FIRST
REPORT OF THE ADVISORY GROUP

SEPTEMBER 30, 1993
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

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INTRODUCTION

The Advisory Group for the United States District Court for the Southern District of Ohio was appointed by Chief Judge John D. Holschuh, pursuant to 28 United States Code, section 478, on February 28, 1991.

The members of the Advisory Group include both lawyers and lay persons from throughout the District having a wide variety of backgrounds. The various constituencies of the Court have been well represented. Trial lawyers having prominence within both the bar of this Court and professional groups of national significance have served. In addition, members of the Group represent a diversity of gender, ethnic, and practice backgrounds. Not infrequently lawyers serving as members of the Group have had substantial personal experience trying cases in state and federal courts outside of the District, which has offered valuable perspective to our work. We were also privileged to have a member of our Group who serves simultaneously as a member of the Advisory Group for the Northern District of Ohio. Members of the Advisory Group are:

John C. Elam, Chair
Richard A. Frye, Reporter

Napoleon Bell
Stanley M. Chesley
Rita S. Eppler
David C. Greer
Martin Pinales
Percy Squire
Richard C. Witte

David M. Buchman
Michael F. Colley
David Goldberger
John R. Hodges
Kathy Seward Northern
Vicki Snow
Scott N. Whitlock

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION NO. 6.

The Court should provide some mechanism by which a party can advise the Court at the earliest stage of a case which appears likely to require unusual types of pretrial attention, or other special handling as a "complex" case. The Court should promptly respond in such cases with as much additional attention as the Court's resources permit and the legitimate needs of the case require. In addition, the Court should consider employing in such cases the "Early Neutral Evaluation" technique or other methods of ADR in addition to those afforded all trial-track cases; and to additional monitoring of discovery, such as requiring an early meeting of counsel, joint preparation of a discovery plan, or other techniques likely to contribute to the cost effective management of the case.

RECOMMENDATION NO. 7

The Court should retain Local Rules 33.1 and 36.1, limiting the number of Interrogatories and Requests for Admission absent agreement to a higher number by the parties or leave of court.

RECOMMENDATION NO. 8

The Court should retain Local Rules 37.1 and 37.2, requiring consultation before a discovery motion is filed, and certification of extrajudicial efforts to resolve the dispute to accompany the motion.

RECOMMENDATION NO. 9

Local Rule 7.1(c)(2)(B) should be retained by the Court as a means to assist in moving the motion docket, notwithstanding that it has been infrequently used in its short history. In addition, the threshold time at which the parties can consent to use this procedure to transfer a motion to a Magistrate Judge should be reduced from 180 days to 120 days after the motion is at issue.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION NO. 10

Local Rule 23.3, requiring a party move for class certification within 120 days after filing a pleading asserting the existence of a class, simplifies the processing of such cases and should be retained.

RECOMMENDATION NO. 11

Because they can readily enhance the credibility of the Magistrate Judges, the District Judges should continue to communicate with litigants and the bar about the benefits of the "consent" system of civil trials to Magistrate Judges generally, and about the strength of the Magistrate Judges in this District.

RECOMMENDATION NO. 12

The Court should, as resources permit, publish a pamphlet setting forth the nature of the Magistrate Judge "consent" system in a manner easily understood by both lawyers and litigants, and setting forth professional and biographical information about each of the incumbent Magistrate Judges of this Court.

RECOMMENDATION NO. 13

If Rule 26(a)(1), FRCP, is amended, this Court should for the present time enact a Local Rule which provides that "Except as may be agreed by the parties or as Ordered by a Judge of this Court in a specific case, parties are not obligated to provide the initial disclosures prescribed by Rule 26(a)(1), FRCP, as effective December 1, 1993.

The accommodating, collegial approach to individual judicial management styles has given all of the District Judges and Magistrate Judges a high degree of job satisfaction. They remain motivated to work hard year after year, and to consistently seek to produce the top quality work which the public and the bar have come to expect from this Court. Feelings of personal responsibility surely are a major factor in the continued improvement in the timeliness of Motion rulings and civil case terminations which is occurring in this District. In the area of court administration, we hasten to note, ready acceptance to differing individual case management approaches has also allowed innovative approaches to be developed by individual Judges. The most recent example of this may be District Judge Rubin's "paperless courtroom" in Cincinnati.[4] Another is the ready acceptance of a variety of ADR mechanisms in this District, during the mid -to -late 1980's.

We conclude that while the individual Judges must continue to candidly assess problems in docket management, that there is no reason to anticipate that prodding by outsiders will be productive in the future and there are good reasons apparent to us to think that damage could be done by too aggressively altering the delicate relationships among those on the present Court.

E. OVERALL OBSERVATIONS ON THE COURT

We have found neither excessive cost nor, generally speaking, unreasonable delay in civil litigation in this District. Aside from the direct and varied experience of the members of this Advisory Group, the observations of the judicial officers reflected in their response to Question No. 19 of the Questionnaire (summarized in the Appendix to this Report at page 23,) and the available statistical information, the input received from members of the bar and from the Court's Local Rules Advisory Committee have all been consistent.

In making the examination called for under Section 472(c)(1) of the Act, this Group has noted that in years past the Motion docket has not always moved as smoothly as was desirable. We considered a variety of possible changes relative to the motion docket, beyond several Local Rules changes adopted in 1991 (discussed *ante* at page 45). These included further restricting page limitations on briefs, and possible institution of formal "Motion Days" as used in some other Districts. There is no clear evidence that these alternatives to present practice, which as noted elsewhere in this Report has been refined over the years, will materially improve the handling of the Motion docket. Persuasive reasons exist from which one could conclude any such changes will only add more cost for litigants to the present system. Questions 9,10, 11, 12, 13 and 14 (summarized in the Appendix at pages 11-17) address the judicial officers' perceptions on these matters. The additional focus of mere mechanical listing and recordkeeping by so-called "Biden lists" is apparently as useful to the entire Court as any other suggestion we might make.

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[4] Ten computer monitors, each equivalent to a large television screen, are used to show videotape depositions and trial Exhibits to all participants in the trial. Exhibits are electronically scanned into the system without charge shortly before the trial, avoiding the need for jury books, overhead projectors, enlargements, and the like. Rubin, *A Paperless Trial*, 19 Litigation 5 (Spring 1993).

This Group has also recognized that trials in civil cases have sometimes not been provided as quickly as might be desirable. The one glaring problem associated with cost and delay upon which there is apparently agreement among all of the judicial officers of the Court and most commentators is the desirability of assigning realistic but firm trial dates, which add meaning to discovery cutoff dates, and then holding those trial dates to the maximum degree possible. Questions 19 and 20 (summarized in the Appendix at pages 23-25,) support this conclusion. Our **Recommendations 16 and 17** on page 56 of this Report address this issue.

There are other causes of cost and delay in the civil docket, most notably the impact of the criminal docket, which are specifically addressed hereinafter.

Notwithstanding the need for continued efforts to streamline Court operations, key features which have become trademarks of our Court, (specifically the respect afforded individual styles of individual judges; the cooperative, deferential relationships among Judges, and between judicial officers and the Court's bar; and the willingness to acknowledge problems and undertake practical, often innovative efforts to improve the Court,) are invaluable features of this institution. They should be preserved. The court administration style present here, while perhaps inappropriate for all Districts, is working well, should be recognized as such, and should be encouraged.

Given this background, it will be understood why our Recommendations are neither revolutionary nor sweeping. Individual Judges must, in our view, retain their sense of personal responsibility for their dockets, and retain their opportunity to experiment with new approaches to keep up with their civil dockets. Such a cautious approach to civil justice "reform" is, moreover, consistent with efforts in the past by this District Court and its bar to operate a Court which is practical and cost effective. One tangible example of this, to circle back to the Local Rules process, is the historic effort by this Court and its bar to avoid needlessly multiplying Local Rules, local paperwork, and General Orders. Some may find this point insignificant, but busy trial lawyers do not. Over the last 25 years, we believe, such a restrained approach has increased the stature of the Court with both the bar and the general community, while helping to minimize transactional costs for litigants. In terms of access to the institution of the federal courts, a more relaxed approach seems to us to encourage lawyers, particularly those practicing in largely rural areas within the District, to consider this District Court as an available alternative for their cases. Conversely, the more local rules and forms multiply, the more a Court becomes a place where only frequent, usually large firm, urban practitioners, feel welcome. Creation of a new form or a new Local Rule every time some problem comes to light has in our view increased cost, and resulted in an impersonalization of the practice in some other districts. Noticeably differing local procedures among the District Courts of the United States affect many lawyers who from time to time are called upon to travel to and practice in a new District, and simultaneously affect those who are only relatively rare users of their own United States District Court because they have a predominantly state-court practice. While the literature is beginning to recognize these issues, *see,* Carl Tobias, *Civil Justice Reform and the Balkanization of Federal Civil Procedure*, 24 Ariz.St.L.J. 1393 (1992), we believe it is appropriate to continue to seek to avoid such costs here.

Although this first Report makes relatively modest recommendations for the Court's consideration, this Group continues in existence for the next several years. During this time we

expect to amplify this initial Report to the Court. Further study of this Court considered against the background of experience accumulating in other Districts which have accomplished the earlier implementation of CJRA Plans, and which will be studied and reported over the next several years, may serve as a valuable information resource for future innovative actions by this Court. Learning from others should help this Court avoid well-intentioned, but misguided efforts.

II. THE STATE OF THE DOCKET

The first responsibility of the Advisory Group is to "determine the condition of the civil and criminal dockets." 28 U.S.C., section 472(c)(1)(A). In addition, the Group is to "identify trends in case filings and in the demands being placed on the court's resources." Section 472(c)(1)(B).

Although members of our Group examined specific civil case files in an effort to glean from them information on the handling of cases here which might not be reflected in the general statistics already maintained by the Court, those efforts have not as yet produced helpful information. Hence with the exception of reporting upon the specific views of the judiciary and anecdotal experiences of members of this Group, this Report generally must rely upon readily available statistical data. In coming months, we will continue to study case files and will solicit responses by questionnaire from members of the Court's bar and from litigants, in an effort to refine these remarks.

A. THE CRIMINAL DOCKET

This Advisory Group studied the phenomenon of the substantial criminal docket, which in recent years was heavily focused in Columbus, with the assistance of representatives of the United States Attorney's Office. We use this opportunity to express concern that the Court was gravely affected. Part of the cause was the local Justice Department street crimes prosecution policy which until recently permitted cases traditionally prosecuted in state courts to be indicted and prosecuted as federal offenses. This had a detrimental effect on this Court's ability to effectively administer its civil calendar.

By 1990 and 1991, the Court's Advisory Committee on Local Rules noted a substantial difference in the processing of civil cases between the Columbus location of the Court and the Cincinnati location. It now seems apparent that a major cause in the delay in the Columbus civil docket was the prosecution policy then in effect in Columbus. While the Columbus docket is now moving faster than in 1991, some impact of those criminal cases remains. Over the five year period between December, 1987 and December, 1992 the number of criminal case filings, expressed either in terms of the number of criminal cases or in number of defendants, was a much greater portion of the docket at the Columbus courthouse than at Cincinnati. Using assumptions that Cincinnati had three active Judges, Dayton one, and Columbus three until 1991 and four in 1992, at the end of that five year period, (factoring in a fourth active Judge primarily at Columbus,) there were 66 criminal defendants pending per judge in Columbus, 65

in Dayton, and 34 in Cincinnati.[5] In gross numbers, Columbus had over 1700 filings in the five year period, while Cincinnati had 899 and Dayton 429. On a per judge basis, Columbus averaged approximately 107 filings per year per active judge; Dayton averaged approximately 86 and Cincinnati averaged 60. Terminations tracked very closely to filings with Columbus having 100 per judge, Dayton 78, and Cincinnati 58.

The number of criminal cases pending at each location of court increased dramatically from December, 1987 to December, 1992. Dayton showed a 132% increase; Columbus 82%; and Cincinnati a 41% increase. Until the addition of District Judge Beckwith as the fourth active Judge, sitting primarily in Columbus since early, 1992, Columbus showed a significantly higher per judge average of criminal cases pending. Thus, at the beginning of the five year period Columbus had 49 such cases per judge pending, while Dayton had 28 and Cincinnati had 24.

Several other statistics bear out the comments received from the District Judges that they feel they spend significant time on criminal cases. One is criminal filings per judge. Over roughly an 11-year period between June 30, 1981 and Sept. 30, 1992, this Court averaged 49 criminal filings per year/per judge. However, in the first five years of that period (1982-86) filings only averaged 41 per judge. In three of the last five years filings per judge were at 60 or more criminal cases per year. Over that same period of slightly more than 11 years, median time in months from filing to disposition of criminal cases steadily increased from 2.8 months to 6.9 months.[6] By comparison, median time from filing to disposition in civil cases over the same period began and ended at the same number (9 months.)

For the five-year period between April 1, 1988 and March 31, 1993, Columbus averaged 318 criminal filings measured by defendants; Cincinnati had 159, and Dayton had 84. Drug cases over the five year period were 47% of Columbus defendants, 36% of Cincinnati, and 30% of Dayton, although in the last two years drug cases in Dayton jumped to roughly 41% of criminal filings, again measured by defendants. Beginning in 1988, Columbus had many more jury trials of criminal defendants than either Cincinnati or Dayton, (50 in 1992, versus 9 in Cincinnati, and 4 in Dayton.) The percentage of criminal defendants going to trial in Columbus was noticeably higher, being as much as 15% in some years and never under 10%, whereas in 1992 only some 6% of Cincinnati defendants went to trial.

For decades, both Democratic and Republican Justice Departments consistently utilized a national policy of selective prosecution. This policy recognized that many cases over which

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5 The work on the felony docket in Columbus by Senior Judge Kinneary, and the substantial petty offense docket at Dayton derived from the federal facilities at Wright-Patterson A.F.B., adjudicated by Magistrate Judge Merz, are excluded from these computations.

6 Broken down by location of Court, the median time to complete a criminal case shows the same jump:

	12 mos. ended 6/30/87	6/30/92
Columbus	4.3 mos.	7.5 mos.
Cincinnati	3.6 mos.	5.8 mos.
Dayton	3.2 mos.	4.6 mos.

the federal court had jurisdiction could not and should not be prosecuted federally. The policy gave priority to the prosecution of cases that are genuinely of a federal nature: tax crime, counterfeiting, civil rights, antitrust, organized crime, complex white collar crime, mail fraud, assault on federal officers. Also given priority were certain cases ordinarily prosecuted in state courts, such as theft, robbery, narcotics, and some violent crimes when there was an overriding federal interest. Ordinarily, an overriding federal interest consisted of a large, multistate ring where a number of defendants were located outside the District or where an in-state defendant was identified as a major source of the particular type of crime. [7] Lower level thieves, robbers and drug dealers were prosecuted in state courts. Federal cases were to be investigated by federal agents, who supplied reports to the U.S. Attorney. The U.S. Attorney would then either authorize or decline prosecution based on the aforementioned guidelines. As the years passed, more specific guidelines were set forth for determining whether a particular crime should be prosecuted in federal court.

The selective prosecution policy was based upon practical realization that the federal courts are courts of limited jurisdiction, have limited resources and limited judicial manpower; therefore, only a finite number of cases can be prosecuted each year and still permit the federal courts to process their civil caseload. Historically, a substantial number of the criminal matters brought to the U.S. Attorney's attention (in some districts as much as 2/3 of the criminal cases presented) were declined.

During the Reagan administration, former Attorney General Richard Thornburg instituted a policy which emphasized prosecution of street crimes, especially guns and narcotics, and stringent asset forfeitures, whether or not there was the traditional multistate ring. Local U.S. Attorneys were permitted to add their own guidelines for federal prosecution. This continued under the Bush administration. [8]

Under prosecution guidelines adopted in 1988, the U.S. Attorney, headquartered in recent years in Columbus, made a priority of prosecuting street crime narcotics cases that traditionally had been prosecuted in state court. Many cases apparently were brought directly to the U.S. Attorney by local police departments without being investigated by federal agents. In 1992, the U.S. Attorney indicted or filed informations on 245 cases in Columbus, of which 89 (or 36%) were narcotics related. It has been estimated that perhaps 15-20 such cases could reasonably have gone to the State courts, although there were concerns that some of them

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7 Since cocaine and heroin are not produced in Ohio, even the most minor of such cases could arguably be said to have an interstate connection. However, under the traditional selective prosecution policy, charging local drug users and sellers in cases that did not also involve the prosecution of their out-of-state drug sources or a major drug source within the state was not considered appropriate for federal court.

8 For example, the Southern District of Florida's CJRA committee determined that about 86% of the cases heard in that district each year are criminal. They have determined that this is not simply due to the large amount of narcotics crimes in southern Florida, but in large part to the current street crime prosecution policy. Where prosecution of federal narcotics cases in the Southern District of Florida was formerly authorized only where there was a substantial number of kilograms involved, they now have cases involving as few as 2.5 grams of cocaine. This, we understand, has nearly paralyzed their civil calendar.

might not have been as aggressively prosecuted in the particular county from which they originated. Of the 245 cases in Columbus, records of the U.S. Attorney show 31 went to trial, of which 21 were narcotics cases. While presentation of narcotics cases to the Columbus U.S. Attorney's office from State law enforcement officials declined in 1992, this was still a sizable percentage. In the late 1980's, of course, cases brought by the Franklin County Sheriff using Columbus federal court reportedly sometimes involved small quantities of cocaine powder. So-called "crackhouse" cases developed by the Columbus Police Department Narcotics Bureau were prosecuted in federal court, involving relatively small quantities of cocaine.

Currently ten Assistant United States Attorneys are assigned to Columbus handling criminal cases, compared to four as recently as 1987. With these added resources, they are able to handle more cases than smaller offices in Cincinnati and Dayton. They also have had different relationships with law enforcement agencies in the respective cities. In Columbus, they worked somewhat more closely with the Columbus Police Department, while the Cincinnati office did not have the same type of working relationship with the local police department. The Columbus Police Department Narcotics Bureau developed many large scale narcotics cases that legitimately deserved federal prosecution. In addition, there are more rural counties in the Eastern Division of this District (served by the Columbus courthouse) than in the Western Division. The United States Attorney has a legitimate concern that, at times, prosecutors in those rural counties are not always equipped to deal with many of the narcotics cases that the state prosecutor in Franklin County can handle.

According to the U.S. Attorney's statement in a public defender feasibility study, the criminal caseload in Columbus more than doubled between 1986 and 1991. In Cincinnati, where it appears that street crimes were ordinarily not prosecuted in federal court, the criminal filings increased only slightly during that same period. As a result, the Cincinnati civil calendar was not so detrimentally affected.

The former prosecution policy also had a detrimental impact on court funding, which was curtailed in 1992 and again in 1993. The public defender feasibility study shows that in the years 1990 through 1992, Columbus had 3.5 times as many CJA appointments as Cincinnati. This appears to be directly related to the prosecution policy then in effect. Those at the bottom end of the criminal spectrum are most often indigent and need appointed counsel. Those at the higher end of the spectrum usually appeal in court with retained counsel. A strict asset forfeiture policy against those caught in the act of a drug sale seemingly guarantees indigence. The Columbus probation office has had to increase in size to 33 employees to handle the number of cases. This is an added administrative and financial burden to the Court.

