United States District Court
Northern District of Illinois

C.J.R.A.
DELAY & EXPENSE REDUCTION PLAN

This Plan was adopted by the full Court met in Executive Session on Monday, 15 November 1993.

United States District Court
Northern District of Illinois

C.J.R.A. DELAY & EXPENSE REDUCTION PLAN

I. INTRODUCTION

The Civil Justice Reform Act of 1990 (CJRA)[1] requires the appointment of an Advisory Group to report on certain aspects of the Court and make recommendations aimed at reducing delay and expenses in civil proceedings. 28 U.S.C. § 471 requires the Court to implement a civil justice delay and expense reduction plan. 28 U.S.C. § 472 requires the Advisory Group to make a report to the Court. Based on an assessment of the dockets of the Court and taking into account the particular needs and circumstances of the Court, the litigants, and litigants' counsel, the Advisory Group is to include in its report any recommended measures, rules, and programs. 28 U.S.C. § 473 requires the Court, in consultation with the Advisory Group, to consider certain principles and guidelines of litigation management and cost and delay reduction techniques in developing its delay and expense reduction plan.

The Advisory Group for this District was appointed by Chief Judge Moran on 27 March 1991. The Group distributed a preliminary version of its Final Report for comment in mid-February 1993. A public hearing on that version of the Final Report was held on 21 April 1993. In mid-August 1993, distribution of the Final Report of the Advisory Group began.

The Court is appreciative of the excellent work performed by the Advisory Group. The Group's Final Report provided the foundation for this *Delay and Expense Reduction Plan* (*Plan*). It has also been an invaluable resource in its preparation. The *Plan* was adopted by the full Court met in Executive Session on 15 November 1993.

---

[1] Pub.L. 101-650. Also see 28 U.S.C. §§ 471, et seq.

II. CASE MANAGEMENT IN THE NORTHERN DISTRICT OF ILLINOIS

Case management is not a new topic for this Court. In many respects, the current concern over delay and expense reduction is a continuation of a movement that started in the federal courts in the 1960s. At that time the advocates of delay reduction saw the need for more active judicial control of the progress of cases from filing to disposition. The movement involved two major campaigns: to substitute the individual calendar system for the master calendar system then in use in most of the larger federal district courts and to increase judicial involvement in the management of cases.

The creation of the Federal Judicial Center in 1968 provided an organization through which these reformers could work. Many of this group were from this Court. The individual calendar system was in use here in the 1940s. Some of the earliest standing orders establishing pretrial procedures were established by judges of this Court. The standing order regarding pretrial conferences entered by the Honorable Hubert L. Will on 8 December 1961[2] and the general order regarding pretrial and trial procedure entered for the Court by the Honorable William J. Campbell, Chief Judge, on 20 December 1966 contained many features that would appear in the 1983 amendments to F.R.Civ.P. 16.

In the 1960s the procedures developed to handle the *electrical equipment antitrust cases*[3] gave rise to the Panel on Multi-District Litigation in 1968 (28 U.S.C. § 1407) and the *Manual on Complex and Multidistrict Litigation*. Chief Justice Warren established a committee of the Judicial Conference to oversee litigation such as the *electrical equipment antitrust cases*. The Honorable Edwin A. Robson, who presided over a substantial number of the cases in this Court, was appointed to that committee and served as the first chairman of its principal subcommittee. He was also appointed by Chief Justice Warren to serve as a member of the original *Panel on*

---

[2] Attributing "firsts" is always risky. In an address to new judges at the F.J.C. in June, 1975, Judge Will indicated that his original order was based on forms used by the Chief Judges of this District, New Jersey, and Texas Northern. (*Seminars for Newly Appointed United States District Judges: 1973, 1974, 1975*. West Publishing Co.)

[3] The *electrical equipment antitrust cases* included 1,912 private treble damage antitrust cases involving 25,623 separate claims. The cases were filed in 35 different districts. They were terminated in 6 years and 2 months. Chief Justice Warren suggested that this "would not be regarded as an unusual length of time for the processing of a single complex antitrust case." (*Manual for Complex and Multidistrict Litigation*, page iv. West Publishing Co. (1970))

Multidistrict Litigation.[4] Judges Robson and Will served on the Board of Editors of both the *Manual on Complex Litigation* and the *Manual on Complex Litigation 2d.*

One result of this pioneering work is that a culture developed in the District of using procedures that effect the rapid disposition of those cases amenable to early disposition. In general, cases are simply not permitted to hang around gathering dust. Although there are differences in philosophies and approaches among the judges, the general rule is that they employ procedures that regularly weed out cases that might otherwise lie dormant.

This claim is not wishful thinking. It is reflected in the median disposition times for civil cases. The median for all federal district courts has remained relatively stable over the past quarter century: either 9 or 10 months. While the median disposition time for this District was about the same as the national average thirty years ago, it started a steady decline in the mid-1960s. During the 1970s and early 1980s it dropped to 6 months. For the past decade it has been either 4 or 5 months.

On 26 June 1985 the Court adopted local General Rule 5.00. Section A of the rule provided that pursuant to F.R.Civ.P. 16 the Court would adopt a *Standing Order Establishing Pretrial Procedure* (*Standing Order*)[5] together with model pretrial order forms. The *Standing Order* and model forms were adopted at the same time as the rule. In addition, section B of the rule specifically exempted 11 classes of cases from the pretrial procedures set out in the *Standing Order*.

The Court continues to experiment with procedures that appear to hold promise for improving case management. In recent years it has introduced several innovations aimed at providing relief for those judges with large pending caseloads. To the extent that such programs succeed, they will bring relief not only to the judges but to the parties in cases assigned to those judges.

---

[4] The first Judicial Panel on Multidistrict Litigation was appointed by Chief Justice Warren in 1968 following the enactment of 28 U.S.C. § 1407.

[5] Although called a "standing order," the document is treated as a local rule. It is considered to be subject to the requirements of 28 U.S.C. § 2071, e.g., public notice is required to permit comments regarding any proposed amendment.

The following programs were formally adopted by the Court to assist judges with large calendars or unusual workloads: (a) the civil task force;[6] (b) relief for judges involved in unusually long criminal trials;[7] (c) the short civil trial calendar;[8] and (d) disposition of pending motions by a judge other than the assigned judge.[9] The Court also adopted a periodic calendar adjustment program.[10] In addition there have been, from time to time, informal programs whereby a small group of judges pooled civil cases ready for trial and joined in trying them, each trying the next available case in the pool, regardless of whether or not that judge was the assigned judge.[11]

---

[6] The civil task force was created pursuant to the general order of 26 June 1989. Two judges volunteered to review civil cases pending for three or more years on the calendars of all judges. Credit in the form of a skip in future assignments to the extent of 1 skip for each 3 cases terminated before trial and 2 skips for each termination after trial was given to judges working on the task force. The task force went through two cycles, i.e., two years.

