United States District Court
Northern District of Ohio

Geri M. Smith
Clerk of Court

Office of the Clerk
102 U.S. Courthouse
201 Superior Avenue
Cleveland, Ohio 44114-1201

(216) 522-4355
FTS 942-4355

January 13, 1992

Mr. Duke Argetsinger
Court Administration Division
Court Programs Branch
Administrative Office of the
U.S. Courts
1120 Vermont Avenue, N.W.
Washington, DC 20544

Re: (1) The Final Report and Recommendation of the Civil Justice Reform Act Advisory Group and,

(2) Sections Seven, Alternative Dispute Resolution and Eight, Differentiated Case Management of the New Local Rules for the Northern District of Ohio

Dear Mr. Argetsinger:

Pursuant to your request, enclosed please find the Final Report and Recommendation of the Civil Justice Reform Act Advisory Group on the Differentiated Case Management Plan.

I am pleased to advise you that the Court has adopted Section Seven, Alternative Dispute Resolution and Section Eight, Differentiated Case Management (enclosed) as part of the new Local Rules. Implementation of Section Seven, Alternative Dispute Resolution and Section Eight, Differentiated Case Management of the new Local Rules will begin on January 1, 1992. Comments on Sections Seven and Eight will be accepted by the Court through January 31, 1992.

Thank you for you assistance in this matter.

Sincerely,

Geri M. Smith
Clerk of Court

GMS:mb

U.S. Courthouse
Federal Building, Room 568
2 South Main Street
Akron, OH 44308-1876
(216) 375-5407
FTS 292-5407

U.S. Courthouse
329 City Hall Annex
9 West Front Street
Youngstown, OH 44503-1431
(216) 746-2524

114 U.S. Courthouse
1716 Spielbusch Avenue
Toledo, OH 43624-1347
(419) 259-6412
FTS 979-6412

United States District Court
Northern District of Ohio
Civil Justice Reform Act Advisory Group

FINAL

REPORT AND RECOMMENDATIONS DIFFERENTIATED CASE MANAGEMENT PLAN WITH SUGGESTED RULES AND COMMENTARY

ADOPTED NOVEMBER 27, 1991

Civil Justice Reform Act Advisory Group
Louis Paisley, Chairperson
The Honorable Jerry L. Hayes, Reporter

Advisory Group Task Force on
Differentiated Case Management
David C. Weiner, Chairperson
The Honorable Jerry L. Hayes,
Reporter

TABLE OF CONTENTS

FOREWORD

The Civil Justice Reform Act of 1990 provides that the Chief Judge of each United States District Court appoints an Advisory Group of attorneys and other participants in the civil litigation process. In compliance with the Act, the Honorable Thomas D. Lambros, Chief Judge for the Northern District of Ohio ("Northern District"), appointed a 35-member Advisory Group. Attorney Louis Paisley was named Chairperson of the Group. Attorney David C. Weiner was named Vice Chairperson of the Advisory Group and Chairperson of the Advisory Group's Task Force on Differentiated Case Management (the "Task Force"). The Honorable Jerry L. Hayes, Judge of the Portage County Court of Common Pleas, was named Reporter, and the Honorable Sam H. Bell, U.S. District Court Judge, was named Chairperson of the Advisory Group Coordinating Committee with the court.

The Advisory Group held its organizational meeting on March 20, 1991. At that meeting Chief Judge Lambros told members they "had a unique opportunity to examine and inquire into the criteria and standards by which we resolve human disputes." Judge Bell reminded members of the Advisory Group of the need to preserve the fundamental principle that the mission of the courts is to serve the people of society and to do "justice."

The Act designated the Northern District as a "Demonstration District." The Northern District was specifically charged by Congress with the preparation of an experimental differentiated case management plan. In accordance with this congressional mandate the Advisory Group and its Task Force submit this Report and Recommendation and Proposed Differentiated Case Management Plan with Recommended Rules and Commentary to the Judges of the Northern District.

The task of the Advisory Group was made easier by the dedicated work of Chief Judge Lambros, Judge Bell, and the Court's Coordinating Committee. Their willingness to devote time and energy to this project is an example of their dedication to the law and their interest in improving the Federal civil justice system.

The Task Force acknowledges with appreciation the assistance and advice of Judge Jerry L. Hayes, Thomas P. Mulligan, Robert J. Fay, Dennis R. Rose, Joan Pettinelli, and the Clerk's Office, in particular, former Clerk of Court, James Gallas, Clerk of Court, Geri Smith, and Office Supervisor James McCann. The Task Force also wishes to thank Irene Milan, Sixth Circuit Satellite Librarian for the many resource

materials she provided to the Task Force, Judith Pollarine and Cheryl Sexton for their assistance in the computer analysis of the Court's docket and Susan Rose for the design and layout of this report.

The preparation of the plan was aided by the input from Judge William W. Schwarzer, Director of the Federal Judicial Center, who met with the Task Force, and court management consultants Holly Bakke and Maureen Solomon, who provided valuable assistance in the preparation of the differentiated case management plan.

A special thanks also goes to Hilary S. Taylor, chairperson of the Task Force Subcommittee on asbestos litigation and the Subcommittee members. A special processing plan for asbestos cases which is designed to address the special problems in asbestos as well as all mass tort actions, was submitted by the subcommittee and is found in the appendix, at tab 1. This plan, which addresses both federal and state cases, is innovative and offers reforms which would truly revolutionize the current system for handling such problems.

The plan being recommended to the Judges of the Northern District is innovative in many ways. It is the culmination of many special Task Force meetings combined with numerous hours of work by individual Task Force members.

This plan is the beginning — not tne end. We look forward to its implementation, review and continued development. It is our sincere hope that when the study years have ended, we will have developed a case management system for processing civil cases, which will retain the current high level of justice while reducing the time and costs involved, and serve as a model for the other 93 districts in the Federal judicial system.

Louis Paisley, Advisory Group Chairperson

Task Force on Differentiated Case Management
Richard M. Kerger
Barbara J. Leukart
John F. McClatchey
Randolph L. Snow
Percy Squire
Robert P. Sweeney
Hilary S. Taylor
Donald P. Traci
David C. Weiner, Chairperson

I. THE CONGRESSIONAL MANDATE

The Advisory Group and the Advisory Group's Task Force on Differentiated Case Management[1] were appointed pursuant to the congressional mandate expressed in the Civil Justice Reform Act of 1990.[2]

The statutory functions of the Advisory Group fall into three general categories. First, it is to assess the Court's pending cases and litigation practices to identify unnecessary costs and delays in the processing of civil cases.[3] Second, it is to prepare and submit a report recommending the adoption of a civil justice expense and delay reduction plan. The report is to recommend measures, rules and programs aimed at the reduction of cost and unnecessary delay and to state the basis for its recommendations. Finally, the Advisory Group is to consult with the court in annual post plan assessments of the civil and criminal dockets.[4]

Section 472(b) of the Act requires that each Advisory Group report contain certain information. Specifically, each report must include:

1. A thorough assessment of the state of the court's civil and criminal docket;

2. The basis for the Group's recommendations;

3. Recommended measures, rules and programs;

4. An explanation of the manner in which the plan complies with Section 473 of the Act.

Each Advisory Group is to consider the special needs of its District Court as it prepares its report and recommendations. The group is also to consider the needs of the litigants and their attorneys. The

---

[1] A roster of the CJRA Advisory Group members is provided in the appendix at tab 3.

[2] The Judicial Improvements Act of 1990, Public Law No. 101-650, was signed by the President on December 1, 1990. Title I of that legislation consists of the "Civil Justice Reform Act of 1990", 28 U.S.C. §471 et seq. ("CJRA" or the "Act").

[3] 28 U.S.C. §472(c)(1).

[4] 28 U.S.C. §475.

recommendations are to include contributions to be made by the Court, the litigants and the attorneys toward the Act's goal of reducing the costs and delays involved in processing civil cases.[5]

Congress designated the Northern District as a Demonstration District[6] for the implementation of a Differentiated Case Management plan ("DCM"). The Northern District is also an Early Implementation District ("EID"). As an EID and a Demonstration District, the DCM plan must be adopted no later than December 31, 1991.

In drafting the Act, Congress outlined certain principles, guidelines and techniques of litigation management and cost and delay reduction to be considered by all District Courts in formulating a plan. Districts designated as "pilot" districts[7] are required to include these Congressional principles in their plan. In the preparation of its recommended plan, the Advisory Group and the Task Force charged with the development of a DCM system considered and included measures which address each of the items mandated by Congress for pilot districts.

As a Demonstration District and as an EID, the Advisory Group believes that its report and recommendations should address and include the principles, guidelines and techniques of litigation management and cost and delay reduction outlined by Congress in the CJRA[8]. They are:

---

[5] Ibid.

[6] Section 103(b) of the Act designates the United States District Court for the Northern District of Ohio as a Demonstration District. The Northern District is required to experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate with distinct and explicit rules, procedures and time frames for the completion of discovery and for trial.

[7] Section 105(b) of the Act calls for ten District Courts to be designated by the Judicial Conference of the United States as "Pilot Districts." These Pilot Districts shall implement the expense and delay reduction plans under the Act no later than December 31, 1991. The plans implemented by "Pilot Districts" must include the principles and guidelines of litigation, management and cost and delay reduction identified in 28 U.S.C. §473(a).

[8] 28 U.S.C. Sec. 473(a).

1. Systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the disposition of the case;

2. Early and ongoing control of the pretrial process through involvement of a Judicial Officer in:

   a. assessing and planning the progress of the case;

   b. setting early, firm trial dates, such that the trial is scheduled to occur within a specified period of the filing of the complaint unless an exception is certified by the Judicial Officer;

   c. controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

   d. setting, at the earliest practicable time, the deadlines for motion filing and a time framework for their disposition.

3. For all cases that the Judicial Officer determines to be complex or in any other appropriate cases, there should be careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the Judicial Officer shall:

   a. explore the parties receptivity to and the propriety of settlement or proceeding with the litigation;

   b. identify or formulate the principal issue is contention and, in appropriate cases, provide for the staged resolution or bifurcation of issues, consistent with Rule 42 of the Federal Rules;

c. prepare a discovery schedule and plan consistent with and presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to . . . identify, . . . limit, . . . eliminate unnecessary discovery, . . . and phase discovery into stages; and

d. set, at the earliest practicable time, deadlines for filing motions and a time frame for their disposition.

4. Encouragement of cost effective discovery through voluntary exchange of information among litigants and through the use of cooperative discovery devices;

5. Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

6. Authorization to refer appropriate cases to alternative dispute resolution programs that:

a. have been designed for use in the district court;

b. the court may make available, including mediation, mini-trial, and summary jury trial.

The Advisory Group's report and recommendations address and include each of the foregoing principles, guidelines and techniques of litigation management.

II. THE ADVISORY GROUP'S ANALYSIS OF THE CONDITION OF THE COURT'S CIVIL AND CRIMINAL DOCKETS

A. A National Overview

There is today a widespread public perception that the Federal Court civil justice system is not functioning at optimum efficiency. That perception found expression in the Brookings Institute Task Force Study Justice For All[9] and eventually in the passage of the CJRA.

Total case filings in the Federal District Courts began a period of rapid growth in the 1950's which has continued to the present time. While there has been growth in both criminal and civil cases, the greatest growth, has been on the civil side.[10]

In 1950 there were 32,000 new private case filings. By 1970, that figure climbed to 64,000, and by 1986, there were 161,000 private civil cases filed in the Federal Courts. It is the growth of private civil litigation, coupled with critical changes in the criminal system, that poses a threat to the Civil Justice System.

While the civil filings were increasing at a rapid pace, the enactment of the Speedy Trial Act, the advent of minimum sentencing and mandatory sentencing, the federalization of criminal conduct which had been traditionally a state matter and the more recent substantial increase in drug prosecutions all put heavy burdens on the judiciary. Since criminal cases take precedent by law, any deterioration in the operation of the over-all Federal judicial system would reflect itself in the handling of private civil case filings as judicial attention is forced toward the criminal docket - sometimes at the expense of the civil docket.[11]

---

[9] Justice For All, The Brookings Institute, Washington, D.C., (1989).

[10] Dungworth, T. and Pace, N.M., Statistical Overview of Civil Litigation in the Federal Courts. The Institute for Civil Justice, Rand Corporation, Santa Monica, CA, (1990) (the "Dungworth Study") at pp. v-x.

[11] Ibid.

B. The Northern District of Ohio and An Assessment of its Civil Docket

1. The Northern District of Ohio

The Northern District is comprised of the 40 northernmost counties of the state. Nearly six million people reside in the 18,008 square miles serviced by the United States District Court for the Northern District. There are two divisions of the Northern District; the Eastern Division, which is authorized to sit in Cleveland, Akron and Youngstown; and the Western Division, which sits in Toledo.

Eleven permanent judgeships and one temporary judgeship are currently authorized in the Northern District by the Judgeship Act of 1990. There are five full-time authorized Magistrate Judges plus one retired, recalled Magistrate Judge. At the present time, however, nine permanent judges, four senior judges and five magistrate judges are handling the workload of the court.

Each Magistrate Judge is currently assigned to work with two or three District Judges. They are utilized throughout the district to the fullest extent permitted by the Magistrates Act. The number of Magistrate Judges per District Judges in the Northern District is below the national average.[12]

The court has three vacancies in its membership. One of these vacancies has existed for nearly two years. Statistics show that the Northern District has averaged nearly one judicial vacancy a year since 1980.

By the middle of 1992, the Northern District may be operating at nearly fifty percent of its authorized judge power due to active judges taking senior status. The delays in filling vacancies has caused the Court to operate short staffed.

The Advisory Group further notes that in 1980 the district had 10 authorized judgeships. In 1990 the number of authorized judgeships had increased only to 11. With the enactment of the Judgeship Act of 1900, the authorized judgeships increased to 12. The two additional judgeships represent an increase of only 20 percent in the number of authorized judgeships since 1980. While the number of judgeships increased only 20 percent, civil case filings increased 127 percent.

---

[12] The ratio between Magistrate Judges and District Judges in the Northern District is 1:2.4, while the national average is 1:2.

The Advisory Group submits that regardless of the effectiveness of any delay and cost reduction plan adopted, such reforms may be adversely affected by the high rate of judicial vacancies.

2. Condition of the Civil Docket and Trends in Case Filings

The Northern District utilizes an individual docket. All cases, both civil and criminal, are assigned to individual judges upon filing and remain with that judge through disposition.

Over the last decade, the Court's filings (including asbestos cases) have more than doubled, increasing 127% from 3,283 in 1980 to 7,465 in 1990. Over the same period of time, the Court's pending caseload has almost quadrupled, increasing from 3, 416 in 1980 to 11, 457 in 1990.

Trends in Case Filings - Includes Civil and Criminal

Year	Total Filings	Terminations	Pending
1990	7465	3662	11457
1989	5804	5458	7752
1988	6991	6051	7413
1987	5642	4920	6473
1986	6447	5848	5749
1985	5295	5863	5150
1984	6208	6540	5718
1983	6517	5395	6051
1982	4018	3004	4927
1981	3780	3282	3914
1980	3283	3190	3416

Statistics for the Northern District show civil case filings have increased 41 percent since 1985. For the 12-month period ending June 30, 1990[13], the Northern District ranked first among all 94 District Courts with 639 total cases filed per judgeship, compared to the national average of 379 cases per judgeship. Considering the fact that the district was operating with one vacancy when the statistics were prepared, the "per judgeship" statistics should be restated. The actual "per judge" filing for the period ending June 30, 1990, is 728 cases.

In weighted case filings the court again ranked first with 876 cases per judgeship compared with the national average of 448. Once again, since the figure is reported "per judgeship" the number is lower than the actual weighted case filings per judge. The true weighted case filings per judge is 964.

The Northern District historically has had a high concentration of asbestos filings. As of June 30, 1990, approximately 7,598 of the court's pending cases consisted of asbestos cases. Most of the increase in the court's filings and pending caseload can be attributed to the asbestos cases. Approximately 75 new asbestos cases are filed each month. Almost all of these cases have been transferred recently pursuant to the order of the Multidistrict Litigation Panel. It is not known at this time whether or not these cases will be resolved through MDL. The possibility exists that they may be returned to this district for further proceedings.

The Advisory Group notes that average weighed filings per judgeship and the number of cases pending in the district for more than 3 years has doubled in the past 10 years. The Group further notes, that the number is largely attributable to the asbestos caseload, a special, complex and time-consuming area of civil litigation.