We are grateful to report that this situation did not escape the attention of the Office of the United States Attorney. Some months ago that Office initiated a thorough review of its internal prosecution criteria. As a result, it is again emphasizing cases having traditional federal aspects. Cases involving primarily drug possession, the street level sale of small amounts of contraband, and cases developed by state and local law enforcement personnel will generally be left to prosecution in the state courts. It has been calculated by that Office,

interestingly, that there are 105 state Common Pleas Court Judges with felony jurisdiction in the District, as opposed to the nine United States District Judges available.

However, reduction or even elimination of "street crime" cases is not expected to significantly reduce the criminal docket. The United States Attorney understandably remains committed to a policy emphasizing the prosecution of narcotics cases with federal implications. Interstate, large scale drug offenses are believed to be a major factor in this District, and it must be anticipated that vigorous federal enforcement of such cases to complement state prosecution efforts in the narcotics and controlled substances area may well result in a smaller number of federal criminal cases, but an increased number of individual federal defendants and more difficult, time-consuming trials.

Statistics for the most recent ten months are shown on the following tables. While they reflect a period during which there was a change in administrations in Washington, and three changes in the United States Attorney for this District, a relatively steady criminal docket remains observable from late -1992 through July, 1993. As noted, this caseload is not predicted to decline substantially in the near future.

table 1

Southern District of Ohio
Total Number of Pending
Criminal Defendants

City	10/92	11/92	12/92	1/93	2/93	3/93	4/93	5/93	6/93	7/93
Cincinnati	88	86	103	123	118	110	115	112	101	106
Columbus	266	271	265	267	261	259	265	262	257	237
Dayton	83	81	84	80	70	75	78	93	76	71
District	437	438	452	470	449	444	458	467	434	414

Current 10 Months Average 446.3 Criminal Defendants

table 2

Southern District of Ohio
Total Number of Pending
Criminal Cases*

City	10/92	11/92	12/92	1/93	2/93	3/93	4/93	5/93	6/93	7/93
Cincinnati	76	76	89(7)	99(7)	96(6)	87(3)	89(4)	80(1)	78(1)	80
Columbus	157	161	162(1)	175(1)	176(0)	177(0)	184(0)	180(0)	175(1)	159
Dayton	60	58	58(15)	54(10)	47(6)	52(12)	55(13)	64(11)	56(13)	51
District	293	295	309(23)	328(18)	319(12)	316(15)	328(17)	324(12)	309(15)	290

*Class A Misdemeanor cases shown in parenthesis.

Current 10 Months Average 311.1 Pending Criminal Cases

Prosecution policy does not stand in isolation. It must be considered against the backdrop of other major developments in the federal criminal practice in recent years. Although discussed at length in Section X of this Report and in much of the current professional literature, the Sentencing Guidelines and criminal statutes containing "mandatory minimum" penalties have collectively impacted the civil docket in this District. We recognize that serious efforts are underway in the Congress and elsewhere to address these issues, *e.g.*, *Panel Approves more Leeway in Drug Sentencing: First Step to Broad Reassessment?*, Legal Times (April 26, 1993) at page 2. We applaud that work. We have no doubt that the United States Attorney's constructive changes and better focus on the selection of criminal cases which truly deserve a federal priority will assist in moving the civil docket. However, other things such as simplification of the Guidelines, which appear to add significant time to the work of District Judges, would also have a positive impact on the civil docket. We can only explain the significant increase in the median time defendants are in the court system (jumping from 2.8 months for the 12 months ended June 30, 1982 to 6.9 months at Sept. 30, 1992) and the comparable jump for defendants who had a trial (5.0 months in 1987, to 9.6 months in 1992) to the extra time now required by the criminal sentencing process.

We also believe there is an important subjective factor at work. As has also been observed by the Advisory Group for the District of Maryland, (Report of the Advisory Group at 10, May 12, 1993), interviews with our District Judges almost uniformly resulted in negative comments about the increasingly criminal workload they face. Job satisfaction, at least for some District Judges here, may over time be negatively impacted. This has been seen in other locations. *2 U.S. Judges, Protesting Policies, Are Declining to Take Drug Cases*, N.Y. Times, April 17, 1993.

Because the newly appointed United States Attorney has already been attentive to the need to fashion prosecution policy with an eye toward its impact upon the Court, we do not believe we can recommend any action to the Court at this time relative to this portion of its docket.

B. THE CIVIL DOCKET

1. Trends In New Filings

To understand the current state of the civil docket in this District it is helpful to begin by discussing the mid-1980's.

At that time, a few Districts saw a startling rise in two types of cases in which the Government was actively involved, namely Social Security cases predominantly involving persons seeking a restoration of benefits, and actions seeking collection of student education loans. During the peak period of filings of Social Security actions, this District was a national leader in such filings. By their nature, such cases had a significant impact on the available time of judicial officers in this District. Although social security appeals and student loan cases seldom remained pending for a significant period of time, and required little in-Court time, their volume and nature required a major commitment of available resources. For a time there also were a significant number of "asbestos" cases, but beginning in 1987 filings in this category dropped off as well, to the point where a mere 13 such cases were brought in 1992. As these categories of cases all dropped off, there was also a reduction in total filing of new civil cases beginning in 1985. In that year, and the prior two years, over 5000 new civil cases were filed, (of which roughly 1/3 to 1/2 were social security or student loan). The drop in new civil filings here conformed to a similar drop in filings nationwide.

A low of 2395 new civil case filings was reached in 1991, when the situation apparently bottomed out and filings started to again increase. For the year ending June 30,1991 there were 2395 new filings; the number climbed for the period ending June 30, 1992 to 2788 new filings. For the ten month period beginning October 1, 1992, new filings are running at an annualized rate of 2645 new civil cases.

Another event in the mid-1980's which contributed, for a substantial period of time, to delay in moving the civil docket at Columbus was the resignation of Robert M. Duncan who returned to private practice. Not only was the loss of this distinguished and experienced District Judge a loss for the public and the Court, but there ensued a delay of some 18 months until his successor was appointed and confirmed. An indefinite period, of at least several years, passed before the addition of new Judges and the decline in civil filings allowed the Court at Columbus to catch up because, in the interim, the criminal docket increased but was handled by fewer Judges.

Statistics on the number of cases (both civil and criminal) pending per Judge over the last eleven years show the following:

table 3

1982	649
1983	846
1984	993
1985	724
1986	588
1987	594
1988	552
1989	504
1990	476
1991	357
1992	363

Available data shows that the number of trials held each year per judge fluctuates somewhat, but when compared with the data showing the number of civil trials held in the District in recent years the trend seems again to confirm a shift in the Court's work toward the criminal docket:

table 4

1987	115 civil trials	26 total trials completed per judge
1988	111	26
1989	90	31
1990	111	29
1991	98	21
1992	71	29

As delay increased in moving civil cases in the mid-to-late '80's,[9] lawyers who otherwise would have filed new cases in the District Court took them to the state trial courts, although due to a defendant's opportunity to obtain removal many such cases may have found their way back into the District Court. This phenomenon of consciously shifting cases out of the federal system due to the perception of inordinate delays may well explain the decline in the number of "tort" filings beginning in 1985 and 1986, (since these are mainly diversity cases). For instance, "product liability" cases dropped from 97 in 1988 to 49 in 1991.

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9 Rulings on civil motions also were widely perceived to have fallen behind during this period.

Throughout most of the last decade the primary civil case types in the docket have been "civil rights" cases, which generally run around 400 cases per year, and "prisoner" cases, which run roughly 400-600 per year. The frequency of ERISA cases has tripled, but in 1992 still only accounted for 101 cases. Despite the heavy growth in the docket of the Bankruptcy Court for the Southern District of Ohio, filings in District Court for "bankruptcy matters" remained relatively constant between 1983 and 1992.

2. *Trial Track Cases Pending*

Available records allow some characterization of "trial track" civil cases, which exclude "prisoner" cases, "social security" cases, and "student loan" cases. Assuming Cincinnati had 2.8 District Judges, Columbus had 3, and Dayton had 1.2 for the years 1987-1991, and Cincinnati went to 3, while Columbus went to 3.8 in 1992, the following highlights appear.

Trial track civil filings make up 68% of the Columbus and Cincinnati civil docket, and 71% in Dayton. Dayton averaged 334 trial track filings per Judge per year and 351 terminations; Columbus averaged 253 filings, and 294 terminations; Cincinnati averaged 234 filings and 246 terminations. In other words, Dayton appears to have a somewhat different composition of civil case filings than the nearly identical mix at Columbus and Cincinnati. Dayton has a higher percentage of trial track civil filings, a higher percentage of social security and student loan filings, but a much lower percentage of prisoner filings because there are fewer penal facilities in the counties served by that Court.

All three locations of Court showed a significant decrease in the number of trial track civil cases pending per District Judge at the end of the five year period 1987-92, ranging from a 53% decrease in Columbus to a 22% decrease in Dayton. (Likewise, the total number of all civil cases pending decreased from 1987 to 1992 by 56% in Columbus, 32% in Dayton, and 23% in Cincinnati between 1987-92.) As case filings dropped and new Judges were added, the Court made major inroads into the backlog of civil cases which had built up. We believe it is noteworthy that this disposition of older cases apparently did not occur through trials. Over the period 1982 -1992, total "trials completed" statistics (shown in part in table 4) range between 21 and 31 per year/per judge, with an average of 25.8. The average of the last two years are exactly 25 trials, the 11-year average. Thus, the difference in moving the civil docket is apparently explained by more settlements, better use of ADR techniques, and more efficient use of dispositive motion rulings before trial. The percentage of trial time devoted to civil cases is, moreover, somewhat less than in the mid-1980's due to the criminal docket discussed above, and in the past several years appears to be around 50-60% of trial time.

Current civil cases pending are as follows:

table 5

	10/92	11/92	12/92	1/93	2/93	3/93	4/93	5/93	6/93	7/93
Cincinnati	972	989	991	996	973	944	944	947	938	947
Columbus	1150	1157	1146	1145	1126	1102	1129	1109	1096	1085
Dayton	497	490	466	467	457	417	416	416	406	415
District	2619	2636	2603	2608	2556	2463	2489	2472	2440	2447

This reflects terminations exceeding new filings, and overall a 7% decrease in pending cases over the last ten months.

Another measure of progress in moving the civil docket is the median time in months from filing to disposition. Examined over the years 1982-1992, this District gradually worsened as the "bubble" of cases built up in the mid-1980's, aged, and slowly moved through the system. However the significant drop in the median age of civil cases shown in 1992 indicates that the worst is behind the Court in this regard:

table 6

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Criminal	2.8 mos.	2.9	2.7	3.4	4	3.9	3.7	5.3	6.3	6.6	6.9
Civil	9 mos.	6	6	9	7	11	12	12	12	13	9

3. Decisions In Bench Trials

The Court has essentially eliminated bench trials submitted for more than six months, although it deserves mention that there was only a relatively small group of such cases at the beginning of recordkeeping in March, 1992.

table 7

	3/31/92	9/30/92	3/31/93
District Judges	11	1	0
Magistrate Judges	0	1	1
District Totals	11	2	1

4. Decisions On Pending Motions

The Court has made extraordinary progress in breaking the backlog of Motions pending more than 6 months.

table 8

		6 - 12 mos.	over 1 year	TOTAL
District Judges	3/31/92	122	163	285
	9/30/92	123	176	299
	3/31/93	39	31	70
Magistrate Judges	3/31/92	32	10	42
	9/30/92	38	6	44
	3/31/93	25	14	39

The Act suggests, in Section 473(a)(3)(D), that the Court consider using pretrial conferences in complex and any other appropriate cases to set not only deadlines for filing motions but also "a time framework for their disposition." In most instances, judicial officers already establish specific motion cutoff dates on a case-specific basis using pretrial Orders. This is desirable. Otherwise, Motions filed late in the case may unduly crowd up against trial dates, and parties will on occasion lose the opportunity to save expense by obtaining a case dispositive ruling earlier.

It is usually helpful for judges to estimate for litigants the time within which Motions will be decided after submission (which many of our judicial officers already do when it is relevant to the progress of specific cases). We recognize that dockets are often driven by factors other than the order in which Motions are filed, such as the need to decide Motions which are holding up discovery more expeditiously than complicated Motions which become at issue after most or all discovery is concluded and which are not holding up anything. Sensitivity to such factors is reflected in the responses of the judges to Question 13 of the Questionnaire. (See Appendix, pages 15-16.)

Improvement in the timeliness of Motion decisions can be noted in this Court in the last two years. Yet, there are still motions awaiting decision for longer than six months. That such Motions persist is one of the few identifiable problems of docket management in this District. As noted hereinafter, because the motion docket has in the past been a much more substantial concern, we recommend to the Court that each judicial officer set for himself or herself the goal of deciding Motions within 60 days after they become at issue, and the additional goal that dispositive Motion rulings be issued not later than one week before the Final Pretrial Order is due to be filed with the Court by counsel.

The statistics now being kept, as noted in the preceding table, record the progress of undecided Motions beginning at the six-month date. This recordkeeping disciplines judicial officers to monitor their Motion docket, and reinforces their instinct to decide as much as they can as promptly as they can.

If lawyers and parties in specific cases genuinely need "expedited disposition" on Motions, existing Local Rule 7.1(c)(1) advises how to seek it. In addition, as reflected in the Questionnaire responses, counsel also contact chambers to alert the Court to such needs and the Court seems to welcome information on the priority which a matter requires. As a result of extended study of the practices of this Court with respect to Motions, and concern among the bar over the perceived backlog of undecided Motions in some chambers, the Local Rules Advisory Committee recommended and the Court adopted several other Local Rules in 1991 specifically addressed at moving the Motion docket more efficiently. Local Rules 7.1(c)(1) and (2). As noted in **Recommendation No. 9**, we believe the Court should retain Local Rule 7.1(c)(2)(B), despite concerns expressed by a Sixth Circuit Staff Attorney, and shorten the time threshold at which parties can consent to use it.

Both the 1990-1991 review of local practice by the Local Rules Advisory Committee and Question 12 in the recent Questionnaire sent to our judicial officers sought input on the advisability of shorter page limitations on Motion papers. Local Rule 7.2(a) sets out such page limits. These are still believed reasonable by both the bench and the bar notwithstanding that there are, inevitably, instances in which memoranda are too long in particular cases. (see Appendix, page 14). We do not recommend changes at this time.

RECOMMENDATION NO. 1

Each judicial officer should set for himself or herself the goal of deciding Motions within 60 days after they become at issue, and the goal of issuing rulings on dispositive Motions not later than one week before the Final Pretrial Order is due to be filed by counsel.

5. *Civil Cases Pending More Than Three Years*

The Court has also made progress in cutting the backlog of older civil cases. It should be mentioned there are often legitimate explanations for older cases (such as interlocutory appeals on key issues, bankruptcies, and unusual complexity). Current figures show:

table 9

District Judges	9/30/92	140
	3/31/93	107
Magistrate Judges	9/30/92	15
	3/31/93	14

The reader should note these totals include roughly 15 cases assigned to Judges in this District from the Western District of Kentucky.

The long term trend is very positive, with annual figures from another source showing civil cases over three years old declining, as the drag on the docket from the mid-1980's has gradually been eliminated. The raw number of such civil cases District-wide, and the percentage of such cases are as follows:

table 10

1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
240	257	304	352	402	368	330	371	395	236	140
6.4%	5.2%	5.2%	7.1%	10.1%	9.2%	9.0%	11.4%	13.0%	9.3%	5.4%

III. ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

A. PROGRAMS CURRENTLY IN USE

The Act requires each Court to consider incorporating into its Plan the "authorization to refer appropriate cases to alternative dispute resolution programs that (A) have been designated for use in a district court; or (B) the court may make available, including mediation, minitrial, and summary jury trial." 28 U.S.C., section 473(a)(6). Elsewhere, the statute directs each Court to consider adopting a "neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a non-binding conference conducted early in the litigation." 28 U.S.C., section 473(b)(4). The Act also suggests that in all complex cases or other appropriate cases the presiding judicial officer explore the parties' receptivity to settlement during pretrial conferences. Section 473(a)(3)(A). We believe that these suggestions from the Act are already in use in most respects throughout the District.

Southern District of Ohio Local Rule 53.1 currently provides:

> The Court may, in its discretion, assign any civil case for a summary jury trial, mandatory, non-binding arbitration hearing, settlement week conference, or other alternative method of dispute resolution.

As reflected in the Local Rule, various types of ADR efforts in this District have been ongoing for some time. It is the conclusion of our Advisory Group that the Court has a strong commitment to ADR, has generally been recommending it to litigants in an appropriate fashion, has programs available which use ADR creatively and effectively, and that there is no need for widespread change in the approaches being taken.

The first substantial ADR program in the District became effective January 1, 1985, when the location of the Court at Cincinnati adopted General Order 85-1 instituting a mandatory court-annexed arbitration program. Three arbitrators from a panel appointed by the Court, who served without compensation, were provided for nonbinding arbitrations. Cases were selected by the trial judge. It was contemplated that this program would capture cases not later than 180 days following the initial pretrial conference. However, actual experience using this procedure at Cincinnati did not gain wide acceptance and was used infrequently after the initial trial period.

The Court in the Eastern Division of the District at Columbus has formally committed to participation in "Settlement Week" mediation conferences as a primary ADR vehicle. *See,* Eastern Division General Order 91-4, sections III and IV. Settlement Weeks have been held

twice a year for roughly five years. Settlement Weeks scheduled by the District Court coincide with the weeks set aside for the same program in the state trial courts of Franklin County, customarily during June and December. Settlement Week cases are individually selected by a judicial officer for inclusion in the program, although counsel receive notification of upcoming Settlement Weeks and are encouraged to suggest specific cases for inclusion. Virtually all trial-track civil cases are mediated before they reach trial, using someone selected from a panel of volunteer attorneys. Generally, such mediation conferences occur fairly late in the case, near the end of or subsequent to completion of discovery. The Settlement Week program uses a panel of volunteer lawyers as mediators, who are actively solicited to participate by the Court and scheduled for one to several cases during Settlement Week at their convenience. Generally, volunteer mediators have participated in mediation training at no charge through the Columbus Bar Association, and those willing to serve in the District Court are generally more experienced trial lawyers. Mediation conferences are scheduled to last several hours, but not infrequently are continued after an initial session during Settlement Week because some prospect for later resolution exists using the mediator assigned by the Court. Mediation using this model seems to be well suited to the trial bar in central Ohio, which is rather less contentious than the bar in other locations outside the District. The bar has also become well accustomed to using the Settlement Week process in state court, contributing to the acceptance and understanding of this concept at District Court.