[7] This program was initiated by the general order of 26 December 1990. Generally, the order provides that judges are given a skip on criminal assignments for each two days of trial in a criminal case past the point where the trial has lasted fifteen days.

[8] The short civil trial calendar is established by local General Rule 2.30 J. This was adopted by the general order of 4 November 1992. Section J provides for the transfer of civil cases awaiting trial where the trial length is estimated at no more than five days to a short civil trial calendar. Visiting judges and judges who have a free time slot as a result of a last minute settlement can preside over the trial.

The Advisory Group recommends that "[j]udges should make use of the 'short civil trial rule,' Local General Rule 2.30(J), to expedite cases that are ready for trial." (Final Report, page 93, Item 20.)

[9] A proposal to adopt a new local rule, General Rule 2.34, was published for comment pursuant to the general order of 1 July 1993. The proposed rule provides that where a judge other than the assigned judge rules on a motion, any motions for rehearing of the ruling are to be made before the ruling judge, not the assigned judge. The intent of the rule is to enable judges to help out those judges with an unusually large number of motions pending for six months or more. By providing that rehearings are to be before the ruling judge, the rule minimizes the likelihood that the assistance intended will be diminished by requests for rehearings.

[10] The procedures known collectively as the periodic calendar adjustment program were adopted by the Court at its meeting on 18 May 1989. Under this program each regular active judge who has been on full assignment for 60 months gets three months during which no new filings are assigned to that judge's calendar. The program is so designed that at any given time only one judge can be off the assignment system as a result of the program. Because the number of cases that would have gone to the judge who is off the assignment system is distributed randomly among the remaining judges, each judge receives the same number of cases over time whether or not the program exists.

[11] A major scheduling difficulty is that of determining whether or not a case will actually go to trial on the date for which the start of trial is set. Regardless of the skill of judges in weeding out potential settlement cases, a significant proportion of cases settles on the courthouse steps, as the saying goes. By combining groups of simpler cases from several calendars, the judges in these informal unions are able to shake out such last-minute settlement cases. Because the group usually involves three or four judges, significant numbers of trials are completed in a short period of time. Because of the close working relationships required among working judges and chambers, these programs appear to work best where they are voluntary.

28 U.S.C. § 137 provides that the business of multi-judge courts "shall be divided among the judges as provided by the rules or orders of the court." It also provides that the "[t]he chief judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as the rules and orders do not otherwise prescribe." Since the 1960s an Executive Committee chaired by the Chief Judge has been central to the operations of the Court. Principal among the duties of the Committee are those connected with its functions as the Court's calendar committee.

Since 1970 the Committee has consisted of the Chief Judge and four judges serving four year terms and, *ex officio*, the Acting Chief Judge and the Clerk of Court. While the rules prescribe many specific functions to be performed by the Committee, they cannot anticipate the range and diversity of problems either the Chief Judge or the Committee is expected to resolve. Problems that occur with some frequency often result in a suggestion for a new rule or for the modification of an existing rule once an effective resolution is found.[12]

The success of the Court in managing its calendar procedures suggests that a certain amount of caution is called for in any movement to modify the procedures used by the Court. After all, since the median disposition time in this District is already half that of the national average, there is not a little danger that any change may result in an *increase* in delay, regardless of the intended effect. The Advisory Group showed an appreciation of this. In the Executive Summary of their Final Report they stated that "this court, which is already handling much of its civil docket more quickly than most, should exercise due care in changing its rules and practices."[13]

[12] An example of this was the creation of consolidated pretrials. (Local General Rule 2.30G.) Under this rule the cases remain on the calendar of the assigned judge, but the pretrial and discovery aspects of the cases are assigned to a single judge. A separate docket is maintained for the consolidated pretrial, much in the manner of the "mother docket" in multidistrict litigation cases.

Another example was the visiting judge program put together by the Chief Judge over the past couple of years. This program helped to offset some of the pressure on the judges resulting from an unusually large number of lengthy criminal trials, judicial illnesses, and continuing vacancies in authorized judgeships.

[13] Final Report, Executive Summary, page vii.

III. CASE MANAGEMENT AND THE PLAN

A. The Six Principles & Guidelines

28 U.S.C. § 473 (a) lists six principles and guidelines that the Court, in consultation with the Advisory Group, is to consider and may include in its *Plan*. The Court opted to organize its *Plan* to follow the organization of section 473 (a).

1. Differentiated Case Management (28 U.S.C. § 473(a)(1)):

Local General Rule 5.00 sets out certain procedures covering pretrial, including the adoption of the *Standing Order* and a final pretrial order form. Section B of that rule lists a series of types of cases to which the procedures set out in *Standing Order* and the final pretrial order form do not apply, unless ordered by the assigned judge. The classes of cases exempted under local General Rule 5.00 B were those that in the Court's experience were not likely to require or benefit from the standard pretrial procedures.[14]

2. Control of Pretrial Process (28 U.S.C. § 473(a)(2)):

The current *Standing Order* requires the assigned judge to enter into the supervision of the case not later than 120 days after filing. Because of the anticipated change to F.R.Civ.P. 16(b), it is proposed that the *Standing Order* be amended to start the supervision "60 days after the appearance of a defendant and within 90 days after the complaint has been served on a defendant." This time period is 30 days less than the limits set by F.R.Civ.P. 16(b) for the entry of the scheduling order.[15]

a. Assessing & Planning Progress of Case (28 U.S.C. § 473(a)(2)(A)):

---

[14] The Advisory Group indicated that "[t]he court's current system of exempting specific classes of cases from the pretrial provisions of F.R.Civ.P. 16, of having specific procedures for prisoner litigation, and of treating other cases individually, constitutes differentiated case management within the meaning of CJRA." (Final Report, page 90, item 4.)

[15] The scheduling provisions of the *Standing Order* may also be applied to a case in the classes designated by section B of local General Rule 5.00 to be exempt from such provisions. The *Standing Order* provides that the presiding judge can implement them in such cases where appropriate.

The procedures set out in the *Standing Order* clearly intend that the judge hold ongoing status hearings in order to monitor the discovery and pretrial processes.[16]

b. Setting Early Firm Trial Dates (28 U.S.C. § 473(a)(2)(B)):

The Court agrees with the proposition that setting a firm trial date serves to expedite the case, even where it is terminated other than by trial. However, under five percent of the civil cases terminated in this Court are terminated during or after trial. Even in classes of cases where trial is generally viewed as more likely than the average, the proportion tried rarely exceeds ten percent.[17] It is not always obvious which cases will settle and which will not. Nor is it obvious which, among those that end up settling, will settle only as a result of the pressure of imminent trial. These factors, together with the uncertainties in scheduling introduced by the need to accord priority to the processing of criminal cases, obviate any simple or mechanical approach to the early setting of firm trial dates. Consequently, the Court urges each of its members to set firm trial dates as early in the proceedings as practicable.

