CIVIL JUSTICE REFORM ACT ADVISORY GROUP REPORT

DRAFT - December 3, 1991

TABLE OF CONTENTS

APPENDICES

I.
INTRODUCTION

I. INTRODUCTION

A. Background

In 1990 Congress enacted the Civil Justice Reform Act (CJRA), P.L. 101-650, 104 Stat. 5090, codified in 28 U.S.C. Sections 471-482. The complete text of this Act is reproduced in Appendix 3. CJRA, which became effective December 1, 1990, requires that each of the ninety-four Federal District Courts in the United States establish an Advisory Group to make recommendations to the Court for reducing excessive costs and delays in civil cases. These recommendations are then reviewed and the District Court is required to promulgate a civil justice expense and delay reduction plan. The Court must review this plan in consultation with the Advisory Group on an annual basis.

B. The Southern District Advisory Group

By order dated March 7, 1991, Chief Judge James L. Foreman, after consultation with Judges William L. Beatty and William D. Stiehl, appointed a twenty-two person Advisory Group to examine the problems of cost and delay in civil cases in the Southern District of Illinois. The members of the Advisory Committee (see Appendix 1) are representative of a broad range of litigants in this District. In addition to prominent practicing lawyers with extensive trial experience in this District and in-house counsel of corporations that are frequent litigators in this court, the United States Attorney for the Southern District of Illinois, four non-lawyers and the Dean of Southern Illinois University School of Law, who served as the Reporter, are included in the membership of the Advisory Group. With the exception of the United States Attorney, who is a permanent member, all the other members have been appointed for a four year term. Stuart J. O'Hare, the Clerk of the District Court, was appointed as an ex officio member and Secretary of the Advisory Group;

and the three District Court Judges were appointed as ex-officio members to serve as liaisons between the Advisory Group and the Court.

The Advisory Group was charged with the task of making its recommendations to the Court in time for the Court to promulgate its civil justice expense and delay reduction plan by December 31, 1991 in order that this District can qualify as an "Early Implementation District Court." Districts that qualify are entitled to apply for extra funds to assist in the implementation of the Court's plan.

The Advisory Group held its organizational meeting on March 23, 1991 and held four additional meetings between then and September 27, 1991. The Advisory Group appointed four subcommittees to investigate specific areas of concern and to report their findings and recommendations back to the Advisory Group. The members of these subcommittees are listed in Appendix 2. These subcommittees met numerous times during the six month period when the Advisory Committee was deliberating on its recommendations. Donald E. Weihl, Esq. of Thompson & Mitchell in Belleville, Illinois served as Chair of the Advisory Group and Mark C. Goldenberg, Esq. of Bono, Goldenberg, Hopkins & Bilbrey, P.C. in Granite City, Illinois served as the vice-chair. Mr. Weihl and Mr. Goldenberg, together with Richard E. Boyle, Esq. of Gundlach, Lee, Eggmann, Boyle & Roessler in Belleville, Illinois, Chair of the Subcommittee on Survey of the Practicing Bar and Maximizing Benefits of Automation, Mary Ann Hatch, Esq. of Churchill, McDonnell & Hatch of Belleville, Chair of the Subcommittee on Trial, Post-trial and Alternative Dispute Resolution, Donald J. Dahlmann, Esq. of Walker & Williams, P.C. of Belleville, Chair of the Subcommittee on Filing Process, Discovery and Motion Practice, and Robert L. Simpkins, Chief Civil Division, United States Attorney's Office for the Southern District of Illinois, Chair of the Subcommittee on Magistrates Judges' Role and Prisoner Petitions, constituted the Executive Committee of the

Advisory Committee. The Reporter, Harry J. Haynsworth, Dean of Southern Illinois University School of Law, and the Clerk of the District Court, Stuart J. O'Hare, served as ex-officio members of the Executive Committee.

The Advisory Group obtained information about the processing of cases filed in the Southern District and opinions about the causes of excessive cost and delay and proposals for reducing these costs and delays from a number of sources.

First, extensive interviews were held with all the District Judges and the Magistrate Judges and their law clerks and with the Clerk of Court. In addition, interviews relating to prisoner cases in the District were held with the District pro se law clerk who reviews prisoner petitions, the Special Assistant United States Attorney who represents the United States in civil cases involving prisoner petitions and members of the Illinois Attorney General's legal staff who are assigned to prisoner petition cases.

Second, statistical information about cases filed in this District and comparative statistics from other District Courts supplied by the Clerk and the Federal Judicial Center in Washington, D.C. were analyzed. The most pertinent of these statistics are set forth in Appendix 4.

Third, a questionnaire consisting of sixty-three questions, three of which called for narrative answers, was prepared with technical assistance of ARC of Southern Illinois University and distributed to 515 lawyers, selected on a random basis, who are currently listed as attorneys of record in civil cases pending in the District. The questions focused on a broad range of issues relating to potential causes of excessive costs and delays in civil cases and asked for opinions on a variety of potential devices, including more rigorous, hands-on case management by judicial officers and more extensive use of the various alternative dispute resolution techniques that have become more widely used in recent years. 336

questionnaires were returned by the cut-off date. This represents a 65% return rate, which is considered a very high rate of return for a survey of this type. A compilation of the questionnaire results and a condensed version of the narrative answers are in Appendix 5. Although there is no claim that this survey represents the views of every lawyer who practices in the District Court, it does represent the views of a broad cross-section of these lawyers and for that reason the opinions expressed in the survey were carefully considered by the Advisory Group.

The Advisory Group also reviewed extensive background materials on CJRA and various national studies about causes and potential cures for excessive costs and delays and the recommendations of other CJRA Advisory Groups; and reviewed Advisory Group reports and civil justice expense and delay reduction plans from other District Courts. In addition, Chairman Donald E. Weihl, Chief Judge James L. Foreman and the Clerk of the District Court, Stuart J. O'Hare, attended a two day seminar in Chicago, reviewing key elements of the CJRA pertaining to pilot, early implementation and demonstration districts.

The Advisory Group finalized its recommendations at a lengthy meeting held on September 27th, 1991 at the Federal Courthouse in East St. Louis, Illinois. There are two types of recommendations. The first are recommendations to the Court for consideration in preparing its civil justice expense reduction and delay plan. These recommendations, together with explanatory comments are set forth in Part V. The second set of recommendations, set forth in Part VI, are addressed to the United States Congress. The Advisory Group found that in actuality Congressional action, and in some cases Congressional inaction (*e.g.*, the failure to fill authorized federal judicial vacancies promptly), is responsible for many of the docket problems in the United States District Courts, including this District, and only Congress can effectively deal with these problems. One

recommendation, for example, is that Congress be required to prepare a judicial impact statement for every bill it enacts and to follow up on this impact statement by promptly authorizing the necessary additional judicial resources to handle any significant increase in federal case filings as a result of the new act.

The Advisory Group will continue in existence after the District Court promulgates its civil justice and expense reduction plan and will review the District Court docket and the Court's plan and make suggestions for changes in the plan, if appropriate, to the Court on an annual basis. The Advisory Group will also be available to undertake any special assignments relating to case management the Court asks the Group to investigate.

C. Organization of this Report

This Report is divided into seven parts and also has five appendices. Part I contains background and introductory material. Part II contains a summary of the recommendations to the Court. Part III describes the District Court, its resources and its needs. Part IV describes the excessive cost and delay problems the Advisory Group found in the Federal District Court for the Southern District of Illinois. Part V contains the recommendations made by the Advisory Group to the District Court, together with comments explaining the rationale for each recommendation. Part VI contains the Advisory Group's recommendations to Congress. Finally Part VII contains a brief summary of the Advisory Group's findings and principal recommendations.

II.
EXECUTIVE SUMMARY

II. EXECUTIVE SUMMARY

The basic conclusions reached by the Advisory Group are that the docket in the Southern District of Illinois is in relatively good shape and that there are no unusual cost and delay problems in this District at this time. This does not mean, however, that no action designed to improve the management of cases filed in this District and to reduce excessive costs and delays is necessary.

The Advisory Group determined that many of the docket and cost and delay problems in this District can only be remedied by Congress. A list of issues for consideration by Congress is in Part VI of this report.

The Advisory Group made fifteen recommendations for consideration by the District Court in designing its civil justice expense and delay reduction plan. The text of these recommendations is set forth below. Part V of this report contains not only the text of the recommendations, but also detailed explanatory comments for each of the recommendations.

Recommendation No. 1

> The case management procedures of the Judges should, except for minor details, be uniform.

Recommendation No. 2

> Except for those classes of cases exempted by Local Rule, early, firm trial dates should be established for each case, with delays authorized only by order of the Court because of the complexity of the case or for other good cause shown. Priority of criminal cases under the speedy trial act shall not be a justifiable excuse for delay except in extraordinary circumstances. The Court shall have the responsibility to use its best efforts to make a Judge available to try a civil case at the designated time, regardless of the pressures of the criminal docket. If the trial date is postponed, the case must be reset on a priority basis for trial at the earliest possible date.

Recommendation No. 3

Case management of civil cases in this District should be structured around three basic components: (1) an initial pre-trial conference held within 60 days after the appearance of a defendant, (2) a settlement conference held within thirty days after the cut off-date for discovery and (3) a final pre-trial conference to be held not less than seven days prior to the trial date. Additional pre-trial and settlement conferences may be held at the discretion of the Court.

Recommendation No. 4

Except for those classes of cases exempted by Local Rule, an initial pre-trial conference shall be held no later than sixty days after the appearance of a defendant. In cases removed to the District Court or transferred to this District Court from another federal District, the initial pre-trial conference shall be held within 90 days after removal or transfer.

At least one attorney for each party with authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed will be present at this conference. In addition, each party, or a representative of a party with authority to bind the party will be present in person, or for good cause shown by telephone, during the course of the conference.

The purposes of the initial pre-trial conference are: (1) to discuss the possibility of settlement; (2) to discuss the possibility of using a voluntary alternative dispute resolution devise (*e.g.*, arbitration, summary jury trial, mini-trial) to resolve the dispute; (3) to discuss the complexity of the case and if it is tried, the approximate number of days necessary to complete the testimony; (4) to set a date for the trial and a cut-off date for completion of all discovery (or in the case of extraordinarily complex cases, the cut-off date for completion of core discovery); (5) to establish a plan for the management of discovery in the case, including any limitations on the use of the various discovery devices that may be agreed to by the parties, ordered by the judicial officer presiding over the conference, or required by Local Rule (See Rule 15 of the Local Rules of this court restricting a party to twenty interrogatories except by leave of court) and requirements as to disclosures relating to expert witnesses; (6) to formulate, simplify and narrow the issues; (7) to discuss and set deadlines for amendments to the pleadings; (8) to discuss the filing of potential motions and a schedule for their disposition; (9) to discuss the possibility of one or more additional case management conferences prior to the final pre-trial conference; and (10) to cover any other procedural issues that the judicial officer hearing the case determines to be appropriate for the fair and efficient management of the litigation. A list of the issues that will be discussed at this conference will be included in the notice of the hearing sent to each party.

Assuming the case is not settled at this conference, the results of this initial pre-trial conference will be incorporated into an order which shall be modified only by order of the Court for good cause shown.