Cases which appear ripe for settlement are also sometimes mediated by a United States Magistrate Judge, who becomes familiar with the status of particular cases and the prospects for settlement through the routine pretrial conference process. In addition, mediation conferences are assigned on a case-by-case basis, using the panel of outside mediators but without awaiting the next Settlement Week in between Settlement Weeks. Such conferences are assigned either at the suggestion of counsel or directly by a judicial officer as a result of information learned at a pretrial conference, or through other pretrial activity.

The success rate for the formalized Settlement Week programs in both the state and federal court systems in Columbus, Ohio has been roughly 40% of cases mediated since such programs began in the mid-1980's.

The Court in the Western Division of the District, at Cincinnati, began using the same Settlement Week program several years ago. It has achieved roughly the same success rate. Moreover, the Court at that location is currently considering moving away from the designated Settlement Week schedule, to an ongoing program using a permanent panel of mediators who will follow specific cases, and conduct mediation conferences at any time.

The Western District location at Dayton has not adopted any formalized ADR program which it routinely makes available in civil cases. As noted hereinafter, because it appears that the formalized programs of mediation at the other two locations of Court in this District have achieved both wide acceptance by the bar and success in disposing of cases, and because such a formalized program operated largely using volunteer lawyers and existing Court staff should require relatively little additional expenditure of judicial time, we recommend the Court at Dayton consider adopting some formalized mediation program. Systematically focusing most

civil cases at a nonbinding, inexpensive settlement program will avoid the risk that any cases "fall through the cracks" and are not addressed, in respect of settlement, whether because of inexperienced counsel, intransigent parties, or other reasons, until the case reaches the point where a judicial officer is personally and heavily involved in the case. A formal program which conserves precious judicial time in even a few cases a year, and which as a byproduct helps to systematically reconfirm for the trial bar that the District Court is genuinely committed to ADR, would seem worthwhile.

This District has successfully used other ADR techniques such as Summary Jury trials, particularly in very complex litigation. Caselaw is, in fact, gradually developing on the procedural rules applicable in such ADR proceedings. *See, e.g., Cincinnati Gas and Electric Co. v. General Electric Co.*, 854 F.2d 900 (6th Cir. 1988)(no right of public access to summary jury trial before Judge Spiegel), and *Day v. NLO, Inc.*, 147 F.R.D. 148 (S. D. Ohio 1993) (Spiegel, J.) (a party can be compelled to participate in a summary jury trial; and such a trial would not be closed to the public despite concerns about media coverage). While not used here with the frequency of the Northern District of Ohio where the idea developed, both District Judges and Magistrate Judges have heard summary jury trials in this Court with some success. Our judicial officers properly remain sensitive to the fact that, although theoretically summary in nature, these proceedings nevertheless are "trials" which are inevitably expensive and time consuming, and which therefore need to be selectively used in cases having suitable factual and legal issues.

Individual Judges also have continued to provide innovative ADR mechanisms. Several Judges routinely advise the parties about the wide variety of ADR mechanisms now available, including even the option of going outside the District Court to hire a specialist or trained technical person as a mediator or arbitrator. One District Judge recently began to issue standard-form pretrial Orders which set out a menu of ADR techniques to be sent to clients, and to use a pretrial Order which explicitly discourages the filing of Summary Judgment Motions any earlier than 30 days after the date of a formal settlement conference with the Court. Settlement conferences used by that Judge apparently achieve a high success rate, although this necessitates very substantial personal involvement by the Judge and his staff. Unlike the effort at "early" ADR in the Cincinnati arbitration program of some years ago, this Judge's formalized conference occurs shortly after the final discovery deadline. It is somewhat more formal than the Settlement Week program in that it both requires the parties to exchange settlement positions in writing in anticipation of the conference with the Court, and also to provide the Court with brief three-page summaries of their position and their "confidential assessment of all conditions necessary to achieve settlement." (Emphasis in original.) It remains to be determined whether such a procedure of postponing the filing of formal Rule 56 Motions will materially reduce expense for litigants or increase the percentage of settlements, but it is a worthwhile experiment.

There are other ADR programs available through community or bar groups to supplement the efforts in the U.S. District Court. This Court has consistently encouraged such efforts.

B. CONCLUSIONS

Our Group gave consideration to Early Neutral Evaluation ("ENE"), as suggested by Section 473(b)(4) of the Act. Like the effort at early arbitration undertaken several years ago in Cincinnati, however, a still-ongoing Columbus (Ohio) Bar Association program somewhat comparable to Early Neutral Evaluation called the "Pre-Suit Tort Mediation Program" has enjoyed only limited success after several years, despite receiving support from a number of local businesses and insurers. The Advisory Group in Maryland has noted that an "early" settlement program attempted there was apparently taking place too soon in the litigation process, and achieved only a low percentage of settlements.[10] The practical difficulty observed in certain kinds of cases is that pretrial discovery, which may be key to proving fraud, or to the identification of a specific theory of a product's defect requiring expert testimony, will simply be unavailable early in the case making realistic evaluation for settlement impossible.

Given the acceptance and availability of other ADR options, and the success which the Court is having using Settlement Week mediation in Cincinnati and Columbus with panels of volunteer lawyers, we do not recommend the Court undertake an additional program like ENE, except perhaps case-by-case in specific instances in which it appears likely to be more worthwhile than waiting for Settlement Week. Possibly in "complex" cases, where it could avoid tremendous cost if successful, ENE may sometimes prove useful. Widespread use of ENE might have the inadvertent effect of watering down the focus and success of existing ADR programs.

In the survey of our judicial officers, and from our experience with the Court, there is strong acceptance of the general wisdom of ADR. District Judges and Magistrate Judges appropriately raise the need to examine settlement at various stages of civil lawsuits; appropriately suggest ways to limit expense pending use of ADR such as limiting discovery to key issues pending possible settlement or Motion rulings; and otherwise appropriately encourage lawyers and parties to seek the most cost effective resolution of their disputes. There is also uniform willingness among judicial officers to consider any creative proposals suggested by counsel, in individual cases, concerning ADR mechanisms which might be worthwhile.

Several Judges in this District have suggested that increasing the use of Magistrate Judges can be viewed as another form of ADR. The use of Magistrate Judges in lieu of Article III Judges may result in less delay and lower cost in particular cases. Utilization of Magistrate Judges is addressed in Section VII of this Report.

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10 "For a time the Court designated one judge to serve as a 'settlement court' on an experimental basis. This experiment was not particularly successful because the judicial intervention was deemed to be too early in the litigation process. Conferences with counsel were being scheduled as soon as a case was at issue, rather than after the case was ripe for trial. The result was a low percentage of cases being settled." Report of the Advisory Group, D. Maryland, at 30.(May 12, 1993).

The judiciary in this District remain sensitive to the fact that ADR is not an appropriate way to resolve every civil case. Professional literature bears this out. Deloitte & Touche Litigation Services, *1993 Survey of General and Outside Counsels, Alternative Dispute Resolution (ADR)*, at 8. Thus, it is inappropriate to unduly discourage litigants from seeking a judicial decision if that is the best route to achieving justice in a particular case. Aside from not unduly pressuring for settlements, the sensitivity of the Judges seems well evidenced by the fact they routinely transfer cases for settlement discussions to another Magistrate Judge or District Judge if it is anticipated they will hear a bench trial.

Mediation is the preferred ADR technique in this District. Professional literature and experience here both suggest that there is high acceptance of mediation. The 1993 Deloitte & Touche survey noted above, which surveyed lawyers in private trial practice and corporate counsel at Fortune 1000 companies, found "extensive users of ADR tended to rely most heavily on mediation and nonbinding procedures," and that most respondents had relatively little familiarity with minitrials, summary jury trials, neutral evaluations, and other less established methods of ADR. *Id.* at pages 1, and 8. Two other relevant conclusions were that "[t]he most important factor motivating users of ADR *not* to use ADR in a particular case is that the opposing party was unwilling," and that [t]he most important obstacle to pursuing ADR may simply be inexperience" such that "as companies and attorneys gain experience with ADR the primary obstacle to its use will diminish." *Id.* at 8. Given these points, continued emphasis upon mediation or other nonbinding ADR approaches, and having the Court initiate ADR in all trial-track civil cases, as occurs in pretrial conferences and in the Settlement Week program, seems the most productive approach. It at once overcomes any unwillingness of one side to participate and any "inexperience" factor through compulsion to participate in a focused process, but nevertheless does so in the relatively low pressure and nonbinding format.

RECOMMENDATION NO. 2

The Court should continue its commitment to ADR, and to the flexible approach reflected in Local Rule 53.1.

RECOMMENDATION NO. 3

The Western Division of the Court at Dayton should consider, within the limitations of staff and funding, implementation of a formalized ADR program, such as Settlement Week mediation using volunteer mediators.

RECOMMENDATION NO. 4

The Court should not adopt any new "early neutral evaluation" program. However, the Judge assigned to any case identified by the Court or suggested by a party at or shortly after filing as being "complex" (see Recommendation No. 6) should consider using ENE in specific cases in which it appears desirable.

IV. JUDICIAL CONTROL OF THE PRETRIAL PROCESS

Section 473(a)(2) and (3) of the Act suggest each District Court consider several principles and guidelines of litigation management and cost and delay reduction. These include a focus upon the "early and ongoing control of the pretrial process through involvement of a judicial officer" in helping to plan the progress and the extent of discovery in civil cases. The Act also suggests that the Court use, in complex or other appropriate cases, "careful and deliberate monitoring through a discovery-case management conference or a series of conferences" at which settlement is explored, issues are identified and staged resolution of the case or bifurcation at trial is examined, a discovery schedule or plan is developed which sets forth time limits, phased discovery, or like restrictions, and which sets out deadlines for filing motions, and a time frame for their disposition. Section 473(b) sets forth various additional litigation management suggestions for inclusion in the Court's Plan. Since these various matters overlap somewhat, we discuss them largely together in the general framework of judicial control of the pretrial process.

For many years this District has had an individual docket system. Except in Dayton, not only is a single District Judge assigned to each civil case, but also a Magistrate Judge is randomly assigned by the Clerk when a case is first filed. Dayton has used a system in which some but not all civil cases are automatically assigned to the Magistrate Judge for pretrial purposes.

Judicial officers in this District have, as a matter of course, afforded hands-on attention to the pretrial management of civil cases. Judges in this District apparently instinctively recognized that they can and must find the time to tailor the requirements of case management to each case, and do so using relatively straightforward means. Substantially all of the suggested management techniques in the portions of the Act noted above are already followed in this District using a series of conferences, followed by pretrial Orders, generated as a result of hands-on judicial management directed at individual trial-track civil cases.

Ordinarily pretrial management occurs by having the Magistrate Judge assigned to the case, or the District Judge if no Magistrate Judge has been directed to take responsibility in a particular case, meet in person or by telephone with counsel and seek agreement establishing a relative small number of key deadlines, and straightforward responsibilities. Customarily these deadlines include a specific discovery cutoff date, a deadline for motion practice, and similar dates which are set out in Orders filed with each specific case. These are then monitored actively as the case progresses. Depending upon the style of the individual judicial officer, additional conferences in specific cases may occur as discovery proceeds and the case approaches trial. We are unaware of any of the Judges who will not agree to convene a meeting with counsel if requested and on occasion if it becomes apparent that either discovery

motions or other motion practice is increasing the Court will become involved to actively discourage any unnecessary filings before they escalate. These subjects are reviewed in response to Questions 6,8,10,15, and 20 by the judicial officers. (Appendix to this Report.) We examined in our discussions and using Questions 5 and 7 the advisability of recommending more control of the pretrial process in the judicial officer who will actually hold the trial, but have concluded the present division of responsibilities worked out among District Judges and Magistrate Judges in the District is working well and should not be altered in any general way. (Appendix, pages 6 and 8.)

We believe, therefore, that the Court is already using the techniques suggested in Section 473 (a)(2) and (3) of the Act.

We have considered the suggested management technique set forth in Section 473(b)(3) that all requests for extensions of deadlines for completion of discovery or for the postponement of trial be signed not only by the attorney but by the party making the request. We do not recommend this to the Court. Although the state courts of Ohio have used the requirement that clients sign requests for trial continuances for several years, it has had no appreciable impact on lessening such requests, and has in our view added slightly to the costs of civil cases. Any good lawyer will keep his or her client informed and aware of deadlines for discovery and trial assignments, and will consult about the wisdom or need for seeking an extension or postponement. As to those lawyers, this requirement only adds a paperwork requirement and means nothing. For clients who are dilatory, the Court is the only real solution, and must examine and rule on requests for extensions or postponements in appropriate ways whether or not clients sign the application.

Uniformly this Court uses the management techniques in Section 473 (b)(2) and (5) of the Act. Counsel attending pretrial conferences with the Court are required to have the authority to bind that party as to the matters customarily discussed. Reliance upon counsel familiar with the case is reinforced by the "Trial Attorney" designation used for many years in this District, which requires that one specific lawyer, rather than a firm, be identified with each civil case throughout its course, and which limits the circumstances under which a Trial Attorney can be substituted or can withdraw, particularly in the period 20 days in advance of trial or a dispositive motion hearing. S.D. Ohio L.R. 4.3. The suggestion in Section 473(b)(5) that upon notice from the Court representatives of parties with settlement authority be present or available by telephone during settlement conferences is routinely used, as it should be.

In the Dayton Court there has been a requirement for several years that counsel prepare and file early in the case a discovery management plan. This is comparable to the suggestion in Section 473(b)(1) of the Act. While the Judges in Dayton wish to continue to use that technique, and we believe there are good reasons to do so, the issue is not so clear-cut that there is now a sense that it be used throughout the entire District. Experience with similar types of documents, such as the Final Pretrial Orders prepared using standard forms in this Court for at least 20 years, shows preparation of discovery plan documents, if done well, necessarily imposes certain costs upon litigants. Questionnaires to the Judges in this District confirm that Final Pretrial Orders do have significant value for the Court. However, that

perceived value is not so clear with discovery plans. In some instances, the judicial officers in Dayton report that discovery plans which they receive are not too well done, leaving the judge in the dilemma of deciding whether to become involved and require a second submission, with attendant costs to litigants, or simply to let the case proceed. Moreover, many trial lawyers have had the experience with documents required to be "jointly" prepared that the more diligent and better prepared counsel end up carrying the laboring oar for an opponent who shirks responsibility. When this occurs, it necessarily adds cost for the party whose lawyer pulls the oar. Any notion that the Court routinely become involved to address and sanction conduct in the preparation of such required documents seems unrealistic, and invites delay in performing other, more important judicial work.

At the Columbus courthouse no such discovery plan is routinely prepared. However, there is customarily a focused discussion upon anticipated discovery during preliminary pretrial conferences, which are routinely held in all trial - track cases by one of the three Magistrate Judges. As deemed appropriate in specific cases, counsel are required to address a discovery schedule and to sometimes report to the Court following such pretrial conferences. In short, we conclude that there are good reasons to leave it to the discretion of each Judge whether to require discovery plans in specific cases. If the Court adopts **Recommendation 6** that it focus a bit more directly on cases deemed "complex," then that specific type of case might be viewed as one in which discovery plans are often requested. However, there again the hands-on management of a judicial officer is the best guide to the need for such effort and expense.

Magistrate Judges handle many of the routine discovery disputes which arise in this Court, and generally do so in a very timely manner. Appeals to District Judges over discovery rulings are infrequent, and since 1991 Local Rule 72.4 has provided that a Magistrate Judge's ruling remains in effect pending such an appeal unless stayed by the Magistrate Judge or the District Judge. This was perceived to be one means to avoid gamesmanship by counsel. *Dayco Products, Inc. v. Walker,* 142 F.R.D. 450 (S.D. Ohio 1992). Another provision adopted in 1991, as a part of Local Rule 37.1, explicitly authorizes parties who have exhausted their own efforts to solve a discovery dispute to promptly "seek an informal telephone conference with the judicial officer assigned to supervise discovery" before filing formal discovery-related Motions. Even prior to 1991, many Magistrate Judges and District Judges would entertain telephone inquiries when there was an ongoing deposition or other matter justifying the interruption. This informality has not been abused, and also helps cut cost and delay. We see no need to recommend a more refined system here, (such as, for example, a formalized rotating Magistrate Judge "on-call" to deal with discovery disputes, as suggested in the District of Maryland's CJRA Report (at page 14)).

Section 473(a)(2)(B) sets out another specific principle of litigation management and cost and delay reduction. "[S]etting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint" is suggested in the Act. As shown by the responses to the formal questionnaires, the Judges in this District almost uniformly recognize that establishment of a firm trial date is a most crucial ingredient to reducing cost and delay. There is little need to modify the existing system, except that we Recommend in Section IX that all Judges make at least a tentative assignment of a trial date as

early as possible, and usually no later than the completion of the Preliminary Pretrial Conference. Ordinarily, litigants should be in a position to know that their case will be reached by a particular month, (i.e. "this case is expected to be reached for trial during October, 1994") even though we recognize that in some instances such dates will not hold firm because other work at the Court, such as emergency injunctions or criminal trials, will interfere.

We do not believe that other pretrial management mechanisms are likely to reduce cost or delay in this District.[11]

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[11] Indeed, adopting new Local Rules, or otherwise altering the procedures through which the Court operates may well cause somewhat more cost or delay for the public. In the short run, at least, virtually any substantial change will predictably require the investment of our most valuable resource—judicial time. Aside from judicial time, significant changes in court procedures require the time of the bar for reeducation of lawyers. This is likely to increase litigation costs because becoming familiar with new procedures or Rules frequently occurs at client expense. Thus, aside from any intangible impact upon the relationship of judicial officers among themselves and with the bar, adoption of any new methodology for administering the civil docket either as a result of the CJRA process or from some other basis brings with it predictably negative effects in terms of both cost and delay in the short run.

V. DIFFERENTIATED CASE MANAGEMENT

A. CURRENT STATUS

Section 473(a)(1) of the Act requires each District Court, in consultation with its Advisory Group, to consider the possible use of a "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 preparation and disposition of the case." This is customarily referred to as Differentiated Case Management ("DCM").

The Northern District of Ohio adopted a DCM system as a Demonstration District under the Act in 1991. This Group has been fully briefed on the system adopted there, and considered its adoption in the Southern District. In addition, we have considered the experience of the bar with similar DCM programs in various state courts of Ohio, such as adopted in July, 1991 in the Franklin County, Ohio, Court of Common Pleas. (Local Rules 37, and 39 of the Franklin County Common Pleas Court set up "tracks" by case type, which result in predetermined case schedules of 12 months for "nearly all" cases, 24 months for professional tort and products liability cases, and a longer period, specifically set by the trial judge, for "complex" cases.)

The information available to us, including the subjective judgments of trial lawyers in Ohio, does not suggest that such DCM systems necessarily reduce cost or delay. As the 12 Districts which adopted some form of DCM are evaluated by the RAND corporation, the two Demonstration Districts are studied by the Federal Judicial Center, and the other 16 early implementation districts report their experiences this conclusion can obviously be reassessed.[12]

From what we can determine, however, active and early monitoring by a judicial officer was not in use in some of the courts which have now adopted a DCM program. It seems to us the present system in the Southern District of Ohio is preferable to any arbitrary designation of cases for certain "tracks" based upon a set of general rules, even when in theory a trial judge can be asked to modify the generic system for complex cases or for other reasons. Moreover, the accumulating experience which has been relayed to us indicates that when individual trial judges do not wholeheartedly embrace a new DCM system and enforce the computer-derived case schedules, the DCM system is no better than the "old" management systems it replaces.