Despite the increase in the asbestos docket, the court's median time from filing to disposition in civil cases increased only from 7 to 10 months and, from issue to trial, from 12 to only 13 months. The 10 month median time from filing to disposition of civil cases ranked the Northern District 45th out of the 94 district courts. The median time of 13 months from filing to trial ranked the Northern District 30th in the nation.

---

[13] The Federal Court Management Statistics for the reporting period ending June 30, 1991, are not yet available from the Administrative Office of the United States Courts.

C. The Criminal Docket — A National Overview and Condition of the Northern District's Criminal Docket

1. A National Overview

The American public is generally aware of the rise in criminal caseloads in both state and federal courts. Within the federal judicial system the rise in criminal cases is accounted for by a variety of factors.

First, there has been a virtual flood of prosecutions based on violations of federal drug laws. For the statistical year ending June 30, 1986, there were 15,762 defendants charged with drug law violations in the federal courts. By 1990 that number had increased to 23,193 — an increase of nearly 50 percent.

In 1986 there were 10,774 defendants convicted of drug law violations in the federal courts. Of those convicted, 1,717 opted for jury trials, 159 were tried by the court, 33 entered pleas of nolo contendere and 8,855 entered pleas of guilty.

The statistics for 1990, however, show that criminal matters are making even greater demands on court time. In 1990 there were 2,973 jury trials, 148 trials to court, 31 nolo contendere pleas and 13,036 pleas of guilty. Fifty-seven percent of all criminal trials in the federal courts are for defendants charged with drug law violations. Convictions by jury trial in federal court drug cases increased by 73 percent since 1986 and convictions by trial in all types of cases have risen 16 percent since 1986.

The rising number of criminal jury trials tax the most precious of all judicial resources — time. Understandably, an increase in criminal indictments would bring about an increase in the number of trials. But the advent of sentencing guidelines to be applied to all crimes committed after November 1, 1987 is probably more responsible for the increase in the number of jury trials than the increases in the number of defendants charged.

The sentencing guidelines provide for the imposition of heavy penalties upon conviction and in many cases the heavy penalties are made mandatory by the guidelines. Defendants who could once plea bargain for a less severe sentence now opt for trial since they have very little to lose.

2. The Northern District's Criminal Docket

The so called "War on Crime" and most particularly the "War on Drug Crimes" coupled with the imposition of sentencing guidelines on the federal judiciary represent the two most significant factors increasing trial demands. This is a national phenomenon and has reflected itself in the trial demands in the Northern District.

The number of criminal trials in the Northern District increased disproportionately from 1989 to 1990. The number went from under 50 in 1989 to more than 70 in 1990. The percentage of criminal trials to total trials almost doubled in the 5 year period from 1985 to 1990. The percentage of criminal trials to total trials increased from approximately 15 percent in 1985 to nearly 30 percent in 1990.

Since 1985, total criminal case filings have increased 60 percent in the Northern District. In the years since 1980, criminal actions per judgeship have risen 53 percent and the number of triable defendants in criminal cases increased 76 percent.

In 1990 there were 417 criminal cases filed in the Northern District which represents a 30 percent increase from the number filed in 1980. The 417 figure represents 40 criminal cases per judgeship ranking the district 71st in the nation. The median time from filing to disposition of the criminal case was 5.9 months which ranked the district 64th in the nation.

Although there has been fluctuation in criminal case filings over the last decade, the general trend shows an increase in numbers. Criminal case filings for the 1980 calendar year were 322 but reached the number 417 for the 1990 statistical year. Over this same period, the number of triable defendants nearly doubled, increasing from 134 in 1980 to 236 in 1990.

III. IMPACT OF COURT PROCEDURES AND RULES

The Northern District of Ohio utilizes an individual docket. Cases are randomly assigned to Judicial Officers upon filing and remain with that individual through disposition. The Court's local rules set forth standards for reassigning cases.

The Court is in the process of amending its local rules. As such, the Court has agreed to standardize its pretrial orders. In the past, there has been some criticism of the Court because each Judge had his/her own standing order, requiring counsel not only to familiarize themselves with the court's local rules, but also to become familiar with and comply with the requirements of each individual judge. Recognizing this problem, the court has adopted a policy to standardize the pretrial requirements imposed upon counsel.

The new pretrial order will set forth discovery cutoff dates, further conference dates, motion cutoff dates and trial dates. The Clerk's Office will be able to provide reports to chambers and the case management teams to monitor critical dates such as; service, answer dates, discovery and motion cutoff dates etc. Up until recently the Clerk's Office was only able to provide this type of information manually. With the automation of the civil docket, this information is readily available in management reports for the courtroom deputies and judges.

The Court, through a committee of the bench and bar is also considering the adoption of proposed rules for Alternative Dispute Resolution. The proposed ADR rules are attached at tab 2. The Advisory Group recommends the adoption of these rules. The district has had experience with ADR, particularly summary jury trials, for many years. The district has been designated as a pilot district for voluntary arbitration. The proposed ADR rules will provide a full range of ADR programs which will mesh with the proposed DCM plan to provide litigants with opportunities to resolve disputes outside of the traditional methods.

IV. IMPACT OF LEGISLATION AND EXECUTIVE ACTION

Case filings in the federal courts, both civil and criminal, are affected by the actions of the Executive Branch and the Congress. In the criminal area, Congressional legislation often acts as a magnet drawing cases to federal courts.

The Federal Courts Study Committee counted 195 statutes enacted by the Congress over the past 40 years which have affected the workload of the federal courts.[14] Civil jurisdiction of the federal courts has been expanded in recent years by legislation in areas of civil rights, the environment and disabled Americans.

Each piece of new legislation that creates or expands legal causes of action create new pressures for the federal court system. In addition to legislation that creates and expands causes of action, Congressional Acts are not always artfully drawn. Legislative language is frequently vague and results in questions that require the involvement of the federal courts. Executive actions often create the same problems and both the Congress and the Executive Branch, by design or by accident, are major contributing factors toward the increase in public demands on the time and attention of the federal judiciary.

In recent years, for example, legislation providing for pretrial detention, mandatory minimum penalties, abolition of parole and sentencing guidelines, provides great incentive to bring into federal courts cases which might otherwise be handled in state courts.

This is a trend which shows few signs of abating and promises to get worse. Under the 1991 anti-crime bill, currently under consideration by the Congress, a new mandatory five year penalty is created for possession of a firearm by anyone with one previous felony conviction for a crime of violence or a drug offense. This provision alone will probably attract cases which would normally be prosecuted under Ohio's concealed weapon law. In addition, the bill limits the use of the exclusionary rule in most cases involving search or seizure and in some cases abolishes the exclusionary rule altogether.

This type of legislation increases both the volume of federal criminal cases and the time required to dispose of the cases. In many cases involving felons in possession of a firearm, the underlying conviction can be attacked collaterally. Many of these cases also

---

[14] Report of Federal Courts Study Committee, April 2, 1990.

involve mandatory minimum penalties and the bottom line is more hearing and trial time by federal Judicial Officers.

Department of Justice policies regarding criminal actions, as implemented by local U.S. Attorneys, impact the civil dockets. Small quantity drug cases and small amount bank embezzlement cases involving small dollar amounts are examples of federal criminal cases which adversely impact court time while serving only minimal social purpose.

A more reasoned balance of all factors impacting on society's concept of "justice for all" seems in order.

V. EFFECT OF COURT RESOURCES

A. Supporting Personnel

1. Clerk's Office

The Clerk's Office has historically played an integral role not only in record-keeping but in providing statistical and case management information to the court. As filings increase in the district, along with the Court's pending caseload, it becomes increasingly important to provide the Clerk's Office with sufficient personnel resources to serve fully the needs of the judiciary in managing their caseload.

Staffing ratios of the Clerk's Office over the last many years has been less than 100%, due to staffing formulas employed by the Administrative Office of the U.S. Courts. Efforts are underway to provide 100% staffing for the Clerk's Office. The Advisory Group believes that it is imperative to staff the Clerk's Office at 100% to enable it to provide professional case management support to the judiciary.

The Clerk's Office for the Northern District of Ohio began efforts to automate its record keeping in the fall of 1987. Presently, its entire civil docket has been automated. The automation staff of the Clerk's Office has grown from "0" in 1987 to "7" in 1991. The automation staff have worked diligently to maintain the hardware and software for the Court and to enhance the software to provide the information requested by the Court. With the implementation of the Civil Justice Reform Act, the demands on the automation staff will increase exponentially because of the need to design and implement and automate the Advisory Group's proposed differentiated case management plan. In addition, the Clerk's Office has already been providing monthly statistical reports to the judiciary closely monitoring the status of the Court's pending inventory to assist in case management.

Over the last two years, the Clerk's Office has worked with the judiciary to install office automation systems throughout the court. These systems provide word processing capabilities, computer assisted legal research abilities as well as access to the database of civil dockets maintained on the Court's computer system. The ability of chambers to access the civil dockets has proven to be invaluable in effective case management.

The staffing needs of the Clerk's Office, separate from the needs of its automation department, will also increase to implement and monitor properly the Court's cost and delay reduction program. The full extent of the impact of the Court's program on the manpower needs of the Clerk's Office will need to be determined fully.

In summary, business in the Clerk's Office must undergo significant change in order to provide a full range of professional support to the Court in managing its docket.

2. Probation Office

The Probation Office has 82 positions. This is a 91% increase from the 43 positions in the office as of October 1, 1988. At present 13, or 16%, of the 82 positions are vacant. Selections have been made for 7 of the 13 positions.

The 82 positions represents a 100% staffing allocation, based on the fiscal 1991 workload formula. The Judicial Conference has adopted a new probation formula which will be used during fiscal 1992. It is estimated that as a result of this formula change, the staff of the Probation Office will increase to approximately 95 positions.

The Sentencing Reform Act of 1987 has had a significant impact on the Probation Office's workload. Sentencing, supervision, and violation of supervision procedures are much more complex under the Act. For example, in 1987 the Probation Office submitted less than 50 supervision violations to the Court. In 1991, more than 500 such reports were submitted to the Court. This number will continue to increase as more supervised release cases come into the system.

Under the Sentencing Reform Act, virtually every offender under supervision has one or more special conditions (a fine or restitution order, a drug treatment requirement, or community service). These special conditions substantially increase the reporting requirements of the Probation Office to the Court which, in turn, impacts on the Court's time for the adjudication of civil cases.

3. Pretrial Services Office

The Pretrial Services Office ("PSO") provides the Court with verified information pertaining to the pretrial release of defendants. The PSO is responsible for providing supervision of defendants released on pretrial status with the goal of ensuring the defendant's appearance in court.

The PSO is allocated a Chief Pretrial Services Officer, one (1) supervisor, six (6) pretrial services officers, one (1) officer assistant and a support staff of five (5) persons. Currently, the Chief is on leave pending retirement and the supervisory officer is on acting Chief status. The support staff positions are filled with three (3) full-time clerical staff (including the chief clerk) and four (4) part-time clerical staff.

Anticipated supervision guidelines, increased electronic monitoring, and implementation of Probation and Pretrial Services Automated Case Tracking System ("PACTS") in our district will require additional professional staff.

Clerical staffing allocations are currently inadequate. The office is in the process of requesting one additional full-time position from the Administrative Office; or a temporary (one year and one day) clerical position. The current additional need stems from increased administrative workload for the chief clerk during the transitionary period for appointment of a new chief, coupled with an anticipated main office move to a new location and new budgetary requirements.

Officers are currently supervising cases at a ratio of 25 per officer, which include supervision of cases with "special" conditions, i.e., daily reporting requirements, drug aftercare, electronic monitoring, and courtesy supervision for other districts, etc. As of this date, the total current open case count is 529, which reflects an average of 88 cases per officer — well above the national average.

The sentencing guidelines have had a definite impact on the requirements of pretrial services. Instances of clients having advance knowledge of their projected sentence (provided by legal counsel) has often resulted in non-cooperation with release conditions. In addition, there appears to have been a marked increase in the number of cases on appeal status, voluntary surrender, fugitives, and those cases whose sentencing is delayed due to a request from the Court for an enhanced presentence report. These factors increase the pretrial services workload requirements and prolong open case activity within the agency.

B. Buildings and Facilities

In February, 1991 the Northern District of Ohio participated in a Long Range Space Study conducted by the Administrative Office of the U.S. Courts. The conclusion reached by the study was that the Court is experiencing a space shortage of crisis proportions in Cleveland and in Toledo. As a result of the study, the court is working with the Administrative Office and the General Services Administration on plans for a new courthouse in Cleveland which will not be available for occupancy until 1997 at the earliest.

In the meantime, the Cleveland courthouse has such a space shortage that it is pursuing leased space to accommodate Senior District Judges and Circuit Judges. The space crisis has already significantly impacted Clerk's Office employees in Cleveland where docket and intake clerks are cramped into areas which are too small in which to effectively operate. The seven-member automation department is presently housed in a room designed to support three people at best.

The implementation of the court's cost and delay reduction plan will open opportunities for the Court and Clerk's Office to re-examine its support structure. Discussions have already been had regarding a "team" approach to case management, which will result in a redesign and relocation of Clerk's Office personnel to enable the teams to work together. In addition, supplemental space will be required to house the support staff required to implement and manage the court's ADR and differentiated case management programs.

The Office of the U.S. Marshal is located in the basement of the Cleveland courthouse. This office has experienced repeated flooding, both from rain and from sewage, making these quarters barely inhabitable. The Marshal has been pursuing options to relocate his staff outside of the Courthouse. This is very undesirable because of the need to have the presence of the Marshal to provide security and timely prisoner availability. Furthermore, there is no federal facility located in the Northern District of Ohio to house prisoners. As a result, the Marshal must contract with neighboring counties to provide housing for federal prisoners. The closest federal detention center is over 3 hours away from Cleveland. The prisoner housing shortage is so critical that the Marshal has requested the judges in this district to schedule sentencing only on Mondays and Fridays to enable the Marshal to maximize his resources in transporting the prisoners to and from the Courthouse.

C. Court Reporting

The Court is presently served by a full complement of court reporters. Most of the reporters utilize computerized court reporting. One of the judges in the district is presently experimenting with "real-time" court reporting, allowing instant translation of the court reporter's stenographic notes, which can be displayed on a computer monitor. This system also allows the Court to mark transcript cites for future reference and includes the option of full LEXIS search. Should this experiment be successful the court may wish to establish a policy of having its court reporters provide a court agreed standard for "real-time" court reporting. Funding for the Court's equipment should be made available and the Judicial Conference should look to create a policy regarding funding of equipment for the bar, court and the public in each courtroom.

Electronic sound recording is installed in the courtrooms of all Magistrate Judges, most Senior Judges and in some District Judges. More District Judges are choosing to have their courtrooms wired for electronic sound recording to have the option available to have a tape-recording of the proceedings reproduced in a more timely and inexpensive manner. The Court may wish to study the cost differences of transcript production, comparing traditional transcript production with that of electronic court recording and "real-time" reporting methods.

In choosing among the available options, the Court should be attentive to litigants' costs and the technological advances which are likely to continue in the years ahead.

VI. CONSIDERATION OF COST AND DELAY FACTORS

From 1970 through 1989, weighted case filings per judgeship for the Northern District exceeded the national average every year except one year, 1980, when they were even. The median time from filing to disposition of civil cases in the Northern District for the 12 months ending June 30, 1990, was 10 months. The median time from issue to trial was 13 months. Statistical surveys showing civil case movement in all United States District Courts put the Northern District in the middle range and it was classified as an "average" District in the Rand Corporation Institute for Civil Justice Study.[15]

The Advisory Group's review of the statistics for Northern District civil case filings shows that the work ethic of District Judges is satisfactory and, in most cases, superior. This finding, taken with the Northern District's classification as an "average" district by the "Dungworth Study" raises the reasonable question of the necessity for change. For the Northern District that question has a two-fold answer.

First, it must be remembered that the Congress has designated the Northern District as a "demonstration District." As such, the Northern District is specifically mandated to experiment with a system of differentiated case management.

The second reason for change is found in the Advisory Group's definition of the word delay. For purposes of its mission, the Advisory Group has defined delay as any unnecessary time spent from the filing of a case until its conclusion. Any program which places all civil case filings into a single-track processing system as the present system does, inevitably creates delays and, in some cases, the delay is considerable.

Under its definition of delay, the Advisory Group feels that the case-specific management plans which form the basis of DCM will help reduce unnecessary time spent between the events in litigation and the overall time to disposition. DCM emphasizes the preparation for disposition as opposed to preparation for trial.