---

[16] The Advisory Group clearly favors such active participation by the assigned judge. It recommends that "judges should strive to become involved early in the case and assist the parties in shaping the litigation through status hearings or pretrial conferences." (Final Report, pages 90-91, item 5.)

[17] With respect to this issue, the Advisory Group made the following observation:

> It is the confirmed experience of many, both on our Advisory Group and elsewhere, that a firm trial date is a key factor in resolving litigation. We endorse this concept heartily. But the ramifications of the dramatically expanded number of criminal cases Congress and the Executive Branch have imposed upon the court, compounded by the priorities of the Speedy Trial Act, make it extremely difficult for the court to set firm, much less early, trial dates in civil cases. Moreover, the time-consuming nature of the court's cases to some extent limits the speed with which they can be resolved. (Final Report, page 45.)

c. Setting Trials Within 18 Months of Filing (28 U.S.C. § 473(a)(2)(B)(i) &(ii)):

The Court, in consultation with the Advisory Group, agrees with the concept embodied in 28 U.S.C. § 473(a)(2)(B) that a trial should start within 18 months of filing. However, the Court agrees with the conclusions of the Advisory Group that the certification process suggested by subsections (i) & (ii) of section 473(a)(2)(B) is unlikely to reduce either expense or delay.[18]

d. Controlling Discovery (28 U.S.C. § 473(a)(2)(C)):

It is a proper function of the court to monitor the discovery process closely and, following discussions with the trial lawyers, to set reasonable time limits on that process. In this District, the *Standing Order* provides a framework for such monitoring and the development of a final pretrial order.

e. Motion Schedules (28 U.S.C. § 473(a)(2)(D)):

As indicated in the Advisory Group's Final Report, "the judges in this district do the litigants a great service by entertaining motions at frequent and regular 'motion calls.'"[19] A concern raised by the Advisory Group was that local General Rule 12 implied a uniformity in motion practice that did not exist. The Court proposes to amend section F of local

---

[18] If that suggestion were adopted, subsections (i) and (ii) would require the judge in those cases where a trial cannot start within 18 months of filing to certify that either "(i) the demands of the case and its complexity make such a trial 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."

The Advisory Group concluded that "[t]he Act sets a goal of eighteen months for a civil trial date, but the practicalities of our court dictate that it remain a goal, not a requirement." It also concluded that "[t]here are more constructive uses of a judge's time [than certifying reasons why a trial did not commence within 18 months of the filing of the case]." (Final Report, pages 44-45.)

[19] Final Report, page 52.

General Rule 12 to make clear that judges may have varying requirements for motions. The amendment would also provide for the clerk to maintain a current list of the practices of each of the judges.[20]

3. *Complex cases (28 U.S.C. § 473(a)(3):*

Section **2.** of the *Standing Order*[21] currently provides that the court *may* require parties to "provide a joint written discovery plan under [F.R.Civ.P.] 26 (f)." The Court proposes to amend section **2.** to specify two additional options for the court to consider: use of the *Manual on Complex Litigation 2d* and use of phased discovery.

The experience of the Court has been that, in general, rules that provide the assigned judge with the flexibility to tailor a solution specific to the case at hand are more effective than those that attempt to mandate procedures that may not be effective in specific cases. The inclusion of the references to the *Manual* and phased discovery in section **2.** will also serve to inform parties that they may seek to have the judge use one of these approaches where appropriate.[22]

a. Exploration of Settlement Possibilities (28 U.S.C. § 473(a)(3)(A)):

Section **1.** of the *Standing Order* provides that "counsel should be *fully prepared* and have authority to discuss any questions regarding the case, including...the possibility of settlement of the case." Similarly, section **4.** of the *Standing Order* provides that "[c]ounsel and the parties are

[20] The Advisory Group recommended that "[t]he court should establish uniform procedures governing motion calls and required notice of motions or, at the least, amend the local rules to state that the judges have varying requirements for motions." (Final Report, pages 91-2, item 11.)

[21] The sections of the proposed amended *Standing Order* are numbered differently from the current order. References in the *Plan* are to the current section numbers unless otherwise specified.

[22] The Advisory Group recommends the use of phased discovery. (Final Report, page 91, item 7.) Its suggestion that "litigants be required to submit a joint *written* discovery plan only if ordered to do so by the judge in a particular case" (Final Report, page 91, item 6.) is already a provision of section 2. of the standing order.

directed to conduct a thorough exploration of the prospects of settlement before undertaking the extensive labor of preparing the [Final Pretrial] Order..." The current provisions of the *Standing Order* appear sufficient to the Court.

b. Staged Resolution or Bifurcation of Issues (28 U.S.C. § 473(a)(3)(B)):

The final pretrial order form completed pursuant to the *Standing Order* has a specific provision permitting the bifurcation of issues of liability and damage at trial. Local Civil Rule 21 provides in part that "the issue of liability may be adjudicated as a pre-requisite to the determination of any and all issues." While forms of staged resolution or bifurcation other than the separation of the issues of liability from issues other than damages may well arise, separation of liability from damages is by far the most frequent form of bifurcation. The current provisions of the rules and the final pretrial order form appear sufficient to the Court. Accordingly, no changes are recommended with respect to this item.

c. Discovery Plan (28 U.S.C. § 473(a)(3)(C)(i)):

Section **2.** of the *Standing Order* provides that where "it appears that complex or protracted discovery will be sought, the court may require that the parties provide a joint written discovery plan under [F.R.Civ.P.] 26(f), which shall be as specific as possible as to dates, times and places discovery will be sought and as to the names of persons whose depositions will be taken." The current provisions of the *Standing Order* appear sufficient to the Court. Accordingly, no changes are recommended with respect to this item.

d. Phased Discovery (28 U.S.C. § 473(a)(3)(C)(ii)):[23]

The phased discovery model assumes that each case will progress through a series of phases, each being so defined that the need to continue to the next is determined by the manner in which the early phase was concluded. For example, issues of jurisdiction should be resolved early in the proceeding because failure to do so in situations where the court subsequently determines it lacks jurisdiction may result in the parties incurring substantial expenses in carrying out the discovery needed to complete the final pretrial order pursuant to the *Standing Order*.