Recommendation No. 5

Except for the classes of cases exempted by Local Rule, a settlement conference shall be held before a judicial officer other than the judge assigned to try the case within thirty days after the cut-off date for discovery . In addition to the attorneys of record, each party or a representative of a party with authority to enter into a binding settlement on behalf of the party shall be present in person, or for good cause shown by telephone during the course of the conference.

The settlement conference statements and communications during the settlement conference shall not be admissible or used in any fashion in the trial of the case.

Recommendation No. 6

Except for those classes of cases exempted by Local Rule, a final pre-trial conference shall be held not less than seven days prior to the trial date.

In contrast to the initial pre-trial conference which may be held before a judicial officer other than the judge assigned to try the case and the settlement conference which must be held before a judicial officer other than the judge assigned to try the case, the judge assigned to try the case should, except in extraordinary situations preside at final pre-trial conference.

In addition, contrary to existing practice, proposed jury instructions should not be required to be submitted to the Court at the final pre-trial conference; rather they should be submitted to the Court and opposing counsel no later than the first day of the trial.

The following issues should be discussed at the final pre-trial conference and in the final pre-trial order; (1) stipulated and uncontroverted facts, (2) list of issues to be tried, (3) disclosing all witnesses, (4) listing and exchange of all exhibits, (5) pre-trial rulings, where possible, on objections to evidence, (6) disposition of all outstanding motions, (7) elimination of unnecessary or redundant proof, including limitations on expert witnesses, (8) itemized statements of all damages by all parties, (9) bifurcation of the trial, (10) limits on the length of trial, (11) jury selection issues and, (12) any issue which in the judge's opinion may facilitate and expedite the trial, for example the feasibility of presenting testimony by a summary written statement. Trial briefs on any difficult, controverted factual or legal issue, including anticipated objections to evidence, shall be submitted to the Court at or before the final pre-trial hearing.

Recommendation No. 7

A uniform local motion rule should be promulgated. This rule should incorporate the following suggestions:

> (1) except in extraordinary circumstances, rulings on all motions shall be made within thirty days after filing of the response by the opposing party, or in the case a hearing is ordered, within thirty days after the hearing.
> (2) an oral argument will be scheduled only if requested by one of the parties, and if requested shall be scheduled by the requesting party with the Clerk of Court.
> (3) motion hearings may be held by telephone conference unless otherwise requested by a party or ordered by the Court.
> (4) the provisions in Local Rule 6 requiring the submission of briefs and proposed orders should be continued.

In order to facilitate the efficient disposition of motions, the Court should broaden the circumstances under which Magistrate Judges will hear motions; and all the judges hearing motions should adopt a practice of setting aside a minimum of two days each month for motion hearings and in addition a specific time each week for informal conferences on routine motions (*e.g.*, extensions of time and most discovery disputes). Moreover, oral rulings confirmed by a very brief written memorandum order should be authorized for routine non-dispositive motions.

Recommendation No. 8

In addition to establishing a cut-off date for discovery and other discovery management devices discussed in Recommendation No. 4, the Court should seriously consider adoption of a Local Rule similar to Illinois Supreme Court Rule 220 dealing with disclosure and related issues of expert witnesses. The Court should also make it clear to the practicing bar that excessive and abusive discovery will not be tolerated; and should be more rigorous and consistent in ordering sanctions for discovery abuses.

Recommendation No. 9

The use of settlement conferences, which in effect are mediation sessions, (Recommendation No. 5) and summary jury trials, the two forms of Alternative Dispute Resolution (ADR) currently authorized in this District, should be expanded.

The Court and the Advisory Group should continue to study the other ADR devices being used in other parts of the country, especially compulsory non-binding arbitration, mini-trials and neutral evaluation of cases where a neutral third party makes an independent evaluation of a case prior to or just

after the initial pre-trial conference. The Advisory Group also recommends that the Court commission a pamphlet on the various types of ADR devices and their respective strengths and weaknesses. This pamphlet should be distributed to attorneys and clients and discussed as part of the initial pre-trial conference and also distributed in various continuing education programs presented in the District.

Recommendation No. 10

Magistrate Judges should be used more frequently for pre-trial motions and conferences.

Recommendations from Magistrate Judges regarding case-disposition motions should be accompanied by a proposed order affirming the Magistrate Judge's recommendations, and the District Court should show the same deference to the recommendations as it would to a special master's report.

Recommendation No. 11

With respect to civil suits and other civil claims by prisoners:

(1) the Court should recommend to the appropriate federal authorities that an additional PRO SE law clerk be hired to screen the cases filed by prisoners in federal prisons and should recommend to the Illinois attorney general that several additional attorneys be hired to defend cases brought by prisoners in Illinois state prisons.
(2) the judges should be more willing than in the past to enjoin a prisoner who has a history of filing frivolous lawsuits or law suits having no discernable purpose other than harassment from being able to file any future petitions without leave of Court.
(3) once it becomes apparent that a prisoner cannot prove the allegations contained in the complaint, summary judgement should be recommended even though the allegations, if proven, would state a cause of action.

Recommendation No. 12

In order to provide better access to case records and quicker compilation of statistics concerning the Court's operations by Court personnel, a faster more sophisticated computer is needed and local and wide area network systems will have to be installed.

In considering what type of computer to purchase, the Court should study the possibility of on-line access to case records by the attorneys of record, and the creation of a computer "bulletin board" that would allow Court personnel and lawyers with pending cases to determine the trial docket and current information on the status of their cases.

Additional personal computers for Court employees are also necessary so that all employees will have a PC at their work stations.

The Court should also study the possibility of allowing pleadings and other documents to be filed with the Court by Fax. At least one high speed Fax machine for each filing office will have to be purchased if a Fax filing Local Rule is promulgated.

Recommendation No. 13

The Court's civil justice expense and delay reduction plan should be effective only after the lawyers practicing before the Court have been exposed to the changes in the current Local Rules and practices through continuing legal education programs as well as pamphlets and other written materials.

Recommendation No. 14

The Court will need to make a careful assessment of its personnel needs and must monitor and reassess personnel needs on a regular basis once its civil justice expense and cost reduction plan is implemented.

Recommendation No. 15

The Court's civil justice expense and delay reduction plan should provide a mechanism for the Advisory Group to be available, at the request of the Court, at least once a year to review the results of the Court's plan and to make recommendations, if deemed appropriate, for changes in the plan.

III.
THE COURT ITS RESOURCES AND NEEDS

III. THE COURT - ITS RESOURCES AND NEEDS

A. Overview of the Court

The Southern District of Illinois is a large geographical area consisting of three divisions, Alton, East St. Louis and Benton. Although the Alton Division is unmanned, the Court is required to utilize the physical facilities for trials and selected hearings.

East St. Louis is the headquarters location of the District. There are two resident District Judges, one full-time Magistrate Judge and one part-time Magistrate Judge in this division. The Bankruptcy Court with one full-time Bankruptcy Judge is also located in this division.

Benton is the southernmost division in the District. The Chief Judge of the District is located in this divisional office. One full-time Magistrate Judge also serves at this location.

The Court's geographic jurisdiction extends from just south of Springfield, to the southernmost tip of the state, encompassing thirty-eight counties. It should be noted that outside of Cook County (the metropolitan Chicago area), this District includes St. Clair and Madison counties, the second most populous area of the State.

Two of the full-time Federal Judges will qualify for senior status during calendar year 1992. The Judicial Improvements Act of 1990 awarded a temporary judgeship to the Southern District of Illinois. This position remains vacant and will in all probability continue to be vacant until the summer of 1992.

Chief Judge Foreman divides his bench time between the Benton division and the East St. Louis division, Judge Beatty divides his bench time between the Alton and East St. Louis divisions, and Judge Stiehl presides full-time in the East St. Louis division except when needed to preside part-time in one of the other divisions.

The vacancy in the temporary full-time judgeship causes the existing Judges to have an excessive number of weighted cases[1]. This results in delay in disposing of both weighted cases and the normal workload of the District. It also results in causing additional cost to both the litigants and the District. That delay in the disposition of cases has caused the median time from filing to disposition for the twelve month period ended June 30, 1991 to increase to twelve months from ten months four years ago. Although this District is below the national average of fifteen months from disposition by trial after an answer is filed in the case, this District's national ranking fell to 26th place from 9th, a drop in rank of seventeen out of ninety-four Districts in the fiscal year ending June 30, 1991.

B. Types of Cases

(1) Prisoner Filings

Prisoner filings constitute the largest class of cases filed in the District and have for more than the last five years. Each year it is anticipated that more than 30% of the total filings in the District will be prisoner filings. Additionally, it is anticipated that two new state prisons and two new federal prisons, one of which will be a medium security federal penitentiary, will cause the projected prison population to increase by 26% in the next eighteen months. The prisoner filings constitute such a large portion of the docket that some civil delay, of necessity, results in this District. An additional pro se law clerk to assist with the prisoner filings is needed at the present time even without the projected increase in prisoner population. The Illinois Attorney General also needs to assign several additional

[1] For court statistical purposes, the more difficult cases requiring a significant amount of judge time, e.g., personal injury, contract, and anti-trust cases, are designated as "weighted" cases, whereas routine relatively simple cases e.g., student loans and mortgage foreclosure, are designated as non-weighted cases.

attorneys to defend the backlog of cases brought by prisoners in Illinois state prisons. See Recommendation No. 11 in Part V.

As in most jurisdictions, prisoner pro se pleadings and other papers are not in typical style or format. This causes the prisoner filings to consume a large share of time of both clerk's office and judges' staffs. Weeding through the large volume and oftentimes illegible and incoherent filings to determine the merit of prisoner filings challenges clerk's office staff and judges' clerks due to the necessity to ensure justice even to the uneducated and unsophisticated prisoner litigants. While the Civil Justice Reform Act is not directed toward solving the prisoner litigation problem, this aspect of the District's filings is clearly one of the more challenging areas to staff and judicial officers in this District.

Pursuant to Local Rules 30, 31, and 32, the Magistrate Judges have been delegated authority to handle the full range of duties as prescribed by 28 USC § 636. However, the two full-time Magistrate Judges devote the major part of their time to prisoner filings. For the twelve months ended June 30, 1991, the Magistrate Judges handled approximately 1,734 non-dispositive motions and submitted 249 reports and recommendations on dispositive matters relating to prisoner cases. This detracts from their time available for referral matters from the three District Judges. In comparison to the figures for prisoner cases, the Magistrate Judges only handled 528 non-prisoner civil and criminal matters. With the majority of their time being utilized on prisoner filings, it would be appropriate to make the part-time Magistrate Judge a full-time Magistrate Judge so that more referrals from the District Judges could be accommodated, thereby eliminating some degree of civil delay.

The prospect of a decrease in prisoner filings is non-existent, and the likelihood that prisoner filings will resolve themselves is also non-existent because there is no advantage for the prisoner to compromise.

It is the Advisory Group's understanding that prisoner filings are weighted less than regular civil cases. It is the consensus of the Advisory Group that the Administrative Office of the United States Courts needs to reconsider its current policy towards the weighing of prisoner filings versus regular civil filings.

(2) Personal Injury and Tort Filings

Personal injury and tort filings make up the next largest segment of case filings. As of June 30, 1991, these cases constituted 26.28% of the pending civil cases. The volume of these filings dictates that some recommendation on differentiated case management or other type of case management system with an earlier pre-trial conference, followed by a settlement conference after discovery cutoff, and one additional pre-trial conference immediately prior to trial be utilized. See Recommendations 3 though 6 in Part V.