The Advisory Group is also charged with the recommendation of a plan to reduce the costs of civil litigation. Attempts to examine the civil litigation costs, however, are frustrated by a shortage of empirical data. The general notion that costs are rising rapidly is based on opinion and

---

[15] The "Dungworth Study" classified the Northern District of Ohio as an "average" district. The classification was based on the district's closeness to the nine-month median time to disposition for private cases in the Federal System.

is not documented by hard data. Still, the opinion is widespread,[16] and, if true, calls into question our commitment to providing a judicial system available to all citizens of our society.

The primary costs of civil litigation comes in the form of attorney-client billings and the bulk of those billings stem from the discovery process followed by the costs of motion practice, trial preparation and trial. The Advisory Group feels that the DCM management techniques (providing discovery control, encouraging the use of Alternative Dispute Resolution ("ADR") programs, streamlining motion practice and establishing firm trial dates) will help reduce the costs of civil litigation.

Philosophically, the Advisory Group feels that the American judicial system functions because it is able to maintain public confidence. The judicial bureaucracy is small in numbers, the overall budget is modest and the judiciary has no army to enforce its orders. The ever-increasing high cost of civil litigation, coupled with delay, may eventually erode that public confidence and the judicial system will falter and fail.

There is, therefore, general agreement, both in and outside the legal fraternity, that processing civil cases within the civil justice system must be improved. In 1989, Congress passed the Judicial Improvements and Access to Justice Act. The Act created the Federal Court Study Committee chaired by Judge Joseph F. Weis, Jr. The Committee report, issued April 2, 1990, persuasively documents that need and reviews why the seemingly obvious solution of appointments of an endless number of federal trial judges is not a long term solution.[17]

---

[16] The Foundation for Change recently commissioned Louis Harris and Associates to survey Americans regarding their feelings on the civil justice system. Latin, R.E., Speeding up Civil Justice, Judicature, Vol. 73, No. 3, Oct.-Nov., 1989, the survey results showed:

1. More that one-half of all the federal judges, corporation counsel and public interest litigators believe that the cost of civil litigation is becoming a "major problem";

2. The majority feels that the high cost of litigation impedes access to the courts by ordinary citizens;

3. The most important cause for the high cost of litigation is an abuse of discovery; and

4. The second cause for the high cost of litigation is the failure of the judges to control the discovery process.

[17] Report of the Federal Courts Study Committee, April 2, 1990

The more meaningful approach calls for the Federal Courts to find more effective and less costly ways to process the growing case loads. The system must be willing to experiment; to be adventuresome and innovative. It must be willing to evaluate new programs honestly, keep and refine programs that work, and discard and replace programs which prove unsuccessful.

While speedier resolution of cases probably will result from DCM, the objective of DCM is to give each case the appropriate level of attention and to allocate properly the time of the judge. DCM is designed to provide justice, in a timely and cost-effective manner. The net result of DCM should be a reduction in delay and the costs of litigation. It is toward that end, that the Advisory Group for Northern Ohio offers this report and recommendations.

VII. ESTABLISHING A DIFFERENTIATED CASE MANAGEMENT PLAN

As a Demonstration District, the Northern District is specifically charged with the responsibility of establishing and implementing a Differentiated Case Management system. Its mission is to experiment with case management systems which can later be adopted by other districts in the national effort to improve the efficiency of our federal civil case system.

Several state Courts have experimented with DCM and the Task Force on differentiated case management reviewed DCM materials available from those state courts. After consultation with experts involved with the implementation of state court DCM programs, the Task Force developed this proposal for the Northern District.

In developing the DCM program for the Northern District, the Advisory Group was guided by the following principles. A philosophical commitment to a judicial system that will serve the American people by making access to an efficient court system available and affordable to all; the high cost of litigation and the unnecessary delays in bringing cases to trial pose a serious threat to our civil justice system; the establishment of a differentiated case management system, which puts civil case filings on different "tracks" depending on case characteristics, can be effective in efforts to reduce costs and avoid unnecessary delay within the civil justice system; and DCM procedures can be implemented without compromising the independence or the authority of either the judicial system or the individual judge.

The underlying purpose of these recommendations is the creation of a management system which will permit the federal judicial system to process its growing and diverse caseload in a more cost and time efficient manner. The Advisory Group recommends the adoption of appropriate management techniques. The Advisory Group submits that the general application of a standard set of procedural rules and regulations to process all civil litigation, without regard for individual case needs, is inefficient, costly and ineffective. A single-track processing approach to civil litigation often causes more discovery than is necessary, impedes the movement of relatively minor cases and can overlook the potential of ADR resolution.

VIII. RECOMMENDATIONS

1. The Northern District should implement a DCM program whereby civil cases will be channeled into processing tracks that provide the appropriate level of judicial, staff and attorney attention needed to move the cases to disposition.

2. Pursuant to the DCM Program:

   (a) Civil cases identified as having similar management requirements be grouped together and assigned to designated tracks. Each of the tracks will employ a case management plan tailored to the general requirements of the designated group. Each case will have judicial and support staff attention as needed and the management plan can be adjusted as required.

   (b) Five tracks should be created for use in the Northern District:

   EXPEDITED - Cases on the Expedited track will be completed within nine months after filing. This track will have a short discovery period of no more than 100 days. Interrogatories will be limited to 15 single part questions and only one deposition per party will be permitted. The Court can allow additional discovery for good cause.

   > An example of an Expedited track case is a contract case between two parties, where the documentary evidence is limited and the main issue involves an interpretation of the contract. Discovery would be limited with little or no need for depositions and the legal issues would be clear. This type of case would be highly suited for ADR.

STANDARD - Cases on the Standard track will be completed within 15 months after filing. The discovery period will be no more than 200 days. Interrogatories will be limited to 35 single part questions and depositions limited to three per side without leave of court. The Court can allow additional discovery for good cause.

> An example of a Standard track case is an employment case where the factual issues are discrete and the documentary evidence is not extensive. Discovery would be routine and there would be few complicated legal issues. This type of case will have moderate to high ADR suitability. The Advisory Group acknowledges that the bulk of civil filings will be assigned to the standard track.

COMPLEX - All scheduled dates for cases on this track will be based on the complexity of the case, with a case completion goal of no more than 24 months after filing.

> An example of a Complex track case is a products liability action involving several defendants and several allegedly defective products, where documentary evidence is likely to be voluminous, and numerous fact and expert witnesses are expected to testify. The discovery would be extensive and there would be numerous procedural and/or substantive legal issues, some of which might be complicated and/or novel. This case would have some ADR suitability.

ADMINISTRATIVE - Cases on the Administrative track will be referred to a Magistrate Judge for a report and recommendation, and are expected to be suitable for summary disposition. Cases will be completed within six months of filing. Little or no discovery will be necessary. Administrative track

cases include Social Security matters, student loan complaints, foreclosures, etc. These cases would not require the involvement of the District Judge prior to entry of judgement.

MASS TORTS - A processing track for mass tort cases will establish procedures adapted to the unique characteristics of these cases. An example of such procedures is found in the recommended procedures for asbestos cases which will form the bases for the Mass Tort track. These procedures are set forth in the appendix at tab 1.

3. A Case Information Statement (CIS) will be filed with each new pleading for every civil case filed within the Northern District of Ohio.

   The CIS will provide the information needed by the court to make an informed decision regarding the case track assignment. The CIS would also be used to screen cases for referral to Alternative Dispute Resolution (ADR) programs.

4. The Court should make track recommendations within five days after the time for the filing of the last responsive pleading. The Court will notify all counsel of the track recommendation and the date of the Case Management Conference.

5. A mandatory Case Management Conference should be held in every case within ten (10) days after track recommendation, and a case management plan will be issued following the conference. The Case Management Conference will, at a minimum, be used to:

   A. Determine track assignment;

   B. Direct early neutral evaluation or any other appropriate ADR program (with the exception of arbitration which must be agreed upon by the parties). Nontrial resolution potential should be explored at all appropriate times throughout the pendency of each case;

   C. Discuss potential party additions;

D. Determine nature and scope of discovery and set appropriate deadlines;

E. Set motion deadlines;

F. Set Status Hearing date;

G. Complete case management plan;

H. Identify or formulate principles or issues in contention.

6. Procedures should be adopted which will insure the exchange of necessary information between the parties and, at the same time, guard against the potential of wasteful and abusive discovery practices.

As part of "discovery control" the Advisory Group recommends that discovery be in two stages. First, there should be an exchange of information necessary to explore settlement potential and referral to appropriate ADR programs. Discovery in its second phase should mandate the exchange of that additional information necessary to prepare for trial.

The discovery process must be monitored carefully by the Court and procedures for control are recommended under suggested Rule 8:8.2, titled "Discovery Motions and Disputes."

7. A mandatory case Status Hearing should be held approximately at the midpoint between the date of the Case Management Conference and the discovery cut-off date. It is recommended that at this hearing a FIRM TRIAL DATE be established.

If, for any reason, the assigned District Judge is unable to hear the case on its assigned trial date, the case should be referred to the Chief Judge for reassignment to any available District Judge for immediate trial. This is critical to assuring firm trial dates and is a key recommendation of the Advisory Group.

8. A Final Pre-Trial Conference should be scheduled by the Judicial Officer at the status hearing. The ideal time for this Conference would be no earlier than 30 days prior to trial and the Judicial Officer may require trial memorandum from counsel. In ordering trial memorandum, the Judicial Officer should weigh the utility of such memorandum in the given case against the additional cost involved in their preparation.

9. A rule should be adopted to ensure the early resolution of all discovery and dispositive motions. The rule should, at the same time, streamline motion practice by adopting regulations which limit the mechanics of motion filing (length of memoranda, appendices, time for answer, reply and hearings, etc.)

   The rule recommended by the Advisory group which addresses the questions of motion practice and motion resolution is found under suggested Rule 8:8.1, "Motions General Information."

10. The Court should adopt local Rule 7, Alternative Dispute Resolution (ADR), and all ADR programs should be available for use in the implementation of the DCM plan. The Court will direct the parties to an appropriate ADR program when, in its judgment, such referral is warranted. No ADR hearing date will be modified without leave of Court.

    It is the opinion of the Advisory Group that the success of the DCM plan rests, in part, with the ability of the Court and the parties to make full use of the various ADR programs available within the Northern District. The Advisory Group acknowledges the thoughtful presentation of ADR programs prepared by the Court's ADR committee and presented to the Northern District in the form of Rule No. 7.

11. There should be active involvement by the bar associations in the Northern District in the implementation and refinement of the DCM system.

The support of an informed legal community is essential to the success of DCM. The Advisory Group recommends that printed materials concerning the DCM System be distributed to the bar and a series of public meetings be held to review the DCM system. The intent is to involve the various constituent communities in the further development of the DCM program.

12. The Court should adopt a plan for the disposition of pending cases in conjunction with the implementation of DCM. By doing this, the Court can assure the public and the bar of its commitment to the fair and expeditious processing of all cases.

    Statistical information shows approximately 11,000 civil matters pending in the Northern District as of June 30, 1990. It is the recommendation of the Advisory Group that an inventory of these cases should be made and that a plan be developed to assure their timely disposition.

    The pending case inventory plan should address the following:

    A. The number and type of cases pending prior to implementation of DCM.

    B. The method and criteria to be used in screening inventory cases for appropriate disposition.

    C. The types of techniques and programs needed to dispose of these cases. For example, cases could be referred for a settlement or status conference, assigned to a DCM track, referred to an ADR program or scheduled for dismissal if there has been no activity.

    D. The plan should explain that DCM procedures may apply to pre-DCM cases.

13. A formal support structure should be developed by the Court to implement and manage the DCM system.

DCM implementation will require a reorganization of the Northern District Court's support systems. The Advisory Group feels that the role and responsibility of the Magistrate Judges must be reviewed and adjusted appropriately. Their roles are critical to DCM success. Other DCM recommendations will cause a hard look at the organization and assignment of personnel within the Clerk's office.

The Advisory Group, feels that Senior Judges will play an important role in the successful implementation of DCM. Their assistance in the resolution of conflicting trial dates will be exceptionally valuable.

It is, however, the opinion of the Advisory Group that the reorganization and reassignment of existing personnel will not be sufficient. Additional staff will be necessary. New Magistrate Judges should be added to the Court. This is considered critical by the Advisory Group to the success of the DCM program.

Although funds have been made available for 3 new positions in the Clerk's office, additional support staff will be necessary. The Advisory Group is hopeful that, as a Demonstration District, the funds necessary to implement DCM will be available from Congress and the Court's fiscal offices.

14. The Court should conduct a systematic performance review of the DCM system. To facilitate its review, the Court should set measurable objectives for the evaluation of the DCM system. Statistics should be kept which, along with an analysis by the Court, will help determine those procedures within DCM which are successful as well as procedures which need adjustment. DCM should also be reviewed in efforts to answer such questions as to how events which take place during the life of the case can effect delay and what effect DCM has on these events. An effort should also be made to collect data on the costs of civil litigation and a cost-study should be undertaken to help determine areas where better management might reduce litigation expense.

15. The Advisory Group Reporter should prepare an annual report of the DCM program. It should review the DCM system in sufficient detail to allow recommendations for change and should be distributed to the Advisory Group and the court by the 31st day of January, following each of the project years.

IX. CONCLUSION

The Advisory Group's mission is to recommend procedures permitting the Northern District to process its civil docket in ways which will reduce both delay and cost. Accordingly, recommendations for the implementation of a DCM system have been made to the Court.

The DCM plan is based on the premise that the early identification and classification of cases will permit the assignment of these cases to "tracks" consistent with their specific needs. By so doing, the case management team can eliminate unnecessary time delays between events in the litigation process.

The DCM plan also calls for the management of civil cases from their filing date to their conclusion by the District Judge and trained management specialists within the court. That management team is expected to eliminate the costs of unnecessary discovery, monitor motion practice, encourage Alternative Dispute Resolution, and promote the use of informal procedures to solve the problems of litigation as they arise. These techniques are specifically recommended in an effort to decrease the overall costs of civil litigation.

The fundamental guiding principle, however, has been the desire to do justice. These recommendations are made in the belief that the DCM process and the recommendations of the Advisory Group will help make the judicial system available and affordable to all citizens.

SUGGESTED RULES AND COMMENTARY

SECTION EIGHT: DIFFERENTIATED CASE MANAGEMENT

CHAPTER ONE • General Provisions

Rule 8:1.1 *Purpose and Authority*

The United States District Court for the Northern District of Ohio (Northern District) adopts this Section in compliance with the mandate of the United States Congress as expressed in the Civil Justice Reform Act of 1990 (CJRA or Act). This Section is intended to implement the procedures necessary for the establishment of a differentiated case management (DCM) system.

The Northern District has been designated as a DCM "Demonstration District." The DCM system adopted by the Court is intended to permit the Court to manage its civil dockets in the most effective and efficient manner, to reduce costs and to avoid unnecessary delay, without compromising the independence or the authority of either the judicial system or the individual Judge. The underlying principle of the DCM system is to make access to a fair and efficient court system available and affordable to all citizens.

COMMENTARY:

Nothing in the Rules proposed by the Civil Justice Reform Act Advisory Group (the "Advisory Group") and its Task Force on Differentiated Case Management (the "Task Force") is intended to hinder District Judges in managing their own docket. Rather, the Rules provide District Judges with the option of utilizing Magistrate Judges, court personnel or staff in complying with these Rules.

In fact, the proposed Rules are intended to make the most efficient use of all judicial resources (District Judges, Bankruptcy Judges, Magistrate Judges, and clerk's office personnel) and, specifically, to provide as much time as possible for the Judges to decide disputes that cannot otherwise be resolved.

Rule 8:1.2 *Definitions*

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

(b) "Judicial Officer" is either a United States District Judge or a United States Magistrate Judge.

(c) "Case Management Conference" is the conference conducted by the Judicial Officer within fifteen calendar days after the time for the filing of the last permissible responsive pleading where the track assignment, Alternative Dispute Resolution ("ADR") and discovery are discussed and where discovery and motion deadlines and the date of the Status Hearing are set.

(d) "Status Hearing" is the mandatory hearing which is held approximately midway between the date of the Case Management Conference and the discovery cut-off date.

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

(f) "Court" is the United States District Judge, the United States Magistrate Judge or Clerk of Court personnel depending on the role each is assigned to perform with respect to any given case.

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

(h) "Discovery cut-off" is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery cut-off date so as to comply with this rule, and discovery requests that seek responses or schedule depositions after the discovery cut-off are not enforceable except by order of the Court for good cause shown. Notwithstanding the foregoing, a party seeking discovery will not be deemed to be in violation of the discovery cut-off if all parties consent to delay furnishing the requested discovery until after the cut-off date or if, for example, a deposition that was commenced prior to the cut-off date and adjourned cannot reasonably be resumed until an agreed date beyond the discovery cut-off; provided, however, that the parties may not, by stipulation and without the consent of the Court, extend the discovery cut-off to a date later than ten (10) days before the Final Pretrial Conference.