Unfortunately, reality does not always readily fit into a simple model. There are cases in which simultaneously progressing on several fronts will be more effective in making available enough information for counsel to have a better appreciation of their clients' position in the dispute. Not using phased discovery carries with it the potential to incur costs and expenses that might have been avoided had the parties not moved ahead of the phase at which the case was concluded. However, phased discovery allows situations where the artificial boundaries of the phases can be manipulated to the advantage of one side or the other. In short, phased discovery in some circumstances can cause additional costs and expenses.

After careful consideration, the Court concludes that to the extent that phased discovery is to be of value, it is likely to be in cases of more than average complexity. It is for this reason that reference to it was included in the proposed amendment to section 2. of the *Standing Order* as one of the alternatives the judge may choose in complex cases.

In addition, the proposed amendments to section 2. of the *Standing*

[23] The Advisory Group provided the following definition of phased discovery: "The first phase should address information necessary to evaluate the case, lay the foundation for a motion to dismiss or transfer, and explore settlement. The next phase or phases should concentrate on other motions and preparations for trial." (Final Report, page 91, item 7.)

Order provide that in those instances where the judge elects to use phased discovery "the first phase will address information necessary to evaluate the case, lay the foundation for a motion to dismiss or transfer, and explore settlement." This amendment also provides that where the case is still pending at the conclusion of the first phase, "the court may then require for the second phase that the parties develop a joint written discovery plan under F.R.Civ.P. 26 (f)."

e. Timetables for Motions (28 U.S.C. § 473(a)(3)(D)):

In the more complex cases, situations sometimes arise where a timetable for filing motions may be of benefit. It is proposed that section 2. of the *Standing Order* be amended to provide that in appropriate cases the assigned judge can establish such a timetable.

f. Manual on Complex Litigation 2d:

The *Manual on Complex Litigation 2d* is a tried and effective guide for procedures to be followed in complex cases. Some of the procedures have application in cases that, while not complex overall, have specific problems that one or more of the procedures in the *Manual* may effectively resolve.[24] As mentioned on page 9, the Court proposes to amend section 2. of the *Standing Order* to indicate the potential use of the *Manual* as a guideline.

4. *Voluntary exchange; cooperative discovery devices (28 U.S.C. § 473(a)(4))*:

The Court encourages the voluntary exchange of materials and other voluntary cooperative discovery devices on the part of counsel and parties. F.R.Civ.P. 26(f) requires that parties prepare and develop a proposed discovery

---

[24] The Advisory Group recommends the use of the *Manual on Complex Litigation 2d* as a guide in complex cases. (Final Report, page 92, item 15.)

plan. Similarly, section **5.** of the *Standing Order* (section **6.** in the proposed amendments) requires that parties develop the final pretrial order. Both are examples of tasks whose completion will depend upon the cooperative efforts of counsel.

5. *Requiring attempts to agree before filing motion (28 U.S.C. § 473(a)(5))*:

Section K of local General Rule 12 provides that the court will refuse to hear any motion for discovery or production of documents under F.R.Civ.P. 26 through 37 that is not accompanied by a statement indicating "(1) that after personal consultation and sincere attempts to resolve differences [counsel] are unable to reach an accord, or (2) counsel's attempts to engage in such personal consultation were unsuccessful due to no fault of counsel's." The rule also requires that the statement provide specifics about any meeting or, if no meeting took place, why it did not. The Court's Rules Advisory Committee has recommended some minor changes to section K for purposes of clarification. If the changes are adopted, they would not affect the substance of the section.[25]

6. *Alternative dispute resolution (28 U.S.C. § 473(a)(6))*:

The Court encourages the use of alternative dispute resolution (ADR) in appropriate circumstances. To this end, members of the Court participated in a program on ADR techniques sponsored by the Federal Judicial Center.[26] The Advisory Group recommended that before adopting a formal court-wide program, the Court should await the analysis of the experience of those courts that under CJRA are experimenting with particular ADR methods.[27] The Court concurs

[25] The provisions of section K first appeared in local General Rule 12 as section (d) in the 1965 revision to the General Rules. The length of time the provision has been in the local rules is a further indication of how long this Court has been actively involved in seeking to improve its calendar management techniques.

[26] See also Section IV B of the Plan, page 22.

[27] Final Report, page 66.

with the Advisory Group's recommendation.

B. Additional Litigation Management Techniques

28 U.S.C. § 473(b) provides five specific and one general category of "litigation management and cost and delay reduction techniques" that a district court, in consultation with its advisory group "shall consider and may include" in its plan.

1. *Counsel to present joint discovery-case management plan at initial pretrial (28 U.S.C. § 473(b)(1)):*

Section **2.** of the *Standing Order* provides that the court may direct the use of the *Manual on Complex Litigation 2d*, phased discovery, or a joint written discovery plan developed by the parties under F.R.Civ.P. 26(f), where "it appears that complex or protracted discovery will be sought." The court can take such action "at any time during the preliminary pretrial conference or later status hearings." The experience of the Court suggests that requiring counsel to present a joint discovery-case management plan at the preliminary pretrial as a matter of course is unnecessary. In many instances such a provision would increase costs. In cases other than the more complex, the additional cost would not usually be offset by any savings or reduction in delay.

Such joint plans carry with them an additional potential for increasing costs and delay in those situations where counsel are unable to arrive at an effective working relationship. In such cases, the resulting side litigation and appearances before the court seeking compulsion orders contribute to delay and expense. With this in mind, the Court proposes that two sentences be added to section **2.** of the *Standing Order*. One would provide for multiple submissions in the event agreement cannot be reached by counsel. The other would provide that the court will resolve any such impasses.[28]

---

[28] The Advisory Group expressed particular concern over the difficulties sometimes encountered in attempting to prepare joint plans. It recommended that "litigants should confer on a joint discovery plan, but if they cannot

2. *Presence of attorney with authority to bind (28 U.S.C. § 473(b)(2)):*

Section 1. of the *Standing Order* requires that at the preliminary pretrial conference "counsel shall be *fully prepared* and have authority to discuss any questions regarding the case, including questions raised by their pleadings, jurisdiction, venue, pending motions, motions contemplated to be filed, the contemplated joinder of additional parties, the probable length of time needed for discovery, and the possibility of settlement." Section 6. similarly provides that counsel attending the final pretrial conference "will familiarize themselves with the pretrial rules and will come to the Conference with *full authority* to accomplish the purposes of Rule [F.R.Civ.P.] 16." An amendment proposed to that section will also require that where a party is going to attend the final pretrial conference, "the party's counsel shall use their best efforts to provide that the client can be contacted if necessary." (The proposed amendment to the section also provides that the court may excuse counsel representing a governmental entity from having authority to settle. This takes into account those situations where such authority is non-delegable or requires legislative action.)