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[12] There is, of course, another issue which is to decide precisely what form of DCM system is being used. This is, as one publication has termed it, the difference between a "fully adopt[ed] DCM or a minimalist approach designed to satisfy the requirements of the Act." Russillo, "Differentiated Case Management: Emerging Data/Statistical Needs," *Court Administration Bulletin*, January 1993 at page 5.

In other words, the key is still responsible judicial case management; DCM does not appear to be a "magic bullet" for docket control.

B. CONCLUSIONS

In our view, this District has in place a solid approach to pretrial management. *See*, responses to Questions 6, 7, 8, 10, and 15 in Appendix to this Report. At this time DCM would be inappropriate for this District, and, indeed, DCM might be a step backward. Rather than arbitrarily assigning cases to a particular track, (which does not occur here except for initial identification by the Clerk of non-trial track cases such as social security and prisoner cases), this Court has a judicial officer examine each case file. Usually following a pretrial conference with counsel, a judicial officer will establish a discovery schedule and other early responsibilities tailored to the specific case. In most cases, early in the case a trial date is established, although this is an issue which we have addressed separately hereinafter in **Recommendation No. 16**.

We do, however, recommend that the Court consider adoption of one feature of most DCM systems, namely a Local Rule, (and perhaps a simple form to implement it), by which counsel could readily indicate early in a case if they perceive it genuinely deserves unusual pretrial management, or other special handling as a "complex" case. No doubt most such cases are recognized by a judicial officer early in the progress of the case under the present system. However, alerting the bar to the possibility of such a designation by counsel may improve the handling of this small category of cases. Once such cases are tentatively identified, moreover, it would permit individual District Judges to elect to personally assume all pretrial conferences and hear any discovery disputes from the outset, in lieu of having preliminary matters handled by Magistrate Judges. No doubt individual District Judges might find other value in such an early identification of "complex" cases, such as by encouraging early examination of the likely expense of such litigation by client representatives,[13] and of the wisdom of early neutral evaluation or other means to explore settlement.

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[13] We recognize some plans require counsel to certify to the Court that they have discussed with their clients the anticipated costs of the lawsuit, its anticipated result, and the various means of alternative dispute resolution available. Such certifications sometimes must be signed by the client. *E.g., Schwarzkopf Technologies Corp. v. Ingersoll Cutting Tool Co.*, 142 F.R.D. 420, 423-424 (D.Del. 1992); U.S. Dist. Court for the Eastern and Western Districts of Arkansas, *Your Day in Court: The Federal Court Experience* (1992). Individual judicial officers in this Court already require, on occasion, lawyers to certify that they have discussed the economics of specific cases with their clients, to appear for settlement or other conferences with their clients or authorized representatives, and so forth. We see the wisdom of such efforts, including at times the value of written certification that clients are fully informed about key features of the litigation process. However, we believe that cost and delay would not be reduced if such efforts were required to be documented in every case on the docket as a matter of routine. Except for specific cases, such as those which are "complex" and which will predictably tie up a disproportionate share of Court time, and may quickly produce extravagant expense or other difficulties for the clients involved, trial lawyers ought to be trusted to perform their roles. These include counseling and educating their clients. Conversely, in ...cific cases recognized to be "complex" and in which extraordinary demands are placed on the Court, judicial ...stified if they choose to require additional, specific certification that the trial lawyers have counseled ... the anticipated cost of the case, about ADR, and so forth. The Judge assigned the case is in the

RECOMMENDATION NO. 5

The Court should continue to give personalized attention by a judicial officer to the pretrial management of each trial-track civil case, and should not adopt a predetermined "Differentiated Case Management" system.

RECOMMENDATION NO. 6

The Court should provide some mechanism by which a party can advise the Court at the earliest stage of a case which appears likely to require unusual types of pretrial attention, or other special handling as a "complex" case. The Court should promptly respond in such cases with as much additional attention as the Court's resources permit and the legitimate needs of the case require. In addition, the Court should consider employing in such cases the "Early Neutral Evaluation" technique or other methods of ADR in addition to those afforded all trial-track cases; and to additional monitoring of discovery, such as requiring an early meeting of counsel, joint preparation of a discovery plan, or other techniques likely to contribute to the cost effective management of the case.

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best position to use this authority, which often may depend upon whether the lawyers in the case are sufficiently well known to the Court as to make such additional work appropriate.

VI. LOCAL RULES OF THE DISTRICT

Recently certain concerns have been raised about the legality of several Local Rules of this District in a review of such rules by a Staff Attorney at the United States Court of Appeals for the Sixth Circuit. Because many of these Local Rules appear to this Advisory Group to be contributing to the reduction of expense and delay in this Court by streamlining civil practice, we record here our Recommendations to the Court respecting such Rules. Although not entirely certain, a group of thoughtful commentators which, we understand, includes Senator Biden believe that an Advisory Group has the independent authority to recommend Local Rules even if they vary from national Civil Rules, at least in the absence of a direct confrontation.

A. INTERROGATORIES AND REQUESTS FOR ADMISSIONS

RECOMMENDATION NO. 7

The Court should retain Local Rules 33.1 and 36.1, limiting the number of Interrogatories and Requests for Admission absent agreement to a higher number by the parties or leave of court.

Local Rules 33.1 and 36.1 provide:

RULE 33.1 INTERROGATORIES

> Unless there has been agreement of the responding party or leave of court has first been obtained, no party shall serve more than 40 interrogatories (including all subparts) upon any other party.

RULE 36.1 REQUESTS FOR ADMISSION

> Unless there has been agreement of the responding party or leave of court has first been obtained, no party shall serve more than 40 requests for admission (including all subparts) upon any other party.

Both were adopted in October, 1991. The Local Rules Advisory Committee recommended both, notwithstanding recognition that the authors of the Local Rules Project found such limits of questionable validity. Practice in this Court since 1991 demonstrates their utility, and that they are well accepted by the practicing bar. Where additional Interrogatory questions or Requests are needed, counsel seem to routinely agree to a higher number.

In recommending these Local Rules in 1991 the Local Rules Committee set forth the following statement concerning a limit of 40 Interrogatories:

> *Given the national policy of seeking to better control the cost and delay of civil litigation expressed in the Civil Justice Reform Act of 1990, the Advisory Committee believes some presumptive limit on paper discovery should be imposed in this District.*
>
> *This Local Rule is intended to assure that parties cannot impose oppressive volumes of paper discovery demands, or precipitate discovery motion practice, merely by churning out boilerplate Interrogatories. Having a limit will, the Advisory Committee hopes, most generally mean that the parties can and will cooperate, and exercise greater control of discovery from the outset. Achieving reasonable limits through negotiating the volume of paper discovery to fit specific cases would be preferable in all cases. If that proves difficult, of course, controls by the Court can fairly readily and inexpensively be applied in specific cases to raise the limit as needed.*
>
> *The Advisory Committee recognizes that any numerical limit is somewhat arbitrary, and will prove unreasonable or inadequate in a certain percentage of civil cases. The limit of 40 we propose would square with the limit recently added to Ohio Civil Rule 33. This should allow the bar to readily accept and work with the same limit in District Court. Moreover, that limit of 40 seems to be causing no hardships or unnecessary motion practice in the Ohio courts. Limitations set by other federal courts range from 20 to 50, with a limit of 30 reportedly being most common. Recognizing the Local Rules Project is not an advocate of numerical limits despite the fact that since 1980 the number of Districts using such limits jumped from seven to fifty-four, a limit of 40 for this District is proposed as somewhat more liberal than the national average limit of only 30.*

Respecting the new Local Rule on the number of Requests for Admissions that Committee observed:

> *The Advisory Committee has proposed a presumptive limit of 40 interrogatories in Local Rule 33.1. A similar limit seems appropriate for Rule 36 requests. Otherwise, there is a risk parties will merely substitute one form of paper discovery for the other in order to avoid the limitation on interrogatories.*

We are aware of no decision invalidating such limits. We are unaware of any Court which has studied the subject under the Civil Justice Reform Act and concluded that such limitations are unwise. The pending amendment to Rule 26(b)(2), FRCP, would explicitly authorize such limitations if it becomes effective December 1, 1993. We think it would prove unduly confusing to practitioners in this District to abandon the existing Local Rules merely to readopt such limits after December 1.

We have considered whether, if the national limit of 25 Interrogatories is adopted, the Court should decrease its local limit of 40. We recommend that the Court retain its limits for both Interrogatories and Requests at 40, as this number appears to be working well here, and maintains consistency with the Ohio numerical limit on Interrogatories.

B. *DISCOVERY MOTIONS*

RECOMMENDATION NO. 8

> **The Court should retain Local Rules 37.1 and 37.2, requiring consultation before a discovery motion is filed, and certification of extrajudicial efforts to resolve the dispute to accompany the motion.**

Section 473(a)(5) of the Act explicitly recommends the consideration of such requirements, which are long-standing in this District. Pending amendments to Rule 37(a)(2) and (4), and (d), FRCP, will incorporate such requirements in the national rules.

Local Rules 37.1 and 37.2 provide:

RULE 37.1 CONSULTATION AMONG COUNSEL; INFORMAL DISCOVERY DISPUTE CONFERENCE

> Objections, motions, applications, and requests relating to discovery shall not be filed in this Court, under any provision in Rules 26 and 37, FRCP, unless counsel have first exhausted among themselves all extrajudicial means for resolving the differences. After extrajudicial means for the resolution of differences about discovery have been exhausted, then in lieu of immediately filing a motion under Rules 26 and 37, FRCP, and Local Rule 37.2, any party may first seek an informal telephone conference with the judicial officer assigned to supervise discovery in the case.

RULE 37.2 DISCOVERY MOTION

> To the extent that extrajudicial means of resolution of differences have not disposed of the matter, parties seeking discovery or a protective order may then proceed with the filing of a motion for a protective order or a motion to compel discovery pursuant to Rule 26(c) or Rule 37(a), FRCP. Such motion shall be accompanied by a supporting memorandum and by an affidavit of counsel setting forth the extrajudicial means which have been attempted to resolve differences. Only those specific portions of the discovery documents reasonably necessary to a resolution of the motion shall be included as an attachment to it. Opposition to any motion filed pursuant to this Local Rule shall be filed within the time specified by the FRCP, or, if no time is specified, within the time specified by Local Rule 7.2. The time for filing a reply memorandum is likewise governed by Local Rule 7.2. In all other respects, a motion to compel discovery or for a protective order shall be treated as any other motion under these rules.

In a lengthy report to the Court dated April 3, 1992 the Local Rules Committee addressed the history of these requirements in this Court, the *Wilson v. City of Zanesville* decision, 954 F.2d 349 (6th Cir. 1992), prior Sixth Circuit precedent in *Beer Nuts, Inc. v. King Nut Co.*, 477 F.2d 326 (6th Cir. 1973), comparable Local Rules in each of the other Districts within the Circuit, § 473(a)(5) of the Civil Justice Reform Act, and practical concerns about how best to administer pretrial discovery in this District. The Ohio Supreme Court amended Ohio Civil Rule 45(C)(4), effective July 1, 1993, and the Staff Note to such amendment specifically noted that it was intended to p[illegible]

requirement of this Court's Local Rule 37.2, and comparable requirements in Ohio trial courts for consultation among counsel before bringing discovery disputes to the court's attention. Twenty-three Districts have adopted such requirements in their CJRA Reports. Shartel, "Case tracking, Disclosure Provisions lead the way in District Reform Plans," Vol. 7 *Inside Litigation*, No. 6, at 25 and 28 (June, 1993).

Absent a situation in which it is clear beyond doubt that it would be a useless gesture to require counsel to negotiate a dispute or to certify their attempts at doing so, (in which circumstances compliance with Local Rules 37.1 and 37.2 should be deemed "waived,") we recommend these Local Rules be retained and enforced.

C. *MOTIONS*

RECOMMENDATION NO. 9

Local Rule 7.1(c)(2)(B) should be retained by the Court as a means to assist in moving the motion docket, notwithstanding that it has been infrequently used in its short history. In addition, the threshold time at which the parties can consent to use this procedure to transfer a motion to a Magistrate Judge should be reduced from 180 days to 120 days after the motion is at issue.

Local Rule 7.1 provides:

RULE 7.1 PROCEDURE FOR DECIDING MOTIONS

(c) Case Management Procedures.

(2) *Measures to Accelerate Decision.* If a motion has been fully at issue for 180 days or more, and the Court has been unable to reach it for decision, parties may elect to proceed as follows:

(B) In the alternative, all parties may consent in writing to submit a pending motion for decision by a Magistrate Judge. If the parties do so, they will be deemed to have waived all rights of review by or appeal to the District Judge from the decision of the Magistrate Judge, which shall be treated as the decision of the Court on the motion. The Magistrate Judge will assure that a ruling is forthcoming at the earliest time possible and in no event longer than sixty (60)

> days after such consent, or the date the motion is submitted for decision if supplemental briefing or oral argument is necessary. The denial of a case-dispositive motion or other action which leaves other matters in issue will return the case to the docket of the District Judge to whom the case was assigned. If a Magistrate Judge grants a case-dispositive motion and entry of judgment is appropriate under Rule 54, the Clerk will enter judgment.

We recommend that the Court retain the current Local Rule unchanged. This new provision was recommended in 1991. That recommendation was made in light of general concerns being discussed in the legal profession about expense and delay, as reflected in adoption of the Civil Justice Reform Act of 1990, and more specifically was based upon widespread concern of lawyers in this District that, on occasion, decisions on pending Motions took too long.

Even the most diligent District Judge will, from time to time, get backed up by the criminal docket or other pressing obligations. Thus, in particular cases it seems worthwhile to afford parties additional options to keep a case moving. The "Comment" by this Court's Local Rules Committee explained why it proposed this Rule:

> *Subsection (2) suggests two possible ways to minimize the cost and delay of federal civil motion practice. These are the goals of the Civil Justice Reform Act of 1990. Recognizing the priority which the criminal docket must receive, and that other factors may result in motions pending longer than desirable, these alternatives suggest themselves when decisions on motions are genuinely needed in a more urgent manner than otherwise would be possible.*

Local Rule 7.1(c)(2)(B) affords an option, which does not detract from those otherwise available. No one is required to use it. It is reserved for only those extreme situations in which the District Judge is unable to reach and decide a Motion within six months. In such cases parties may well see fit to get a case moving using one of the Court's well-respected Magistrate Judges. Affording the opportunity to get the Motion transferred to an alternative judicial officer who the Local Rule contemplates will move expeditiously should benefit everyone, but if any party does not agree to it this will not occur.

If the procedure is used it makes little sense to direct any "appeal" or "reconsideration" to the backlogged District Judge who was unable to reach the matter in the first place. While the losing party might prefer that, sound case management is hardly served by dropping the Motion back in the docket of the backlogged Judge once the Magistrate Judge has made a ruling. On the other hand, if the case is not disposed of by the Motion ruling(s), then the parties

should be able to go back to the Judge whom they preferred hear the case, even if waiting for a trial or future motion rulings means some delay. There may, in other words, be situations in which the parties are satisfied to receive legal rulings on Motions by Magistrate Judges, in lieu of extended delays caused by the docket of the District Judge, but still do not elect to give full consent for trial to the Magistrate Judge.

In 28 U.S.C. § 636(c)(1) parties may give consent for the Magistrate Judge to "conduct any or all proceedings in a jury or nonjury civil matter. . . ." (Emphasis added). Parties have broad rights to consent to the exercise of various types of authority by Magistrate Judges. *Peretz v. U.S.*, 111 S. Ct. 2661, 115 L. Ed. 2d 808 (1991). We believe this Local Rule is lawful and appropriate.

D. *CLASS CERTIFICATION MOTIONS*

RECOMMENDATION NO. 10

Local Rule 23.3, requiring a party move for class certification within 120 days after filing a pleading asserting the existence of a class, simplifies the processing of such cases and should be retained.

Local Rule 23.3 provides:

RULE 23.3 MOTION FOR DETERMINATION AS CLASS ACTION

> Unless the Court otherwise orders, the party asserting a class action shall, within one hundred twenty (120) days after the filing of a pleading asserting the existence of a class, move for a determination under Rule 23(c)(1), FRCP, as to whether the action is maintainable as a class action and, if so, the membership of the class. If no such motion is filed, the Court may enter an order that the action is not maintainable as a class action. Nothing in this rule shall preclude a motion by any party at any time to strike the class action allegations or to dismiss the complaint.

We recommend this Local Rule remain unchanged. This Local Rules Advisory Committee first examined this issue in 1990, in response to the concern raised by the Local Rules Project. In part, it responded to the Court:

> *In the opinion of the Committee, S.D. Ohio R. 3.6.3 [now 23.3] is not inconsistent with Fed. R. Civ. P. 23. It expressly allows a judge to modify the procedure in its opening words, "unless the court otherwise orders." This is an adequate provision for active judicial management when it is appropriate. On the other hand, when the case has not been initially identified by the judge as one requiring management, or even any Rule 23(c)(1) process, the obligation on the party asserting class status to bring the matter to the court's attention will necessarily prompt judicial attention to the necessity of making a 23(c)(1) determination. In other words, the mere presence of a duty on the court in Rule 23(c)(1) to make a class determination does not automatically trigger court attention to class allegations in a particular case. This local rule appears designed to do that.*
>
> *A time limit of some sort is believed to help weed out spurious "class action" cases, gives some guidance to the bar on when that issue needs to be addressed, and may afford more due process to defendants who are, at least theoretically, targets of "class" cases until the Court rules against class certification. The existing Local Rule allows the 120-day time to be extended, so a longer period is not needed.*

We have reexamined the issue this year. In doing so, we focused particular attention upon the meaning of the *Senter v. General Motors Corp.* decision, which is the leading Civil Rule 23 decision in this Circuit. 532 F.2d 511 (6th Cir.), *cert. denied* 429 U.S. 870 (1976). Like many others, *Senter* recognized that a District Court has an independent obligation under Civil Rule 23 (c)(1). Regardless of what the parties later do, the District Court must address class allegations included in a Complaint. *See, e.g., Bieneman v. City of Chicago,* 838 F.2d 962, 963 (7th Cir. 1988).

However, as the *Senter* decision and others also recognize, "[a] plaintiff must show that the action satisfies the requirements of Rule 23." 532 F.2d at 520; *Mayo v. Sears, Roebuck & Co.*, 148 F.R.D. 576, 579 (S.D. Ohio 1993) (Rice, J.). Given that affirmative obligation of the party seeking class action status, a number of cases have denied class status where comparable Local Rules or Orders setting deadlines for certification motions in particular cases were disregarded. *E.G., Weiss v. Int'l Broth. of Elec. Workers,* 729 F.Supp. 144, 148 (D.D.C. 1990) (Local Rule); Wright, Miller & Kane, *Federal Practice and Procedure*: Civil 2d § 1785, at 92-94 (1986). While the law is not entirely settled,

the better practice seems to us to be to set a reasonable deadline and enforce it except where it is demonstrably impractical. Local Rule 23.3 does that, while allowing for exceptions where "the Court otherwise orders." In our view it is prudent for the Court to deny certification if purported class counsel neither acts in the window of 120 days allowed as a matter of course nor seeks a different time period from the Court because of the exigencies in a specific case.