Rule 8:1.3 *Date of DCM Application*

This Section shall apply to all civil cases filed on or after January 1, 1992 and may be applied to civil cases filed before that date if the assigned Judge determines that inclusion in the DCM system is warranted and notifies the parties to that effect.

Rule 8:1.4 *Conflicts with other Rules*

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

CHAPTER TWO • Tracks, Evaluation and Assignment of Cases

Rule 8:2.1 *Differentiation of Cases*

(a) Evaluation and Assignment. The Court shall evaluate and screen each civil case in accordance with this Section, and then assign each case to one of the case management tracks described in Rule 8:2.1(b).

(b) Case Management Tracks. There shall be five case management tracks, as follows:

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

2. Standard - Cases on the Standard Track shall be completed within fifteen (15) months or less after filing, and shall have a discovery cut-off no later than 200 days after filing of the CMP. Discovery guidelines for this track include interrogatories limited to thirty-five (35) single-part questions, no more than three (3) fact witness depositions per party without prior approval of the Court, and such other discovery, if any, as may be provided for in the CMP.

3. Complex -- Cases on the Complex Track shall have the discovery cut-off established in the CMP and shall have a case completion goal of no more than twenty-four (24) months.

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

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

COMMENTARY:

The case management tracks are the heart of the DCM system. They establish five general categories that reflect past experience and provide guidelines, while permitting flexibility for particular situations.

Requests for intermediate forms of relief such as temporary restraining orders, and preliminary injunctions should be handled in the current manner and should not alone determine the track to which the case is assigned. In considering Rule 8:2.1(b), Advisory Group members discussed the special problems created by such motions. The members felt that although each area provided special problems, they did not require, at this time, a special track.

The Advisory Group submits that motions for injunctive relief should continue to be handled as they are currently. That is, they are assigned and heard by the assigned judge unless referred to a Magistrate Judge.

The Advisory Group also submits that petitions for habeas corpus fall within procedures recommended for the Administrative track. The processing procedures for habeas corpus petitions are well-established and seem to fit neatly within the system recommended. It is possible, however, that given the number of death penalty cases seeking habeas corpus relief, special attention of the Court might be necessary. To provide assistance, the Advisory Group recommends that a special law clerk(s) be employed specifically to assist with habeas corpus petitions.

The processing of bankruptcy appeals was also considered by the Advisory Group and the Advisory Group submits such appeals fall within the procedures established for the expedited track.

Rule 8:2.2 *Evaluation and Assignment of Cases*

The Court shall consider and apply the following factors in assigning cases to a particular track:

Expedited:

1. Legal Issues: Few and clear
2. Required Discovery: Limited
3. Number of Real Parties in Interest: Few
4. Number of Fact Witnesses: Up to 5
5. Expert Witnesses: None
6. Likely Trial Days: Less than 5
7. Suitability for ADR: High
8. Character and Nature of Damage Claims: Usually a fixed amount

Standard:

1. Legal Issues: More than a few, some unsettled
2. Required Discovery: Routine
3. Number of Real Parties in Interest: Up to 5
4. Number of Fact Witnesses: Up to 10
5. Expert Witnesses; Two or three
6. Likely Trial Days: 5-10
7. Suitability for ADR: Moderate to high
8. Character and Nature of Damage Claims: Routine

Complex:

1. Legal Issues: Numerous, complicated and possibly unique
2. Required Discovery: Extensive
3. Number of Real Parties in Interest: More than 5
4. Number of Witnesses: More than 10
5. Expert Witnesses: More than 3
6. Likely Trial Days: More than 10
7. Suitability for ADR: Moderate
8. Character and Nature of Damage Claims: Usually requiring expert testimony

Administrative:

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

Mass Tort:

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

CHAPTER THREE • Case Information Statement

Rule 8:3.1 *Case Information Statement*

The initial pleading filed by each party shall be accompanied by a Case Information Statement ("CIS") which shall be in the form prescribed by the Court, and which shall be served on each other party to the litigation. The CIS shall not be admissible in evidence nor be deemed to constitute a jurisdictional requirement.

CHAPTER FOUR • Track Assignment and Case Management Conference

Rule 8:4.1 *Notice of Track Recommendation and Case Management Conference*

The Court shall issue a track recommendation to the parties within five calendar days after the filing of the last permissible responsive pleading. The track recommendation shall be made in accordance with the factors identified in Local Rule 8:2.2. The Court shall notify all counsel of the date for the Case Management Conference, which shall be scheduled within ten calendar days after the date that the track recommendation is issued.

In the event there is a delay in filing a responsive pleading, the Court may issue the track recommendation and schedule a Case Management Conference without awaiting the last permissible responsive pleading if in the Court's discretion such scheduling will assist in the overall management of the case. In any event, the Case Management Conference shall be held within sixty days of the filing of the initial Complaint.

COMMENTARY:

The Civil Justice Reform Act specifically identifies certain objectives to be handled at a case management conference. Those objectives include exploring the possibility of settlement, identifying the principle issues involved in the case, a review of the discovery process and the establishment of case specific time limits. The purpose of this rule is to provide the Judicial Officer with the information necessary to

meet all of the objectives as outlined in the Act and to tailor an appropriate case management plan and make an appropriate track assignment.

The Case Management Conference is a critical component of the recommended DCM Plan. The Conference is the first step in the management program that puts each civil case filing on a specific management track which is tailored to provide the appropriate amount of judicial attention.

Although each case is assigned to one of the five specific tracks which form the basis of the DCM Plan, the Judicial Officer conducting the hearing will recognize the unique qualities of each case and tailor procedures to fit those special characteristics. The Case Management Conference will also be used to encourage parties to narrow issues to those material and relevant, establish priorities for completion of important tasks, and review anticipated discovery problems. The Judicial Officer presiding is also charged with the mission of identifying cases that are amenable to prompt settlement or to alternative dispute resolution programs.

Recommended track requirements will be sent to counsel with the Notice of the date of the Case Management Conference. The purpose is to give counsel advance notice of what procedural requirements are contemplated by the Court in the track assignment. With these general requirements in mind, it should be easier for counsel to discuss any special problems at the Case Management Conference and to reach agreement on a specific track assignment.

Rule 8.4.2 *Case Management Conference*

The Judicial Officer shall conduct the Case Management Conference. The parties and lead counsel of record shall be present at the Conference.

(a) The agenda for the Conference shall include:

(i) Determination of track assignment;
(ii) Determination of whether the case is suitable for reference to an ADR program;
(iii) Voluntary disclosure of discovery information, including key documents and witness identification;
(iv) Determination of the type and extent of discovery;
(v) Setting of a discovery cut-off date;
(vi) Setting of deadline for filing motions: and

(vii) Setting the date of the Status Hearing, which shall be on a date approximately midway between the date of the Case Management Conference and the discovery cut-off date.

(viii) At the conclusion of the Case Management Conference, the Court shall prepare, file and issue an order with the Case Management Plan.

(b) Counsel for all parties are directed to engage in meaningful discussions regarding the track recommendation issued by the Court and each of the other agenda items established by the Court with the goal of submitting to the Court before the Conference a written stipulation agreed to by all parties with respect to each agenda item. It shall be the responsibility of counsel for the plaintiff(s) to arrange such pre-Conference discussions sufficiently in advance of the Conference so that, in the event of disagreement about any agenda item, each party, may if it chooses, file and serve a brief written submission of its position on each such disputed item not later than three (3) days prior to the Conference. The Court shall provide forms to counsel for all parties for indicating the parties' positions regarding all such agenda items when it issues its track recommendation.

(c) At the conclusion of the Case Management Conference, the Judicial Officer shall prepare, enter and serve the parties with the Case Management Plan governing the litigation.

CHAPTER FIVE • Status Hearing and Final Pretrial Conference

Rule 8.5.1 *Status Hearing*

The parties, each of whom will have full settlement authority, and lead counsel of record will attend the Status Hearing. At the Status Hearing the Judicial Officer will (a) review and address settlement and ADR possibilities; any request for revision of track assignment and/or of the discovery cut-off or motion deadlines; and any special problems which may exist in the case; and (b) assign a Final Pretrial Conference date, if appropriate, and (c) set a Firm Trial Date.

If, for any reason, the assigned Judicial Officer is unable to hear the case within one week of its assigned trial date, the case shall be referred to the Chief Judge for reassignment to any available Judicial Officer for prompt trial.

COMMENTARY:

Consensus was easily reached that establishing a realistic trial date was a critical component of any delay and cost reduction plan. After discussion of the various alternative dates for setting of a Firm Trial Date by the Task Force, the Advisory Group recommended that the Judicial Officer set a Firm Trial Date at the midpoint between the Case Management Conference and the projected completion date established by the track assignment.

More important than when the trial date is assigned, however, is the need for a realistic and Firm Trial Date. The reliability of the trial date is critical, and every effort should be made to hold to the assigned trial date.

The Advisory Group recognizes that, because cases are often settled between the Status Hearing date and the trial date, more than one case may be set for trial on the same date. The Advisory Group further recognizes that the actual start of trial may be delayed because an insufficient number of civil cases are settled or because a criminal case must first be tried. Accordingly, the date that trial actually begins may be delayed for a short period. In the extreme case, where the start of trial may be delayed for more than one week, provision is made for referring the case for trial to any available Judicial Officer.

The Advisory Group understands that while the underlying concept is simple, it becomes complex in its application. The Advisory Group suggests that Senior Judges might be available to handle trial scheduling conflicts. Furthermore, as Magistrate Judges become more involved with parties and counsel in the management of cases, the referral to a Magistrate Judge for trial becomes a more viable additional option. Finally, after exhausting all other options, the Advisory Group recommends that the Chief Judge make an assignment of the case to another District Judge whose schedule makes him or her available at or near the assigned Firm Trial Date.

Advisory Group members recognize that transferring trial-ready cases to a new judge is generally undesirable and should be avoided when possible. In fact, one goal of the DCM system is the early disposition of cases through direct contact with lawyers, early intervention of a Judicial Officer and the imposition and enforcement of deadlines. DCM offers a range of disposition alternatives. It encourages and sometimes requires ADR use, and acknowledges the reality that most cases will be disposed of by non-trial resolution.

Trial date certainty is, however, important to DCM success. A protocol for the occasional reassignment of cases is, therefore, necessary. The recommended protocol offers a variety of alternatives with oversight by the Chief Judge.

The Advisory Group anticipates flexibility in the application of this Rule. It is understood that no case would be assigned to another Trial Judge without first consulting with the assigned Trial Judge. If the assigned Trial Judge, for example, indicated availability for trial within a relatively short period of time, it is anticipated that that Judge would maintain control over the case and adjustments would be made by counsel and the parties. If, however, it were to be more than one (1) week before the assigned Trial Judge would be available, then the Court should use the recommended rule.

The Advisory Group further recognizes that each of the District Judges have already devised methods to help assure the integrity of trial dates. Judges are expected to continue using these methods so long as they are not inconsistent with the proposed Rules and Recommendations and provided that these methods do not delay the scheduled trial date.

Statistics should be maintained on all reassignments for the duration of the demonstration project. If experience shows the protocol needs modifications, changes can, and should be made. Such changes should be courtwide and not made on an ad hoc basis by individual judges or magistrates.

Group members further understand that exceptional circumstances may sometimes cause the parties to request a delay in the trial date. Those circumstances should be disclosed to the Judicial Officer and the appropriateness of a continuance shall rest in the sound discretion of the Judicial Officer.

In adjusting any Firm Trial Date, the Judicial Officers shall use their discretion and they are to be guided by the interest of the parties in having the trial concluded with dispatch and without undue cost and, above all, in the spirit of the proposed Rule and this Recommendation, which is intended to preserve a firm and clearly determinable trial date.

Rule 8:5.2 *Final Pretrial Conference*

A Final Pretrial Conference may be scheduled by the Judicial Officer at the Status Hearing. The parties and lead counsel of record shall be present at the conference. The Final Pretrial Conference shall be scheduled as close to the time of trial as reasonable under the circumstances. The Judicial Officer may, in the Judicial Officer's discretion, order the submission of pretrial memoranda.

COMMENTARY:

The DCM Plan anticipates the scheduling of a final pretrial conference in many, but not all cases. That conference should be presided over by a Judicial Officer — a Magistrate Judge or the assigned Trial Judge — and should be held no earlier than one month prior to trial.

The parties involved and lead counsel (the counsel who will conduct the trial) must be present at the final pretrial conference.

The Judicial Officer may require that counsel for the parties submit pretrial memoranda. Submission of memoranda shall be at the discretion of the Judicial Officer and should be used only when it is in the best interest of the parties. When ordering pretrial memoranda, the Judicial Officer should consider the costs involved in the preparation of such statements.

Although the Act does not mandate a Final Pretrial Conference, the Advisory Group submits that such a conference would be helpful in controlling cost and delay in some cases.

CHAPTER SIX • Alternative Dispute Resolution

Rule 8:6.1 *Alternative Dispute Resolution*

Parties are encouraged to use the provisions of Rule 7, Alternative Dispute Resolution (ADR), and the Court shall direct the parties to an appropriate ADR program when, in the judgment of the Court, such referral is warranted. ADR hearing dates shall not be modified without leave of Court.

COMMENTARY:

Alternative Dispute Resolution programs already play an important role in processing the court's civil docket. The DCM Plan mandates full integration of ADR into the civil case processing system. Rule 8:6.1 requires the Judicial Officer to explore ADR programs and authorizes the Judicial Officer, when appropriate, to mandate the use of ADR programs. While the Rule does not mandate the Judicial Officer to refer matters for ADR resolution, the Judicial Officer, however, may order the use of ADR procedures when warranted.

CHAPTER SEVEN • Discovery

Rule 8:7.1 *Discovery - General*

The parties are encouraged to cooperate with each other in arranging and conducting discovery, including discovery involved in any ADR program. Discovery shall be conducted according to limitations established at the Case Management Conference, based generally on the guidelines set forth in Local Rule 8:2.1, and confirmed in the Case Management Plan. Attorneys serving discovery requests shall have reviewed them to ascertain that they are applicable to the facts and contentions of the particular case; form discovery pleadings containing requests that are irrelevant to the facts and contentions of the particular case shall not be used.

COMMENTARY:

There is general agreement within the legal profession that discovery problems represent a major area of case cost and delay. The Advisory Group's discovery Recommendation is intended to permit a Judicial Officer to exercise control over the discover process.

The parties are encouraged to exchange relevant information on a voluntary and informal basis.

Each track provides for a fixed number of depositions and interrogatories. Members recognize that these are guidelines and that the Judicial Officer at the Case Management Conference can modify the nature and scope of discovery as appropriate to the individual case.

Rule 8:7.2 *Preliminary Discovery*

Prior to the Case Management Conference, the parties may conduct such discovery as is necessary and appropriate to support or defend against any claim for emergency, temporary or preliminary relief that may be presented.

Rule 8:7.3 *Interrogatories*

(a) No interrogatory may contain subparts, or a compound, conjunctive or disjunctive question, except those interrogatories seeking the identity of persons or documents.

(b) Answers and objections to interrogatories shall set forth each question in full before each answer or objection. Each objection shall be followed by a concise statement of the reasons and bases therefor. No interrogatory shall be left unanswered merely because an objection is being interposed with respect to another interrogatory. If an interrogatory contains subparts permitted by this Rule, when objection is made to one subpart the remaining subparts of the interrogatory shall be answered at the time the objection is made.

(c) If the initial set of interrogatories propounded by a party does not exhaust the limitation on its total number of interrogatories established by the CMP, the remaining number of interrogatories may be propounded in subsequent sets. Unless the Court orders to the contrary, no party need respond to any interrogatories served that are in excess of the limit set forth in the CMP, as numbered sequentially from the beginning of any set, if that party objects to answering the excess interrogatories on the ground that the limit has been exceeded. On stipulation or motion, for good cause shown, the Court may grant leave to a party to propound interrogatories in excess of the number specified in the CMP. The Court may direct the party requesting the additional discovery to set forth the additional proposed interrogatories and the reasons they are necessary in its memorandum in support of any such motion or stipulation.