3. *Counsel & party to sign requests for extension (28 U.S.C. § 473(b)(3)):*

28 U.S.C. § 473(b)(3) suggests that the Court, in consultation with the Advisory Group, consider adopting a requirement that motions for extensions of deadlines for completion of discovery or for postponement of trial be signed by both counsel and the party represented or by counsel alone where counsel certifies that the party is aware of the request. The Advisory Group recommended against

---

agree, each side should submit its own proposed discovery schedule at the pretrial conference or status hearing with the judge. Lawyers should cooperate in agreeing to a phased discovery schedule, to the extent possible." (Final Report, page 91, item 7.)

the adoption of this particular technique.[29] The Court concurs with that recommendation.

4. *Neutral evaluation program (28 U.S.C. § 473(b)(4))*:

The Court encourages the use of a neutral evaluation program. However, in the absence of funds and additional staff, the extent of such a program must perforce be small. In some situations the aims of such a program could be achieved by referring the case to a magistrate judge who would act as the evaluator. Accordingly, the Court concurs with the recommendation of the Advisory Group that it should await the results of the programs being evaluated by the Northern District of California and other courts and "evaluate their results when they become available" and not adopt a formal program at this time.[30]

5. *Availability of representatives with authority to bind during settlement conferences (28 U.S.C. § 473(b)(5))*:

A proposed amendment to section **4.** of the *Standing Order* explicitly authorizes the judge to "require that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conferences."[31]

C. Miscellaneous Issues

In its discussion of the content of the *Plan*, the Court considered many areas not

---

[29] The Advisory Group observed that "[a]lthough this proposed technique presupposes otherwise, we do not think that the prevailing practice among lawyers in federal court is to seek repeated or substantial extensions that they then hide from their client." (Final Report, page 76.) The Group adds: "As the business of law becomes more competitive, lawyers cannot afford to alienate clients by dragging out a case the client wants to see resolved. For those clients who do want to delay resolution, this proposal would present no bar. We do not recommend it be adopted." (Final Report, page 77.)

[30] Final Report, pages 77-78.

[31] The Advisory Group noted in its Final Report (page 78) that under *G. Heileman Brewing Co. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989) this is already the law in the Seventh Circuit.

readily categorized in the statutory listing so far considered. Most had been discussed by the Advisory Group in its Final Report. The issues include the following:

1. *Costs to be taken into account in discovery*:

The Court endorses the recommendation that costs be taken into account in the discovery process. In its Final Report, the Advisory Group recommended that "cost-shifting on broad discovery requests be used where appropriate."[32] The Court takes the Group's recommendation with respect to cost-shifting to be aimed particularly at those situations where the court might not otherwise permit the discovery because it was unduly burdensome or expensive. As part of the annual review of the operation of the *Plan*, the Court will solicit information from the judges as to their experience in this area.

2. *Depositions*:

The Court has authorized the Chief Judge to form a committee of attorneys with experience in federal practice to develop a set of guidelines for use by attorneys in the conduct of depositions.[33] Such guidelines should also provide assistance to the bar in adapting to the proposed amendments to F.R.Civ.P. 30 scheduled to take effect on 1 December 1993.

3. *Procedure to inquire of clerk re. status of motion*:

The Court proposes an amendment to local General Rule 12 that would provide a procedure by which parties can anonymously obtain from the clerk

---

[32] Final Report, page 51. The Advisory Group also noted that such cost-shifting "allows lawyers to obtain discovery they believe they need by agreeing to pay for it, presumably in consultation with their clients. As clients are becoming more aggressive in negotiating with their own counsel on fees, this should serve as a check on discovery requests. This proposal would also obviate the problem of a judge or a track systematically forcing litigants to take less discovery than they believe is merited in a particular case." (See also Item 8 of the proposed plan in the Final Report, page 91.)

[33] One of the recommendations of the Advisory Group in this area was that "[t]he bar associations should be asked to draft proposed guidelines for the court's consideration." (Final Report, page 91, item 9.)

information on the status of an undecided motion or bench trial. The proposal is in the form of a paragraph added to the current section Q that, because of other proposals to amend General Rule 12, becomes proposed section R.[34]

4. *Oral rulings on motions & bench trials*:

The Court encourages the practice of oral rulings on motions and bench trials. For many years judges in this Court have frequently issued oral rulings on motions.[35] This has been an aspect of the regular motion practice that results in quick rulings on many motions. However, there are limitations inherent in the practice. Given the wide range of issues brought before judges, the more experienced judges are probably more comfortable issuing oral rulings than are newer judges for whom the ruling may involve considerably more background research.

5. *Special masters*:

The Court has long been aware of the advantages of using special masters in unusually complex cases, particularly those involving technical areas with which the judge may not be familiar, or those involving contentious discovery disputes.[36] Specialists have been used as special masters for the technical areas. The district judges have also used magistrate judges as special masters in cases with contentious discovery disputes.

6. *Requirement for agreed list of uncontested facts & law & face-to-face meeting*:

The Court proposes to amend section 5(a) of the *Standing Order* to

---

[34] The Advisory Group recommends the adoption of such a procedure. (Final Report, page 92, item 13.)

[35] The Advisory Group recommends that "[j]udges should issue oral rulings on motions or bench trials when possible." (Final Report, page 92, Iitem 14.)

[36] The Advisory Group recommends the use of special masters in such circumstances. (Final Report, page 92, item 16.)

eliminate the reference to a "face to face (sic) meeting." The proposed revision requires "[c]ounsel for all parties...to meet in order to (1) reach agreement on any possible stipulations narrowing issues of law and fact, (2) deal with non-stipulated issues in the manner stated in this paragraph, and (3) exchange copies of documents that will be offered in evidence at the trial." This will permit more flexible, and presumably less costly, manners of meeting in order to comply with the *Standing Order*, e.g., telephone conferences. The final sentence of that section already provides that "any party [that] cannot obtain the cooperation of other counsel" is to notify the court. This serves to bring to the court's attention those counsel who fail to cooperate.[37] There are situations where a face-to-face meeting would be beneficial. In order to make clear that the Court wishes to retain the option of requiring such meetings in those situations, the following is proposed as a new second sentence in section (a): "The court may direct that counsel meet in person."

7. *Automatic disclosure of qualifications of experts*:

The current subsection (3)(e) [proposed subparagraph (3)(f)] of the final pretrial order form currently includes only the requirement for "stipulations or statements setting forth the qualifications of each expert witness in such form that the statement can be read to the jury at the time the expert witness takes the stand." As the final pretrial order is to be prepared for the final conference, disclosure is perforce required prior to final pretrial conference under the current procedures. Accordingly, no amendment is proposed with respect to this recommendation.[38]

---

[37] The Advisory Group recommended that "[t]he court should revise its standard pretrial order form as follows: delete sections (a) and (b), which call for the parties to meet face to face and agree on a list of uncontested facts and contested issues of fact and law." The requirements referred to appear to be those of 5(a) and 5(b) in the *Standing Order Establishing Pretrial Procedure*, not in the final pretrial order form. (Final Report, page 92, item 17.)