VII. UTILIZATION OF MAGISTRATE JUDGES

Six full-time United States Magistrate Judges sit in this District, with three assigned to Columbus, two to Cincinnati, and one to Dayton. Two of the six have previous experience as judges in the state courts. All are regarded as conscientious, intelligent, and hard-working. One experienced, though obviously modest District judge reported to our Advisory Group that the quality of the Magistrate Judges might be the greatest single strength of the District. Yet we believe they are, generally speaking, underutilized in hearing "consent" civil trials, particularly in the Columbus location of the Court.

In view of the amendment to 28 U.S.C. section 636(c)(2), we believe that the District Judges have the opportunity to "sell" the Magistrate Judges somewhat more than was appropriate previously. Responses to Question No. 4 indicate that some District Judges are now doing so. (See Appendix, pg. 4-5.) Recognizing, at the same time, that this Court does not intend to get into a situation in which there is any perception that it is "pushing off the caseload," much less violating the protection in the statute that "parties ... are free to withhold consent without adverse substantive consequences," we suggest that it appears desirable to have an institutional program which informs parties and trial counsel about the opportunity to consent, of the nature of the experience of the six Magistrate Judges available in this Court, and of the potential benefits for civil litigants. Such benefits directly implicate the reduction of cost and delay in civil cases, since they relieve demands on the District Judges to the extent that a portion of their civil docket is heard by a Magistrate Judge, and speed trials for litigants in the specific cases heard by Magistrate Judges. Predictably litigants on the docket of a Magistrate Judge can be somewhat more certain that the trial date selected will hold firm, because there is relatively little pressure from the criminal calendar or other exigencies as occur on the dockets of District Judges. There is often also a greater opportunity for pretrial involvement by a Magistrate Judge, such as in managing discovery more closely in complex cases.

The benefits of the Magistrate Judge system generally, and the strength of the incumbents in this District in particular may not yet be well understood within the Court's bar. Those matters are wholly foreign to most litigants. Therefore we suggest that more is needed than the continued efforts at conveying information in use by the District Judges. A printed brochure setting forth a basic explanation of the use of Magistrate Judges, and biographical information on the six Judges available in this District, together perhaps with citations to selected published opinions and a description of noteworthy unpublished judicial work, would seem an inexpensive and professionally appropriate way to convey such information. Attorneys obtaining such a booklet could simply pass copies along to clients for both their education and their consideration in regard to "consent," streamlining the present communication process which seems normally to begin with something along the lines of "Are they a 'real' Judge?" This is one tangible contribution which can be made by the Court, litigants, and litigants' attorneys, consistent with Section 472(c)(3) of the Act.

We have considered the "contingent" or "backup consent" to trial to a Magistrate Judge system in use in Dayton for several years. This system leaves the civil case on the docket of a District Judge through the progress of the case up until trial; if at trial the District Judge is unavailable, the contingency is fulfilled and the case transferred to the Magistrate Judge for trial and entry of judgment. While at first glance that seemed to promise greater utilization of the Magistrate Judges, concerns have emerged about whether this system postpones the "consent" decision and in that way detracts from the percentage of cases which might be given total consent to transfer at an early date. These concerns are reflected in judicial responses to Question 17, Appendix at page 21. There appears no way to determine this from available data. We therefore do not recommend that this District use the system at every location of the Court. However, as District Judges discuss with litigants the possibility of consent to transfer, this is certainly an alternative to full consent which might also be explored with those who have not felt it advisable to give complete consent at the outset of the case.

Although in prior years the chambers and courtroom facilities available to Magistrate Judges were marginal if not inadequate, there has been progress by the General Services Administration in providing modern facilities. There has also been cooperation in sharing courtrooms by the District Judges. These are obviously essential to fully and effectively use Magistrate Judges.

RECOMMENDATION NO. 11

Because they can readily enhance the credibility of the Magistrate Judges, the District Judges should continue to communicate with litigants and the bar about the benefits of the "consent" system for civil trials to Magistrate Judges generally, and about the strength of the Magistrate Judges in this District.

RECOMMENDATION NO. 12

The Court should, as resources permit, publish a pamphlet setting forth the nature of the Magistrate Judge "consent" system in a manner easily understood by both lawyers and litigants, and setting forth professional and biographical information about each of the incumbent Magistrate Judges of this Court.

VIII. "VOLUNTARY" DISCOVERY/AMENDED RULE 26

A. *RULE 26(a)(1)*

Section 473(a)(4) of the Act suggests consideration of "cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices." The culture among the bar of this Court, discussed in Section I of this Report, is conducive to this approach and the judicial officers of this Court frequently suggest both "cost-effective" focused discovery, and the "voluntary" exchange of information to supplement such efforts among the bar. The Advisory Group obviously recommends that the Court continue its long-standing efforts in this regard. These efforts serve the goals of reducing the expense and delay of civil litigation.

This portion of the CJRA has resulted in various forms of "automatic disclosure" of discovery information presently being used as an experiment in 25 Districts. Carl Tobias, *Congress and the 1993 Civil Rules Proposals*, 148 F.R.D. 383, 389 (1993). Amendment of Rule 26(a)(1), of the Federal Rules of Civil Procedure is pending before the Congress. The Supreme Court, over three dissents, submitted these proposed amendments in late April, 1993. It is uncertain whether they will be blocked or changed by the Congress, although we understand some likelihood exists that may occur.

Early information which we have been able to gather about the experience of District Courts using such disclosure programs as a part of their CJRA Plan suggests they are not well understood or accepted by the trial bar, and are relatively infrequently used. Since the proposed amendment to Civil Rule 26(a)(1) would allow counsel to opt-out of mandatory disclosure, this suggests that the system might not be used as a matter of routine, at least initially. Moreover, there are a wide range of objections to the proposal among trial lawyers, not the least based upon concern that this system might spawn more "satellite" litigation.

Since proposed Rule 26(a)(1) allows a Court to "opt-out" by Local Rule,[14] we recommend that this Court's Plan and, (if Rule 26(a)(1) becomes effective, a Local Rule), remove the obligation to use the voluntary disclosure system unless the parties stipulate to do so, or unless a judicial officer directs by Order that it be used in a specific case. This will, in our view, be the most effective use of the voluntary disclosure idea. It will avoid the difficulties anticipated with the new system by many observers, including three dissenting Justices of the United States Supreme Court. It will also preserve the trial bar's ability to work together and this Court's practice of attempting to tailor discovery to the needs of specific cases.

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[14] "(1) **Initial Disclosures.** Except to the extent otherwise stipulated or directed by order or local rule, a party shall, without awaiting a discovery request, provide to other parties .... "

RECOMMENDATION NO. 13

If Rule 26(a)(1), FRCP, is amended, this Court should at least for the present time enact a Local Rule which provides that "Except as may be agreed by the parties or as Ordered by a Judge of this Court in a specific case, parties are not obligated to provide the initial disclosures prescribed by Rule 26(a)(1), FRCP, as effective December 1, 1993."

This language is suggested in the Memorandum from Judge Sam C. Pointer, Jr., Chairman of the Advisory Committee on Local Rules at n. 1 (July 26, 1993).

B. *RULE 26(f) MEETING OF THE PARTIES*

Unless excepted by Local Rule or otherwise ordered, parties would be required to meet at least 14 days before the initial scheduling or pretrial conference to discuss the case, and prepare a proposed discovery plan. Presumably this meeting can occur by telephone.

As noted in Section IV, at pages 35-36, we do not at this time recommend that the entire District adopt the practice of requiring written discovery plans being used in Dayton. Since that is one obvious purpose of an early Rule 26(f) meeting, and since parties customarily consult about the case while meeting with the judicial officer holding a pretrial conference, we believe this Court should opt-out of this requirement unless a Judge deems it useful in a specific case.

RECOMMENDATION NO. 14

If Rule 26(f), FRCP, is amended, this Court should adopt a Local Rule which provides that "Parties are encouraged, but not obligated except as Ordered by a Judge of this Court, to meet and confer and prepare a joint discovery plan as prescribed by Rule 26(f), FRCP, as effective December 1, 1993."

C. *RULE 26(d) — BEGINNING DISCOVERY*

If adopted, Rule 26(d) would be amended to delay the parties' ability to seek discovery "from any source" until the parties have met and conferred under Rule 26(f). This discovery can be authorized by local rule, however.

Consistent with the foregoing, we recommend the Court opt-out of this requirement.

RECOMMENDATION NO. 15

If Rule 26(d), FRCP, is amended, this Court should adopt a Local Rule which provides that "Unless otherwise Ordered or agreed by the parties, discovery may begin at any time notwithstanding Rule 26(d), FRCP."

IX. TRIAL ASSIGNMENTS

Section 473(a)(2)(B) of the Act requires each Advisory Group to consider, as part of an "early and ongoing control of the pretrial process", the

> "setting [of] early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that - (i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or (ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases."

We recommend that the Court adopt this trial assignment process.

There is unanimity among the Judges of this Court that no single event moves cases better than a "firm" trial date. Consistent with that view, most of the Judges of this Court already assign each civil case a specific trial date relatively early, even if it is for a trailing docket of two weeks duration. Given the Court's great progress in moving the civil trial docket and the motion docket in recent years, as reflected in the statistics reviewed in Section II of this Report, we believe that the Court is finally in a position to afford fairly predictable trial dates in virtually all civil cases. Uniformly doing so will complement other efforts in bringing the docket current and keeping it current, without imposing additional costs on litigants or added work on the Court.

Consistent with the results of the judicial questionnaire, we believe that an 18 month goal for most trials, including most "complex" civil cases, is reasonable and appropriate. More time-sensitive cases which deserve to move more quickly, and so-called routine cases can reasonably reach trial in a lesser period. The average suggested by the questionnaires as a time goal for routine cases is 14 months. These are the targets suggested in **Recommendation No. 17**.

Moving civil cases more quickly has been tried in certain so-called "Rocket Docket" jurisdictions. *See*, Paleos, *The Rocket Docket Revisited*, The Washington Lawyer, Sept./Oct. 1989, at 54. We are not persuaded that such extreme measures promote justice, or significantly lower the expense of civil litigation.

There will be exceptional cases in which an early trial assignment consistent with the suggestion in Section 473(a)(2)(B) will be unreasonable for the Court or for the parties. The

need for some cases to last beyond 18 months is explicitly recognized under the guidelines set forth in the Act. As a practical matter, cases which legitimately require a longer pretrial period can be identified through the monitoring which routinely occurs in the pretrial conference system used with the Magistrate Judges and frequently the District Judges themselves. The fact that problem cases inevitably will arise which deserve more than 18 months ought not to deter the Court from moving to a system which uniformly affords predictable civil trial dates to the maximum extent possible.

Section 472(c)(1)(C) of the Act requires this Advisory Group to attempt to identify the principal causes of cost and delay in civil litigation. Section 472(c)(3) requires this Advisory Group to ensure that its recommended actions include significant contributions by the court, the litigants, and the litigants' attorneys toward reducing cost and delay. The benefits in terms of reduction of delay to litigants from the very substantial improvement in the civil motion and trial docket recently made in this District are apparent. Continuing those gains will, in our view, best be accomplished by setting firm trial dates and holding them in most cases. We sense this will be the single best contribution which can be made to reducing further the cost and delay of cases here by the Court, litigants, and the bar.

A meaningful trial date focuses everyone, including the Judge. Firm trial dates help assure that discovery cutoff dates assigned routinely in civil cases in this District are meaningful. A firm date communicates to litigants that their rights will not be neglected, while also focusing them upon the need to use their pretrial time and money wisely and most productively. This will inevitably eliminate at least some marginal pretrial discovery and some marginal pretrial motion practice, benefiting everyone including the Court. If firm trial dates are not established relatively early in most cases and are not routinely held, civil litigants will tend to put off constructively using the ADR systems offered by the Court. Those whose financial ability gives them the opportunity will predictably multiply and string out discovery and motion practice intending to "spend" their opponent into as weak a posture as possible, if not into submission. This phenomenon is, of course, not only a problem for the individual citizen seeking justice in a personal injury or civil rights case; it also hurts businesses, large and small.

RECOMMENDATION NO. 16

The Court should adopt a practice of uniformly assigning a meaningful trial date early in the progress of each civil case.

RECOMMENDATION NO. 17

The Court should attempt to assure that the trial of most civil cases occurs within 18 months after filing, and for routine trial track cases should endeavor to reach trial within 14 months.

X. ASSESSMENT OF THE IMPACT OF NEW LEGISLATION ON THE FEDERAL COURTS

Section 472(c)(1)(D) of the Act requires each Advisory Group to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts." This subject in and of itself could justify a lengthy report, but this Group will offer abbreviated comments in the hope that they are of some value.

A. THE ROLE OF THE FEDERAL COURTS

We record our agreement with the straightforward resolution adopted by the participants in the 1993 Sixth Circuit Judicial Conference regarding the future of the federal courts as an institution:

> Resolved, that the future role of the federal courts should remain complementary to the role of the state courts in our society. They should not usurp the role of state courts. To achieve that goal, it is the consensus of the Conference that the Congress might consider such issues as the federal courts remaining an institution of limited size and jurisdiction.
>
> The ability of the federal courts to fulfill their historical limited and specialized role is dependent on the willingness of the Congress to maintain jurisdictional balance and curtail the federalization of traditional state crimes and causes of action.

B. THE SIZE OF THE JUDICIARY, AND ITS WORKLOAD

Consistent with the conclusions reached by roughly 40 delegates from this District, both judges and lawyers, at that same Conference in mid-April, 1993, we note our concerns about the suggestion that the number of federal trial judges be artificially limited. This was advanced for discussion in the Report of the Judicial Conference Committee on Court Administration and Case Management to the Judicial Conference Committee on Long Rang Planning, dated February 16, 1993, and generally called the "Parker Report." The delegation summarized its conclusions in April as follows:

> 1. After discussion, those present were only one person short of unanimous in voting that we do <u>not</u> favor the main proposal

set forth in the "Parker Report" dated February 16, 1993 to arbitrarily "cap" or limit the size of the Article III judiciary.

2. Approximately 80% present supported the general proposition that it is appropriate to curtail further enlargement/expansion of federal court jurisdiction.

3. Nearly unanimous support existed for the proposition that if federal court jurisdiction is expanded in the future, such expansion should only occur after congressional examination of "judicial impact," so that either other existing responsibilities will be curtailed, additional financial and staffing resources will be made available, or some other responsible accommodation to the new jurisdiction will be made.

When new causes of action are created in civil cases, such as ERISA, or new criminal procedures and substantive laws are adopted, such as the Sentencing Guidelines and "mandatory minimum" sentences, the Congress should acknowledge and address the fact that such actions predictably will dilute the ability of the trial courts to work on other matters. The idea that the Congress consider "judicial impact statements" has been advanced in the 1990 Report of the Federal Courts Study Committee (at pages 89-90) and we concur with that suggestion. We do not believe that more "justice" and top quality work can be squeezed out by simply assuming judges can work longer hours, or write shorter opinions, or take other painless steps in the face of significantly broadened caseloads and responsibilities

C. ADEQUATE AND PREDICTABLE FUNDING

We record our sincere regret that in 1993 the Congress allowed a shortfall to develop in funding to pay for court-appointed criminal defense lawyers, and a separate shortfall in money to pay for jurors in federal civil trials. These budgetary issues distracted judicial officers and court administrative personnel here and around the country from other duties. Inadequate funding lessens the confidence of the public in the federal courts as an institution. Civil litigants in this District had jury trial assignments placed in doubt or delayed by the shortfall in juror funding, adding to the cost of using the federal system.

D. THE IMPACT OF LEGISLATION RELATED TO THE CRIMINAL CASELOAD

Any description of the impact of legislation on the Southern District of Ohio's civil docket must reference the Speedy Trial Act passed by the Congress in 1975.[15] The Act, which was passed to assure that criminal defendants were tried promptly, requires that a criminal trial be held within 100 to 130 days of the filing of an indictment. Although, under special circumstances, the District Judge before whom a criminal case is pending may grant a continuance beyond the time limits provided by the statute, such circumstances are quite limited. Indeed, the Act explicitly provides that no continuances can be granted "because of general congestion of the court's calendar. . . ." [16]

The impact of the Speedy Trial Act on a Court's ability to manage its civil docket has been dramatic because it grants all criminal cases an automatic priority over most pending civil cases. As a consequence, when the period within which a criminal trial must be held is close to expiration, the trial must be held or the case dismissed. If there is a civil case on the same docket for which a trial has been scheduled, it must be postponed, no matter how long it has been pending. Failure to hold the criminal trial within statutorily mandated time periods requires dismissal of criminal charges.[17] The impact of the Speedy Trial Act has been reinforced by several other legislative and policy initiatives from Washington. These include the Omnibus Drug Initiative Act of 1988, the Violent Crime Initiative of 1989, the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and the Crime Control Act of 1990.

Between 1985 and 1993, the total number of Assistant United States Attorneys in the Southern District of Ohio was increased from 23 to 37. Six new attorneys were assigned to drug related crimes, two were assigned to enforcement of laws regulating financial institution fraud, and two to violent crime, weapons violations and white collar crime. Two additional prosecutors were added in Cincinnati, one was added in Dayton, and six were added in Columbus. During this same period, the only judicial manpower added was one additional District Judge, and one Judge appointed when Judge Kinneary took Senior status.

An additional burden on the District was the radical increase in time devoted to sentencing. This burden was caused by the passage of the Sentencing Reform Act of 1984 which requires the federal courts to follow strict sentencing guidelines designed to eliminate sentencing disparities. Because the Sentencing Reform Act was so comprehensive in nature, its impact on the administration of justice was perhaps difficult to predict at the time it was passed. However, since its passage the impact has become clear.

Prior to the Act, the typical sentencing proceeding required the judge to consider information learned from the trial, the probation department's pre-sentencing investigation report, the in-court statements of counsel and an in-court statement by the defendant. Based on the information gained from these sources, and other appropriate sources upon which the

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[15] 18 U.S.C. §§3161 through 3174.
[16] Sec. 3161(h)(8)(C).
[17] 18 U.S.C. §3162.

judge might rely, a sentencing decision was made. The Sentencing Reform Act changed the sentencing process significantly. Following conviction, the Probation Department performs a pre-sentence investigation to assist the court. The report generated by that investigation often includes detailed findings of fact concerning the nature of the offense, defendant's conduct, and the defendant's background and criminal history. Points are assigned to each finding based on the provisions of the Sentencing Guidelines. Based upon the total number of points, the report specifies the particular sentencing range required by the Guidelines. If the parties and the judicial officer accept the findings and the tabulation of points in the sentencing report, the judge must impose a sentence within the applicable sentencing range specified by the Guidelines. If either the judge, the Government, or the defense disagrees with any of the findings in the sentencing report, or if there is a dispute over the interpretation of the Sentencing Guidelines, a judge must resolve the disagreement and recalculate the point total. Resolution of frequent disagreements requires the allocation of substantial additional judicial time for sentencing proceedings in order that witnesses can be called or additional legal argument can be made.[18]

Besides adding to the length of criminal proceedings, the Sentencing Reform Act and accompanying Sentencing Guidelines appear to be contributing to an expansion of the number of criminal cases on the trial calendar. There is a widespread perception among members of the federal bar that because the Sentencing Guidelines are mandatory, the United States Attorney has little in the way of sentence reduction to offer in return for a plea of guilty. Therefore, it is reasoned, fewer cases can be resolved by plea bargaining. Statistics showing the substantial jump in the median time criminal cases are pending, *supra* footnote 6, support this conclusion.