Revision of current discovery practices needs to be addressed as a part of the case management system ultimately adopted as a part of the Civil Justice Reform Act plan to be implemented. See Recommendation No. 8 in Part V.

(3) Contract and Property Filings

Contract and property filings, while significant, (approximately 15% of the pending cases as of June 30, 1991) pose no issues that are not similar to the personal injury and tort filings except that the filings are not as numerous. These filings are susceptible of disposition with the same case management techniques that are utilized for the personal injury and tort cases.

(4) Labor Filings

Labor filings have continued to increase on a steady basis and as of June 30, 1991 constitute approximately 10.5% of the pending cases. Initially, these filings require substantial emergency time from the Court. Thereafter, these filings are susceptible to disposition with the same case management techniques that are utilized for the personal injury and tort cases.

(5) Civil Rights Filings

Civil rights filings make up slightly more than 5% of the case filings on an annual basis. Notwithstanding, they do not take up more than minimal Court time annually and rarely involve issues that require a significant amount of judicial time.

(6) FELA, Social Security, Forfeiture, Copyright, Tax and Anti-trust Filings

FELA, Social Security, Forfeiture, Copyright, Tax and Anti-trust Filings, make up a minimal part of the filings docket (approximately 5% of the pending cases as of June 30, 1991). While individual cases may contain weighted issues, they are isolated instances and do not require special case management techniques.

(7) Bankruptcy

Most bankruptcy cases are disposed of by the Bankruptcy Judge. Only a few cases are appealed to the District Court each year. As of June 30, 1991, these cases represented 1.35% of the pending cases in the District Court.

C. Present State of the Docket - Civil and Criminal

The unanimous consensus of the Advisory Group is that the condition of the civil docket in the Southern District of Illinois is satisfactory. While close analysis of the docket statistics indicates that the median time from filing to the disposition of cases is twelve

months, compared to ten months four years ago, this does not indicate a trend towards a serious deterioration in the condition of the Court. The completed trial statistics indicate that the Southern District is consistently ranked first or second in the Seventh Circuit. This same statistic indicates that the Southern District of Illinois is equal to or better than the national average. The lawyer members of the Advisory Group are of the opinion that the system is working well. In contrast, the lay members of the Advisory Group feel that a year to dispose of a civil case is excessive. The lay members also feel that the increase in the median number of months from the time an answer is filed to trial is indicative of a problematic trend.

Overall, the Advisory group's positive impression of the condition of the civil docket is basically borne out by the judicial workload profile statistics. The annual filings in this District are not increasing substantially. The weighted filings are likewise not increasing substantially.

These items do not tell the entire story, however, since there are changes in the pending docket that are not reflected solely by the fact that the median disposition time has increased. Of the cases that were on file as of June 30, 1991, 152 or 9.9% of total pending cases were three or more years old. On June 30, 1990 there were 147 or 9.6% of the total pending cases that were three or more years old. This increase in the number of three-year old cases indicates that there is a decrease in terminations of difficult cases over the prior year.

The Advisory Group believes that there has been a change in the character of the civil caseload, in that the general trend is to have pending cases be more complex than they have been in prior years. This appears to be a contradiction of the statistic quoted above that the weighted case filings have not substantially increased. That notwithstanding, the

lawyer members of the advisory group do not believe that the weighted filings statistic is truly indicative of the complexity of the cases currently pending on the Court docket. The lay members of the advisory group believe that lawyers are to blame for the case complexities and that the statistics are evidence of some deterioration in the docket. The lay members further believe that pending cases need to travel through the system more quickly.

Both the lawyer members and lay members of the advisory group believe that there is room for improvement and that efforts should be made to try case management techniques and ADR principles in an effort to ultimately improve the flow of cases to earlier resolution. The advisory group believes unanimously that no drastic overhaul of the system is needed, but that fine tuning based upon its recommendations should be done with careful monitoring and comparison of the docket statistics to dictate whether additional changes should be implemented. The basis for this belief is the fact that the District's statistics generally compare favorably with the national average statistics.

The Advisory Group also unanimously believes that the U.S. District Court Judicial Workload Profile which is prepared annually by the Administrative Office of the United State Court should be reviewed each year by the Advisory Group to determine if the plan adopted by the Court has favorably impacted the state of the docket so that such changes as are indicated can be further implemented.

Pursuant to the mandate of the Speedy Trial Act, the Sentencing Reform Act and other legislation, District Courts must give priority to the processing of criminal cases. The Southern District of Illinois criminal docket has grown 64% in the number of pending criminal cases over the last six years.

During the same time frame, the median time for a criminal felony disposition rose to 5.7 months, the national average, from 3.4 months. However, the United States Attorney's Office grew from twelve Assistant United States Attorneys to twenty-seven over the same period of time with the heaviest increase over the past ten months. With this proliferation of cases and law enforcement resources, the Advisory Group feels that the Court cannot maintain its same ratio of trial time, i.e., 34% in the conduct of civil trials to 32% in the conduct of criminal trials in the future. (See Appendix 4).

D. Filing Trends: Caseload Forecast

The analysis of civil case filings from 12/31/86 through 6/30/91 in Appendix 4 reflects total filings in 1991 of 1,321 versus 1,368 cases in 1986. Based on the analysis, the total filings for the District have not varied significantly for the last six years; however, the individual types of filings show clear trends. Real property case filings are on the increase as are labor cases and forfeiture case filings. Personal injury and other tort filings, along with prisoner cases, and antitrust, copyright and miscellaneous remedy filings are relatively stable while Social Security, FELA and civil rights case filings are the most erratic. Tax cases and contract cases are on the decline. Statistics alone cannot indicate what the trend will be. See Filing Trends: Caseload Forecast in Appendix 4.

The prisoner filings are a classic example of an area where the statistics only reflect the past. New prisons, increased criminal statutes, more effective law enforcement programs and other factors will cause increased filings during periods when there is emphasis on law enforcement and penal reforms. The current stable prisoner filings are believed not to indicate a trend in this District due to factors stated above. See the Illinois Prison Population, Southern District of Illinois statistics that are included with the local Court statistics in the Appendix 4.

E. Existing Judicial Resources

Vacant judgeship months since January 1, 1985 have contributed significantly to the condition of the docket for the Southern District of Illinois. A total of thirty-four vacant judgeship months represents lost judicial time that can never be recovered. While other judicial Districts in the nation may have had similar vacant judgeship months, this is a significant loss of judicial time when the total number of federal judgeships for the District was only three for six full years and four for calendar year 1991. In Districts where there are a greater number of judges, it is possible to provide judicial coverage in the case of vacancies significantly more easily than it is where only a small number of judgeships is involved. Congress must develop a system of filling judicial vacancies more swiftly. This is of particular significance in the Southern District of Illinois where two of the three District Judges will qualify for senior status within the next twelve months.

(1) District Court Judges

The fact that the judicial workload profile shows the Southern District of Illinois to be well above the national average per judge in case terminations and trials completed indicates that the District has managed to process cases through the system, despite the thirty-four vacant judgeship months. That notwithstanding, the filling of the vacancy that now exists should result in a substantial improvement in the processing of the Court's workload.

(2) Magistrate Judges

In addition to handling all pre-indictment criminal matters, the two Southern District of Illinois full-time Magistrate Judges spend a vast majority of their time processing prisoner cases. The advisory group feels that substantial civil referral work should be delegated to and processed by the Magistrate Judges. This would be in conformity with this

Court's Local Rule delegating the full range of responsibilities to the Magistrate Judges pursuant to 28 USC § 636. Despite this, a viewing of the Magistrate Judge workload statistics indicates little available time for the performance of these tasks. To accomplish the delegation of additional work to the Magistrate Judges would necessitate a shifting of some part of the existing Magistrate Judges' workload elsewhere. Without an additional full-time Magistrate Judge, or an additional pro se law clerk, there is no way for the Magistrate Judges to assume those additional duties.

The volume of civil matters being performed by the full-time Magistrate Judges at the present time is limited to disposition of non-prisoner civil motions and occasional civil consent cases. This limitation would be substantially altered if the part-time Magistrate Judge were to be made full-time, or an additional Magistrate Judge were to be allocated to the District. While there may be little prospect of an additional allocation, it will be necessitated by the anticipated increase in prisoner filings that the filing trends in this report indicate. Additionally, it would be possible to restructure the workload of the Magistrate Judges in such a way that part of each Magistrate Judge's workload would consist of additional duties on non-prisoner civil cases that could be assigned by the District Judges. This would result in better use of the Magistrate Judge's abilities.

The part-time Magistrate Judge currently works only in the area of ADR and non-prisoner civil pre-trial and motion areas. The District Judges would be able to expand the areas delegated to the existing part-time Magistrate Judge were he to be made full-time.

(3) Office of the Clerk of Court

The mission of the Clerk's Office can be reduced to a simple phrase, to serve the Court. Carrying out that mission entails executing a broad array of diverse functions according to the highest standards of professional excellence. The Clerk of Court and his

staff are responsible for a broad range of organizational functions, such as chief administrative officer, ministerial officer bearing statutory authority and responsibilities as set forth in the United States Code, the Federal Criminal, Civil and Appellate Rules of Procedure, the local District Court rules of practice and procedure, the information systems conduit of the Court, the financial and space/facilities officer of the Court, the chief human resources officer, and the chief planning officer for the Court. In order for the Clerk to fulfill his mission and mandate, the Clerk's Office must be staffed at 100% at all times. This has not been the case for many years, primarily due to the Gramm-Rudman-Hollings cost-cutting measures and other budgetary constraints. The Administrative Office of the United States Courts has devised a formula setting forth the staffing level for all Clerks' Offices. Depending upon the state of the federal budget, the staffing formula is then reduced by a percentage that reflects the shortfall in dollars.

Currently, the Administrative Office is instituting a policy of "decentralization". This policy is placing additional burdens on Clerks' Offices throughout the nation. Although functions are being transferred from the Administrative Office to the Clerks, positions are not being transferred. This, in turn, increases the workload of the staff in each District's Court's clerk's office which creates a burden in the handling of the Court's daily paper flow. The smaller Clerks' Offices do not have the luxury of large staffs to absorb and counteract this additional workload. Therefore, it becomes extremely important that staffing allocations be awarded at a full 100%.

Further, the Clerk of Court, pursuant to the Civil Justice Reform Act of 1990, will assume additional responsibilities. The Act itself recognizes this need by stating, "It is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction

principles and techniques."[2] The temporary position of management analyst for this District should be made permanent to assist the Clerk in fulfilling the mandates of the Act.

(4) Pro Se Law Clerk

This District has one pro se law clerk whose duties are to assist the District Judges and Magistrate Judges in processing prisoner filings and capital cases. In view of the fact that these filings presently constitute over 30% of the District's filings annually and four additional prison institutions will open within the foreseeable future, the Advisory Group believes that an additional pro se clerk is warranted. To the extent that the additional clerk is able to assume part of the workload of the Magistrate Judges, more time will be available to the Magistrate Judges to assist the District Judges in the processing of non-prisoner civil matters.