[38] The Advisory Group recommended that the final pretrial order form "require that the parties automatically disclose the qualifications of any experts to be called at trial before the final pretrial conference. An expert should not be required to prepare a written report, unless so ordered by the judge in a particular case. Judges should enforce the current provision in the standard pretrial order that allows only one expert witness per side per issue unless

8. *Uniform use of final pretrial order form*:

The Court proposes to amend the *Standing Order* to include a new second paragraph providing as follows:

> Parties should also be aware that there may be variances in the forms and procedures used by each judge in implementing these procedures. Accordingly, parties should contact the minute clerk assigned to the presiding judge for a copy of any standing order of that judge modifying these procedures.

The Advisory Group expressed a concern that the use of the final pretrial order form be uniform.[39] Their comment goes both to the uniform use of the standard form and to the use of the form in appropriate circumstances. The *Standing Order* indicates the Court's agreement with that recommendation. However, the judge in the individual case is in the best position to determine the extent to which the case will benefit by following the procedures set out in the *Standing Order.*

9. *Amend General Rule 1.72B to Permit Ruling on Dispositive Motions on Consent*

28 U.S.C. § 636(c)(1) provides in part:

> Upon the consent of the parties, a [magistrate judge] may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, where specially designated to exercise such jurisdiction by the district court or courts he serves.

This section suggests that either an entire proceeding or a portion of a proceeding may be reassigned on consent to a magistrate judge. For example, a dispositive motion might be reassigned on consent. If the magistrate judge were to grant the

---

otherwise warranted." (Final Report, page 92, item 17.)

The anticipated revisions to F.R.Civ.P. 26(a)(2) should also result in information on experts being made available earlier in the proceeding.

[39] The Advisory Group recommends that "[a]ll judges should use the revised standard final pretrial order in cases for which a final pretrial order is appropriate." (Final Report, page 92, item 18.)

motion, that ruling would be final, rather than having the magistrate judge file a report and recommendation as is commonly done now. (Such an order would, of course, be subject to review on appeal.)

Local General Rule 1.72 B currently provides only for the reassignment of the entire case to a magistrate judge on consent. It does not provide for reassigning less than the entire proceeding on consent, e.g., a dispositive motion. The Court proposes to amend local General Rule 1.72 to add a new section, section H, that would expressly authorize the reassignment on consent of less than the entire proceeding.[40]

IV. ALTERNATIVE DISPUTE RESOLUTION

A. Judicial Involvement in Settlement or Mediation

Judicial involvement in settlement is a tradition of long standing in this Court. Section **4.** of the *Standing Order* already contains a provision permitting parties to request participation of the court in a settlement conference. The Court proposes to amend that section to add two provisions. The first provides that "[e]arly in the case, the court may offer *sua sponte* to preside over settlement talks." The second cautions that where the trial is to be conducted without a jury, "the preferred method of having the court preside over settlement talks is for the assigned judge to arrange for another judge to preside or to refer the task to a magistrate judge." These techniques have been used with some frequency by most of the members of the Court. The proposed modifications to the *Standing Order* would provide an explicit reference to this approach. They also serve to notify parties of the likelihood of judicial presence at settlement conferences.[41]

---

[40] The Advisory Group recommends such a change in the rules. (Final Report, page 93, item 28. Also see discussion at page 81 of Final Report.)

[41] The Advisory Group proposed (Final Report, page 93, item 22.) that—

> Early in a case, judges may offer to preside over settlement talks. In a bench trial, particularly as the case nears the point at which it is ready for trial, the preferred method is to send the case to another district or magistrate judge for settlement discussions, unless the parties request the participation of the trial judge.

The Court has not included the final qualifying clause of that proposal in its amendment to Section 4 of the *Standing*

B. Training for Judicial Officers in ADR Techniques

The Federal Judicial Center held a seminar for judges on ADR techniques on 12-14 November 1993. Several of the members of this Court attended. Arrangements will be made for those judges not attending either to attend a subsequent seminar or to learn of the techniques discussed at the seminar through a presentation by one or more of the judges who did attend.[42]

C. Summary Jury Trials & Minitrials

In its discussions on summary jury trials and minitrials, the Advisory Group suggested that, for a limited number of appropriate cases, the Court should consider using these ADR techniques.[43] The Court's experience with such techniques, in this District and others, leads it to concur with the Advisory Group. These techniques are so expensive and time consuming, in and of themselves, that they are appropriate for only a small number of cases.

D. Pamphlet Listing Available ADR Methods

The Court has authorized the Chief Judge to establish a panel of attorneys and persons involved in ADR programs to develop a pamphlet listing the various ADR methods available and giving a general description of available private ADR options.[44]

Order.

[42] The Advisory Group recommended that "[d]istrict and magistrate judges should obtain training in settlement techniques, mediation and other forms of ADR." (Final Report, page 93, item 24.)

[43] Final Report, pages 72-73. In item 25 of the Group's Proposed Plan (page 93) it is proposed that—

> Judges and litigants should consider summary jury trials in complex cases that are expected to result in an extremely long trial and for which more traditional settlement techniques have proved futile. Minitrials should be considered in commercial cases with large amounts in controversy.

[44] The preparation of such a pamphlet is recommended by the Advisory Group. (Final Report, page 93, item 26.)

V. *PRO SE* LITIGATION, INCLUDING PRISONER LITIGATION

The Court has considered the several recommendations of the Advisory Group in this area of litigation.[45] The Court has been informed that the Advisory Committee on Local Rules and Procedures has nearly completed its work on drafting proposed revisions to the forms used in Title VII cases brought *pro se*.

The Court currently has three staff law clerks assigned to handling prisoner litigation. It supports the suggestion of the Advisory Group that these law clerks be used "to hold settlement conferences, via telephone, in appropriate prisoner cases." However, the current budgetary constraints limit the number of staff law clerks available to handle prisoner-related work to below the level the Administrative Office has determined is warranted. Accordingly, until the number of staff law clerks can be increased, this experiment will have to wait.

The Court warmly supports the suggestion of the Advisory Group that a handbook be developed to help counsel appointed to represent *pro se* plaintiffs in Title VII cases. The Court funded the Federal Court Prison Litigation Project of the Legal Assistance Foundation of Chicago to develop a handbook for counsel appointed to represent incarcerated plaintiffs filing complaints concerning conditions of confinement. Unfortunately the Court has not been able to interest any organization in preparing a similar handbook for Title VII cases. It will continue to try.