Rule 8:7.4 *Discovery Disputes*

Discovery disputes shall be referred to a Judicial Officer only after counsel for the party seeking the disputed discovery has made, and certified to the Court the making of, sincere, good faith efforts to resolve such disputes. The Judicial Officer shall attempt to resolve the discovery

dispute by telephone conference. In the event the dispute cannot be resolved by the telephone conference, the parties shall outline their respective positions by letter and the Judicial Officer shall attempt to resolve the dispute without additional legal memoranda. If the Judicial Officer still is unable to resolve the dispute, the parties may simultaneously file their respective memoranda in support of and in opposition to the requested discovery by a date set by the Judicial Officer, who will also schedule a hearing on the motion to compel to be held within three (3) days after the date the parties are to file their memoranda. No discovery dispute shall be brought to the attention of a Judicial Omcer, and no motion to compel may be filed, more than ten (10) days after the discovery cut-off.

CHAPTER EIGHT • Motions

Rule 8:8.1 *Motions - General Information*

(a) Motion Day. Each Judicial Officer shall select and publish to the bar one day of each week to be his or her civil motion day. The establiishment of a general motion day does not preclude the Judicial Officer from exercising the discretion to set a motion for hearing on any other day.

(b) Motions to be in Writing. All motions, unless made during a hearing or trial, shall be in writing and shall be made sufficiently in advance of the trial to avoid any delay in trial.

(c) Memorandum by Moving Party. The moving party shall serve and file with its motion a memorandum of the points and authorities on which it relies in support of the motion.

(d) Memorandum in Opposition. Each party opposing a motion shall serve and fiie a memorandum in opposition within ten (10) calendar days after service of the motion.

(e) Reply Memorandum. The moving party may serve and file a reply memorandum in support of its motion within five (5) calendar days after service of the memorandum in opposition.

(f) Length of Memoranda. Without prior approval of the Judicial Officer for good cause shown, memoranda relating to dispositive motions shall not exceed ten (10) pages in length for expedited and administrative cases, twenty (20) pages for standard cases, thirty (30) pages for complex cases, and forty (40) pages for

mass tort cases. Memoranda relating to all other motions shall not exceed fifteen (15) pages in length. All memoranda exceeding fifteen (15) pages in length shall have a table of contents, a table of authorities cited, a brief statement of the issue(s) to be decided, and a summary of the argument presented. Appendices of evidentiary, statutory or other materials are excluded from these page limitations and may be bound separately from memoranda.

(g) Hearings. The Judicial Officer may rule on unopposed motions without hearing at any time after the time for filing an opposition has expired. The Judicial Officer may also rule on any opposed motion without hearing at any time after the time for filing a reply memorandum has elapsed. Unless acted upon earlier by the Judicial Officer, hearings on motions shall be held within thirteen (13) calendar days after the filing of the memorandum in opposition.

(h) Attendance at Hearings. Any party may waive oral argument by giving notice of such waiver to the Court and all counsel of record at least three (3) days in advance of the hearing. Unless oral argument is waived, the moving party and all parties filing an opposition to the motion shall attend the hearing. The Judicial Officer may hear oral argument on any motion by telephone conference. The Judicial Officer may grant or deny the requested relief for failure by any party to attend the hearing.

(i) Untimely Motions. Any motion (other than motions made during hearings or at trial) served and filed beyond the motion deadline established by the Court may be denied solely on the basis of the untimely filing.

(j) Failure to File Memoranda. Memoranda required to be filed under this Rule that are not timely filed by a party may not be considered and may be deemed by the Court to constitute the party's consent to the granting or denial of the motion, as the case may be.

(k) Sanctions for Filing Frivolous Motions or Oppositions. Filing a frivolous motion or opposing a motion on frivolous grounds may result in the imposition of appropriate sanctions including the assessment of costs and attorneys' fees against counsel and/or the party involved.

COMMENTARY:

The Civil Justice Reform Act requires the Court to consider "setting at the earliest practicable time, deadlines for filing motions and a time framework for their disposition." This Rule addresses this congressional mandate.

The Rule contemplates a motion day set each week by the Court. While the Advisory Group understands that motion hearings may be set by individual judges on any day at the judge's discretion, it was the desire of members that hearings be held on one specific day each week with the Trial Judge ruling on most motions from the bench.

The Court, in its discretion, may rule on motions without hearing. The focus of this rule is the timely disposition of motions.

The Advisory Group recognizes the difficulties presented to Trial Judges by the motion docket. The purpose of this rule is to lessen the delay and cost increases occasioned by unresolved motions. The rule is recommended to create procedures for the monitoring and resolution of motions by a Judicial Officer. It also attempts to ease part of the burden on the Judicial Officer with Recommendations limiting the number of pages permitted in the filing of supporting memoranda and documents.

The Advisory Group members were mindful of the need for the Judicial Officers to exercise their best discretion in the handling of motions. It is clear, however, that the potential cost increases and delays resulting from unresolved motions needed attention.

It is anticipated that there is sufficient flexibility in the Rule to permit the Judicial Officer to exercise discretion in the best interests of justice. The goal, however, is to establish procedures that specifically focus the Court's attention on motions within certain specified time frames to help address cost and delay concerns.

Rule 8:8.2 *Dispositive Motions*

Any motion which disposes of any claims or defense shall be ruled upon by the Judge assigned to the case.

Rule 8:8.3 *Ruling on Motions*

(a) It is to be expected that the Judicial Officer will announce his or her intended preliminary ruling and rationale or grounds for such decision at the outset of the hearing on a motion, and that the parties will be asked to limit their oral arguments to the reasons why the preliminary ruling is correct or incorrect. Normally, the party which stands to lose on the motion if the preliminary ruling is entered will be invited to argue first, followed by the party in whose favor the preliminary ruling has gone. In all cases, the moving party will be entitled to have the final opportunity, if desired, to address the Court at the hearing. It is to be expected that the Judicial Officer will then rule from the bench.

(b) In those unusual instances when a Judicial Officer determines that it is absolutely necessary to take a motion under advisement, the Judicial Officer shall render a ruling on any nondispositive motion within thirty (30) days of the hearing and the Judge shall rule on any dispositive motion within sixty (60) days of the hearing.

(c) A list of motions that have been heard but not ruled upon beyond the time limits set forth in this Rule shall be published by the Court once a month which shall include the case caption, the name of the Judicial Officer, and the type of motion pending. Discovery shall be suspended during the pendency of any such motions beyond the time limits set forth in this Rule, and track deadlines may be adjusted accordingly at the request of a party where the interests of justice so require.

COMMENTARY:

This Rule addresses the delay and cost increases caused by unresolved motions and the mandate of Congress that courts consider setting a time framework for the disposition of motions. The Advisory Group feels that dispositive motions should be heard by the assigned judge. Referring dispositive motions to a Magistrate Judge frequently increases costs and delay by the filing of objections, briefs and, sometimes, re-hearings.

ADVISORY GROUP TO THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
REVISED APRIL 26, 1991

REPORTER:

1. Judge Jerry L. Hayes
   Portage County Court of
   Common Pleas
   203 W. Main Street
   Ravenna, Ohio 44266
   (216) 297-3880

MEMBERS:

2. Louis Paisley, Esq.,
   Chairperson
   Weston, Hurd, Fallon,
   Paisley & Howley
   2500 Terminal Tower
   Cleveland, Ohio 44113
   (216) 241-6602

3. Mark Wallach, Esq.
   Calfee, Halter & Griswold
   1800 Society Bldg.
   800 Superior Ave., N.E.
   Cleveland, Ohio 44114
   (216) 622-8200

4. Ronald Holman, Esq.
   Calfee, Halter & Griswold
   1800 Society Bldg.
   800 Superior Ave., N.E.
   Cleveland, Ohio 44114
   (216) 622-8200

5. Margaret Wong, Esq.
   1370 Ontario St. Suite 300
   Cleveland, Ohio 44113
   (216) 556-9908

6. Professor Solomon Oliver
   Cleveland Marshall
   College of Law
   1801 Euclid Avenue
   Cleveland, Ohio 44115
   (216) 687-2344

7. Gerald A. Messerman, Esq.
   Messerman & Messerman
   1525 Ohio Savings Plaza
   1801 East 9th Street
   Cleveland, Ohio 44114
   (216) 574-9990

8. Raymond J. Negrelli
   28601 Chagrin Blvd.,
   Suite 450
   Cleveland, Ohio 44122
   (216) 464-0049

9. Willis P. Jones, Jr., Esq.
   Jones & Bahret
   701 Adams St., Suite 709
   Toledo, Ohio 43624
   (419) 243-8311

10. Larry R. Brown
    Vice President &
    General Counsel
    The Timken Company
    1835 Duebar Avenue, S.W.
    Canton, Ohio 44706
    (216) 438-3000

11. Robert H. McDowall, Esq.
    McDowall, Keith & Quillin
    Post Office Box 8
    Cuyahoga Falls, Ohio 44222

12. Marcia W. Johnson
    Assistant U.S. Attorney
    1404 East 9th St., S-500
    Cleveland, Ohio 44114
    (216) 363-3900

13. Jacqueline A. Johnson, Esq.
Arter & Hadden
1100 Huntington Bldg.
Cleveland, Ohio 44115
(216) 696-1100

14. George M. von Mehren, Esq.
Squire, Sanders & Dempsey
1800 Huntington Bldg.
Cleveland, Ohio 44115
(216) 687-8500

15. Mark McClain, Esq.
Schleiker House
1849 East 89th Street
Cleveland, Ohio 44106
(216) 721-3939

16. Barbara J. Arison, Esq.
Thompson, Hine & Flory
1100 National City Bank Bldg.
Cleveland, Ohio 44114-3070

17. John W. Stoepler
Dean Emeritus
University of Toledo
Law School
2801 West Bancroft Street
Toledo, Ohio 43606
(419) 537-2882

18. Terry H. Gilbert, Esq.
Friedman & Gilbert
1700 Standard Bldg.
Cleveland, Ohio 44113
(216) 241-3335

19. Anne L. Kilbane, Esq.
Nurenberg, Plevin, Heller &
McCarthy Co., L.P.A.
First Floor, Standard Bldg.
1370 Ontario Street
Cleveland, Ohio 44113
(216) 621-2300

20. Charles L. Richards, Esq.
Richards, Ambrosy &
Fredericka
The First Place, Suite 300
152 E. Market Street
Warren, Ohio 44481
(216) 373-1000

21. Patrick M. McLaughlin, Esq.
Mansour, Gavin, Gerlack
& Manos
2150 Illuminating Bldg.
55 Public Square
Cleveland, Ohio 44113
(216) 523-1500

22. Leslie W. Jacobs, Esq.
Thompson, Hine & Flory
629 Euclid Ave., Suite 1100
Cleveland, Ohio 44114-3070
(216) 556-5500

23. Hugh R. Whiting, Esq.
Jones, Day, Reavis & Pogue
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-3939

24. R.D. Welsh, General Counsel
The Westfield Companies
Post Office Box 5001
Westfield Ctr., Ohio 44251-5001
(216) 887-0454

25. Eric H. Zagrans
Associate General Counsel
Ernst & Young
2000 National City Center
Cleveland, Ohio 44114
(216) 861-5000

26. Larry Salibra, Senior Counsel,
Alcan Aluminum Corp.,
Corporate Law Dept.
Post Office Box 6977
Cleveland, Ohio 44101-1977
(216) 523-6998

The following members are also designated as members of the Advisory Group's Task Force on Differentiated Case Management:

27. David C. Weiner, Esq., Chairperson
Hahn, Loeser & Parks
3300 BP America Building
200 Public Square
Cleveland, Ohio 44114-2301
(216) 621-0150

28. John F. McClatchey, Esq.
Thompson, Hine & Flory
1100 National City Bank Bldg.
629 Euclid Avenue
Cleveland, Ohio 44114-3070
(216) 566-5500

29. Barbara J. Leukart, Esq.
Jones, Day, Reavis & Pogue
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-3939

30. Randolph L. Snow, Esq.
Black, McCusky, Souers & Arbaugh
1000 United Bank Plaza
220 Market Avenue South
Canton, Ohio 44702
(216) 456-8341

31. Richard M. Kerger, Esq.
Marshall & Melhorn
800 Four SeaGate
Toledo, Ohio 43604
(419) 249-7100

32. Hilary S. Taylor, Esq.
Weston, Hurd, Fallon, Paisley & Howley
2500 Terminal Tower
Cleveland, Ohio 44113
(216) 241-6602

33. Percy Squire, Esq.
Bricker & Eckler
100 S. 3rd Street
Columbus, Ohio 43215
(614) 227-2372

34. Donald P. Traci, Esq.
Spangenberg, Shibley, Traci & Lancione
1500 National City Bank Bldg.
Cleveland, Ohio 44114
(216) 696-3232

35. Robert P. Sweeney
Robert E. Sweeney Co., LPA
The Illuminating Bldg.
55 Public Square
Cleveland, Ohio 44113

36. Louis Paisley, Esq.
Weston, Hurd, Fallon, Paisley & Howley
2500 Terminal Tower
Cleveland, Ohio 44113
(216) 241-6602

37. Judge Jerry L. Hayes
Portage County Court of Common Pleas
203 W. Main Street
Ravenna, Ohio 44266
(216) 297-3880

38. James McCann
U.S. District Court
United States Courthouse
201 Superior Avenue
Cleveland, Ohio 44114
(216) 522-2080

EX-OFFICIO MEMBERS:

Chief Judge Thomas D. Lambros
Judge John M. Manos
Judge Alvin I. Krenzler
Geri Smith, Clerk of Court

ADVISORY GROUP
COORDINATING COMMITTEE:

Judge Sam H. Bell/Chairman
Judge George W. White
Judge John W. Potter

SECTION SEVEN:

ALTERNATIVE DISPUTE RESOLUTION

SECTION SEVEN: ALTERNATIVE DISPUTE RESOLUTION

TABLE OF CONTENTS

SECTION 7: ALTERNATIVE DISPUTE RESOLUTION (ADR)

CHAPTER ONE
GENERAL PROVISIONS

Rule 7:1.1 Purpose

The Court adopts this Section to make available to the Court and the parties a broad program of court-annexed dispute resolution processes designed to provide quicker, less expensive, and generally more satisfying alternatives to continuing litigation.

It is not contemplated that all of these processes--early neutral evaluation, mediation, arbitration, and summary jury trial--will be suitable for every case. Rather, the Judges of the Court believe that the careful selection of processes to fit the cases will result in the efficient preparation and resolution of those cases, to the benefit of the parties, their counsel, and the Court.

Rule 7:1.2 Definitions

(a) "Arbitration" is an adjudicative process by which a neutral person or persons (the arbitrator(s)) decide the rights and obligations of parties. The arbitration process described in Local Rule 7:4.1, et seq. is court-annexed, in that it is arranged and administered by the court. It is also consensual, in that the parties consent to participate, and non-binding.

(b) The "assigned Judge" is the Judge to whom the case is assigned. If the Judge has referred the matter to a Magistrate Judge, the Magistrate Judge is the assigned Judge under this Section with respect to actions or decisions which are to be made by the assigned Judge.

(c) The "Court," as used in this Section means any United States District Judge, United States Magistrate Judge, or Clerk of Court personnel to whom responsibility for a particular action or decision has been delegated by the Judges of the United States District Court for the Northern District of Ohio.

(d) "Early Neutral Evaluation" ("E.N.E.") is a pre-trial process involving a neutral evaluator who meets with the parties early in the course of the litigation to help them focus on the issues, organize discovery, work expeditiously to prepare the case for trial, and, if possible, settle all or part of the case. The neutral evaluator provides the parties with an evaluation of the legal and factual issues,

to the extent possible, at that early stage of the case.

(e) "Mediation" is a non-binding settlement process involving a neutral mediator who helps the parties to overcome obstacles to effective negotiation. The mediation process described in Local Rule 7:3.1, et seq. is court-annexed.

(f) "Summary Jury Trial" is a court-annexed, non-binding process in which the parties briefly present their case to a jury with a Judge or other Judicial Officer presiding and then use the decision of the jury and information about the jurors' reaction to the legal and factual arguments as an aid to settlement negotiations.

Rule 7:1.3 The ADR Administrator

The "ADR Administrator" is the person appointed by the Court with full authority and responsibility to direct the programs described in this Section. The ADR Administrator shall be a person with training and experience in the administration of ADR Programs. The ADR Administrator shall:

(a) Administer the selection, training, and use of the Federal Court Panel;

(b) Collect and maintain biographical data with respect to members of the Federal Court Panel to permit assignments commensurate with the experience, training, and expertise of the panelists and make the list of Panelists and the biographical data available to parties and counsel;

(c) Prepare applications for funding of the ADR Program by the United States government and other parties;

(d) Prepare reports required by the United States government or other parties with respect to the use of funds in the operation and evaluation of the program;

(e) Develop and maintain such forms, records, docket control, and data as may be necessary to administer and evaluate the program;

(f) Periodically evaluate, or arrange for outside evaluation of, the ADR Program and report on that evaluation to the Court, making recommendations for changes in this Section, if needed; and

(g) Develop, and make available upon request, lists of private or extra-judicial ADR providers.