F. Automation

The Clerk's Office utilizes an automated docketing program called Integrated Case Management System (ICMS) and recently celebrated the first anniversary of the ICMS implementation project. Commencing in October of 1990, Court staff began the arduous task of site planning and preparation, hardware installation, and examination of all case management procedures. The system software installation, data verification, database conversion and uploading ensued early in the new year, at which time formal staff training took place until late April when the Court went "live" with automated docketing. The Clerk's Office continues training new users and is bringing the benefits of the automated system to the remainder of the Court family.

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[2] Judicial Improvements Act of 1990, P.L. 101-650 (Dec. 1, 1990) §102(6).

The Clerk's Office is currently implementing a Public Access of Court Electronic Records (PACER) System. This is an application which will allow outside users access to the system. PACER provides access to all docket cards current through the previous day. In November 1991, on a very limited basis, PACER was made available to members of the legal community and the public who have access to personal computers. By dialing into PACER, the legal community and the public gain access to the Court's dockets. Successful implementation of PACER mandates the Clerk's Office install approximately six telephone lines and modems along with purchasing one 286 personal computer. This would allow several people to dial in to the system simultaneously, thus relieving some of the workload in the docketing area, reducing the number of phone calls and distractions to employees. PACER users can quickly research needed information without having to be put on hold, encounter a busy signal, or tie up their own voice lines. The personal computer will provide the Court with a place to store PACER without allowing public access to the ICMS system, thus eliminating the threat of sabotage or computer virus.

Currently, the Federal District Court owns and operates thirty-seven personal computers. Not all employees have access to a personal computer to assist them with their daily workload and responsibilities. Those employees who have a PC at their workstation use it to access the ICMS database, along with other stand-alone applications like word processing, spreadsheets, graphics, legal research (i.e. Westlaw, Lexis) et cetera. Users do communicate electronically with one another on a limited basis using the mail capabilities of the UNIX operating system but this is characteristic to ICMS users only and does not allow the sharing of files created in other applications. In order for a judge, law clerk, or judge's secretary to transfer an order written in WordPerfect to another Court employee (i.e.

law clerk to judge) for review and revision, the user must copy the file to a diskette and physically deliver the media to the other party.

The District's automation process would be substantially improved by the installation of a LAN (local area network). A LAN would allow judges, law clerks, secretaries, and managers of the Court to transfer letters, memos, orders, and legal opinions electronically. A LAN would also provide an electronic flow of documentation among all Court components of the District, (i.e. U. S. District Court, U. S. Probation Office, U. S. Attorney, Federal Public Defender, U. S. Bankruptcy Court) to distribute work with less delay and more organization and efficiency.

Moreover, a LAN would enable the Clerk of Court to communicate more efficiently, and transfer files back and forth with Judges and employees and other members of the Court family. LANs eliminate a substantial amount of paper-shuffling and provide timely information to get the job done here and now. A law clerk or staff member could prepare a preliminary report, send it to the Judge or the Clerk over the LAN, and the Judge or the Clerk could make changes, suggestions, etc., before sending it back to its originator via E-mail (electronic mail) for completion. The Advisory Group would like to see LANs in both East St. Louis and Benton and ultimately form a WAN (wide area network). A WAN is a method by which distant locations may communicate with one another using network software and telephone cabling. A WAN would provide a link between the judges' chambers, Clerk's offices, and all other members of the Court family. Most communications between the East St. Louis Courthouse and the Benton Courthouse take place by fax, mail, telephone or personal travel between offices. A WAN would afford an electronic link between locations and the respective offices within each location. This WAN network will provide a timely and orderly flow of documentation.

IV.
IDENTIFIABLE CAUSES OF EXCESSIVE COST AND DELAY

IV. IDENTIFIABLE CAUSES OF EXCESSIVE COST AND DELAY

A. Analytical Framework

Section 472(c)(1)(c) of CJRA mandates that the Advisory Group "identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation." CJRA does not, however, define what is meant by cost and delay or specify whether the principal concern is with cost and delay with respect to the courts, attorneys, clients or the public in general.

Clearly it is impossible to eliminate all costs of civil litigation. There will always be court costs and some out of pocket costs for depositions, medical reports and the like; and there will always be attorneys' fees, whether they are paid out of any settlement or judgment, as in the case of contingent fee cases, paid by one of the parties, or in the case of government attorneys, paid from public funds. Moreover, it is axiomatic that the amount of these costs will increase with the complexity of the case. The overall litigation costs and total attorneys' fees in a complex anti-trust case will undoubtedly be considerably greater than in a simple mortgage foreclosure suit in which the mortgagor defaults.

Furthermore, there will always be delays in civil suits. It is impossible to try any case the day it is filed. As is the case with litigation costs, the amount of time necessary to prepare adequately for a trial and the time required to try a lawsuit varies with the complexity of the case. Some cases can be adequately prepared for trial within several months of filing and may take a day or less to try. Others, for example, a complex products liability case, may require a year or more to prepare fully and the trial may last several days or in some cases weeks, even if every lawyer involved in the case works diligently and

efficiently. In addition, compressing the time from filing of a case to trial artificially may diminish significantly the possibility of settlement before trial and may in fact increase rather than decrease the total attorneys' fees because of premium billing rates.

Therefore, the focus of the analysis should be on reducing excessive costs and delay in civil cases filed in this District, with excessive being defined as costs and delays that are in excess of those that should reasonably be expected to occur in cases having similar characteristics and complexity. Moreover, the analysis should be made primarily in terms of reducing excessive costs and delays to actual and potential litigants for whom the system was created. All too often in the past, court procedures and litigation practices have been designed for the convenience of the lawyers and judges, and the interests of the parties has been either consciously or unconsciously a secondary consideration. This litigant orientation is evident throughout the CJRA and was the primary theme espoused by the non-lawyers on the Advisory Group, who persistently blamed lawyers' dilatory tactics and excessive discovery as the principal causes of cost and delay in this District.

In its deliberations, the Advisory Group tried to identify the procedures and practices that appear to cause excessive cost and delay to the litigants and to devise recommendations that are designed to curtail the excesses while at the same time not unduly interfering with the ability of a competent lawyer to adequately prepare and try a civil suit filed in this District. This is a difficult balance to strike. Because of the tremendous variation in the complexity of cases, it is not easy to identify causes of excessive cost and delay that apply across the board to all cases. Furthermore, there are legitimate differences of opinion as to both the causes and the cures. Nevertheless, the Advisory Group has used the sources of information available to it and its collective wisdom to fulfill the statutory mandate of CJRA to the best of its ability.

One additional complicating factor needs to be discussed at this point. The focus of CJRA is on costs and delay in civil trials. Yet civil trials in the federal courts must compete with criminal trials for judge time, so the criminal trial docket has a direct impact on the civil docket. Moreover, the Speedy Trial Act requires that criminal trials must be given scheduling priority over civil trials. This means that a civil case set for trial must often be postponed at the last minute because of a pending criminal trial. When this occurs, the lawyers must spend a great deal of time reviewing the file before the new trial date; and witnesses and litigants incur additional costs and are inconvenienced.

This is a particularly acute problem in this District because the number of criminal cases filed each year is growing faster than the number of civil cases. The number of pending criminal cases has grown approximately 64% in the past six years, yet the number of civil cases filed each year has been relatively constant during the past three years and has actually decreased during the past six years. If this trend continues, and it is likely it will as long as Congress enacts legislation that broadens the criminal jurisdiction of the federal courts, less and less judicial time will be available for civil cases, unless additional judges are made available to this District. Furthermore, the likelihood of a civil trial having to be postponed due to preemption by a criminal trial because of the Speedy Trial Act will also increase.

There is, however, nothing that can be done by the Court to remedy this problem in any fundamental way. Congress passed the Speedy Trial Act, which has constitutional underpinnings, and only Congress can change the Act. Moreover, only Congress can allocate additional judicial resources to this District. The Congress has authorized a temporary District Court Judge for this District, but the position has not yet been filled and will be vacant for several more months.

What can be done locally is to have a local rule that places civil trials that must be postponed because of a criminal trial on a priority basis on the civil docket. This will at least help to minimize the additional costs and delay occasioned by the postponement. See Recommendation No. 2 in Part V of this Report.

The main point of this lengthy discussion is that many of the causes of costs and delays in civil cases result from factors beyond the control of lawyers, judges and litigants involved in civil cases. Because there is nothing that can be done locally to deal effectively with these factors, the Advisory Group did not make any recommendations to the court about them. However, the Advisory Group has included in Part VI a list of issues for Congressional consideration that could have a positive impact on the costs and delays in civil trials.

B. Causes of Excessive Costs and Delays in Civil Cases

Although the statistics on civil cases filed in this District indicate that overall the civil docket is relatively in better shape than many other Districts, there are, as is pointed out in Part III, several statistics pointing to potential long range problems. First, the median time from filing to final disposition of civil cases has increased from ten to twelve months or 20% during the last four years. Second, this District fell from 9th in FY90 to 26th in FY91 out of ninety-four Districts in the time from the filing of an answer to the date of completed trials. Third, there has been an increase in the number of cases that have been pending over three years. In combination, these statistics indicate a trend toward more complex civil cases being filed.

By itself, this trend would not cause much alarm, unless there was some concrete evidence that complex cases invariably result in more excessive costs and delays than less complex cases and no such evidence was brought to the attention of the Advisory Group.

Nevertheless, there is cause for concern because complex cases, in general, require more judge time than simple, uncomplicated cases and the substantial increase in the number of criminal cases on the docket makes it more difficult for the District Judges and Magistrate Judges to devote time to civil cases. At the present time, the amount of time spent by the District Judges on civil and criminal trials is roughly the same (34% vs 32%), but this ratio is very likely to change in favor of a greater percentage being devoted to criminal trials in the future.

In addition, prisoner civil cases, such as petitions for post conviction relief and civil rights claims, now represent 30% of the total civil filings; and because of new prisons being built in this area, a substantial increase in the number of these cases is expected for at least the next several years. The large number of these cases also impact on the amount of judge time available in this District for civil cases being financed by clients from their own resources.

More significant than all these problems, however, is the excessive use of discovery. As is reported on pages 6-7 of the Brookings Institution Task Force on Civil Justice Reform Report entitled Justice for All: Reducing Costs and Delay in Civil Litigation (1989) in discussing the findings of a 1988 national survey by Louis Harris and Associates:

> --The respondents agree that the most important cause of high litigation costs or delays is abuse by attorneys of the discovery process, which leads to "overdiscovery" of cases rather than to attempts to focus on controlling issues. Both plaintiffs' and defendants' attorneys share in the blame. Corporate counsel and private litigators estimate that 60% of all litigation costs in a typical federal court case arise out of discovery.

The judges in this District felt that although the evidence is for the most part anecdotal and impressionistic, misuse and abuse of discovery is the single most prevalent cause of excessive cost and delay in this District. The Advisory Group has made several recommendations in Part V that are designed to curb discovery abuses. See in particular Recommendation No. 4, which deals with judicial management of discovery and discovery deadlines and Recommendation 8, which deals with disclosure and discovery of expert witnesses.

The Advisory Group also found that the absence of a uniform, detailed case management system with firm trial dates and firm discovery cut-off dates geared to the complexity of civil cases filed in this District could lead to excessive costs and delays. Therefore, the Advisory Group has recommended that the Court adopt a three-tiered system of case management for complex civil cases consisting of a mandatory pre-trial scheduling and discovery management conference where a firm trial date will be set, a mandatory settlement conference that is to take place within sixty days after the cut-off date for discovery and a final pre-trial conference that will be held not less than seven days prior to the date set for the trial. See Recommendations 2-6 in Part V. These recommendations are designed to give the judicial officers in this District hands-on control of complex cases in order to prevent dilatory and abusive tactics that could result in excessive costs and delay in a particular case.