VI. COURT AWARDED FEES & FEE PETITIONS

The Court agrees with the general aims of the Advisory Group in its recommendations regarding attorney fees. These include providing guidance to counsel through the incorporation in the local rules of standards for drafting fee petitions and devising methods to reduce the amount of time required to review the petitions.[46]

Among the amendments to the Federal Rules of Civil Procedure scheduled to take effect on 1 December 1993 is a new subsection (d)(2) for F.R.Civ.P. 54. This subsection requires that "[u]nless otherwise provided by statute or order of the court, the motion [for claims for attorneys'

---

[45] The principal recommendations are set out as items 30, 31, and 32 on page 94 of the Final Report.

[46] See Final Report, items 35 and 36, page 94, and discussion at pages 87-89.

fees and related nontaxable expenses] must be filed and served not later than 14 days after the entry of judgment." The Committee Notes indicate that "[o]ne purpose of this provision is to assure that the opposing party is informed of the claim before the time for appeal has elapsed." The Court proposes to amend local General Rule 46 to reflect both the changes to F.R.Civ.P. 54(d)(2) and the provision in the Committee Notes that "[w]hat is required is the filing of a motion sufficient to alert the adversary and the court that there is a claim for fees and the amount of such fees (or a fair estimate)."

The Court authorizes the Chief Judge to create a committee for the purpose of drafting proposed standards for fee petitions and guidelines for their review.

VII. PROPOSED AMENDMENTS TO F.R.Civ.P. 26 (a) & (f)

Included in the proposed amendments to F.R.Civ.P. transmitted to the Congress by the Chief Justice on 22 April 1993[47] were amendments to sections (a) and (f) of F.R.Civ.P. 26. The proposals are scheduled to become effective on 1 December 1993. It appears that Congress will act to eliminate Section (a)(1) as transmitted.

A. Exemption from automatic disclosure (proposed F.R.Civ.P. 26(a))

Section (a)(1) of F.R.Civ.P. 26 as transmitted to Congress would require automatic disclosure of certain information "[e]xcept to the extent otherwise stipulated or directed by order or local rule." If section (a)(1) is adopted in its present form, the Court will amend local General Rule 5.00 as follows:

> **C. Application of F.R.Civ.P. 26(a)(1)**
> Except as otherwise ordered by the court, the extent to which the automatic disclosure provisions set out in F.R.Civ.P. 26(a)(1) will apply to a case will be established at the preliminary pretrial conference scheduled pursuant to section **2.** of the *Standing Order Establishing Pretrial Procedures.*

This will allow the assigned judge to determine if any of the provisions are to be followed. It will also permit those judges who wish to have some or all of the provisions

---

[47] *Communication from the Chief Justice of the United States Transmitting Amendments to the Federal Rules of Civil Procedure and Forms, Pursuant to 28 U.S.C. 2072*, House Document 103-74.

followed and to have the parties follow them *prior* to the preliminary pretrial conference to enter an order to that effect.[48] The Court is aware that during the period it was considering this Plan a bill was introduced into the House of Representatives that would, if enacted into law, have the effect of eliminating F.R.Civ.P. 26 (a)(1) in the form transmitted. If the change is adopted, the Court will not have to take any action.

B. Local rule re. discovery plan (proposed F.R.Civ.P. 26(f))

The *Standing Order* adopted by the Court pursuant to section A of local General Rule 5.00 follows the provisions of the current F.R.Civ.P. 26(f) and provides that "the Court may require that the parties provide a joint written discovery plan under Rule 26(f)." If the proposed F.R.Civ.P. 26(f) is adopted, the Court does not intend to amend the *Standing Order*. It will continue to require the filing of a *written* discovery plan only where directed by the court.[49]

VIII. JUDICIAL OFFICERS: STAFFING LEVELS

There are currently 22 district judgeships and 9 magistrate judgeships authorized for the United States District Court for the Northern District of Illinois.

A. Magistrate Judgeships

Because of the differences in the ways in which the services of magistrate judges are used in district courts, no statistical threshold similar to the 400 filings per judgeship used for district judgeships has been established for magistrate judgeships. However, a commonly accepted guide is that there be one magistrate judgeship authorized for each

---

[48] The Advisory Group recommended that if the proposed F.R.Civ.P. 26 (a) is adopted, the Court should adopt a local rule "exempting all cases from the automatic pre-discovery disclosure" otherwise required by that section. (Final Report, page 91, item 6.)

[49] The Advisory Group recommended that if the proposed F.R.Civ.P. 26(f) is adopted, the Court should adopt a local rule "providing that litigants will be required to submit a joint *written* discovery plan only if ordered to do so by the judge in a particular case." (Final Report, page 91, item 6.)

two authorized district judgeships.[50] On that basis, the Court could request authorization of 2 additional magistrate judgeships.

Of the 9 magistrate judgeships currently authorized, 1 is headquartered at Rockford and serves the Western Division exclusively. There is 1 authorized district judgeship assigned to that Division. In addition, there is a senior district judge assigned there. The remaining 21 authorized district judgeships and 8 magistrate judgeships are assigned to the Eastern Division. To meet the 1:2 ratio of authorized magistrate to district judgeships in the Eastern Division would require 2.5 additional magistrate judgeship positions.

There is a time lag of between one and two years from the time a formal request is made for additional magistrate judgeships and—assuming that the request is granted—the time the funding is available and a magistrate judge is appointed. Accordingly, the Court will request that 2 additional magistrate judgeships be authorized, both to be headquartered at Chicago, Illinois.[51]

B. District Judgeships

Every two years the Judicial Conference of the United States conducts a survey to determine judgeship needs in the district courts. Based on the survey results, the Conference forwards recommendations to the Congress. The initial questionnaire to courts was recently distributed among the courts for the *1994 Biennial Survey of Judgeship Needs*.

The Judicial Conference of the United States has established 400 weighted or unweighted filings per judgeship as the threshold point for considering the need to recommend that additional district judgeships be authorized. Unweighted civil and criminal filings per authorized judgeship for Northern Illinois during the year ending

---

[50] The average number of authorized district judgeships per authorized magistrate judgeship for all district courts has been running a little less than 1.9:1 in recent years.

[51] The Advisory Committee recommended an increase in the number of magistrate judgeships authorized based on the 1 magistrate judgeship per 2 authorized district judgeships ratio. (Final Report, page 90, item 2.)

30 June 1993 were 389. Weighted filings, using the preliminary results of the 1990 case weight study, were 355.[52] As the District does not meet the threshold and as there appears to be no compelling justification of a non-statistical nature to seek additional judgeships, the Court will not ask for any in its response to the *1994 Biennial Survey of Judgeship Needs*.