Decisions of the ADR Administrator, acting within the

authority conferred in this Section, shall be orders of the Court for purposes of enforcement and sanctions.

Rule 7:1.4 Federal Court Panel

There is hereby authorized the establishment of a Federal Court Panel consisting of persons who, by experience, training, and character, are qualified to act as evaluators, mediators, arbitrators, or other neutrals in one or more of the processes provided for in this Section.

(a) Appointment to the Panel. The Federal Court Panel shall consist of persons nominated by the Court's Advisory Group and confirmed by the Judges of the Court.

(b) Qualifications and Training.

(1) Panelists shall be lawyers who have been admitted to the practice of law for at least five (5) years and are currently either members of the bar of the United States District Court for the Northern District of Ohio or members of the faculty of an accredited Ohio law school. The Court may waive these requirements to appoint other qualified persons with special expertise in particular substantive fields or experience in dispute resolution processes.

(2) All persons selected as panelists shall:

(A) Undergo such dispute resolution training as the Court may prescribe;

(B) Take the oath set forth in 28 U.S.C. § 453; and

(C) Agree to follow the provisions of this Section.

Each person shall be appointed as a Federal Court Panelist for a period of three (3) years. Appointment may be renewed upon a demonstration of continued qualification.

(c) Compensation of Panelists.

(1) Mediators and evaluators shall receive no compensation for the first four and one half (4 1/2) hours of services. Thereafter the parties shall be equally responsible for the Panelist's compensation at the rate of $150 per hour. A compensation schedule for arbitrators shall be published by the

Court.

(2) No Panelist may be assigned in one calendar year to more than one case which falls within the Complex Case Track (See Local Rules Section 8, Chapter Two), nor to a total of more than five (5) cases, without the consent of the Panelist.

CHAPTER TWO
EARLY NEUTRAL EVALUATION (E.N.E.)

Rule 7:2.1 Eligible Cases

Any civil case may be referred to E.N.E.

Rule 7:2.2 Selection of Cases

A case may be selected for E.N.E.:

(a) By the Court at the case management conference (See Local Rule 8:1.2(c)); or

(b) At any time:

(1) By the Court on its own motion;

(2) By the Court, on the motion of one of the parties; or

(3) By stipulation of all parties.

Rule 7:2.3 Administrative Procedure

(a) Upon notice that a case has been referred to E.N.E., the parties may notify the ADR Administrator, not later than ten (10) days after the date of the written notice, of their agreed selection of an evaluator from the available neutrals on the Federal Court Panel. If the parties fail to notify the ADR Administrator of a selection within that period, the ADR Administrator shall select from the Federal Court Panel an evaluator who is qualified to deal with the subject matter of the lawsuit. The ADR Administrator shall make a preliminary determination that the Evaluator has no conflict of interest and that the Evaluator can serve.

(b) After receiving notice of the parties' selection or after making the selection of the Evaluator, the ADR

Administrator shall give or send to counsel for all parties (or to parties not yet represented by counsel) a Notice of Designation (which shall include the name and address of the Evaluator) and any other materials which may facilitate the process. The ADR Administrator shall send a copy of the Notice of Designation to the Evaluator. If, after Notice of Designation is given or sent, a new party is joined in the action, the ADR Administrator shall promptly send that new party a copy of the Notice of Designation and other materials.

(c) Promptly after receiving the Notice of Designation, the Evaluator shall schedule the evaluation session. The Evaluator shall send written notice to all parties and to the ADR Administrator of the time and place of the session.

(d) The evaluation session shall be held within thirty (30) days of the receipt by the Evaluator of Notice of Designation unless otherwise ordered by the Court for good cause shown. A request for postponement of a scheduled evaluation session must be presented to the ADR Administrator, not to the Evaluator.

Rule 7:2.4 Neutrality of Evaluator

If at any time, the Evaluator becomes aware of or a party raises an issue with respect to the Evaluator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties, the Evaluator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Evaluator withdraw because of the facts so disclosed, the Evaluator may withdraw and request that the ADR Administrator appoint another evaluator. If the Evaluator determines that withdrawal is not warranted, the Evaluator may elect to continue. The objecting party may then request the ADR Administrator to remove the Evaluator. The ADR Administrator may remove the Evaluator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the evaluation session shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

Rule 7:2.5 Written Submissions to the Evaluator

(a) No later than ten (10) days before the evaluation session, each party shall submit to the Evaluator and serve on all other parties a written evaluation statement. The statement shall not exceed ten (10) pages and shall conform to local rule. The statement shall:

(1) Identify the person, in addition to counsel, who will attend the session as a representative of the party with decision making authority;

(2) Identify any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute to settlement; and

(3) Describe discovery which is contemplated.

The statement may include any other information the party believes useful in preparing the Evaluator and other parties for a productive session. The statement may identify individuals connected to another person (including a representative of an insurer) whose presence would be helpful or necessary to make the session productive. The Evaluator shall determine whether any person so identified should be requested to attend and may make such request.

(b) Written evaluation statements shall not be filed and shall not be shown to the Court.

(c) In addition to submitting the written evaluation statement, the parties shall prepare to respond fully and candidly in a private caucus to questions by the Evaluator concerning:

(1) The estimated costs, including legal fees, to that party, of litigating the case through trial;

(2) Witnesses (both lay witnesses and experts);

(3) Damages, including the method of computation and the proof to be offered; and

(4) Plans for discovery.

Rule 7:2.6 Attendance at the Evaluation Conference

(a) All parties shall be present, except that when a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to act and to settle, shall attend. Wilful failure of a party to attend the evaluation conference shall be reported by the Evaluator to the ADR Administrator for transmittal to the assigned Judge who may impose appropriate sanctions.

(b) Each party shall be represented at the session by the attorney expected to be primarily responsible for handling

the trial of the case.

Rule 7:2.7 Procedure at Evaluation Conferences

(a) Each E.N.E. conference shall be informal. The Evaluator shall conduct the process in order to help the parties to focus the issues and to work efficiently and expeditiously to make the case ready for trial or settlement.

(b) At the initial conference, and at additional conferences as the Evaluator deems appropriate, the Evaluator shall:

(1) Permit each party to make a brief oral presentation of its position, without interruption, through counsel or otherwise;

(2) Help the parties to identify areas of agreement and, if feasible, enter stipulations;

(3) Determine whether the parties wish to negotiate, with or without the Evaluator's assistance, before evaluation of the case;

(4) Help the parties identify issues and assess the relative strengths and weaknesses of the parties' positions;

(5) Help the parties to agree on a plan for exchanging information and conducting discovery which will enable them to prepare expeditiously for the resolution of the case by trial, settlement, or dispositive motion;

(6) Help the parties to assess litigation costs realistically;

(7) Determine whether one or more additional conferences would assist in the settlement or case development process and, if so, schedule the conference and direct the parties to prepare and submit any additional written materials needed for the conference;

(8) At the final conference (which may be the initial conference), give an evaluation of the strengths and weaknesses of each party's case and of the probable outcome if the case is tried, including, if feasible, the dollar value of each claim and counterclaim;

(9) Advise the parties, if appropriate, about the availability of ADR processes that might assist in

resolving the dispute; and

(10) Report, promptly and in writing, to the ADR Administrator: the fact that the E.N.E. process was completed, any agreements reached by the parties, and the Evaluator's recommendation, if any, as to future ADR processes that might assist in resolving the dispute.

(c) The Evaluator may, subject to the requirements stated in this Local Rule 7:2.7:

(1) Determine how to structure the evaluation conference;

(2) Hold separate, private caucuses with any party or counsel but may not, without the consent of that party or counsel, disclose the contents of that discussion to any other party or counsel; and

(3) Act as a mediator or otherwise assist in settlement negotiations either before or after presenting the evaluation called for in Section (b)(8) of this Local Rule 7:2.7.

Rule 7:2.8 Confidentiality

The entire E.N.E. process is confidential. The parties and the Evaluator shall not disclose information regarding the process, including settlement terms, to the Court or to third persons unless all parties otherwise agree. Parties, counsel, and evaluators may, however, respond to confidential inquiries or surveys by persons authorized by the Court to evaluate the E.N.E. program. Information provided in such inquiries or surveys shall remain confidential and shall not be identified with particular cases.

The E.N.E. process shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and state rules of evidence. The Evaluator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the E.N.E. process.

CHAPTER THREE
MEDIATION

Rule 7:3.1 Eligible Cases

Any civil case may be referred to mediation.

Rule 7:3.2 Selection of Cases

(a) When Selected. A case may be selected for mediation:

(1) When the status of discovery is such that the parties are generally aware of the strengths and weaknesses of the case; or

(2) At any earlier time by agreement of the parties and with the approval of the Court.

(b) How Selected. A case may be selected for mediation:

(1) By the Court on its own motion;

(2) By the Court, on motion of one of the parties; or

(3) By stipulation of all parties.

(c) Objection to Mediation.

(1) For good cause, a party may object to the referral to mediation by the Court on its own motion by filing a written request for reconsideration within ten (10) days of the date of the Court's order.

(2) Mediation processes shall be stayed pending decision on the request for reconsideration, unless otherwise ordered by the court.

(d) Arbitration. If all parties advise the court that they would prefer court-annexed arbitration to mediation, the court may order the case to arbitration under Local Rule 7:4.1, et seq.

(e) Private ADR. If all parties advise the court that they would prefer to use a private ADR process (including private arbitration or mini-trial) the court may permit them to do so at the expense of the parties, subject to:

(1) The submission to the court of an agreement,

executed by the parties, providing for the conduct of the ADR process;

(2) The filing with the court, within ten (10) days of the completion of the ADR process, of a written report, signed by the neutral, or by the parties if no neutral was used.

Rule 7:3.3 Administrative Procedure

(a) When a case is referred to mediation, the ADR Administrator shall promptly notify the parties in writing and shall include the names of three (3) proposed mediators taken from the Federal Court Panel. Each party shall then rank the mediators in order of preference and shall, within seven (7) days of the date of the written notice, return the ranked list to the ADR Administrator who shall:

(1) Choose one party's list at random and "strike" the least preferred name on that list from consideration;

(2) Go to the other party's list and "strike" the least preferred remaining name on that list from consideration; and

(3) Select the remaining name as the Mediator.

(b) In the event of multiple parties not united in interest, the ADR Administrator shall add the name of one proposed mediator for each such additional party, and shall process the returned lists in the manner provided in section (a) above.

(c) The ADR Administrator, after conferring with the selected Mediator concerning potential conflicts of interest and scheduling, shall give or send written notice to the parties and the Mediator advising them as to:

(1) The identity of the Mediator;

(2) The date and time of the mediation conference, which shall be not more than thirty (30) days from the date of the written notice; and

(3) The place of the mediation conference.

(d) Nothing in this Chapter shall limit the right of the parties, with the consent of the court, to select a person of their own choosing to act as a mediator hereunder.

Rule 7:3.4 Neutrality of Mediator

If at any time, the Mediator becomes aware of or a party raises an issue with respect to the Mediator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties, the Mediator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Mediator withdraw because of the facts so disclosed, the Mediator may withdraw and request that the ADR Administrator appoint another mediator. If the Mediator determines that withdrawal is not warranted, the Mediator may elect to continue. The objecting party may then request the ADR Administrator to remove the Mediator. The ADR Administrator may remove the Mediator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the mediation conference shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

Rule 7:3.5 Written Submissions to Mediator

(a) At least ten (10) days before the mediation conference, the parties shall submit to the Mediator:

(1) Copies of relevant pleadings and motions;

(2) A short memorandum stating the legal and factual positions of each party respecting the issues in dispute; and

(3) Such other material as each party believes would be beneficial to the Mediator.

(b) Upon reviewing such material, the Mediator may, at his or her own discretion or on the motion of a party, schedule a preliminary meeting with counsel.

Rule 7:3.6 Attendance at Mediation Conference

The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and shall be prepared and authorized to discuss all relevant issues, including settlement. The parties shall also be present, except that when a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to settle, shall attend. Wilful failure of a party to attend the mediation conference shall be reported by the Mediator to the ADR

Administrator for transmittal to the assigned Judge who may impose appropriate sanctions.

Rule 7:3.7 Procedure at Mediation Conference

(a) The mediation conference, and such additional conferences as the Mediator deems appropriate, shall be informal. The Mediator shall conduct the process in order to assist the parties in arriving at a settlement of all or some of the issues involved in the case.

(b) The Mediator may hold separate, private caucuses with any party or counsel but may not, without the consent of that party or counsel, disclose the contents of that discussion to any other party or counsel.

(c) If the parties have failed, after reasonable efforts, to develop settlement terms, or if the parties request, the Mediator may submit to the parties a final settlement proposal which the Mediator believes to be fair. The parties will carefully consider such proposal and, at the request of the Mediator, will discuss the proposal with him or her. The Mediator may comment on questions of law at any appropriate time.

(d) The Mediator may conclude the process when:

(1) A settlement is reached; or

(2) The Mediator concludes, and informs the parties, that further efforts would not be useful.

(e) The Mediator shall report the results of the mediation to the ADR Administrator.

(1) If a settlement agreement is reached, the Mediator, or one of the parties at the Mediator's request, shall prepare a written entry reflecting the settlement agreement, which entry shall be signed by the parties and filed with the ADR Administrator for approval by the court.

(2) If a settlement agreement is not reached, the Mediator shall report in writing to the ADR Administrator that mediation was held, any agreements reached by the parties, and the Mediator's recommendation, if any, as to future processing of the case.

tiality

ma

inquiries

the

such inquiries or surveys shall remain

will not be identified with particular

relating to

persons not parties

CHAPTER

ARBITR

Eligible Cases

Any civil case may

authorized by 28 U.S.C. §

At any time thereafter:

(A) By the on its own

(B)

ties; or

(C) By stipulation of all

Written Notice

The

send

(c) Relief from Selection.

(1) At any time prior to the expiration of the twenty (20) days following the date shown on the written notice of selection, any party may decline to consent to arbitration under this Chapter by filing a statement to that effect with the ADR Administrator. No person affiliated with the Court may attempt to coerce a party or attorney to consent to arbitration. If a party or attorney declines to consent, no Judge to whom the action is or may be assigned may be advised of the identity of that party or attorney. No party or attorney may be prejudiced for declining to participate in arbitration.

(2) The assigned Judge may, acting sua sponte or on motion by any party, exempt any case from arbitration if the objectives of arbitration would not be realized:

(A) Because the case involves complex or novel legal issues;

(B) Because legal issues predominate over factual issues; or

(C) For other good cause.

(3) In lieu of arbitration under this Chapter, the parties to a civil action may elect private consensual arbitration under the Federal Arbitration Act (9 U.S.C. § 1, et seq.) and agree that the case be referred to binding arbitration. The order of referral shall specify the agreement of the parties with respect to the conduct of the arbitration and payment of the Arbitrator(s).

Rule 7:4.3 Administrative Procedure

(a) Selection of Arbitrators. When a case has been referred for arbitration, the ADR Administrator shall forthwith furnish to each party the names of five proposed arbitrators drawn at random from available neutrals on the Federal Court Panel. If there are multiple parties not united in interest on either side of the case, the ADR Administrator shall add the name of one proposed arbitrator for each additional party. The parties shall then confer for the purpose of selecting three arbitrators or, if the parties agree in writing, a single arbitrator, in the following manner:

(1) Each party shall be entitled to strike one name from the list, beginning with the first-named plaintiff to strike the first name, the first-named defendant(s)

the next, and alternating between plaintiffs and defendants in the order named. If the parties have agreed to select a single arbitrator, the first-named plaintiff and the first-named defendant shall each strike an additional name until a single name remains.

(2) The parties shall submit to the ADR Administrator, within ten (10) days of receipt by them of the original list, the names of the three arbitrators or the name of the single arbitrator selected from the list by means of the process described in subsection (1) above. In the event the parties fail to notify the ADR Administrator of the selection of arbitrator(s) within the time provided, the Clerk shall make the selection of arbitrator(s) at random from the original list of five names.

(3) The ADR Administrator shall promptly notify the person or persons of their selection. If any person so selected is unable or unwilling to serve, the process of selection under this Rule shall begin again to select another arbitrator for that position.