In all fairness, however, it must be pointed out that the Advisory Group did not find that the lawyers in this District are any different from lawyers in other areas of the country or that there are any unusual or pervasive abusive practices in this District. To the contrary, the vast majority of the lawyers who practice in the federal court in this District are exemplary in their behavior and competently represent their clients. The Advisory Group did find, however, that the lawyers who practice in this District, like lawyers everywhere,

have a tendency not to prepare a case until they are forced to because of some scheduled major event. This tendency can result in excessive costs and delay and may prevent a timely, mutually beneficial settlement from being effectuated. The case management system recommended by the Advisory Group is designed in part to counteract this tendency to procrastinate. If these recommendations are accepted by the Court, lawyers will have built-in incentives to prepare their cases quickly and thoroughly. Enforced discipline of this nature is regrettable but, in the opinion of the Advisory Group, necessary.

Finally, the Advisory Group concluded that the lack of uniformity in the handling of motions and in some cases excessive delays in rulings on motions had caused a great deal of confusion among lawyers practicing in the Court and had also led to additional attorneys' fees that are sometimes difficult to justify. In order to deal with this criticism, the Advisory Group has recommended a uniform, streamlined motion rule that calls for rulings in not more than thirty days after the reply or hearing, cuts down on the number of hearings on routine motions and also authorizes telephonic hearings. See Recommendation No. 7 in Part V.

V.
RECOMMENDATIONS TO THE COURT

V. RECOMMENDATIONS TO THE COURT

As is clear from the discussion in Parts III and IV of this report, the docket in the Southern District is in much better shape than many Districts, and there are at the present time no unusual cost and delay problems that are unique to this District. Therefore, instead of radical reforms, what is needed are fine-tuning recommendations that are intended to make the court more efficient and "user-friendly" for the litigants and their counsel. The Advisory Group's recommendations are designed to address this important but limited purpose.

The Advisory Group wants to make it clear that the District Judges and Magistrate Judges in this District are doing an excellent job with the resources at their disposal. The recommendations are not in any way intended as criticism of the competence, integrity or good will of any of the judges. Nevertheless, the Advisory Group, pursuant to the CJRA, has the statutory duty to make recommendations that will reduce costs and delays of civil litigation in this District.

The Advisory Group's recommendations are made in the context of the parameters set by § 473 of the CJRA for the civil justice expense and delay reduction plan the court must promulgate and implement. Section 473 requires that the Court's plan take into account the following eight principles and guidelines: (1) differential levels of case management based on the complexity of a case, (2) active case management by the judiciary from the filing of a case through the trial stage, (3) the setting of early, firm trial dates, (4) controlling the extent of discovery, the time for completion of discovery, good faith efforts to settle discovery disputes, and encouraging voluntary exchanges of information and cost effective cooperative discovery devices, (5) deadlines for filing of motions and the framework

for deciding motions, (6) active judicial involvement in attempts to settle cases, (7) expanded use of alternative dispute resolution devices, and (8) the possibility that parties or agents of the parties with authority to bind be required (a) to be physically present or at least available by telephone at all pre-trial and settlement conferences and/or (b) to sign requests for extensions of certain court ordered case management deadlines.

The Advisory Group's recommendations are intended to provide a working framework and list of important issues for the court to consider in devising its civil justice expense and delay reduction plan. The recommendations are merely outline suggestions and are not intended as all-inclusive. Moreover, the Advisory Group has no expectation that all of its recommendations will be included in the Court's plan. In formulating its recommendations with respect to local rules, the Advisory Group has taken into account the July 5, 1991 legal opinion from the Administrative Office of the United States Courts that, except to the extent mandated by the CJRA, or otherwise authorized by statute, local rules cannot be inconsistent with the Federal Rules of Civil Procedure. In this connection, see Part VI, which contains recommendations for expense and delay reduction that are properly addressed to the United States Congress and which the court has no authority on its own to implement.

Each recommendation is followed by a Comment which explains the Advisory Groups's rationale for the recommendation. Except where otherwise noted, the vote in favor of the recommendation was unanimous.

RECOMMENDATION NO. 1

The case management procedures of the judges should, except for minor details, be uniform.

COMMENT

The lack of uniformity among the District Judges and Magistrate Judges as to pre-trial conferences, discovery cut-off dates, motion practices, settlement conferences and bifurcation of trials was the most frequent criticism of the existing case management system made in the lawyer survey conducted by the Advisory Group. This criticism was echoed by members of the Advisory Group who try cases before the court. Not only does the lack of uniformity create confusion among lawyers who have cases before the court, but it also often causes unreasonable delays and can unnecessarily increase the costs of cases.

Two examples may help to illustrate this point. First, some judges have a rule that except in rare circumstances they will rule on all motions within thirty days. Other judges have no such rule and frequently fall behind in issuing motion orders, thereby causing a delay in the processing of docketed cases. The motions that are assigned to a judge that quickly disposes of them will, however, inevitably move more quickly through the system. Another example involves the difference with respect to telephonic hearings on motions. A lawyer with a motion before a judge that allows telephonic hearings will have much less time and a smaller legal fee for the hearing than if the lawyer had to attend a formal court hearing fifty or one hundred miles from his or her office on the same motion. This disparate treatment is unfair to the litigants and their attorneys and unfortunately also fosters a negative impression of our judicial system in the eyes of the public.

The Advisory Group does not intend that every single aspect of each case management device be absolutely the same. Minor variations that accommodate a particular judge's style are necessary and desirable. On the other hand, the Advisory Group believes that basic uniformity on, for example, the timing and issues to be dealt with in pre-trial and settlement conferences and the rules for disposing of motions, is a highly desirable goal

which the judges should strive to incorporate in the court's civil justice expense and delay reduction plan. Achieving this goal will undoubtedly require a great deal of discussion and, in many cases, changes in long-standing habits.

RECOMMENDATION NO. 2

Except for those classes of cases exempted by local rule, early, firm trial dates should be established for each case, with delays authorized only by order of the court because of the complexity of the case or for other good cause shown. Priority of criminal cases under the Speedy Trial Act shall not be a justifiable excuse for delay except in extraordinary circumstances. The court shall have the responsibility to use its best efforts to make a judge available to try a civil case at the designated time, regardless of the pressures of the criminal docket. If the trial date is postponed, the case must be reset on a priority basis for trial at the earliest possible date.

COMMENT

Preparation for a trial is a very time-consuming and expensive process. Last minute delays, whatever their cause, require a duplication of much of the trial preparation work, increase substantially the legal fees and other trial costs (*e.g.*, expert witness fees) and inconvenience everyone involved in the trial. On the other side of the coin, the available evidence indicates that firm trial dates that are strictly adhered to promote settlements, whereas the absence of firm trial dates decreases the likelihood of settlement because the lawyers and parties have no critical deadline that forces them to focus their energies on the possibility of settlement.

The Advisory Group is aware of the priority that must be given to criminal trials under the Speedy Trial Act of 1974 and Rule 50 of the Federal Rules of Criminal Procedure. This priority, however, is not absolute. The hardships to clients, witnesses and their lawyers and the increased costs of postponed civil trials are properly taken into account

in determining whether a civil trial should be preempted by a criminal case. Other solutions should be considered. The criminal case, for example, could be assigned to another judge. Alternatively, the civil case could be assigned to another judge. Moveover, assuming the court implements the Advisory Group's recommendation that Magistrate Judges handle substantially more of the pre-trial work (See Recommendation No.10), the District Judges will have significantly more time available to preside over both criminal and civil trials. If this occurs, there will be less likelihood that the priority rule for criminal trials will ever require postponement of a civil trial.

Many members of the Advisory Group felt that a preferable solution to the criminal docket priority problem is to create separate civil and criminal divisions and assign judges to one or the other. The majority of the Advisory Group, however, felt that this proposal was too radical, and might create more delay problems than it solved. One problem with this scheme is the possibility of serious overloads in the civil division that cannot be adequately dealt with unless a judge from the criminal division was assigned to the civil division, which could cause overload problems in the criminal division, or the District received additional judges. Despite the potential problems, all members of the Advisory Group thought the court should study the possibility of separate divisions.

The Advisory Group favors a local rule that divides civil cases into three categories based primarily on tracks on the complexity of the case and assigns a presumptive trial time to each category.[3] The Advisory Group was favorably impressed with Judge Beatty's practice of three tracks, "A" cases, which will be tried within 6-8 months, "B" cases, 9-12 months and "C" cases, 14+ months. The Advisory Group thought it would be helpful if the

[3]Section 473 (a)(2)(B) of the CJRA specifies that except for very complex cases, the trial date should be no later than eighteen months after the filing of the complaint.

types of cases that generally fall into each category could be made known to the lawyers who practice before the court.

At the present time, some judges will place a postponed trial at the bottom of the trial docket while other judges try to reset such cases for trial on a priority basis. The Advisory Group thinks the latter is the preferable practice and recommends that it be implemented by all the judges.

Finally, the Advisory Group recommends that the trial date be included as part of the initial pre-trial conference order (See Recommendation No. 4).

RECOMMENDATION NO. 3

Case management of civil cases in this district should be structured around three basic components: (1) an initial pre-trial conference held within sixty days after the appearance of a defendant, (2) a settlement conference held within thirty days after the cut-off date for discovery and (3) a final pre-trial conference to be held not less than seven days prior to the trial date. Additional pre-trial and settlement conferences may be held at the discretion of the court.

COMMENT

All members of the Advisory Group enthusiastically endorsed this basic structure, which in essence is not fundamentally different from the current case management practices used in the District. All the judges currently issue a Trial Practice and Schedule Order following the filing of the complaint. Not all the judges, however, issue such an order after formal pre-trial conferences. Some of the judges order settlement conferences. Some of the judges hold final pre-trial conferences and issue final pre-trial orders.

The Advisory Group's recommendation differs from the present case management practice principally in four respects: (1) the revised case management system is intended to be used in all cases except those specifically excluded by local rule of the court on the

grounds that a formal case management structure is unnecessary or inappropriate (*e.g.*, routine mortgage foreclosure and social security cases) whereas under current practice there is a wide variation in the types of cases that are subject to extensive case management, (2) under current practice, settlement conferences are not consistently held as part of the case management structure, (3) the Advisory Group's recommendations contemplate more extensive use of Magistrate Judges for the initial pre-trial and settlement conferences than under current practice, and (4) the Advisory Committee's recommendation concerning the presence of the parties or representatives of parties with binding authority at the initial pre-trial conference (See Recommendation No. 4) is not apparently part of the present practice, although it is currently a requirement in settlement conferences held before Magistrate Ferguson. These and other differences will be discussed in more detail in the recommendations which follow.

The Advisory Group believes that its proposed case management structure is consistent with the framework envisioned in Rules 16 and 26 (f) of the Federal Rules of Civil Procedure and the requirements and suggestions in § 473 of the CJRA. The Advisory Group also believes that this structure, if implemented, will significantly enhance the possibility of settlements that are advantageous to all parties and will substantially reduce the overall costs and the average time between filing and final disposition of civil cases filed in this District.