IX. RESOURCES

A primary resource for the Court is the buildings it uses as courthouses. It has two principal courthouses: the Everett McKinley Dirksen Building in Chicago and the Federal Courthouse in Rockford. The Court recently completed a review of its long-range needs.[53] In the Eastern Division it appears that there is sufficient space in the Dirksen Building to accommodate the Court for the next ten or twenty years. However, as the number of judgeships increases, the Court will take over additional floors and convert the space to courtrooms.

---

[52] Since 1960 the Administrative Office of the United States Courts and then the Federal Judicial Center have conducted special surveys once a decade of judicial work. The result of these surveys has been a case weighting system. The weights are used to translate the raw case filings to figures that better reflect the judicial effort required to dispose of the cases. For the first three such surveys, i.e., a period of thirty years, the weighted civil and criminal caseloads of this District were ten to twenty percent higher than the unweighted. It was on the basis of these figures that the Advisory Group recommended that the Court seek additional judgeships.

The preliminary results of the 1990 case weighting study were released in early September as part of the package accompanying the initial questionnaire for the *1994 Biennial Survey of Judgeship Needs*. The revised case weights resulted in large reductions in the weights previously assigned to five categories that account for around a third of the civil filings in Northern Illinois. Under the proposed revisions, for the first time the weighted caseload for the District will be *lower* than the unweighted caseload.

For the year ending 30 June 1993 the weighted civil and criminal filings in Northern Illinois using the revised case weights were 355 per authorized judgeship. Under the former weighting systems, the last time they had been below 400 cases per judgeship was 1974, when they dipped to 391. For fourteen of the past twenty years they were higher than 500 cases per judgeship.

The Advisory Group recommended in its Final Report that the Court seek additional judgeships. The information on the new case weights was released after the Final Report was published. After having been informed of the change, the Group's chairperson wrote to the Chief Judge indicating that as a result of the change the Group no longer recommended that the Court seek additional authorized judgeships. The letter did indicate that the Group continued to recommend an increase in the number of authorized magistrate judgeships.

[53] The exercise involved all of the courts (United States Court of Appeals for the Seventh Circuit, United States District Court, United States Bankruptcy Court) located in the Dirksen Building, staff from the Administrative Office of the United States Courts, staff from related agencies, e.g., United States Attorney's Office, United States Marshals Service, and staff from the General Services Administration (GSA). The exercise attempted to determine the space and facility needs of the District and Bankruptcy Courts of Northern Illinois through the year 2005.

One difficulty in planning space and facility needs is the length of the lead times. For example, in the Dirksen Building it takes approximately six years from the point that additional courtrooms are requested to the point that they become available. About eighteen months of this is construction time. The rest is required for planning, obtaining congressional approval for funding, relocating agencies currently occupying the space in which the courtrooms are to be built, and removing asbestos.

In the Western Division the existing facilities are already hopelessly overcrowded. The conversion of the part-time magistrate judge position to a full-time position and the addition of a senior district judge and the growth of the United States Attorney's divisional office are more than was anticipated in the original plans of the building. G.S.A. is already taking the steps needed to provide the Court with a facility in Rockford that will meet its needs.

X. JUDICIAL IMPACT STATEMENTS

The Advisory Group recommended that "Congress should establish an Office of Judicial Impact Assessment to evaluate the impact of proposed legislation, both civil and criminal, on the federal courts."[54] The Court shares the concern of the Advisory Group and recommends to the Judicial Conference of the United States that it urge the Congress to consider the likely impact of its legislation on the rate of filing civil and criminal cases in the district courts.

XI. FUTURE OF ADVISORY GROUP

28 U.S.C. § 475 requires the Court to "assess annually the conditions of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court." Section 475 also provides that the court consult with the Advisory Group in making such an assessment. Because the changes to rules and the *Standing Order* will require publication pursuant to 28 U.S.C. § 2071, for the purposes of the annual assessment the Court will consider the year ending 31 December 1994 as the closing of the first year. The Advisory

[54] Final Report, page 94, item 38.

Group is requested to review the Court's docket as of 31 December 1994 and to file a report with the Court making any suggestions or observations that might assist the Court in carrying out its duties under Section 475. The report of the Advisory Group should be filed with the Chief Judge by 31 March 1995.

The Court authorizes the Chief Judge to request the current members of the Advisory Group to undertake the task of presenting the first review report. It also authorizes him to appoint new members to replace any members of the current Advisory Group unable to continue their participation. The Chief Judge is also authorized to appoint new members to the Advisory Group at the expiration of the current members' terms on 27 March 1995.

XII. IMPLEMENTATION OF THE PLAN

The *Plan* is to be implemented either by the adoption of amendments to local rules or the *Standing Order*, or by action taken by the Court following consideration of the reports of three groups.[55] The proposed amendments to the rules and the *Standing Order* will be published for comment pursuant to 28 U.S.C. § 2071. The comments will be reviewed by the Advisory Committee on Local Rules and Procedure. That Committee will make its report to the Court. Following action by the Court on the Advisory Committee's recommendations, the proposals will be adopted with such modifications as seem necessary in light of the comments and recommendations.

In large measure, therefore, the implementation will flow from published local rules and will not be dependent upon the ready availability of this *Plan*. However, the Clerk of the Court will make provisions for sufficient copies of this *Plan* to be printed so that copies will be available on request to any interested party.[56]

---

[55] The Chief Judge was authorized (a) "to form a committee of attorneys with experience in federal practice to develop a set of guidelines for use by attorneys in the conduct of depositions," (b) "to establish a panel of attorneys and persons involved in ADR programs to develop a pamphlet listing the various ADR methods available and giving a general description of available private ADR options," and (c) "to create a committee for the purpose of drafting proposed standards for fee petitions and guidelines for their review."

[56] The Plan as adopted deals fully or in large part with almost all of the recommendations made by the Advisory Group in the proposed plan included in the Group's Final Report. Certain of the recommendations are not specifically addressed:

(a) Recommendation 10 relating to a judge's availability during depositions is, the Court believes, a matter to be included among those to be considered by the committee to be established pursuant to section C.2. of the Plan to develop a set of guidelines for use by attorneys in the conduct of depositions.
(b) With respect to Recommendation 28, the Court declines to comment on the generally preferable content of references to magistrate judges in light of the scope of their powers as conferred by the statute.
(c) The Court does not believe that the demands on judicial time and effort required in handling mortgage foreclosure and employer contribution cases are such as to warrant their special handling as suggested in Recommendations 33 and 34.
(d) The Court does not consider the sentiments expressed in Recommendation 37 as appropriately part of a plan.