In addition, it is the perception of many lawyers, including members of the criminal defense bar, that recent legislation has resulted in longer sentences for many offenses than was previously true. This leads defendants to conclude that, guilty or not, they have little or nothing to lose by demanding a jury trial. The increased bias towards trial in criminal cases obviously is reinforced by many defendants' customary belief that there is always a chance a jury finding of not guilty can be returned in any case, no matter how strong the Government evidence may appear.

The new sentencing phase created by the Sentencing Reform Act has required defense attorneys to develop new strategies. These too drag on the docket. Thus, in some instances, defense attorneys design their trial strategy with an eye to the trial's impact on sentencing proceedings, and advise their clients to go to trial to make a record that will be used in the sentencing phase of the case. The incentive is created by the fact that the recommendations contained in the Pre-Sentencing Investigation Report usually dominate the sentencing process. Making a record at trial is one clear way to try to assure that the probation officer compiling the sentencing report is confined to the facts introduced at trial. In the eyes of many defense

[18]Typical sentencing proceedings under the Sentencing Reform Act might take from 45 minutes to several hours of in-court time. In extreme cases, sentencing hearings can last several days or longer. Pre-Reform Act sentencing generally took between 15 minutes to one-half hour of in-court time.

lawyers, one of the surest ways to avoid an unduly damaging or mistaken sentencing report is to put helpful facts into the trial record.

One Columbus attorney recounted an anecdote illustrating the unanticipated complexities and burdens generated by the Sentencing Guidelines. According to the anecdote, a defense attorney who represented a minor participant in a conspiracy case reached the conclusion that the minor role of his client might not be apparent to the Probation Department. Rather than advise his client to plead guilty, he participated in the jury trial of the principal conspiracy defendants in order to more effectively establish his client's minor role. While he recognized a great likelihood that the jury would convict his client, he wanted to assure that the minor nature of his client's participation was in the trial record, so that it could not subsequently be refuted by the Probation Department.

In conclusion, we urge the Congress to reassess the benefits and the impacts of the Sentencing Reform Act, and other mandatory sentencing requirements to ascertain whether there is a way to minimize their burdensome effect on the civil justice system.

There is another concern in this area. It appears that a growing percentage of informed observers are reaching the conclusion that limitations on judicial discretion in sentencing are not only generating unacceptable costs in terms of court administration, on both the criminal and civil sides of the docket, but that limitations on traditional judicial discretion may produce unjust results in individual criminal cases.[19] That any such perceptions exist or that, in some cases, federal judges are forced by the Guidelines to impose sentences which seem to them inappropriately severe, warrants further attention by the Congress.

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[19]For instance, the Chief Judge of the United States Court of Appeals for the Sixth Circuit recently described changes in the process as follows:

> The straightjacket of "sentencing reform" becomes ever more tightly bound and inflexible as each month goes by. In the name of "sentencing reform" the sentences go up and up and the sentencing judge becomes more of an automaton controlled by the prosecutor.
>
> *United States v. Morgan,* 986 F.2d 151, 154 (6th Cir. 1993) (Merritt, C.J., dissenting).

XI. MISCELLANEOUS RECOMMENDATIONS

RECOMMENDATION NO. 18

The Court should, subject to the limits of available funding, conduct at least every two years a small in-house working group meeting focused upon case administration and court management topics of relevance to this District.

We recommend this Court hold its own internal working seminars. Modeled after reviews done by "efficiency experts" in private industry, and perhaps including permanent law clerks, a few attorneys, and key court personnel, we envision such meetings would be in relatively small groups, perhaps at Ohio state park lodges or comparable convenient, relatively low cost facilities. Such working meetings would supplement the Sixth Circuit Judicial Conferences, quarterly judges meetings, and other existing communications and training for the judicial officers. This format may provide the judicial officers of the Court additional insights, enabling them to continue to modernize and improve the operation of this Court.

While the "Tell It to the Judge" seminars held a few years ago were valuable, we do not recommend this as a model. The large number of participants in those seminars restricted the exchange of candid and focused information. Moreover, no outside "experts" in judicial administration spoke to specific and practical topics focused on this Court. Instead, we contemplate a practical learning opportunity for judicial officers and other court personnel, with relatively little input from members of the bar. We do suggest a few lawyers be permitted to attend to help keep any outside experts from going overboard.

CIVIL JUSTICE REFORM ACT INDEX

1993
CJRA QUESTIONNAIRE FOR UNITED STATES DISTRICT JUDGES
AND MAGISTRATE JUDGES
S.D. OHIO

CIVIL CASE MANAGEMENT

QUESTION 1

a.) Do you perceive any particular burden on the Court in **monitoring service of process**? b.) Do you perceive any burden on the Court or on litigants regarding extensions of time to respond to complaints or motions? c.) What procedures have you found most effective in enforcing service of process and other time limits?

Judge	
1.	a.) No. b.) No. c.) Show cause orders.
2.	a.) No. b.) No. c.) Show cause orders.
3.	a.) No. b.) No. c.) Show cause orders within 120 days of filing.
4.	a.) Clerical. Monitor service for Rule 4(j) compliance/dismissal. Attorneys frequently fail to file acknowledgment of service form. b.) No. c.) Clerical monitoring; order to show cause within 120 days; discuss service at PPT.
5.	a.) No. b.) No. Any burden is outweighed by the necessity of extensions in most cases. c.) The Magistrate Judges monitor service of process and enforce time limits.
6.	a.-b.) No, but pending amendments to Rule 4 will make calculation time more difficult. c.) Clerk produces a tickler on cases approaching 120 day limit. When limit is reached, clerk produces show cause order for Judge's signature.
7.	a.) Yes, in forma pauperis. U.S. as plaintiff cases are not always promptly served by marshal's service. b.) No. c.) Orders to show cause under FRCP 4(j), S.D. Ohio L.R. 55, etc.
8.	Magistrate Judge follow up.
9.	a.) No, Clerk's office monitors and I'm unaware that it takes an undue amount of time. b.) No, with regard to extensions of time to respond to complaints. Yes, with regard to extensions for responding to motions. c.) Not as strict as possible in enforcing time limits. Arbitrary enforcement of time limits can be the antithesis of justice.
10.	a.) No. b.) Not usually. c.) Careful monitoring of civil docket by law clerks and courtroom deputies.
11.	a.) Service of process should be the responsibility of the party requesting service. b.) Every extension of time is a burden on someone. Extensions are necessary on some occasions, but not as a matter of course. c.) Discussion at preliminary pre-trial conferences, show cause orders.
12.	a.) No. b.) No. Isn't this the obligation of counsel? c.) I allow the parties to give each other 20 days. I rarely grant any additional time.
13.	a.) No. b.) No. c.) Show cause orders.
14.	No answer

QUESTION 2

Using your own definitions for "standard" and "complex," how many months do you regard, on average, as a **reasonable time from filing to trial** in:

a. "Standard" civil cases
b. "Complex" civil cases

Judge	
1.	a.) 18 months. b.) 24 months.
2.	a.) 1 year. b.) 2-3 years.
3.	a.) 12-16 months. b.) 24-30 months.
4.	a.) 14-18 months. b.) 18-24 months.
5.	Too difficult to pigeonhole cases into categories and assign time limits. Every case is unique and should have its own timetable.
6.	a.) 12 months. b.) 24 months.
7.	a.) 14-18 months. b.) 18-28 months.
8.	a.) 12-18 months. b) 18-24 months.
9.	a.) 9-15 months. b.) 9-15 months.
10.	a.) 18 months. b.) Probably 2 - 2 1/2 years.
11.	a.) 18 months. b.) 36 months.
12.	a.) 12 months. b.) 12-24 months.
13.	a.) 12-18 months. b.) 18-24 months.
14.	a.) 12-14 months. b.) 18-24 months.

QUESTION 3

Raw average of 14 responses for reasonable time from filing to trial in:

a.) "Standard" civil cases—14.5 months. b.) "Complex" civil cases—22.3 months.

QUESTION 4

a.) What is your general practice in advising lawyers and parties of the **right to consent to proceed to judgment before a United States Magistrate Judge** in lieu of an Article III Judge? b.) Since the 1990 amendment of 28 U.S.C. §636(c)(2) ["Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate . . . ."], do you more frequently or more strongly encourage consent? If so, in what types of cases and by what means? Some CJRA Plans in other Districts are recommending that their Courts more aggressively "sell" counsel and litigants on the quality of their Magistrate Judges and the legitimacy of this method of moving civil cases. c.) Do you believe this Court should consider doing the same?

Judge	
1.	a.) Notice of right in notice of PPT conference; magistrate mentions at PPT conference. b.) Yes, in prisoner civil rights cases. c.) Should make counsel and parties aware of option, but do not aggressively sell.
2.	a.) N/A. b.) N/A. c.) Yes.
3.	a.) Advised in writing upon filing and during PPT conference. Orally advise at pretrial status or settlement conference. b.) Don't encourage consent, but mention more frequently in straightforward jury cases that are ready to try before the District Judge can reach them. c.) Beneficial to have option mentioned.
4.	a.) Notice in notice of PPT conference. Orally advise in many cases. b.) Yes, when counsel indicate concern to resolve/try case expeditiously. c.) Yes. District Judges already express great confidence in Magistrate Judges. Need to continue to "get the word out."
5.	a.) Magistrates inform parties at early pretrial conferences. If I believe parties should consider a Magistrate Judge, I raise subject at FPT conference. b.) Probably more frequently. Don't single out a type of case, but usually it is a jury case in which I can point out that litigants will receive same jury they would before a District Judge. I raise consent disposition most often because of impending conflicts with scheduled criminal trials. c.) Litigants shouldn't be "sold" on consenting to trial before a Magistrate, although our Magistrates are of the highest quality. They have right to trial before Art. III Judge and should never be pressured to use a Magistrate.
6.	a.) Statutory reminder in initial filing package. Parties are advised at all pretrials and are asked for time limited response in initial PT order; letter is sent to parties in referred cases. b.) Only change is that the letter to parties in referred cases is sent over Magistrate Judge's signature, instead of his/her courtroom deputy's signature. c.) Yes, to the extent necessary, District Judges should also be "sold" on the idea.
7.	a.) Form sent to attorneys with notice of PPT conference. Not otherwise discussed except in response to procedural questions by attorneys. b.) No change. c.) Yes.
8.	a.) Bring up option at FPT conference if case can't get to Art. III Judge during trailing docket period. c.) Yes—it is way to maximize Magistrates and provide them with diverse jobs.
9.	a.) Have long used "contingent consent" approach where in a scheduling conference convened within 30 days after the issues are joined, I solicit attorneys' willingness to try case before a Magistrate. b.) Yes, our Magistrate has a sufficiently fine reputation that I do not feel constrained to limit my suggestion of consent to particular types of cases. c.) I do not know what course other judges might take; however, I believe that I am suitably aggressive in this regard.

QUESTION 4 (Continued)	
10.	a.-b.) I have no standard practice. I do not encourage consent strongly or frequently. c.) I need to give this more thought. Given the high quality of our Magistrate Judges, it might be a good idea.
11.	a.-c.) Discussed at PPT conference. It is an ADR device that is ready at hand, costs nothing additional and permits lawyers to be lawyers. It should be used more often by the parties. It must be by consent of the parties, freely given. Only a party who wishes to delay gains any advantage by refusing to consent. Sometimes, however, delay may be in the best interests of his/her client.
12.	a.) If a case is referred to a Magistrate, he may so advise counsel. b.) No. c.) No. I have no problem trying cases within the limits of #5 herein.
13.	a.) I do not discuss it with the lawyers. They were advised pursuant to 28 U.S.C. 636(6)(2). b.) No. c.) Yes.
14.	I routinely refer prisoner civil rights cases.

QUESTION 5

Some CJRA Plans in other Districts are studying whether their Courts might **avoid dividing case responsibility** into a pretrial phase, handled primarily by a Magistrate Judge, and a trial phase done by the Article III Judge (absent consent). Do you believe this approach would materially reduce cost and delay for litigants?

Judge	
1.	No. Magistrates are effective and helpful. It is counter-productive to require Judge to do.
2.	Yes, each Judge and Magistrate should handle his/her own cases.
3.	No, District Judges do not have time for the kind of pretrial case management that Magistrate Judges do now.
4.	Yes, but Magistrate Judges cannot handle a large volume of case-dispositive motions. There should be a 1:1 ratio of District Judges to Magistrate Judges ideally.
5.	No. Would like to keep system same way it is now.
6.	Definite problem when cases passed between two judicial officers. Giving pretrial responsibilities back to District Judges defeats utility of having Magistrate Judges. In absence of enough Art. III Judges, need Magistrates to write opinions. Regular communication between District and Magistrate Judges is essential.
7.	
8.	Can't distinguish proposal from our current practice.
9.	Cannot answer. I don't believe in automatic referral of all cases to Magistrate for pretrial purposes only. I do on a selective basis only, and my gut reaction is that it does not cause or reduce either cost or delay.
10.	Yes.
11.	Yes.
12.	I either refer the entire case to the Magistrate or, in rare instances, ask the Magistrate to monitor discovery disputes. Dividing authority will only create more cost and delay.
13.	No. This approach works well in our courts.
14.	No. I only use magistrate for discovery matters. I handle everything else myself, except for pro se litigation and social security appeals which by general order are referred to the magistrate at pretrial stage. I would not change the current use of magistrates.

QUESTION 6

a.) Do you personally hold **Rule 16 conferences**? b.) If so, are they done routinely and frequently (e.g., 75-100% of trial track cases)? c.) If not done personally, are they done by law clerks or other chambers staff under your direct supervision? d.) What is the format of your conference? (Face to face or telephone; any advance preparations required of counsel; parties attend; etc.) e.) Do you issue a standardized Order scheduling such conferences?

Judge	
1.	a.) I hold all final pretrial conferences. Magistrates hold PPT conference in cases where we both preside, except in complicated cases. b.) 100%. d.) FPT requires attendance of counsel and advance preparation of final pretrial orders. Clients are often requested to attend. e.) Yes.
2.	a.) Generally no. Use scheduling orders or conference calls. d.) N/A. e.) Yes.
3.	a.) Yes. b.) Yes. c.) N/A. d.) In person or by telephone. Parties may, but are not required, to attend. Agenda with notice is mailed so counsel can prepare. e.) Yes.
4.	a.) Yes. b.) Yes, within 120 days in most cases. d.) Face-to-face preferred. Telephone if all counsel agree. Parties may attend but are not required. Counsel should be prepared to make decisions required by General Order on pretrial. e.) Yes.
5.	a.) No. c.) Magistrates hold all pretrial conferences except FPT and some settlement conferences.
6.	a.) Yes. b.) Done in all trial track cases, but never habeas corpus or Social Security. c.) N/A. d.) Usually telephone with attorneys only, except do pro se cases face-to-face. Counsel are sent agenda. e.) Yes.
7.	a.) Yes. b.) Yes. c.) N/A. d.) Primarily face-to-face, telephone upon request of party/counsel. Parties invited, but not required to attend. e.) Yes.
8.	a.) No, except FPT conference. Either I or Courtroom Deputy hold within 30 days after joining of issues or identification of all attorneys. b.) 100%. c.) No. d.) Face-to-face; formal PT orders, jointly prepared, which must be filed one week before conference. Parties are to attend. e.) Yes.
9.	a.) Either I or Courtroom Deputy hold within 30 days after joining of issues or identification of all attorneys. b.) 100%. d.) Not as elaborate as Civil Rule contemplates though. More like scheduling conference. Usually telephone. Brief conference leading to scheduling of dates for trial, motion filing, discovery, witness ID, etc. For some cases, schedule 26(f) discovery conference 30 days after filing of Discovery Plan. e.) Yes.
10.	a.) Yes. b.) About 50% of trial track cases. c.) Although I handle them personally, a law clerk always attends. d.) Face-to-face with fairly extensive advance preparation. e.) Yes.
11.	a.) Yes. b.) Yes. c.) Done personally. d.) Face-to-face. All matters are discussed, e.g. - facts, law, motions pending, defenses. I try to determine if cause of action or defense is real or boilerplate. Settlement is also discussed. e.) Yes.
12.	a.) No. b.) N/A. c.) N/A. d.) In lieu of such a conference I put on a scheduling order setting approximate dates for cut-off of discovery, final pretrial and trial. Rule 16 conferences are a complete waste of time.
13.	a.) No.
14.	a.) Yes. b.) Yes. c.) No. d.) Face to face, unless out-of-town counsel is involved. Seldom are parties present

QUESTION 7

a.) Are any types of trial track cases exempted from Rule 16 conferences? b.) In your experience, **are Rule 16 conferences conducted by the assigned District Judge more effective than conferences held by a Magistrate Judge in moving the civil docket,** in facilitating settlement or in some other specific respect? Please explain.

Judge	
1.	a.) No. b.) Shared responsibility works well.
2.	b.) More effective if Judge who will try case holds conference.
3.	a.) No b.) District Judges can be more effective in encouraging settlement. Rate at which Judges set civil cases for trial is not affected by who holds conference.
4.	a.) No. b.) No. Many cases pretried are settled prior to case dispositive motions being filed and/or adjudicated. District Judge time more effectively devoted to trying cases and deciding case dispositive motions.
5.	a.) Prisoner civil rights cases if litigant is incarcerated. b.) FPT conferences and settlement conferences are effective in facilitating settlements when held by District Judge. In many cases, litigants reluctant to settle will do so when they meet me at FPT conference and face the immediacy of trial
6.	a.) No. b.) Rarely hold initial scheduling conferences in one Judge's cases. For another Judge, handle case up to FPT and will continue to urge parties to allow me to try case.
7.	a.) No. b.) District Judges in Eastern Division rarely do Rule 16 conferences.
8.	a.) No. b.) Yes, attorneys take matter more seriously and know trial date is imminent.
9.	a.) No. b.) Do not believe a Magistrate with no knowledge of a particular trial docket could effectively handle scheduling during this conference.
10.	a.) Yes, Social Security, prisoner civil rights, habeas corpus and forfeiture/foreclosure cases. b.) Magistrate Judges are very effective. Nevertheless, there are occasions when a particular party or attorney may be more apt to settle a case if the District Judge holds the conference.
11.	a.) Pro se, student loans, IRS summons, Social Security appeals, Habeas Corpus, Miller Act, garnishments. b.) I learn more about the case and develop a "feel" for the case if I handle conference personally. I cannot say they are more effective.
12.	a.) N/A. b.) The best way to move a docket is to set time limits immediately and adhere to those dates. In almost all instances nothing else is required.
13.	
14.	a.) No. b.) Yes, Judge can determine if this is a "real" case. Lawyers have opportunity to meet the judge, and get an understanding of the judge's expectations. It is also great training for law clerks.