(b) Notification of hearing. When the selected arbitrator(s) have agreed to serve, the ADR Administrator shall confer with them concerning potential conflicts of interest, scheduling, and place of hearing, and shall thereafter promptly send written notice to each arbitrator and to each party advising them as to:

(1) The identity of the selected arbitrator(s);

(2) The date and time of the arbitration hearing, which shall be not more than thirty (30) days from the date of the written notice and not more than one hundred eighty (180) days from the date of the filing of the answer or the date of the filing of a reply to a counterclaim; and

(3) The place of the arbitration hearing.

(c) Unless all parties consent, or unless the assigned Judge so orders for good cause, no arbitration hearing may commence until thirty (30) days after disposition by the assigned Judge of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment.

(d) The Arbitrator(s) may, for good cause, grant one continuance for not more than thirty (30) days from the arbitration hearing date set in the written notice. No subsequent continuance may be granted except by the assigned

Judge, for good cause.

Rule 7:4.4 Neutrality of Arbitrator(s)

(a) No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist.

(b) If at any time, an arbitrator becomes aware of or a party raises an issue with respect to the Arbitrator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties or attorneys, the Arbitrator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Arbitrator withdraw because of the facts so disclosed, the Arbitrator may withdraw and request that the ADR Administrator appoint another arbitrator. If the Arbitrator determines that withdrawal is not warranted, the Arbitrator may elect to continue. The objecting party may then request the ADR Administrator to remove the Arbitrator. The ADR Administrator may remove the Arbitrator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the arbitration hearing shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

Rule 7:4.5 Submissions to Arbitrator(s)

(a) At least five (5) days before the arbitration hearing, the parties shall submit to each arbitrator:

(1) A set of relevant pleadings; and

(2) A short memorandum by each party, stating the legal and factual positions of the party, together with copies of the documentary exhibits the party intends to offer at the hearing.

(b) At least five (5) days before the arbitration hearing, each party shall deliver to the other party a copy of the memorandum and copies of the documentary exhibits provided to the Arbitrator(s), and each party shall make available any non-documentary exhibits for examination by the other party. If a party fails to deliver a copy of a documentary exhibit or to make available for examination a non-documentary exhibit as required, the Arbitrator(s) may refuse to receive the exhibit in evidence.

Rule 7:4.6 Attendance at Arbitration Hearing

(a) Each individual who is a party shall attend the hearing in person. When a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of the party or insurance company, with full authority to settle, shall attend.

(b) Absence of a party shall not be a ground for continuance. An award against an absent party shall be made only upon presentation of proof satisfactory to the Arbitrator(s).

Rule 7:4.7 Procedure at Arbitration Hearing

(a) Conduct of Hearing. The Arbitrator(s) may administer oaths and affirmations and all testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine witnesses except as herein provided. In receiving evidence, the Arbitrator(s) shall be guided by the Federal Rules of Evidence, but shall not thereby be precluded from receiving evidence considered by the Arbitrator(s) to be relevant and trustworthy and which is not privileged. Attendance of witnesses and production of documents may be compelled in accordance with Rule 45, Federal Rules of Civil Procedure.

(b) Transcript or Recording. A party may cause a transcript or recording to be made of the proceedings at the party's expense. Except as provided in Local Rule 7:4.9(b), no transcript of the proceedings shall be admissible in evidence at any subsequent trial de novo.

(c) Place of Hearing. Arbitration hearings may be held at any location within the Northern District of Ohio selected by the Arbitrator(s). In making the selection, the Arbitrator(s) shall consider the convenience of the panel, the parties, and the witnesses.

(d) Time of Hearing. Unless the parties agree otherwise, hearings shall be held during normal business hours.

(e) Authority of Arbitrator(s). The Arbitrator(s) may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing. Any two members of a panel shall constitute a quorum. The concurrence of a majority of the entire panel shall be required for any action or decision of the panel, unless the parties stipulate otherwise.

(f) Ex Parte Communication. There shall be no ex parte communication between an arbitrator and any counsel or party on any matter touching the action except for purposes of scheduling or continuing the hearing.

Rule 7:4.8 Award and Judgment

(a) Filing of Award. The Arbitrator(s) shall file the award with the ADR Administrator promptly following the close of the hearing and in any event not more than ten (10) days following the close of the hearing. As soon as the award is filed, the ADR Administrator shall serve copies on the parties.

(b) Form of Award. The award shall state clearly and concisely the name or names of the prevailing party or parties and the party or parties against whom it is rendered, and the sum of money awarded, if any. The award shall specify which party is to pay the costs as provided in 28 U.S.C. § 1920 and whether interest is awarded. If interest is awarded, the award shall separately state the amount.

(c) Entry of Judgment on Award. Unless a party has filed a demand for trial de novo within the time stated in Local Rule 7:4.9(a), the ADR Administrator shall enter judgment on the arbitration award in accordance with Rule 58, Federal Rules of Civil Procedure. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the Court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(d) Sealing of Arbitration Awards. The content of any arbitration award made under this chapter shall not be made known to any Judge unless:

(1) The assigned Judge is asked to decide whether to assess costs under Local Rule 7:4.10;

(2) The Court has entered final judgment or the action has been otherwise terminated; or

(3) The Judge needs the information for the purpose of preparing the report required by § 903(b) of the Judicial Improvements and Access to Justice Act.

Rule 7:4.9 Trial de Novo

(a) Right to Trial de Novo. Any party may demand a trial de novo in the district court by filing with the ADR

Administrator a written demand containing a short and plain statement of the reasons for the demand. The party shall serve a copy upon all counsel of record and any unrepresented party. Such a demand must be filed and served within thirty (30) days after the date of filing of the arbitration award, except that the United States, its officers and agencies, shall have sixty (60) days to file and serve a written demand for a trial de novo. Upon the filing of a demand for a trial de novo the action shall be treated for all purposes as if it had not been referred to arbitration, except that no additional pretrial discovery shall be permitted without leave of court, for good cause. Any right of trial by jury that a party would otherwise have shall be preserved inviolate. Withdrawal of a demand for a trial de novo shall reinstate the Arbitrator's award.

(b) Limitation on Admission of Evidence. The assigned Judge shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless:

(1) The evidence would otherwise be admissible under the Federal Rules of Evidence; or

(2) The parties have otherwise stipulated.

Rule 7:4.10 Assessment of Costs

(a) The party requesting a trial de novo shall deposit with the ADR Administrator a sum equal to the Arbitrator(s)' fees as advance payment for such costs, except that this requirement does not apply to parties proceeding in forma pauperis or to the United States, its officers or agencies.

(b) Any sum deposited under section (a) above shall be returned to the party demanding trial de novo if:

(1) The party obtains a final judgment more favorable than the arbitration award; or

(2) The assigned Judge determines that the demand for trial de novo was made for good cause.

(c) Any sum deposited as provided in section (a) above and not returned to the party as provided in section (b) above shall be taxed as costs of the arbitration and paid to the Treasury of the United States.

(d) In any trial de novo, the assigned Judge may assess costs of that trial, as provided in 28 U.S.C. § 1920, against

the party who demanded trial de novo if:

(1) That party fails to obtain a judgment, exclusive of interest and costs, which is substantially more favorable to that party than the arbitration award; and

(2) The assigned Judge determines that the party's conduct in seeking a trial de novo was in bad faith.

For the purpose of this section (d), a verdict may be considered substantially more favorable if it is more than 10 percent (10%) better for the party than the arbitration award. This section (d) does not apply to any party in cases involving the United States or one of its agencies as a party.

(e) Except as provided in this Local Rule 7:4.10, no penalty shall be assessed against any party for demanding a trial de novo.

CHAPTER FIVE
SUMMARY JURY TRIAL

Rule 7:5.1 Eligible Cases

Any civil case triable to a jury may be assigned for summary jury trial.

Rule 7:5.2 Selection of Cases

A case may be selected for summary jury trial:

(a) By the Court at the Case Management Conference. (See Local Rule 8:1.2(c)); or

(b) At any time:

(1) By the Court on its own motion;
(2) By the Court, on the motion of one of the parties; or
(3) By stipulation of all parties.

Rule 7:5.3 Procedural Considerations

Summary jury trial is a flexible ADR process. The procedures to be followed should be determined in advance by

the assigned Judge in light of the circumstances of the case. The following matters should be considered by the assigned Judge and counsel in structuring a summary jury trial.

(a) Scheduling. Ordinarily a case should be set for summary jury trial when discovery is substantially completed and conventional pretrial negotiations have failed to achieve settlement. In some cases, settlement prospects may be advanced by setting the case for an early summary jury trial. To facilitate an early summary jury trial, limited and expedited discovery should be obtained to accommodate earlier settlement potential. The summary jury trial should usually precede the trial by approximately sixty (60) days.

(b) Presiding Judge. The summary jury trial shall be conducted by the United States District Judge or United States Magistrate Judge to whom the case is assigned or referred.

(c) Submission of Written Materials. It is generally advantageous to have various materials submitted to the Court before the summary jury trial begins. These could include a statement of the case, stipulations, exhibits, and proposed jury instructions.

(d) Attendance. Each individual who is a party should attend the summary jury trial in person. When a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of the party or insurance company, with full authority to settle, should attend.

(e) Size of Jury Panel. Usually the jury shall consist of six (6) jurors. To accommodate case copncerns, the size of the jury panel may vary. Because the summary jury trial is usually concluded in a day or less, the judge may choose to use the challenged or unused panel members as a second jury. This procedure can provide the Court and counsel with additional juror reaction.

(f) Voir Dire. Parties should ordinarily be permitted some limited voir dire. Whether challenges are to be allowed ought to be determined in advance.

(g) Opening Statements. It is helpful if each party has a chance to make a brief opening statement to help put the case into perspective. It may be possible to combine voir dire and the opening statement into one procedure, and fifteen (15) minutes may be sufficient time for each party.

(h) Transcript or Recording. A party may cause a transcript or recording to be made of the proceedings at the party's expense, but no transcript of the proceedings should be submitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.

(i) Case Presentations. As this is not a full trial, it is expected that counsel will present a condensed narrative summarization of the entire case consisting of an amalgamation of an opening statement, evidentiary presentations, and final arguments. In this presentation, counsel may present exhibits, read excerpts from exhibits, reports and depositions, all of which evidentiary submissions should be subject to the approval of the presiding Judge by addressing motions in limine at a reasonable time in advance of the scheduled summary jury trial. This advanced consideration permits the summary jury trial proceedings to proceed uninterruptedly without objections. Generally, live witnesses should not be permitted, although an exception may be made by the assigned Judge. An attorney certifies that offering any such summary of testimony or evidence is based upon a good faith belief and a reasonable investigation that the testimony or evidence would be available and admissible at trial.

(j) Jury Instructions. Jury instructions should be given. They will have to be adapted to reflect the nature of the proceeding.

(k) Jury Deliberations. Jury deliberations should be limited in time. Jurors should be encouraged to reach a consensus verdict. If that is not possible, separate verdicts may give the parties a sense of how jurors view the case.

(l) De-briefing the Jurors. After the verdict, the presiding Judge should initiate and encourage a discussion of the case by the parties and the jurors.

(m) Settlement Negotiations. Within a short time after the summary jury trial, the presiding Judge and the parties should meet to see whether the matter can be compromised. A sufficient period between the end of the summary jury trial and the meeting is necessary to allow the parties to evaluate matters, but the assigned Judge should exercise care not to allow too much time to elapse.

(n) Trial. If the case does not settle as the

result of the summary jury trial, it should proceed to trial on the scheduled date.

(o) Limitation on Admission of Evidence. The assigned Judge shall not admit at a subsequent trial any evidence that there has been a summary jury trial, the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless:

(1) The evidence would otherwise be admissible under the Federal Rules of Evidence; or

(2) The parties have otherwise stipulated.

CHAPTER SIX
SUMMARY BENCH TRIAL

Rule 7:6.1 Eligible Cases

Any case not triable to a jury may be assigned for a summary bench trial. A summary bench trial is a court-annexed pretrial procedure intended to facilitate settlement consisting of a summarized presentation of a case to a Judicial Officer whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations.

Rule 7:6.2 Selection of Cases

A case may be selected for summary bench trial:

(a) By the Court at the Case Management Conference (See Local Rule 8:1.2(c));

(b) At any time:

(1) By the Court on its own motion;
(2) By the Court, on the motion of one of the parties; or
(3) By stipulation of all parties.

Rule 7:6.3 Procedural Considerations

(a) Presiding Judge. The summary bench trial shall be conducted by a Judicial Officer other than the Judicial Officer who will ultimately preside at the binding trial.

(b) Proposed Findings of Fact and Conclusions of Law. The parties shall submit proposed findings of fact and conclusions of law in advance of the summary bench trial.

(c) Procedural Considerations. Where appropriate, the same procedural considerations applicable to summary jury trials may be adapted to summary bench trials to reflect the nature of the proceedings.

CHAPTER SEVEN
OTHER ADR PROCEDURES

Rule 7:7.1 Other ADR Procedures

A Judge may utilize other methods of court-annexed alternative dispute resolution procedures or recommend or facilitate the use of any extrajudicial procedures for dispute resolution not otherwise provided for by these Local Rules.

In the event a reference to extrajudicial procedures is made, all further court-annexed case management procedures may be stayed and an administrative closing of the case may be made pursuant to Administrative Office guidelines for cases in which all presently contemplated proceedings have been completed. (See Guide to Judiciary Policies and Procedures, Volume XI, Chapter 5, Subsection III, H, p. 26).

If the case is resolved extrajudicially, then the administrative closing order may be supplemented with a terminal dispositive order. If the case is not resolved extrajudicially, the case may be returned to a court-annexed case management protocol for processing and ultimate disposition.

SECTION 8: DIFFERENTIATED CASE MANAGEMENT

CHAPTER ONE
GENERAL PROVISIONS

Rule 8:1.1 Purpose and Authority

The United States District Court for the Northern District of Ohio ("Northern District") adopts this Section in compliance with the mandate of the United States Congress as expressed in the Civil Justice Reform Act of 1990 ("CJRA" or "Act"). This Section is intended to implement the procedures necessary for the establishment of a differentiated case management ("DCM") system.

The Northern District has been designated as a DCM "Demonstration District." The DCM system adopted by the Court is intended to permit the Court to manage its civil dockets in the most effective and efficient manner, to reduce costs and to avoid unnecessary delay, without compromising the independence or the authority of either the judicial system or the individual Judge. The underlying principle of the DCM system is to make access to a fair and efficient court system available and affordable to all citizens.

Rule 8:1.2 Definitions

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

(b) "Judicial Officer" is either a United States District Judge or a United States Magistrate Judge.

(c) "Case Management Conference" is the conference conducted by the Judicial Officer within fifteen (15) calendar days after the time for the filing of the last permissible responsive pleading, or in any event, not later than sixty (60) calendar days after filing of the initial complaint, where the track assignment, Alternative Dispute Resolution ("ADR"), and discovery are discussed and where discovery and motion deadlines and the date of the Status Hearing are set.

(d) "Status Hearing" is the mandatory hearing which is held approximately midway between the date of the Case Management Conference and the discovery cut-off date.

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

(f) "Court" means any United States District Judge, United States Bankruptcy Judge, United States Magistrate Judge, or Clerk of Court personnel to whom responsibility for a particular action or decision has been delegated by the Judges of the United States District Court for the Northern District of Ohio.

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

(h) "Discovery cut-off" is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery cut-off date so as to comply with this rule, and discovery requests that seek responses or schedule depositions after the discovery cut-off are not enforceable except by order of the Court for good cause shown. Notwithstanding the foregoing, a party seeking discovery will not be deemed to be in violation of the discovery cut-off if all parties consent to delay furnishing the requested discovery until after the cut-off date or if, for example, a deposition that was commenced prior to the cut-off date and adjourned cannot reasonably be resumed until an agreed date beyond the discovery cut-off; provided, however, that the parties may not, by stipulation and without the consent of the Court, extend the discovery cut-off to a date later than ten (10) days before the Final Pretrial Conference.

Rule 8:1.3 Date of DCM Application

This Section shall apply to all civil cases filed on or

after January 1, 1992 and may be applied to civil cases filed before that date if the assigned Judge determines that inclusion in the DCM system is warranted and notifies the parties to that effect.

Rule 8:1.4 Conflicts with Other Rules

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

CHAPTER TWO
TRACKS AND EVALUATION OF CASES

Rule 8:2.1 Differentiation of Cases

(a) Evaluation and Assignment. The Court shall evaluate and screen each civil case in accordance with this Section, and then assign each case to one of the case management tracks described in Local Rule 8:2.1(b).