RECOMMENDATION NO. 4

Except for those classes of cases exempted by local rule, an initial pre-trial conference shall be held no later than sixty days after the appearance of a defendant. In cases removed to the district court or transferred to this district court from another federal district, the initial pre-trial conference shall be held within ninety days after removal or transfer.

At least one attorney for each party with authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed will be present at this conference. In addition, each party, or a representative of a party with authority to bind the party will be present in person, or for good cause shown by telephone, during the course of the conference.

The purposes of the initial pre-trial conference are: (1) to discuss the possibility of settlement; (2) to discuss the possibility of using a voluntary alternative dispute resolution device (*e.g.*, arbitration, summary jury trial, mini-trial) to resolve the dispute; (3) to discuss the complexity of the case and, if it is tried, the approximate number of days necessary to complete the testimony; (4) to set a date for the trial and a cut-off date for completion of all discovery (or in the case of extraordinarily complex cases, the cut-off date for completion of core discovery); (5) to establish a plan for the management of discovery in the case, including any limitations on the use of the various discovery devices that may be agreed to by the parties, ordered by the judicial officer presiding over the conference, or required by local rule (see Rule 15 of the local rules of this court restricting a party to twenty interrogatories except by leave of court) and requirements as to disclosures relating to expert witnesses; (6) to formulate, simplify and narrow the issues; (7) to discuss and set deadlines for amendments to the pleadings; (8) to discuss the filing of potential motions and a schedule for their disposition; (9) to discuss the possibility of one or more additional case management conferences prior to the final pre-trial conference; and (10) to cover any other procedural issues that the judicial officer hearing the case determines to be appropriate for the fair and efficient management of the litigation. A list of the issues that will be discussed at this conference will be included in the notice of the hearing sent to each party.

Assuming the case is not settled at this conference, the results of this initial pre-trial conference will be incorporated into an order which shall be modified only by order of the court for good cause shown.

COMMENT

The Advisory Group unanimously concluded that the initial pre-trial conference should be the basic component of the District's case management system and that consequently it should encompass as wide a range of scheduling and planning issues as

possible. In essence, the initial pre-trial conference envisioned by the Advisory Group is similar to but much broader in scope than the initial pre-trial conference now held in this District. Moreover, the pre-trial order will cover more issues than the existing Trial Practice and Schedule Order. In addition, the Advisory Group's recommendation is that the initial pre-trial conference be mandatory, whereas under Local Rule 13 this conference is discretionary.

The types of issues and the degree of specificity with which they are dealt in the initial conference and order will vary with the type of case. The case management requirements of a prisoner's civil rights case, for example, will be quite different from the case management requirements of a complex class action suit. Nevertheless, the basic format for the conference and the order should be the same for all cases subject to the rule.

The Advisory Group did not feel that it is necessary at this time to have completely separate tracks for each major type of case in this District. The federal District Courts that have or are contemplating this type of detailed differential case management, in general, have much heavier dockets and more difficult case management problems than currently exist in this District. The initial pre-trial order should, however, be tailored to the needs of that particular case. Some broad distinctions, *e.g.*, the three suggested categories of trial dates - see Recommendation 2 - will undoubtedly be part of the local rules or will develop as standard practice over a period of time.

Some classes of cases, because of their routine nature and simplicity (*e.g.*, standard mortgage foreclosure actions) may properly be exempted from the pre-trial conference requirement. The Court is in a better position than the Advisory Group to determine what categories of cases should qualify for the exemption. In this connection, Local Rule 13(b) exempts fourteen categories of cases from the current pre-trial conference requirement.

This list should be reviewed in the course of the court's preparation of its civil justice expense and delay reduction plan.

The timing of the initial pre-trial conference is the same as the scheduling and planning conference required by the proposed revisions to Rule 16(b) of the Federal Rules of Civil Procedure.

The requirement that the attorneys participating in the initial pre-trial conference have authority to enter into stipulations and make admissions is taken from Rule 16(c).

The requirement that each party or a representative of each party with binding authority be present in person, or for good cause shown by telephone, at the initial pre-trial conference is not included in Rule 16 or 26(f) of the Federal Rules of Civil Procedure, but the Advisory Group felt very strongly that this is an appropriate requirement because the "presence" of the clients will facilitate the discussion of settlement and the resolution of differences that may arise during the course of the pre-trial conference. The Advisory Group is aware that this requirement may present difficulties in cases where the United States is a party because in many cases the approval of a settlement by a deputy attorney general located in Washington, D.C. is mandated. The Advisory Group suggests that a pre-trial local rule take this potential problem into account.

The Advisory Group reached no consensus on whether the parties should be required to meet before the initial pre-trial conference to prepare a joint case management plan which would list all areas of agreement and disagreement, as suggested by § 473(b)(1) of the CJRA, or whether there should be a mandatory rule regarding pre-discovery exchange of information and documents - see § 473(a)(4) of the CJRA. The majority of the Advisory Group felt that these requirements are unnecessary duplication of effort since the issues will be covered in the initial pre-trial conference. Some members of the Advisory Group,

however, felt that a local rule encompassing these concepts is appropriate and would reduce cost and delays. A third group felt the judges already had the inherent authority to enforce these requirements in very complex cases where appropriate and that therefore no local rule spelling out the details of these requirements is necessary. Nevertheless, the Advisory Group unanimously agreed that discovery should be conducted on a more cooperative basis between attorneys. Cooperation, however, cannot be mandated (except in a negative sense through sanctions that curb egregious discovery abuse), but rather must be continually nurtured by the bench and the bar.

Finally, the Advisory Group strongly recommends that Magistrate Judges should be authorized to conduct initial pre-trial conferences in all types of cases, in order to free up additional time for the District Judges to preside over trials.

RECOMMENDATION NO. 5

Except for the classes of cases exempted by local rule, a settlement conference shall be held before a judicial officer other than the judge assigned to try the case within thirty days after the cut-off date for discovery. In addition to the attorneys of record, each party or a representative of a party with authority to enter into a binding settlement on behalf of the party shall be present in person or, for good cause shown, by telephone during the course of the conference.

The settlement conference statements and communications during the settlement conference shall not be admissible or used in any fashion in the trial of the case.

COMMENT

The Advisory Group's intent is that the settlement conferences now held by Magistrate Ferguson be expanded to include all cases except those excluded by the court by local order. As envisioned by the Advisory Group, this settlement conference will in effect be conducted as a mediation proceeding and as such qualifies as an alternative dispute

resolution device. See Recommendation No. 9 and § 473(a)(6) of the CJRA. In addition, according to Magistrate Judge Ferguson, the settlement conferences he has held have resulted in a higher than normal rate of settlement, thereby reducing the total costs of the cases that are settled and also reducing potential delays in other pending cases.

Scheduling the settlement conference after the conclusion of discovery maximizes the possibility that each party will have sufficient information about the case to make an informal decision concerning the settlement value of the case. This does not mean that settlement should not be discussed at other pre-trial conferences. It most definitely should be discussed at every conference, including the initial pre-trial conference. As a practical matter, however, in most cases it is unlikely the parties will be willing to enter into serious settlement negotiations until discovery is complete.

Having a judicial officer other than the judge assigned to try the case preside over the settlement conference increases the likelihood that the parties and their attorneys will negotiate more openly and vigorously than if the trial judge presides. Moreover, the judicial officer presiding over the settlement conference will likely feel freer to use standard mediation techniques like the ex parte settlement statement used by Judge Ferguson without fear of tainting his or her objectivity about the case should settlement not be achieved.

Requiring the parties, or representatives of parties with binding authority, to be present at the settlement conference also enhances the possibilities that the conference will result in a good faith effort on the part of everyone to settle the case prior to the time intensive trial preparations must be undertaken. Magistrate Ferguson currently utilizes this requirement in his settlement conferences. An exception to this requirement for cases where the United States is a party and settlement approval by a deputy attorney general in

Washington, D.C. is necessary may be appropriate. See the Comment to Recommendation No. 4.

RECOMMENDATION NO. 6

Except for those classes of cases exempted by local rule, a final pre-trial conference shall be held not less than seven days prior to the trial date.

In contrast to the initial pre-trial conference which may be held before a judicial officer other than the judge assigned to try the case and the settlement conference which must be held before a judicial officer other than the judge assigned to try the case, the judge assigned to try the case should, except in extraordinary situations preside at final pre-trial conference.

In addition, contrary to existing practice, proposed jury instructions should not be required to be submitted to the court at the final pre-trial conference; rather they should be submitted to the court and opposing counsel no later than the first day of the trial.

The following issues should be discussed at the final pre-trial conference and in the final pre-trial order: (1) stipulated and uncontroverted facts, (2) list of issues to be tried, (3) disclosing all witnesses, (4) listing and exchange of all exhibits, (5) pre-trial rulings, where possible, on objections to evidence, (6) disposition of all outstanding motions, (7) elimination of unnecessary or redundant proof, including limitations on expert witnesses, (8) itemized statements of all damages by all parties, (9) bifurcation of the trial, (10) limits on the length of trial (11) jury selection issues, and (12) any issue which in the judge's opinion may facilitate and expedite the trial, for example the feasibility of presenting testimony by a summary written statement.

Trial briefs on any difficult, controverted factual or legal issue, including anticipated objections to evidence, shall be submitted to the court at or before the final pre-trial hearing.

COMMENT

The overall purposes of the final pre-trial conference are (1) to explore one final time the possibility of settlement, (2) to simplify the issues and (3) to shorten, to the extent possible, the length of the trial.

The Advisory Group's recommendation on the final pre-trial conference is not that different from the current practices of most of the judges. The judges differ, however, with respect to many issues including the timing of the final pre-trial conference and the deadline for submission of proposed jury instructions. The Advisory Group feels that, to the greatest extent possible, the timing and requirements of the conference should be uniform. The Advisory Group's recommendation that proposed jury instructions do not need to be submitted until the first day of the trial is based on the practical conclusion that many cases settle between the time of the final pre-trial conference and the date of the trial and in these cases the attorneys' fees for the preparation of the jury instructions are an unnecessary expense to the client. On the other hand, there is little likelihood of prejudice to any of the parties due to the proposed rule delaying the submission of the instructions until the time the trial begins.

Although not specifically stated in the recommendation, it is clear that lead counsel for each party will be present in person at this conference. That attorney must have authority to bind the client on all matters that are likely to be discussed at this conference, including settlement authority. Since this conference for the most part deals with technical issues of the forthcoming trial, the presence of the parties is not deemed by the Advisory Group to be as necessary as in the initial pre-trial and settlement conferences. Having the judge assigned to try the case preside over this conference is, however, an important requirement. The trial judge needs to have firsthand knowledge of the differences between the parties in order to exercise effective control over the trial.

RECOMMENDATION NO. 7

A uniform local motion rule should be promulgated. This rule should incorporate the following suggestions:

> **(1) Except in extraordinary circumstances, rulings on all motions shall be made within thirty days after filing of the response by the opposing party, or in the case a hearing is ordered, within thirty days after the hearing.**
>
> **(2) An oral argument shall be scheduled only if requested by one of the parties and, if requested, should be scheduled by the requesting party with the clerk of court.**
>
> **(3) Motion hearings may be held by telephone conference unless otherwise requested by a party or ordered by the court.**
>
> **(4) The provisions in Local Rule 6 requiring the submission of briefs and proposed orders should be continued.**

In order to facilitate the efficient disposition of motions, the court should broaden the circumstances under which magistrate judges will hear motions; and all the judges hearing motions should adopt a practice of setting aside a minimum of two days each month for motion hearings and in addition a specific time each week for informal conferences on routine motions (*e.g.*, Extensions of Time and most discovery disputes). Moreover, oral rulings confirmed by a very brief written memorandum order should be authorized for routine non-dispositive motions.