QUESTION 8

a.) Do you routinely establish and enforce **cut-off dates for discovery**? b.) If so, do you believe such deadlines generally decrease cost and delay in discovery? c.) Are there any other benefits? d.) Please describe any procedures and practices regularly used (as opposed to tailored on a case by case basis) in controlling the scope and volume of discovery. e.) Do you routinely use a Rule 26(f) discovery conference? f.) If so, please describe the scope of the conference. g.) Do you believe use of Magistrate Judges in this District for resolving discovery disputes is, generally speaking, effective for the Court and litigants, or do you believe that the District Judge who will try the case should whenever possible handle such disputes?

Judge	
1.	a.) Yes. b.) Yes. c.) Yes. d.-f.) None. PPT could be considered a Rule 26(f) conference. g.) Yes, very effective. Counter productive to require District Judges to do.
2.	a.) Yes. b.) Yes. c.) Improves chances of faster settlement. d.) Quick hearings and phone conferences along with immediate rulings. e.) No. g.) Person who tries case should handle discovery disputes.
3.	a.-b.) Yes, and they would decrease cost and delay if fairly strictly enforced. c.) Benefit of accelerating time for holding settlement discussions or filing summary judgment motions. d.) None. e.) No. g.) Effective for Magistrates to deal with discovery disputes.
4.	a.) Yes. b.) Yes. Discovery deadlines firmest when there is certain trial date. d.) Scheduled sequencing of discovery at PPT conference. Ask counsel to conduct only discovery relevant to settlement status report before proceeding with remaining discovery. g.) Magistrate Judges should resolve all discovery disputes in all cases except requests for TROs.
5	a.) Magistrates set deadlines. b.) Such deadlines, while they should not be inflexible, are essential to case management and decrease cost and delay. d.) Magistrate Judges handle this generally. e.) No. g.) Magistrates effectively handle discovery matters. I hold a FPT conference.
6.	a.) Set cut off in every case. d.) Require discovery plan within one month of scheduling conference. If discovery is not done by set cut off and both parties agree, time for discovery is extended. Scheduled cut off should make counsel plan backwards. Require a discovery plan in most cases. These plans are not very detailed, so they don't effectively limit discovery. e.) No. g.) District Judges are valuable educators if they have time to become involved in discovery disputes, esp. substantive ones. Other issues should be dealt with by Magistrate Judges and appealed to District Judge.
7.	a.) Yes, deadlines also facilitate case management. They establish action dates to which the court can refer to schedule next phase of litigation. d.) Tailored to each case in the Rule 16 conference. e.) Not routinely held apart from Rule 16 conference. g.) Agree that Magistrate Judges can be effectively used for this purpose.
8.	a.) Magistrates establish cut off dates and I enforce. b.-c.) Cut off dates decrease cost and delay and provide yardsticks to measure progress. g.) District Judge should not be involved because he is often unavailable when deposition disputes arise, requiring almost immediate access to judicial officer. District Judges can't quickly provide conference or hearing time.

QUESTION 8 (Continued)	
9.	a.) Always establish discovery cut-off dates in initial scheduling order. I allow attorneys to discover, by agreement, beyond this date. This allowance has caused difficulties because attorneys delay discovery until too close to trial. b.) Don't believe rigid cut-off date will decrease delay. Don't know about effect on cost. d.) My requirement of a jointly prepared Discovery Plan to be filed within 30 days of scheduling conference, which is within 30 days after issues joined or counsel identified, is my attempt to focus attorneys on relevant factual and legal issues and aid them in tailoring discovery process. e.) Don't routinely use. f.) Use twenty to twenty-five percent of the time, depending on complexity of case and identity of attorneys. Will always convene conference if counsel requests. g.) Preferable that District Judge who will try case should, whenever possible, handle such disputes. However, if time does not permit use of a District Judge, I have full confidence in ability of Magistrates to deal with the matter.
10.	a.) Magistrate Judges establish and enforce discovery cut-off dates. I am seldom involved. d.) I have no standardized order or practice for this. e.) No. g.) The use of Magistrate Judges is very effective.
11.	a.) Yes. b.) No. c.) It prevents last minute manipulation by one party or another. d.) At PPT conference, we discuss my expectations of the party's discovery conduct, any particularized problems they anticipate and attempt to suggest a solution. e.) Not in addition to preliminary pre-trial conference. g.) Magistrate Judges have been effective. I try to handle as many discovery disputes as I can.
12.	a.-b.) Yes, such deadlines will move the docket. d.) I follow District Rule. I would like to see a stricter rule. Uncontrolled discovery only benefits the better financed litigant. e.) No. g.) No general conclusion can be reached Usually discovery disputes are minor and a law clerk can resolve them. If not, I hold a hearing with the clear understanding that the offending attorney will pay the attorney fees caused by such a hearing. If lawyers become too contentious, I ask a Magistrate to supervise.
13.	a.) Yes. b.) Yes. e.) No.
14.	a.-c.) Yes, the Court can control the movement of the docket. d.-e.) Discovery is the magistrate's responsibility (with issues appealable to the district judge). g.) I believe the current use of magistrates re: discovery is effective, with only the appeals going to the district judge.

QUESTION 9

a.) How frequently do you grant requests for oral argument? (e.g., every case requested, 50% requested, never?) b.) If granted, what is your criteria for granting **oral argument on Motions**?

Judge	
1.	a.) Almost 100%. b.) Grant unless clearly unnecessary.
2.	Usually grant since it allows court opportunity to ask questions and rule from bench.
3.	a.) Almost never, excluding in person and telephone discovery conferences. b.) When need more detail on issue than briefs provide.
4.	a.) Almost always, but do not encourage oral argument. b.) Something unclear or missing from brief. Whether parties want to be heard.
5.	a.) Not routinely granted. About 25%. b.) Unique nature of case or complexity of issues.
6.	a.) Seventy-five percent of the time when requested, but requests are rare. b.) Strength of counsel's desire for argument; complexity and novelty of issues; clarity of written presentation.
7.	Never.
8.	a.) Rarely. b.) Something unusual which is incomprehensible in briefs.
9.	a.) Rarely requested. Grant @ 90% of time when requested b.) When I have questions of facts or law I want counsel to answer without additional filings.
10.	a.) Rarely. b.) If case needs explanation not found in papers.
11.	a.) Twenty-five percent requested. b.) Whether there is a possibility that a decision could dispose of the case. Whether evidence must be received.
12.	a.) Almost never - maybe 1%. b.) 1. Criminal motions for suppression should be argued. 2. A case presenting novel legal questions.
13.	Every case requested.
14.	a.) Whenever requested. b.) If the attorneys feel it is necessary, I will listen to their arguments.

QUESTION 10

Please describe any special procedure you use for **monitoring the filing of motions and briefs** to assure timely resolution.

Judge	
1.	Review filings daily and motions list regularly.
2.	Courtroom deputy submits each motion immediately when it is ripe (@ 30 days after filing).
3.	Clerk's office motions list with filing dates; personal computer list of motions based on review of first page of every document filed Computer generates due dates.
4.	List of cases with next action date which tracks motion deadlines and motions at issue. Clerk's office motion list.
5.	Docket clerk generates monthly list of pending motions and responses. Secretary generates list of pending motions that will be reportable as "pending six months". These motions are given priority.
6.	Computerized master list of assigned cases. Filing and memo contra date are noted at same point on case. When memo contra is filed, reply memo date is noted. Motion is marked as ripe when it is filed or date passes.
7.	Courtroom deputy uses Clerk's office motion list to pull every case in which motion is pending every two to four weeks. Ripe motions are addressed.
8.	Each motion is followed so it's immediately addressed when ripe. Monthly motion docket is reviewed.
9.	Have motion filing cut-off date in Scheduling Order, which is typically met by counsel. If discovery lags, a request for extension to file motion often necessitates a continuance. I use "Biden lists" to monitor filing and briefing of motions.
10.	Senior law clerks keeps track of motions by using clerk's office motions pending list and copies of the first page of all filings.
11.	Courtroom deputy brings to my attention. Computer print-out of motions filed every month.
12.	All motions and responses must include memoranda. If there will be oral argument, counsel are advised of the setting. I use Fridays for motion hearings.
13.	As soon as a motion is ripe, our clerk refers it to us.
14.	Motions are brought to my attention by my deputy clerk when they are ripe for ruling.

QUESTION 11

Do you believe it is appropriate for our Court to more frequently ask for and use **proposed Orders drafted by attorneys**?

Judge	
1.	Yes, for routine or agreed order. No, when attorneys can inject their own nuances into text of order.
2.	OK, but attorney drafted orders may come in late. Court can rule directly from bench and have ruling reflected in minutes.
3.	No
4.	No, writing order helps me decide case.
5.	Sometimes, but I do not often request or use them.
6.	No harm. Using them depends on whether they correctly reflect the relief intended to be granted.
7.	On simple motions (e.g. extensions of time, amending pleadings, substitution of counsel, etc.)
8.	Yes. Frequently counsel have greater knowledge of certain terms to ask which may be required for requested order. Ensures matter isn't omitted and expedites court response.
9.	The time spent reviewing such orders to assure compliance with Court's thinking is not worth whatever savings of time that might result from attorney drafted orders.
10.	Yes. It can save time in many cases.
11.	No. I believe the balance presently is appropriate.
12.	No - they should never be done. I have never met the attorney who does not try to slip everything he can into such an order.
13.	It is appropriate when needed.
14.	No.

QUESTION 12

a.) Do you believe legal memoranda submitted on Motions are routinely too long? b.) If so, would you support an absolute page limit in S.D. Ohio Local Rule 7.2(a)(3)? c.) A suggested limit less than 20 pages?

Judge	
1.	a.) No. b.) No. c.) No.
2.	a.) Yes. b.) Yes.
3.	a.) No. b.) No. c.) Takes longer to consider motion for a longer brief than to read a few extra pages.
4.	a.) Yes. b.) No. c.) Yes.
5.	a.) No. b.) No. c.) No. Need for fully represented arguments and need to rule on frequent requests for longer briefs outweighs time spent contending w/ verbosity.
6.	Memoranda are often, but not routinely too long. Opposed to any absolute page limit.
7.	Not routinely, although there are some instances where this is indisputably true.
8.	a.). No. b.) No. c.) No.
9.	a.) Page limit is excellent means of forcing counsel to write directly, albeit sparingly, on the pertinent legal and factual issues. b.) However, I do not support absolute page limit.
10.	a.) Yes. They are routinely too long. b.) I would support an absolute 20 page limit. Also recommend that attorneys omit the standard for summary judgment in their motions. The Court is well aware of the standard.
11.	a.) Yes. b.) No. Good judgment rather than a restriction on length, should dictate the number of pages. The one case that resolves the issue should be discussed, not the "hundred" that might mention the issue. I routinely suggest to lawyers that my attention span on an issue may be only five pages.
12.	a.) Yes. A memorandum can be written in five pages. All it really requires is a citation of authorities upon which the attorney relies. Most memoranda are written for the client, not the Judge.
13.	a.) They are occasionally too long. b.) No.
14.	a.) A fifteen page limit would probably be satisfactory.

QUESTION 13

a.) Do lawyers use Local Rule 7.1(c)(1) or comparable means to keep you sufficiently advised of **Motions requiring expedited disposition**? b.) What is your opinion of Motion Day practice such as is commonly used in some other Districts? c.) Do you make oral rulings or short "notation" rulings on pretrial or post-trial civil motions? If so, please describe frequency, type of case, and perceived effectiveness for litigants. d.) Please describe your internal policies for handling motions which are ready for ruling--i.e., priority of ruling; policies for short opinions versus full written opinions; policies regarding published opinions.

Judge	
1.	a.) Never use Local Rule. Sometimes they notify office. b.) Don't know much, but suspect it is waste of time. c.) Yes in discovery disputes, motions in limine shortly before trial and in cases with a large number of simple issues. d.) First come, first served except cases where trial imminent. Issues determine length.
2.	a.) Haven't seen it. b.) Unnecessary unless Judge has a lot of pending motions. c.) Yes, whenever possible if issue is simple. d.) Chronological unless case is urgent. Usually decided within 30 days.
3.	a.) No, they call. b.) Don't need. Already deal with motions timely. c.) No. d.) First, motions that will delay case, then extensions or non-contested matters. Trial track motions take priority over "administrative" case motions. Opinions tailored to complexity. Only opinions adding to body of case law are published.
4.	a.) No. Prefer phone conferences to issue oral decisions followed by a brief written order. b.) Wouldn't help in ruling on most case dispositive motions. c.) I do not note by ruling on motion itself. I always issue a brief written order following an oral ruling. d.) Chronologically, unless priority deadline. Recently filed motions are best decided during phone conferences. All opinions should be short. I only publish opinions upon request.
5.	a.) Not used often. Lawyers tell law clerk or correspond with me. b.) Not a good practice. c.) Litigants are entitled to a carefully drafted order explaining Court's reasoning. No "notation" rulings. Rarely make oral rulings of this sort. Only do when expediency is necessary, as when trial is imminent. d.) Motions are generally resolved in order filed with priority given to older motions. Length of opinion depends on nature of motion and case. Published when requested or issue represents aspect of unsettled law.
6.	a.) S.D. Ohio R. 7.1(c)(1) has been rarely used here. b.) Probably increases costs. Oral argument seems useful only when it focuses on otherwise unfocused argument. c.) Oral rulings over the phone but on the record for discovery disputes arising during depositions seem very efficient. Notation orders useful when party asks for definite relief. d.) Prioritize motions as follows: 1. Motion holding up progress of a case 2. Oldest motions 3. Motions where decisions may lead to settlement Allow easily decided motions to trump priority. Don't write extensively unless novel issue. Only publish if novel point or little or no published 6th Circuit law.

QUESTION 13 (Continued)

7.	a.) Don't use Local Rule 7.1(c)(1) but will ask for conference or make phone contact. b) Not familiar with it but would be amenable to it if convinced it would serve public and bar. c.) Only for essentially unimportant matters. d.) Priority—chronological order with exceptions. Length of opinion determined by character of issues. Rarely publish.
8.	a.) No. b.) A waste of judicial resources. All show, no substance. c.) Rarely—occasionally a preliminary oral ruling will be made with a formal order to follow. d.) Begin work on motion as early as possible; be prepared to begin drafting order when last document filed. Full written opinions except when clear issue or reconsideration of prior ruling. Publish opinions that are first impression or helpful to bench and bar in future.
9.	a.) Only two filed. They both got my attention in a hurry. More common is a polite letter from counsel requesting a decision along with copies to all counsel. b.) Never had enough time to use. But would be helpful in requiring counsel to focus on motions in a timely manner. c.) Use quite often on nonsubstantive pretrial motions. Use only during post-trial for extensions of time for filing memoranda. Notation orders are helpful in affording a speedy decision for complicated motions, often use a telephone "monologue." d.) Rule on motions where trials are upcoming as early as I can. For nonunique motions, a short form of four to six pages will suffice. Anything novel requires a longer, written opinion. Submit opinions involving novel fact situations or matters of first impression for publication.
10.	a.) No. b.) Not a good idea. c.) Occasionally. Motions in limine, etc. Never on motions that are more involved. d.) Priority—generally to oldest motions, although age of case is also considered. Length—full-written opinions on case dispositive motions, non-dispositive motions ruled on by brief entries. Publications—reserved for significant decisions announcing new law.
11.	a.) Probably not. b.) I have no objection to its use, but the practice wastes lawyers' time. c.) Yes. As often as appropriate, in any type of case. I attempt to state into the record any reasons for ruling, statement of facts and conclusions of law. I invite the parties to expand the record. d.) First come, first served. Short opinions every time they can save the parties, generally on non-dispositive matters. Final orders usually require full opinions. Certain rules decisions regarding pretrial matters may be published. Certain opinions may be published when requested by the counsel involved.
12.	a.) I can usually tell if a motion really requires expedited disposition. b.) Setting motion days will encourage the filing of more motions. Most motions do not require oral argument and only interfere with a Judge using his time efficiently. c.) Yes—the vast majority of motions can be disposed with a marginal "granted" or "denied." Only a dispositive motion requires a full opinion. d.) I only publish an opinion if we had difficulty finding precedential authority. If subject is well covered, another District Court opinion is unnecessary.
13.	a.) No. b.) Good idea. We try to follow this practice. Our day is Friday. c.) Yes. Mostly in prisoner cases because of the numerous motions. Include a reason in the notation. d.) Rule on oldest motions first. Opinion is as long or as short as necessary to fully decide the motion. No policy regarding publication.
14.	a.) Yes. b.) No problem, I schedule hearings on motions and pretrial conferences the last week of each month. c) I only make such rulings when both parties agree, or if the motion is obviously unopposed. I read motion documents and draft an opinion or memo to law clerk. Law clerk rechecks and finalizes the order or argues with me if s/he disagrees. d.) Orders are published if they break new ground in the law or are likely to be helpful to future courts.

QUESTION 14

A question has recently been raised by a Staff Attorney in the 6th Circuit about the validity of **S.D. Ohio Local Rule 7.1(c)** ("Case Management Procedures"). a.) Since it was adopted in late 1991, has it ever been used to your knowledge? b.) Would you favor shortening the 180 day time period in S.D. Ohio Local Rule 7.1(c)(2)? If so, what shorter period should be considered reasonable?

Judge	
1.	a.) No. b.) Yes, only if 7.1(c)(2)(A) action is discretionary. 60-90 days.
2.	a.) Don't know. b.) 120 days. Rule should permit attorneys to have District Judge rule on motion within 180 or 120 days, not Magistrate Judge.
3.	a.) No. b.) Maybe to 120 days.
4.	a.) No. b.) Yes, 90 days after last brief is filed.
5.	a.) No. b.) No.
6.	a.) Aware of two Rule 7.2(c)(1) cases in Dayton. b.) Yes, 90 days.
7.	a.) No. b.) No.
8.	a.) No. b.) Yes, 120 days.
9.	a.) Have only received two 7.1(c) requests. A device more often used is a friendly letter to the Court inquiring as to status of a given motion. b.) No.
10.	a.) No. b.) No.
11.	a.) Yes, but after a conference with the parties to determine prejudice, if any. b.) No.
12.	a.) No. b.) 90 days.
13.	a.) No. b.) No.
14.	a.) Not to my knowledge. b.) No.