(b) Case Management Tracks. There shall be five (5) case management tracks, as follows:

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

(2) Standard - Cases on the Standard Track shall be completed within fifteen (15) months or less after filing, and shall have a discovery cut-off no later than two hundred (200) days after filing of the CMP. Discovery guidelines for this track include interrogatories limited to thirty-five (35) single-part questions, no more than three (3) fact witness depositions per party without prior approval of the Court, and such other discovery, if any, as may be provided for in the CMP.

(3) Complex -- Cases on the Complex Track shall have the discovery cut-off established in the CMP and shall have a case completion goal of no more than twenty-four (24) months.

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

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

Rule 8:2.2 Evaluation and Assignment of Cases

The Court shall consider and apply the following factors in assigning cases to a particular track:

(a) Expedited:
- (1) Legal Issues: Few and clear
- (2) Required Discovery: Limited
- (3) Number of Real Parties in Interest: Few
- (4) Number of Fact Witnesses: Up to five (5)
- (5) Expert Witnesses: None
- (6) Likely Trial Days: Less than five (5)
- (7) Suitability for ADR: High
- (8) Character and Nature of Damage Claims: Usually a fixed amount

(b) Standard:
- (1) Legal Issues: More than a few, some unsettled
- (2) Required Discovery: Routine
- (3) Number of Real Parties in Interest: Up to five (5)
- (4) Number of Fact Witnesses: Up to ten (10)
- (5) Expert Witnesses: Two (2) or three (3)
- (6) Likely Trial Days: five (5) to ten (10)
- (7) Suitability for ADR: Moderate to high
- (8) Character and Nature of Damage Claims: Routine

(c) Complex:
- (1) Legal Issues: Numerous, complicated and possibly unique
- (2) Required Discovery: Extensive
- (3) Number of Real Parties in Interest: More than five (5)
- (4) Number of Witnesses: More than ten (10)
- (5) Expert Witnesses: More than three (3)
- (6) Likely Trial Days: More than ten (10)
- (7) Suitability for ADR: Moderate
- (8) Character and Nature of Damage Claims: Usually requiring expert testimony

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

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

CHAPTER THREE
CASE INFORMATION STATEMENT

Rule 8:3.1 Case Information Statement

The initial pleading filed by each party shall be accompanied by a Case Information Statement (CIS) which shall be in the form prescribed by the Court, and which shall be served on each other party to the litigation. (See Appendix E.) The CIS shall not be admissible in evidence and shall not be deemed to constitute a jurisdictional requirement.

CHAPTER FOUR
TRACK ASSIGNMENT AND CASE MANAGEMENT CONFERENCE

Rule 8:4.1 Notice of Track Recommendation and Case Management Conference

The Court shall issue a track recommendation to the parties within five (5) calendar days after the filing of the last permissible responsive pleading. The track recommendation shall be made in accordance with the factors identified in Local Rule 8:2.2. The Court shall notify all counsel of the date for the Case Management Conference, which shall be conducted within ten (10) calendar days after the date that the track recommendation is issued.

In the event there is a delay in filing a responsive pleading, the Court may issue the track recommendation and schedule a Case Management Conference without awaiting the last permissible responsive pleading if in the Court's discretion such scheduling will assist in the overall management of the case. In any event, the Case Management Conference shall be held within sixty (60) days of the filing of the initial Complaint.

Rule 8:4.2 Case Management Conference

The Judicial Officer shall conduct the Case Management Conference. The parties and lead counsel of record shall be present at the Conference.

(a) The agenda for the Conference shall include:

(1) Determination of track assignment;
(2) Determination of whether the case is suitable for reference to an ADR program;
(3) Determination of whether the parties consent to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c);
(4) Voluntary disclosure of discovery information, including key documents and witness identification;
(5) Determination of the type and extent of discovery;
(6) Setting of a discovery cut-off date;
(7) Setting of deadline for filing motions; and
(8) Setting the date of the Status Hearing, which shall be on a date approximately midway between the date of the Case Management Conference and the discovery cut-off date.

(b) Counsel for all parties are directed to engage in meaningful discussions regarding the track recommendation issued by the Court and each of the other agenda items established by the Court with the goal of submitting to the Court before the Conference a written stipulation agreed to by all parties with respect to each agenda item. It shall be the responsibility of counsel for the plaintiff(s) to arrange such pre-Conference discussions sufficiently in advance of the Conference so that, in the event of disagreement about any agenda item, each party may, if it chooses, file and serve a brief written submission of its position on each such disputed item not later than three (3) days prior to the Conference. The Court shall provide forms to counsel for all parties for indicating the parties' positions regarding all such agenda items when it issues its track recommendation.

(c) At the conclusion of the Case Management Conference, the Judicial Officer shall prepare, file, and issue to the parties an order containing the Case Management Plan governing the litigation.

CHAPTER FIVE
STATUS HEARING AND FINAL PRETRIAL CONFERENCE

Rule 8:5.1 Status Hearing

The parties, each of whom will have full settlement authority, and lead counsel of record shall attend the Status Hearing. At the Status Hearing the Judicial Officer will:

(a) review and address:

(1) settlement and ADR possibilities;
(2) any request for revision of track assignment and/or of the discovery cut-off or motion deadlines; and
(3) any special problems which may exist in the case;

(b) assign a Final Pretrial Conference date, if appropriate; and

(c) set a Firm Trial Date.

If, for any reason, the assigned Judicial Officer is unable to hear the case within one week of its assigned trial date, the case shall be referred to the Chief Judge for reassignment to any available Judicial Officer for prompt trial.

Rule 8:5.2 Final Pretrial Conference

A Final Pretrial Conference, if any, may be scheduled by the Judicial Officer at the Status Hearing. The parties and lead counsel of record shall be present at the conference. The Final Pretrial Conference shall be scheduled as close to the time of trial as reasonable under the circumstances. The Judicial Officer may, in the Judicial Officer's discretion, order the submission of pretrial memoranda.

CHAPTER SIX
ALTERNATIVE DISPUTE RESOLUTION

Rule 8:6.1 Alternative Dispute Resolution

Parties are encouraged to use the provisions of Section 7, Alternative Dispute Resolution (ADR), and the Judicial Officer shall direct the parties to an appropriate ADR program when, in the judgment of the Judicial Officer, such referral

is warranted. In the event it is a case referred to a United States Magistrate Judge for case management only, any reference to ADR may be made only with the approval of the United States District Judge to whom the case was assigned. ADR hearing dates shall not be modified without leave of Court.

CHAPTER SEVEN
DISCOVERY

Rule 8:7.1 Discovery - General

The parties are encouraged to cooperate with each other in arranging and conducting discovery, including discovery involved in any ADR program. Discovery shall be conducted according to limitations established at the Case Management Conference, based generally on the guidelines set forth in Local Rule 8:2.1, and confirmed in the Case Management Plan. Attorneys serving discovery requests shall have reviewed them to ascertain that they are applicable to the facts and contentions of the particular case; form discovery pleadings containing requests that are irrelevant to the facts and contentions of the particular case shall not be used.

Rule 8:7.2 Preliminary Discovery

Prior to the Case Management Conference, the parties may conduct such discovery as is necessary and appropriate to support or defend against any claim for emergency, temporary, or preliminary relief that may be presented.

Rule 8:7.3 Interrogatories

(a) No interrogatory may contain subparts, or a compound, conjunctive, or disjunctive question, except those interrogatories seeking the identity of persons or documents.

(b) Answers and objections to interrogatories shall set forth each question in full before each answer or objection. Each objection shall be followed by a concise statement of the reasons and bases therefor. No interrogatory shall be left unanswered merely because an objection is being interposed with respect to another interrogatory. If an interrogatory contains subparts permitted by this Rule, when objection is made to one subpart the remaining subparts of the interrogatory shall be answered at the time the objection is made.

(c) If the initial set of interrogatories propounded by a party does not exhaust the limitation on its total number of interrogatories established by the CMP, the remaining number of interrogatories may be propounded in subsequent sets. Unless the Court orders to the contrary, no party need respond to any interrogatories served that are in excess of the limit set forth in the CMP, as numbered sequentially from the beginning of any set, if that party objects to answering the excess interrogatories on the ground that the limit has been exceeded. On stipulation or motion, for good cause shown, the Court may grant leave to a party to propound interrogatories in excess of the number specified in the CMP. The Court may direct the party requesting the additional discovery to set forth the additional proposed interrogatories and the reasons they are necessary in its memorandum in support of any such motion or stipulation.

Rule 8:7.4 Discovery Disputes

Discovery disputes shall be referred to a Judicial Officer only after counsel for the party seeking the disputed discovery has made, and certified to the Court the making of, sincere, good faith efforts to resolve such disputes. The Judicial Officer shall attempt to resolve the discovery dispute by telephone conference. In the event the dispute cannot be resolved by the telephone conference, the parties shall outline their respective positions by letter and the Judicial Officer shall attempt to resolve the dispute without additional legal memoranda. If the Judicial Officer still is unable to resolve the dispute, the parties may simultaneously file their respective memoranda in support of and in opposition to the requested discovery by a date set by the Judicial Officer, who will also schedule a hearing on the motion to compel to be held within three (3) days after the date the parties are to file their memoranda. No discovery dispute shall be brought to the attention of a Judicial Officer, and no motion to compel may be filed, more than ten (10) days after the discovery cut-off.

CHAPTER EIGHT
MOTIONS

Rule 8:8.1 Motions - General Information

(a) Motion Day. Part or all of a day shall regularly be set on a monthly or more frequent basis to hear and determine civil motions the disposition of which, in the

judgment of the Judicial Officer, can thereby be expedited. Such motion day shall be published to the Bar by each Judicial Officer. The establishment of a general motion day does not preclude the Judicial Officer from exercising the discretion to set a motion for hearing on any other day.

(b) Motions to be in Writing. All motions, unless made during a hearing or trial, shall be in writing and shall be made sufficiently in advance of the trial to avoid any delay in trial.

(c) Memorandum by Moving Party. The moving party shall serve and file with its motion a memorandum of the points and authorities on which it relies in support of the motion.

(d) Memorandum in Opposition. Each party opposing a motion shall serve and file a memorandum in opposition within ten (10) calendar days after service of the motion.

(e) Reply Memorandum. The moving party may serve and file a reply memorandum in support of its motion within five (5) calendar days after service of the memorandum in opposition.

(f) Length of Memoranda. Without prior approval of the Judicial Officer for good cause shown, memoranda relating to dispositive motions shall not exceed ten (10) pages in length for expedited and administrative cases, twenty (20) pages for standard cases, thirty (30) pages for complex cases, and forty (40) pages for mass tort cases. Memoranda relating to all other motions shall not exceed fifteen (15) pages in length. All memoranda exceeding fifteen (15) pages in length shall have a table of contents, a table of authorities cited, a brief statement of the issue(s) to be decided, and a summary of the argument presented. Appendices of evidentiary, statutory or other materials are excluded from these page limitations and may be bound separately from memoranda.

(g) Hearings. The Judicial Officer may rule on unopposed motions without hearing at any time after the time for filing an opposition has expired. The Judicial Officer may also rule on any opposed motion without hearing at any time after the time for filing a reply memorandum has elapsed.

(h) Attendance at Hearings. Any party may waive oral argument by giving notice of such waiver to the Court and all counsel of record at least three (3) days in advance of the hearing. Unless oral argument is waived, the moving party and all parties filing an opposition to the motion shall attend the hearing. The Judicial Officer may hear oral argument on any motion by telephone conference. The Judicial Officer may grant or deny the requested relief for failure by any party

to attend the hearing.

(i) Untimely Motions. Any motion (other than motions made during hearings or at trial) served and filed beyond the motion deadline established by the Court may be denied solely on the basis of the untimely filing.

(j) Failure to File Memoranda. Memoranda required to be filed under this Rule that are not timely filed by a party may not be considered and may be deemed by the Court to constitute the party's consent to the granting or denial of the motion, as the case may be.

(k) Sanctions for Filing Frivolous Motions or Oppositions. Filing a frivolous motion or opposing a motion on frivolous grounds may result in the imposition of appropriate sanctions including the assessment of costs and attorneys' fees against counsel and/or the party involved.

Rule 8:8.2 Dispositive Motions

Motions that dispose of any claim or defense shall usually be heard and determined by the District Judge assigned to the case. When such Judge concludes that final adjudication of such motion will be expedited if it is referred to a Magistrate Judge for report and recommendation, such motion may be referred to the Magistrate Judge, whose report and recommendation shall be filed not later than thirty (30) days after the date of reference.

Rule 8:8.3 Ruling on Motions

(a) At any oral hearing, the Judicial Officer may announce his or her intended preliminary ruling and rationale or grounds for such decision at the outset of the hearing on a motion, and that the parties will be asked to limit their oral arguments to the reasons why the preliminary ruling is correct or incorrect. In that event, the party which stands to lose on the motion if the preliminary ruling is entered will be invited to argue first, followed by the party in whose favor the preliminary ruling has gone. In all cases, the moving party will be entitled to have the final opportunity, if desired, to address the Court at the hearing. It is to be expected that the Judicial Officer will then rule from the bench.

(b) The Judicial Officer shall render a ruling on any nondispositive motion within thirty (30) days of the time the motion comes at issue and the Judge shall rule on any dispositive motion within sixty (60) days of the time the

motion comes at issue.

(c) A list of motions that have been heard but not ruled upon beyond the time limits set forth in this Rule shall be published by the Court once a month which shall include the case caption, the name of the Judicial Officer, and the type of motion pending. Discovery shall be suspended during the pendency of any such motions beyond the time limits set forth in this Rule, and track deadlines may be adjusted accordingly at the request of a party where the interests of justice so require.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO CIVIL CASE INFORMATION STATEMENT (CIS)

DCM PROGRAM

CAPTION	CASE NO.

Do You Consent to the Jurisdiction of a Magistrate Judge? YES ☐ NO ☐ If YES, have You Filled Out the Appropriate Form? YES ☐ NO ☐	JUDGE:

TRACK ASSIGNMENT REQUESTED

Administrative ☐ Expedited ☐ Standard ☐ Complex ☐ Mass Torts ☐

ALTERNATIVE DISPUTE RESOLUTION - IS THIS CASE SUITABLE FOR DISPOSITION BY ADR? IF SO, BY WHICH ADR PROCESS(ES):

Early Neutral Evaluation ☐ Mediation ☐ Arbitration ☐ Summary Jury Trial ☐ Summary Bench Trial ☐ Other ☐

Briefly describe the case; include any special characteristics that may warrant extended discovery or accelerated disposition. If complex or expedited track assignment is requested, explain why. (Use Separate Sheet if Additional Space is Required):

RELATED CASE? YES ☐ NO ☐ CASE NO._____ JUDGE_____

ATTORNEY NAME AND BAR I.D. NO	TELEPHONE NUMBER ( )
FIRM NAME AND ADDRESS	PARTY NAME - DOCUMENT TYPE

The information provided on the CIS statement will be used for administrative purposes only (Local Rule 8:3.1)
DCM FORM 1/1/92

CASE INFORMATION STATEMENT
(Local Rule 8:3.1)

EVALUATION AND ASSIGNMENT OF CASES (LOCAL RULE 8:2.2)

The Court shall consider and apply the following factors in assigning cases to a particular track:

Expedited:

(1) Legal Issues: Few and clear
(2) Required discovery: Limited
(3) Number of Real Parties in Interest: Few
(4) Number of Fact Witnesses: Up to five (5)
(5) Expert Witnesses: None
(6) Likely Trial Days: Less than five (5)
(7) Suitability for ADR: High
(8) Character and Nature of Damage Claims: Usually a fixed amount

Standard:

(1) Legal Issues: More than a few, some unsettled
(2) Required Discovery: Routine
(3) Number of Real Parties in Interest: Up to five (5)
(4) Number of Fact Witnesses: Up to ten (10)
(5) Expert Witnesses: Two (2) or three (3)
(6) Likely Trial Days: five (5) to ten (10)
(7) Suitability for ADR: Moderate to high
(8) Character and Nature of Damage Claims: Routine

Complex:

(1) Legal Issues: Numerous, complicated and possibly unique
(2) Required Discovery: Extensive
(3) Number of Real Parties in Interest: More than five (5)
(4) Number of Witnesses: More than ten (10)
(5) Expert Witnesses: More than three (3)
(6) Likely Trial Days: More than ten (10)
(7) Suitability for ADR: Moderate
(8) Character and Nature of Damage Claims: Usually requiring expert testimony

Administrative: Cases that, based on the Court's prior experience, are likely to result in default or consent judgments or can be resolved on the pleadings or by motion.

Mass Tort: Cases will be assigned to this track in accordance with a special management plan adopted by the Court.