COMMENT

The variation in motion practice among the judges and the adverse impact this variation has on the cost and delay of civil trials in this District was the most prevalent complaint made by lawyers who answered the Advisory Group's survey questionnaire. The members of the Advisory Group who regularly practice before the court also expressed their

frustration with having to deal with these different practices. See also the Comment to Recommendations No. 1.

Utilizing Magistrate Judges more frequently for motion hearings will help spread the workload more evenly among the judges, thereby making it easier to comply with the thirty day ruling requirement and also additional time for the District Judges to preside over trials.

The Advisory Group considered but rejected the suggestion in § 473 (b)(3) of the CJRA that extensions of deadlines for completion of discovery or postponement of a trial be signed by the party as well as the attorney. The Advisory Group felt that this requirement could engender mistrust between the lawyer and client, and in any event would, at best, have only a minimal effect on cost and delay of cases.

RECOMMENDATION NO. 8

In addition to establishing a cut-off date for discovery and other discovery management devices discussed in Recommendation No. 4, The court should seriously consider adoption of a local rule similar to Illinois Supreme Court Rule 220 dealing with disclosure and related issues of expert witnesses. The court should also make it clear to the practicing bar that excessive and abusive discovery will not be tolerated; and should be more rigorous and consistent in ordering sanctions for discovery abuses.

COMMENT

Excessive discovery is widely acknowledged as one of the most prevalent causes of excessive cost and delay in civil trials. Although the Advisory Group found that excessive discovery is a problem in this District, it is not as serious a problem as in many other Districts. For this reason, the Advisory Group concluded that major reform proposals were not justified. Instead, only two major recommendations for changes appear to be warranted at this time.

The first is to suggest that the Court consider adopting a rule regarding expert witnesses similar to Illinois Supreme Court Rule 220, which states:

(Supreme Court Rule 220). Expert Witnesses

(a) Definitions.

(1) Definition of expert witness. An expert is a person who, because of education, training or experience, possesses knowledge of a specialized nature beyond that of the average person on a factual matter material to a claim or defense in pending litigation and who may be expected to render an opinion within his expertise at trial. He may be an employee of a party, a party or an independent contractor.

(2) *Consulting expert.* A consulting expert is a person who possesses the same qualifications as an expert witness and who has been retained or specially employed in anticipation of litigation or preparation for trial but who is not to be called at trial to render opinions within his area of expertise .

(b) Disclosure.

(1) *Expert witness.* Where testimony of experts is reasonably contemplated, the parties will act in good faith to seasonably:

(i) ascertain the identity of such witnesses, and

(ii) obtain from them the opinions upon which they may be requested to testify.

In order to insure fair and equitable preparation for trial by all parties the identity of an expert who is retained to render an opinion at trial on behalf of a party must be disclosed by that party either within 90 days after the substance of the expert's opinion first becomes known to that party or his counsel or, if the substance of the expert's opinion is then known, at the first pre-trial conference in the case, whichever is later. In any event, as to all expert witnesses not previously disclosed, the trial court, on its own motion, or on the motion of any party after the first pre-trial conference, shall enter an order scheduling the dates upon which all expert witnesses, including rebuttal experts, shall be disclosed. The schedule established by the trial court will sequence disclosure of expert witnesses in accordance with the complexities of the issues involved and the burdens of proof of the respective parties as to those issues. All dates set by the trial court shall be chosen to insure that discovery regarding such expert witnesses will be completed not later than sixty days before the date on which the trial court reasonably anticipates the trial will commence. Upon disclosure, the expert's opinion may be the subject of discovery as provided in paragraph (c) hereof. Failure to make the disclosure required by this rule or to comply with the discovery contemplated herein will result in disqualification of the expert as a witness.

(2) *Consulting expert.* Except as provided in paragraph (c)(5) hereof, a party need not disclose the identity of a consulting expert.

(c) Discovery.

(1) Upon interrogatory propounded for that purpose, the party retaining or employing an expert witness shall be required to state:

(i) the subject matter on which the expert is expected to testify;

(ii) his conclusions and opinions and the bases therefor; and

(iii) his qualifications

(2) The party answering such interrogatories may respond by submitting the signed report of the expert containing the required information.

(3) A party shall be required to seasonably supplement his answers to interrogatories propounded under this rule as additional information becomes known to the party or his counsel.

(4) The provisions of paragraphs (c) and (d) hereof also apply to a party or an employee of a party who will render an opinion within his expertise at the time of trial. However, the provisions of paragraphs (c) and (d) do not apply to parties or employees of entities whose professional acts or omissions are the subjects of the litigation. The opinions of these latter persons may be the subject of disclosure by deposition only.

(5) The identity, opinions and work product of consulting experts are discoverable only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject matter by other means. However, documents, objects and tangible things as defined in Rule 214 which are in the possession of a consulting expert and which do not contain his opinions may be obtained by a request for that purpose served upon the party retaining him.

(6) Unless manifest injustice would result, each party shall bear the expense of all fees charged by his expert witness or witnesses.

(d) Scope of testimony.

To the extent that the facts known or opinions held by an expert have been developed in discovery proceedings through interrogatories, depositions, or requests to produce, his direct testimony at trial may not be inconsistent with nor go beyond the fair scope of the facts known or opinions disclosed in such discovery proceedings. However, he shall not be prevented from testifying as to facts or opinions on matters regarding which inquiry was not made in the discovery proceedings.

Most of the members of the Advisory Group who regularly practice in Illinois were of the opinion that Rule 220 works very well and should, if adopted in modified form by the court as a local rule for federal cases, substantially reduce the current problems with expert

witnesses. Sixty-eight percent of the lawyers who answered the survey questionnaire also either agreed (41%) or strongly agreed (21%) with this recommendation. See Appendix 5. One member of the Advisory Group, however, is of the opinion that Rule 220 is too restrictive and inflexible and recommends against its adoption by the District Court. There was unanimous agreement, however, that a local rule requiring early disclosure of expert witnesses and their opinions is necessary.

The second recommendation is that the court use sanctions, with particular emphasis on non-monetary sanctions, as a principal means of monitoring discovery abuses. To be effective as a deterrent, however, the judges need to have a carefully thought out policy on discovery sanctions that is made known to the practicing bar and is consistently applied. Inconsistent *ad hoc* enforcement of sanctions can result in an excessive filing of sanctions motions, and thereby increasing rather than decreasing the cost and delay problems in the federal courts.

The Advisory Committee feels that the requirement in Local Rule 14 of a good faith effort of the attorneys to resolve discovery disputes as a prerequisite for a ruling on a discovery motion is appropriate and has had a salutary effect and therefore should be continued.

There was some sentiment in the Advisory Group to change the current limitation in Local Rule 15 of twenty interrogatories, but there was no consensus on what change to recommend. In this connection, 78% of the lawyers answering the survey questionnaire favored a limitation on the number or interrogatories, with 33% favoring the current limitation, 37% favoring a limitation of thirty-five and 8% favoring a limitation of fifty.

There was, however, no sentiment for other limitations on discovery, for example, a limitation on the number of depositions or requests for admissions.

RECOMMENDATION NO. 9

The use of settlement conferences, which in effect are mediation sessions, (Recommendation No. 5) and summary jury trials[4], the two forms of alternative dispute resolution (ADR) currently authorized in this district, should be expanded.

The court and the advisory group should continue to study the other ADR devices being used in other parts of the country, especially compulsory non-binding arbitration, mini-trials and neutral evaluation of cases where a neutral third party makes an independent evaluation of a case prior to or just after the initial pre-trial conference. The advisory group also recommends that the court commission a pamphlet on the various types of ADR devices and their respective strengths and weaknesses. This pamphlet should be distributed to attorneys and clients and discussed as part of the initial pre-trial conference and also distributed in various continuing education programs presented in the district.

COMMENT

Expanded use of ADR is one of the concepts specifically mentioned in the CJRA as an important way to reduce delay and costs of civil trials. See CJRA § 473(a)(6). The Advisory Group strongly favors the broader use of ADR, but is reluctant to suggest more than the rather modest recommendations described above at this time for two reasons. First, the answers to the survey questionnaire the Advisory Group sent out clearly indicates that the lawyers in this District do not have much experience with ADR or in-depth

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[4]The objection to the legality of summary jury trials expressed in Hume v. M&C Management, 129 F.R.D. 506 (N.D., ILL. 1990) due to the absence of federal legislation authorizing its use is no longer valid because § 473 (a)(6) of the CJRA specifically mentions summary jury trials as one type of ADR a District Court expense and delay reduction plan is supposed to consider. See, also Memorandum from William R. Burchill, Jr. General Counsel, Administrative Office of the United States Courts to Abel J. Mattos, Court Administration Division - CPB, dated July 5, 1991 ("However, in those few instances where the CJRA expressly provides for expansion of the civil rules, mainly as regards discovery, and clarifies the authority to hold summary trials as a type of alternative dispute resolution (ADR), the CJRA, as the later specific statute, would control.")

knowledge about the advantages and disadvantages of the various ADR devices. A more solid educational and experiential base is necessary in our judgment to provide the positive support of the bar for expanded ADR. Second, since the lawyers practicing in this District are familiar with settlement conferences and, to a lesser extent, summary jury trials, expanding their use will not be viewed as a radical departure from existing practices, and as lawyers become more accustomed to these devices, they will likely be more willing to accept other ADR devices. Another advantage of staying with settlement conferences and summary jury trials is that they both utilize existing judicial officers, whereas most of the other ADR devices require non-judicial third parties who have to receive special training and compensation.

RECOMMENDATION NO. 10

Magistrate judges should be used more frequently for pre-trial motions and conferences.

Recommendations from magistrate judges regarding case-dispositive motions should be accompanied by a proposed order affirming the magistrate judge's recommendations and the district court should show the same deference to the recommendations as it would to a special master's report.

COMMENT

The court should study ways to encourage an increase in the number of cases that Magistrate Judges can try with consent of the parties. One possibility is to include discussion of this issue in the list of issues to be considered in the initial pre-trial conference (See Recommendation No. 4). The questionnaires from and interviews with the District Judges and Magistrate Judges indicated that the Magistrate Judges had more time available than the District Judges and that an allocation of more pre-trial work to the Magistrate Judges would reduce significantly the disposition time for motions and also provide additional time

for the District Judges to preside at trials. Moreover, the recommendation of the Advisory Group making the initial pre-trial conference and a settlement conference mandatory for most cases will be impossible to implement unless the Magistrate Judges are allowed to preside at these conferences. See Recommendations 4, 5 and 7.

The recommendation regarding case-dispositive motions (See Local Rule 29(d)) grew out of a concern expressed by several members of the Advisory Group that there is a widely held perception the District Judges may not be giving sufficient deference to these recommendations. If this is the case, then clients are in effect being forced to pay for two hearings in case-dispositive motions heard by Magistrate Judges. This recommendation may, however, be inconsistent with Local Rule 32(b). If this is the case, the Court should amend the local rule to provide the greatest deference permissible under 28 U.S.C. § 636(b)(1)(B).