QUESTION 15

a.) Please describe your procedures regarding **final pretrial conferences** (e.g., held in every case; held roughly _____ weeks before trial; held by telephone or face-to-face). b.) Do you send out a standardized final pretrial conference package? c.) How do you customarily structure the sequence of trial issues (i.e., do you often bifurcate trials and under what conditions?). d.) Please describe your perception of your customary role in exploring settlement in such final conferences. e.) All things considered, are Final Pretrial Conferences and the customary "Final Pretrial Orders" prepared by counsel in this District of sufficient value to the Court that they justify the expense associated with them for litigants? (Or, stated another way, does the Court genuinely use them?)

Judge	
1.	a.) Every case; 30 days before trial; face-to-face; trial counsel present; agreed FPT orders. b.) Yes c.) Bifurcate when one or more of the issues would likely resolve case and save significant time. d.) Encourage settlement, provide forum for settlement negotiations, make factors clear to parties. e.) FPT conferences certainly are. Pretrial order should be simplified, but it facilitates settlement and simplifies trial.
2.	a.) Four weeks before trial; FPT order required face-to-face. b.) Yes. c.) Don't usually bifurcate; doesn't save time d.) Limited If parties have an interest in settlement, assign to another Judge for conference. e.) Yes.
3.	a.) Don't typically hold. Don't require FPT order in consent cases. Don't require FPT unless parties request.
4.	a.) Every case, four weeks before trial; face-to-face. b.) Yes. c.) No. Do not generally bifurcate. d.) Fully discuss settlement if jury trial or if I'm not trial judge. If trial goes to me, then I determine status of settlement discussions. e.) Yes, counsel should put more effort into defining issues.
5.	a.) No set period before FPT conference and trial. Period determined at FPT conference in consultation with lawyers. Held in every case personally with lawyers. Also hold conference a few days before trial. b.) Yes. c.) Don't generally favor bifurcation. Consider bifurcation in case of questionable liability but extensive damage. d.) Encourage parties to make final effort to settle dispute. Explain what is at stake. e.) Yes. FPT orders extremely helpful. They focus issues, alert court to evidentiary or procedural problems, and serve as a catalyst for meaningful settlement discussions.
6.	a.) Final pretrials one week before trial ordinarily by telephone. b.) Yes. c.) I do not often bifurcate, but the District Judge does and sometimes I get contingent consent in already bifurcated cases. d.) Ask what progress has been made on settlement and if there is any way I can be helpful e.) Most useful purpose is to control the trial. Parties who are sloppy about final pretrial orders find me adamant about modifying them once they're signed.
7.	a.) Every case to be tried; face-to-face and at FPT conference; court and counsel agree to a certain trial date (usually 30-60 days later). b.) Yes. c.) Have never bifurcated issues for trial. d.) Act as mediator, but express opinion about settlement potential. e.) Absolutely.
8.	a.) One to two weeks before trial. b.) Yes. d.) Discuss: pitfalls of trial, settlement, Magistrate option, settlement week. e.) Yes, although some counsel seem to brush it off and produce a fairly worthless document with every item reserved for later completion.

QUESTION 15 (Continued)	
9.	a.) FPT conferences normally held within one to three weeks of trial, primarily by phone. I review pretrial order seven days before FPT to make sure counsel are aware of factual and legal issues. Trial proceedings are discussed at FPT conference b) No, but have enclosed my General Order that regulates all aspects of Civil Litigation in my Court. c) Often bifurcated between liability and damages. Have sequenced trials to have jury begin to hear evidence upon damages issues only if liability is first resolved in favor of plaintiff. d.) To leave no stone unturned in exploring settlement not only during FPT conference, but during trial itself. e.) The Court genuinely uses final pretrial orders; they are of great value. The less competent the attorney, the less competently prepared will be the Final Pretrial Order, and the less value the Order will have to the Court.
10.	a.) Held in cases set for trial about one week before trial date. b.) Yes. d.) I may inquire if parties are still interested in settlement, but is not my decision to make this a settlement conference e.) Absolutely. It brings case into sharp focus and ensures adequate preparation on the part of counsel.
11.	a.) Final Pre-Trial Order is presented by the parties to the Court 30 days before trial. Conference held as needed and in whatever manner appropriate. b.) Yes. c.) Rarely bifurcate trial issues. If one issue will determine case or if one issue is independent and isolated from another, I would bifurcate. d.) I attempt to encourage settlement at every opportunity. Only parties can settle a case. Judges cannot. I do everything I can to create proper atmosphere. e.) I try case from final pre-trial order. They are important and critical to the parties. The final pre-trial order impacts both procedural and merit determinations throughout trial, post-trial matters and Rule 11 considerations, if required, after trial.
12.	a.) Four weeks before trial; face-to-face. I consider FPT conference of great importance. I can learn a great deal by attorney's language, their state of preparation, and their relations with each other. A large number of cases settle at or around the time of the final pretrial. b.) Yes. c.) I bifurcate almost all trials. It is the most efficient trial procedure I know. d.) I only discuss settlement in jury trials. Another judge or magistrate conducts settlement conference in a bench trial. Judge should encourage and assist settlement. e) Yes, they are the best "road map" that can be devised. Joint final pretrial orders bring lawyers together and frequently resolve disputes.
13.	a.) Four weeks before trial; held in chambers. b.) Yes. c.) Occasionally bifurcate into liability and damages portions of trial. d.) I always explore whether settlement has been attempted and whether additional efforts would be worthwhile. e.) Yes, the legal and factual issues are clearly understood, the witnesses are agreed upon (including experts) and the exhibits are produced. All other pretrial matters, such as pleading motions, are settled.
14.	a.) I have FPT conference in my chambers four to six weeks before trial. Trial counsel must attend in person, never by phone b.) Yes. c.) Depends on the situation. d.) My responsibility is to promote dispute resolution. I therefore explore settlement wherever possible. I do not participate in settlement discussions in cases where I will be the trier of fact. e.) Yes.

QUESTION 16

a.) Please describe your **method for scheduling civil trials** (i.e., date certain, trailing docket, etc.) Please describe any special procedures you have found to be effective in scheduling realistic civil trial dates b) How frequently do you have civil trials "bumped" at the last minute?

Judge	
1.	a.) Trailing. Cases set for trial within one year filing with six months notice of trial date. This system works. b.) Never.
2.	a.) Forty-five days after case filed scheduling order is entered with deadlines and tentative monthly date for FPT & trial. Five months before trial, set day. Avoid granting continuances; use specific dates. b.) Almost never.
3.	a.) Date certain, agreed to by counsel. Date certain agreed to by counsel. b.) Very infrequently.
4.	a.) Date certain, agreed to by counsel. Date certain, agreed to by counsel. b.) Infrequently.
5.	a.) Set FPT conference date and trial date when discovery and other pretrial matters are complete or near completion. Fully inform lawyers of my trial calendar, including criminal. Explain that any continuance would result in a protracted delay. b.) Not often. Lawyers have usually been alerted to possibility in advance.
6.	a.) At initial scheduling conference pick discovery cut-off date. Work backward to witness disclosure dates and forward to trial date. Set definite trial date. Warn parties of contingent consent process. There are not many cases set for trial on my docket. Therefore, we should strongly encourage use of consent. b.) Almost never.
7.	a.) At FPT conference counsel and court agree to a certain trial date. b.) Never.
8.	a.) Trailing docket every two weeks with five to eight cases per period. b.) 10%.
9.	a.) Assign firm trial dates during initial scheduling conference. Do not use trailing docket, but if I have two trials set on a given week, I tell second they will begin when first is completed. There is no substitute for knowing the personality of the attorneys. b.) Occasionally, but not often. The criminal docket in Dayton is not the burden it is in Cincinnati and Columbus.
10.	a.) Case is set for trial when discovery is complete, dispositive motions ruled on, settlement explored and priority of criminal docket allows. b.) Not often.
11.	a.) Date certain. With the criminal docket, there is no certain civil trial date, but we attempt to set a certain date. Unexpected occurrences may interfere with start of trial. b.) It is not unusual—50% of the time. It is usually because of a settlement.
12.	a.) Trials are tentatively scheduled within 60 days of filing. Trial Assignment Docket is published monthly, setting trials six months in advance. A 12-month policy is realistic. I allow for some attorney conflict exceptions, but I don't grant continuances. b.) Almost never.
13.	a.) We get the lawyers to agree to a date and set only that trial on that date. The above procedure, which, incidentally does not work in prisoner cases. b.) Never.
14.	a.) Schedule trial date at PPT conference and advise parties that trial will be scheduled on an "on deck basis." Four cases are scheduled for same day, and I will try the oldest. Remaining three are released Thursday prior to trial date, and are rescheduled. I hold firm the trial date. b.) Not frequently. Occasionally, the "on deck" cases will be bumped on the previous Thursday.

QUESTION 17

a.) Would you favor a District-wide system in which parties were encouraged to give "contingent" consent for trial to a Magistrate Judge early in the case, permitting a **"backup" Judge** to be available if a case cannot be heard by the District Judge on the assigned date? b.) Would you favor more active "backup" use of other District Judges when an assigned Judge cannot reach a civil case?

Judge	
1.	a.) No. Parties should have trial before District Judge if they want. b.) No, unfamiliar with cases. Judges have to help each other transfer cases well in advance of trial.
2.	a.) Only if it doesn't discourage normal consent procedure which is done early in the case. Prefer to have judges encourage early consent so they have longer to work on case. It's done in Cincinnati.
3.	a.) Yes. Doesn't know case. b.) District Judge would have to decide if wanted to be backup.
4.	a.) Yes. b.) Yes.
5.	a.) I am reluctant to pressure parties for any consent disposition, contingent or otherwise. Not as a general rule. b.) Unfair to backup judge and to parties because judge has no familiarity with case.
6.	a.) Yes. b.) No opinion.
7.	a.) Would work if not widely used in Eastern Division where Magistrate Judges would have to coordinate schedules with Southern District Judges. b.) Yes.
8.	a.) Yes. b.) Yes.
9.	a.) We use contingent consent in Dayton and it works well. I would recommend it to district as a whole. b.) There are no other District Judges in Dayton, hence the beauty of the contingent consent to the Magistrate concept.
10.	a.) I'm not sure this would be necessary. I'd like to know what the bar thinks of it. b.) No. I believe our present practice of handling such matters informally works well.
11.	a.) Yes. b.) No. This would be ideal but each District Judge has a full docket and their time is fully committed.
12.	a.) No. b.) No. I am not willing to share responsibility for cases assigned to me. I always have cases scheduled six months in advance and doubt that I could act as a "backup Judge."
13.	No
14.	a.) It seems like a good idea, but may cause confusion. b.) No.

QUESTION 18

a.) Generally speaking, what is your opinion of the effectiveness of **alternative forms of dispute resolution** presently used in this Court (settlement week, other mediation conferences, and summary jury trial being three primary forms)? b.) Have you ever used any other forms of alternative dispute resolution which you suggest this Court should routinely offer to litigants? If so, what forms?

Judge	
1.	a.) Settlement week and settlement conference effective. Haven't used summary jury trial, but would. b.) No.
2.	a.) Works well, assignment of case to Magistrate for settlement conferences works well. b.) Coin flip.
3.	a.) Settlement week and mediation conferences are effective. Summary jury trials are used sparingly, but are effective. b.) No, but would like to see arbitration before neutral experts.
4.	a.) Settlement week very effective; mediation effective but time consuming; the only summary jury case I held settled before it went to trial. b.) Binding arbitration works only when parties prefer it to trial.
5.	a.) Settlement week and mediation conferences are highly effective in resolving civil cases. Too difficult to determine effectiveness of summary jury trials. b.) No.
6.	a.) No formalized ADR mechanism here. The District Judge is an active negotiator and will intervene to commence settlement negotiations, particularly in "institutional reform" litigation. b.) No.
7.	Settlement week very effective. Summary jury trials, in my experience have always resulted in settlement, but consume several days of Judge's time.
8.	All can be effective and are regularly utilized.
9.	a.) Effectiveness of ADR depends on legal and factual issues. Traditional ADR mechanisms have a realistic chance of success and, given the state of our dockets, their use constitutes an absolute imperative. b.) Often suggest to counsel that an outside mediator be hired (at cost to parties) with specific expertise in the given subject matter.
10.	a.) Present practices are very effective, although I am sure there's room for improvement. b.) The Court should continue to educate itself about new forms. Thus far, I've used settlement week, mediation conferences, and summary jury trials.
11.	a.) Ninety percent of the cases are settled. This has been true for a number of years. b.) Consent to have case tried by Magistrate Judge is to me the most useful ADR method available and it does not increase the costs or the stress of litigation.
12.	a.) Settlement week is useful in settling cases early. Mediation is probably useful. Summary jury trials are questionable. I have never been sure that they are effective. b.) No. Bear in mind that 93-95% of all cases will settle no matter what the judge does.
13.	a.) Very effective so far. b.) No.
14.	a.) Very effective. b.) Besides using Summary Jury Trial, I sometimes bifurcate and try damages first In complex cases, damages may be speculative.

QUESTION 19

a.) Generally speaking, at present do you think **civil cases take too long** to complete in this District? b.) If so, are there certain types of cases which predictably and inappropriately take longer than others? c.) Can you offer any suggestions for improvement in such cases? d) Generally speaking, do you think it **costs too much** at present to litigate civil cases in this District? e.) If so, what can be done by the Court to decrease the costs of litigation here?

Judge	
1.	a.) No. Yes, but numerous outside factors contribute, including: lawyer rate, expert fees, uncontrolled contingent fee system, American Rule for liability for attorneys fees.
2.	a.) No. c.) Constant attention to docket and good administrative skills. d.) Getting there. e.) More discovery suspension.
3.	a.) Yes, simple cases don't go to court early enough. c.) Routine consent to Magistrates would help, so would "expedited" docket. d.-e.) Probably, but do try to keep inexpensive with push for early settlement and settlement week.
4.	a.) No. c.-e.) ENE could be effective in complex cases. Would focus counsel and clients on issues and cost effectiveness of discovery and motions.
5.	a.) Generally speaking, no. b.) Cases with strong emotional feelings and unrealistic monetary expectations take longer than others. c.) Earlier involvement of a District Judge in these cases may help. d.) Too high. e.) Reasonable limitations on discovery are most important tool to decrease costs.
6.	a.) Civil cases take too long because of pretrial motion practice and varying lawyer norms on time for case preparation. d.) Don't know. We have less satellite litigation over Rule 11 sanctions, attorney fees, etc. than some other places.
7.	a.) If the case needs a trial, it usually takes too long to get there. d.) I don't have great insight into litigation costs. e.) Decreased discovery and fewer dispositive motions would decrease costs.
8.	a.) Most cases completed in timely fashion. b.) Patent infringement cases take inordinate amounts of time in discovery. c.) Suggest stricter "drop dead" discovery cut off dates. d.) Court is not directly responsible for costs Counsel must be responsible for reasonable preparation. e.) Limiting number of depositions and number of witnesses (esp. experts) can decrease costs.
9.	a.) My goal is to try a civil case once. I would rather delay a day or two, based upon the facts and law, than to break existing speed records in the name of judicial efficiency, only to try the case once again, courtesy of the Sixth Circuit. b.) Cases with poor lawyers take too long. c.) The only preventive medicine is a rigidly enforced jointly prepared Discovery Plan and Final Pretrial Order. d.) Costs of litigation in S.D. Ohio are not out of line with other districts. e.) Court-managed discovery and court involvement, whenever necessary to resolve a discovery impasse, will reduce cost of litigation.
10.	a.) No. d.) Litigation is almost always the worst and most expensive way to resolve a dispute. e.) ADR is always better.
11.	a.) No. d.) No. e.) Only parties can reduce cost of litigation. The District Judges can shift the cost of litigation from one party to another, but they cannot reduce the costs and still perform their traditional responsibilities.

QUESTION 19 (Continued)	
12.	a.) I am unwilling to comment on the techniques of my colleagues. c.) I have set my own goal of trying all cases within a year. There will always be some that can't be tried within that time limit. I have eleven cases over one year old, six cases over two years old, and none over three years old. d.-e.) Yes—dispose of cases earlier.
13.	a.) No. b.) Prisoner cases. c.) Hire additional pro se law clerks. d.) Don't know.
14.	a.) No. d.-e.) Yes, judge could make better use of ADR techniques.

QUESTION 20

a.) Leaving aside the burden of the criminal docket, what in your opinion is the most effective tool or process to expedite civil cases? b.) What difficulties have you encountered in moving your civil case docket which our CJRA Committee can address?

Judge	
1.	a.) Set trial promptly and try when scheduled. b.) None. Current.
2.	a.) Definite trial date. b.) None.
3.	a.) Set for trial while considering time needs for discovery and settlement. Show litigants benefits of early settlement, early arbitration, bifurcated trials, prompt decisions on contested issues. Also lawyer education & prompt contact with parties.
4.	a.) Firm trial date. Publicize availability of magistrate judges to try cases. Also communicate existing techniques to expedite.
5.	a.) Firm trial date. b.) Problems of the criminal docket overshadow any other difficulties.
6.	a.) Early and firm trial dates, contingent consent. b.) Need more lawyer help. Authority of District Courts to adopt expediting procedures is narrowly construed. Interpretation of Magistrate authority is crabbed.
7.	a.) To give trial dates in civil cases.
8.	a.) Iron clad scheduling orders. Should discourage counsel from agreeing between themselves as to extension of deadlines, especially if it may affect dispositive motion or trial date.
9.	a.) A firm trial date, followed by the requirement of a jointly prepared Discovery Plan and firm discovery cut-off dates. b.) Motions which come at issue so close to trial date that Court is left in awkward position of "winging it" (which hopefully none of us would do) with a decision or continuing the trial date to allow us to more fully examine motion papers.
10.	a.) Encouraging parties to explore settlement at all stages of case; structuring discovery for this purpose; setting realistic deadlines for discovery and trying to stick to them; and promptly ruling on motions. Attorneys need to work harder to complete discovery within deadlines set by Magistrate.
11.	a.) Constant surveillance. An additional law clerk could be added to the staff. Judge time, however, is limited. Reduce number of filings to 150 per judge per year.
12.	a.) There is a principle that has guided judges since antiquity. "The best way to settle a case is to set it for trial." b.) None.
13.	a.) Calendar orders that are enforced. Nothing other than the pro se law clerk suggestion.
14.	a.) Hold firm on trial date. b.) Check with attorneys.

QUESTION 21

What other **recommendations** or suggestions do you have for **addressing the cost or delay of civil cases** in our District?

Judge	
1.	Eliminate civil RICO; retain current Rule 11; eliminate garden-variety insurance company disputes from ERISA.
2.	Don't fix problems unless they exist. Identify problem before working on solution.
3.	Standardized, available options such as ENE arbitration at beginning of case. Earlier and more trial dates.
4.	
5.	None
6.	Staff attorney at Circuit level should prepare judicial impact analysis of proposed decisions.
7.	
8.	
9.	I would be delighted to discuss any additional ideas with a panel member.
10.	We need to continue to focus on settlement/ADR whenever possible, and educate ourselves and the federal bar along these lines.
11.	Reduce number of filings. Create an administrative court for prisoner cases.
12.	None.
13.	Nothing obvious comes to mind.
14.	Check with attorneys.