtesy and professional integrity both among attorneys and between judicial officers and attorneys are essential in reducing cost and delay. Therefore, the Advisory Group recommends that the Court adopt and enforce the attached "Proposed Civility Principles" (Appendix A).

The principles were adapted from the Final Report of the Committee on Civility of the Seventh Federal Judicial Circuit.

V. METHODOLOGY

A. The Advisory Group

The first meeting of the Advisory Group was held on May 22, 1991. Since then, the Group has met 12 times, usually on a monthly basis.

The Advisory Group was divided into four subcommittees: Cost and Delay Assessment Subcommittee, Caseload Condition Statistical Analysis Subcommittee, Bar/Public Survey Outreach Subcommittee, and Local and Federal Rules Review Subcommittee.

The Cost and Delay Assessment Subcommittee was responsible for isolating the possible causes of cost and delay in civil litigation. After analysis of other Eastern District reports to help identify types of cost and delay issues, the Subcommittee conducted a docket analysis of a random sample of civil cases and also constructed and administered a general survey to ascertain opinions of judicial officers on cost and delay.

The Caseload Condition Statistical Analysis Subcommittee was assigned the task of analyzing the past and present filings, pending, and termination trends within the Eastern District's docket and evaluating the docket's overall condition.

The Bar/Public Survey Outreach Subcommittee conducted an attorney survey and attempted to gather the opinions of members of the public pertaining to the specific causes of cost and delay within the Eastern District (see Project Notes, p.35).

Finally, the Local and Federal Rules Review Subcommittee drafted proposed Local Rule amendments which would alleviate cost and delay based on the information gathered by the other three subcommittees.

B. Project Notes

The judicial officer surveys were sent to eight district judges and five magistrate judges. Topics covered within the surveys included Rule 16 conferences, case management orders, final pretrial conferences, motion practices, discovery practices, ADR procedures and the utilization of magistrate judges. Few definite response trends were isolated from the survey, however. (For the results of this survey, please see Part II, Section A of this report.)

The attorney survey was sent to 392 attorneys. Of those 392, 223 (57%) were returned to the Advisory Group. (For the results of this survey, please see Part III, Section B of this report.)

One member of the Cost and Delay Assessment Subcommittee and one member of the Caseload Condition Statistical Analysis Subcommittee attended a Civil Justice Reform Act Seminar held in St. Louis, Missouri on April 6-7, 1992. Issues addressed included the proper way to read court statistics, how to format district reports, and possible uses of ADR in the judicial process. Constructive criticisms of reports done by early implementation districts were also a part of the seminar.

The Bar/Public Survey Outreach Subcommittee scheduled a hearing in March 1992. Invitations were sent to various legal firms and lay organizations to send representatives to express their views on cost and delay in civil litigation. Unfortunately, only 3 responses were received out of 35, and the hearing was cancelled.

Statistical data used in this report was provided by the Administrative Office of the United States Courts.

Appendix A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

PROPOSED CIVILITY PRINCIPLES

Preamble

An attorney's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as attorneys, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe all participants in a legal proceeding respect, diligence, punctuality and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay, and often deny, justice.

The following standards are designed to encourage us, judges and attorneys, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the

twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and attorneys will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout the Eastern District.

These standards shall not be used alone as a basis for litigation, sanctions or penalties. However, nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which attorney negligence or misconduct may be determined.

These standards should be reviewed and followed by all judges and attorneys participating in any proceeding in the Eastern District. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

Attorneys' Responsibilities to Other Counsel

1) We will practice our profession with a continuing awareness that our role is to advance the legitimate interest of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties and witnesses in a civil and courteous manner, not only in Court, but also in all other written and oral communications.
2) We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel,

parties or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3) We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4) We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.

5) We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

6) We will adhere to all express promises and agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

7) When we reach an oral understanding on a proposed agreement or stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide other counsel the opportunity to review the writing. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not

include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8) We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

9) In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10) We will not use any form of discovery or discovery scheduling as a means of harassment.

11) We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings, discovery requests and objections.

12) We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13) We will not request an extension of time solely for the purpose of unjustified delay or to obtain tactical advantage.

14) We will consult other counsel regarding scheduling matters in a good-faith effort to avoid scheduling conflicts.

15) We will endeavor to accommodate previously-scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars or other functions that produce good-faith calendar conflicts on the part of other counsel. If we have been given

an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

16) We will notify other counsel and, if appropriate, the Court or other persons, at the earliest possible time when hearings, depositions, meetings or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the Court to use the previously-reserved time for other matters.

17) We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18) We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

19) We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

20) We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21) We will not obstruct questioning during a deposition or object to deposition questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the Court.

22) During depositions, we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

23) We will carefully craft document production requests and/or interrogatories so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

24) We will respond to document requests and interrogatories reasonably and not strain to interpret the requests or interrogatories in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents and information. We will not produce documents or answer interrogatories in a manner designed to hide or obscure the existence of particular documents or information.

25) We will base our discovery objections on a good-faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

26) When a draft order is to be prepared by counsel to reflect a Court ruling, we will draft an order that accurately and completely reflects the Court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the Court.

27) We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

28) Unless specifically permitted or invited by the Court, or unless otherwise necessary, we will not send copies of correspondence between counsel to the Court.

Attorneys' Responsibilities to the Court

1) We will speak and write civilly and respectfully in all communications with the Court.

2) We will be punctual and prepared for all Court appearances so that all hearings, conferences and trials may commence on time; if delayed, we will notify the Court and counsel, if possible.

3) We will be considerate of the time constraints and pressures on the Court and Court staff inherent in their efforts to administer justice.

4) We will not engage in conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in Court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5) We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication.

6) We will not write letters to the Court in connection with a pending action, unless invited or permitted by the Court.

7) Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the Court of any likely problems.

8) We will act and speak civilly to marshals, clerks, court reporters, secretaries and law clerks with an awareness that they, too, are an integral part of the judicial system.

Court's Responsibilities to Attorneys

1) We will be courteous, respectful and civil to attorneys, parties and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2) We will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with attorneys, parties or witnesses.

3) We will be punctual in convening all hearings, meetings and conferences; if delayed, we will notify counsel, if possible.

4) In scheduling all hearings, meetings and conferences, we will be considerate of time schedules of attorneys, parties and witnesses.

5) We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6) We will give the issues in controversy deliberate, impartial and studied analysis and consideration.

7) While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on attorneys by the exigencies of litigation practice.

8) We recognize that an attorney has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow attorneys to present proper arguments and to make a complete and accurate record.

9) We will not impugn the integrity or professionalism of any attorney on the basis of the clients whom or the causes which an attorney represents.

10) We will do our best to insure that Court personnel act civilly toward attorneys, parties and witnesses.

11) We will not adopt procedures that needlessly increase litigation expense.

12) We will bring to an attorney's attention uncivil conduct which we observe.

Judges' Responsibilities to Each Other

1) We will be courteous, respectful and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.
2) In all written and oral communications, we will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge.
3) We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.