The recommendation regarding increased numbers of trials by Magistrate Judges is based on the assumption that Magistrate Judges have excess time available for trial work and therefore can try cases sooner than the District Judges. The increased workload on the Magistrate Judges that will result from the Advisory Group's prior recommendations, however, may make this assumption incorrect.

RECOMMENDATION NO. 11

With respect to civil suits and other civil claims by prisoners:

(1) The court should recommend to the appropriate federal authorities that an additional pro se law clerk be hired to screen the cases filed by prisoners in federal prisons and should recommend to the Illinois Attorney General that several additional attorneys be hired to defend cases brought by prisoners in Illinois State prisons.

(2) The judges should be more willing than in the past to enjoin a prisoner who has a history of filing frivolous law suits or lawsuits having no discernable purpose other than

harassment from being able to file any future petitions without leave of court.

(3) Once it becomes apparent that a prisoner cannot prove the allegations contained in the complaint, summary judgment should be recommended even though the allegations, if proven, would state a cause of action.

COMMENT

Prisoner petitions which are classified as civil cases constitute 30-35% of the total civil caseload and take up to 30-40% of Magistrate Judges' time. Such cases place a severe strain on the civil docket in this District. Moreover, because several new prisons are being built, there will undoubtedly be a substantial increase in the number of prisoner civil petitions in future years. Therefore, any measures that can either reduce the number of these cases or reduce the judicial time necessary to dispose of these cases will make more time available for other civil cases.

Unfortunately, unless the current constitutional doctrines dealing with prisoner cases are changed, it is unlikely that the number of prisoner petitions will be substantially reduced. For this reason, the Advisory Group's recommendations focus on reducing the time these cases take to be processed in a fair and evenhanded manner through the system.

An additional pro se law clerk to screen federal prisoner cases and additional assistant attorneys general assigned to defend the state of Illinois in PCR cases filed by prisoners in Illinois prisons will help to reduce the substantial backlog of these cases.

The recommendation for enjoining a prisoner from filing multiple frivolous petitions is designed to deal with the situation where a prisoner files multiple petitions with minor changes dealing with issues previously found to be frivolous. Unfortunately, this is a

common situation. The recommendation being suggested should be permissible under the Court's inherent equitable authority to enjoin vexatious law suits.

The Advisory Group's recommendation with respect to the increased use of summary judgment does not require a change in the Local Rules of the Court, but will require a willingness to overcome the reluctance by many judges to granting summary judgment in any case.

RECOMMENDATION NO. 12

In order to provide better access to case records and quicker compilation of statistics concerning the court's operations by court personnel, a faster, more sophisticated computer is needed and local and wide area network systems will have to be installed.

In considering what type of computer to purchase, the court should study the possibility of on-line access to case records by the attorneys of record, and the creation of a computer "bulletin board" that would allow court personnel and lawyers with pending cases to determine the trial docket and current information on the status of their cases.

Additional personal computers for court employees are also necessary so that all employees will have a PC at their work stations.

The court should also study the possibility of allowing pleadings and other documents to be filed with the court by fax. At least one high speed fax machine for each filing office will have to be purchased if a fax filing local rule is promulgated.

COMMENT

These recommendations for the new computer and additional PC's are based on information provided to the Advisory Group by Stuart J. O'Hare, Clerk of Court, at the request of the Subcommittee on Survey of Practicing Bar and Maximizing Benefits of Automation. The Subcommittee on Filing Process, Discovery and Motion Practice made the remaining recommendations based on the results of the questionnaire and the deliberations

of the subcommittee. In this connection, the amendments to the Federal Rules of Civil Procedure that will become effective December 1, 1991 authorize a local rule authorizing court filings by means of fax machines.

In the Advisory Group's opinion, these recommendations can potentially reduce the attorneys' fees and other costs of processing cases through the court system.

RECOMMENDATION NO. 13

The courts civil justice expense and delay reduction plan should be effective only after the lawyers practicing before the court have been exposed to the changes in the current local rules and practices through continuing legal education programs as well as pamphlets and other written materials.

COMMENT

Lawyers should be given a reasonable amount of time to become knowledgeable about the changes that will be implemented as a result of the Court's expense and delay reduction plan. Training of the District Judges, Magistrate Judges, and the Court's support staff will also be necessary. Without such advance training, the new rules will cause confusion and frustration and therefore will be counterproductive.

RECOMMENDATION NO. 14

The court will need to make a careful assessment of its personnel needs and must monitor and reassess personnel needs on a regular basis once its civil justice expense and cost reduction plan is implemented.

COMMENT

Many of the recommendations made by the Advisory Group will, if implemented, increase substantially the amount of judge time that will be necessary to handle the caseload in the District. Some of the increased workload may be able to be handled by the Magistrate Judges. Increasing Judge Ferguson's position from part-time to full-time would

increase the average available judge time of the Magistrate Judges. Moreover, the Court is scheduled to receive a new District Judge in the next several months. The Magistrate Judges, however, will not be able to handle all the additional workload, and since it is likely that one or more of the existing District Judges will take Senior status in the next couple of years, it is not at all clear how much net new judicial capacity will be added by the new District Judge. There is a real danger, therefore, that without additional District Judges and Magistrate Judges, the recommendations of the Advisory Group could increase rather than decrease the delay problem in this District. Delays and other problems can also result from a shortage of a full complement of support staff.

The Court is in a much better position than the Advisory Group to assess its personnel capacity and needs.

RECOMMENDATION NO. 15

The court's civil justice expense and delay reduction plan should provide a mechanism for the advisory group to be available, at the request of the court, at least once a year to review the results of the court's plan and to make recommendations, if deemed appropriate, for changes in the plan.

COMMENT

Section 475 of the CJRA requires that the Court assess annually the condition of its docket and possible amendments to its civil justice expense and delay reduction plan. Section 475 also requires that the Court consult with the Advisory Group in making this assessment. One topic the Advisory Group is particularly interested in exploring further with the Court is the possibility of expanding the use of ADR in this District.

CONCLUDING REMARKS

The Advisory Group did not find any concrete evidence of serious delay and cost problems in the way trials and post-trial motions are conducted. Some of the comments from the open-ended questions in the attorney survey questionnaire expressed concern about the level of competence of some of the lawyers who practice in the District. One of the judges also made this same observation. The Advisory Group, however, rejected the idea of recommending to the court a competency rule requiring a lawyer to participate in x number of trials before being allowed to handle a case in this court. Instead we felt that this problem, to the extent it does exist, can be dealt with effectively by the judges taking firm control of the trial and, in egregious circumstances, imposing appropriate sanctions or reporting the incidents in question to the appropriate ethics investigatory body.

The Advisory Group also considered but rejected a suggestion by one of the Magistrate Judges that the use of an offer of judgment in Rule 68 of the Federal Rules of Civil Procedure be expanded by local rule to cover non-judgment settlement offers. Only Congress can make any such change.

VI.
RECOMMENDATIONS TO CONGRESS

VI. RECOMMENDATIONS TO CONGRESS

Many of the causes of excessive costs and delays in this District and other federal courts cannot be effectively dealt with by changes in local rules and practices. Rather, both the cause and the cure lie with the United States Congress. Two well-known examples of recent federal legislation and regulations that have substantially increased the federal caseload are the sentencing guidelines and RICO. In addition, the significant expansion of federal criminal jurisdiction has, because of the priority given criminal trials, increased delays in the civil docket.

Section 472(c)(1)(D) of the CJRA requires that the Advisory Group examine the potential reduction in costs and delay in civil cases by a requirement that a judicial impact analysis be made for all new federal legislation. The Advisory Group believes the judicial impact analysis would be beneficial and that it should also be required of all new federal regulations. The proliferation in recent years of federal regulations that spawn litigation is a major cause of the rapid increase in federal cases. To be effective, however, the results of the judicial impact analysis must be translated into increased appropriations to the federal judicial system. Additional judicial resources must be made available promptly to handle the potential increased caseload.

Although not required by the CJRA to make other recommendations to Congress, the Advisory Group would like to bring to the Court's attention the following additional issues that should be submitted to Congress for action:

(1) Revising the judicial selection process so that vacancies can be filled more quickly. Backlogs due in part to unfilled vacancies are a growing problem in the Federal Court System.

(2) Implementing a system that guarantees judicial salaries sufficient to attract and keep the best qualified judges and court support staff.

(3) Increasing further the minimum damage level for diversity cases and index the threshold figure so that inflation will automatically be taken into account (there was no consensus on these proposals, however).

(4) Legislation giving Magistrate Judges more authority to try all aspects of prisoner cases and greater authority in civil cases.

(5) Fee-shifting legislation broadening the circumstances under which the losing party pays the attorneys' fees of the winning party. One possibility is a general "loser pays attorneys' fees" rule for all discovery disputes that are litigated. This rule would undoubtedly substantially reduce the number of discovery dispute motions.

(6) Legislation providing more flexibility in connection with the mandatory sentencing guidelines.

(7) Expanding the offer of judgment in Rule 68 of the Federal Rules of Civil Procedure to cover non-judgment settlement offers, and to make it applicable to both parties in the case as opposed to only "a party defending against a claim."

VII.
SUMMARY

VII. SUMMARY

The docket in the Federal District Court for the Southern District of Illinois is in relatively good shape compared to many other Districts. On a long term basis, however, there will be increasing docket pressures from an increase in criminal cases and prisoner petitions and in the number of civil cases that involve complex factual and legal issues. These trends will impact negatively on the amount of judge time available for each case.

The filling of the existing temporary full-time District Court vacancy will make more judge time available in this District and therefore will alleviate some of the pressures discussed in the preceding paragraph. More utilization of the Magistrate Judges in civil matters may also help to increase the available judge time for civil cases.

Even if this District were to obtain all the judicial resources it needs, however, there will still be significant docket pressures. These pressures are particularly acute in the civil docket because of the priority given to criminal trials by the Speedy Trial Act. While these pressures cannot be eliminated, they can be alleviated to some degree by carefully tailored case management techniques that are designed to move cases through the federal system efficiently and to maximize the possibilities of pre-trial mutually advantageous settlements.

That is the aim of CJRA, which places special emphasis on eliminating excessive costs and delay in civil cases. That is also the aim of the recommendations by the Advisory Group. The recommendations focus on reducing the total elapsed time from the commencement of civil litigation until its final disposition through a uniform, structured case management system geared to the complexity of the case that involves an initial pre-trial scheduling and discovery management conference, a settlement conference within sixty days after the completion of discovery and a final pre-trial conference at least seven days prior

to the scheduled date of the trial. In the opinion of the Advisory Group, this system, if implemented by the Court, should have a salutary effect on both excessive delays and costs by (1) reducing the number of non-productive hours spent in reviewing a file that might have been avoided, (2) eliminating excessive and marginal discovery and (3) fostering earlier settlements.

The co-operation of the bench and the bar and litigants will be necessary to achieve these goals. Because it is always difficult to adjust to a new system of case management, the Advisory Group recommends that the Court defer the implementation of its civil justice expense and delay plans for several months after it is promulgated. The plan should be widely disseminated and seminars to review it should be held in the District before the implementation date.

Finally, the Advisory Group appreciates the privilege and opportunity of participating in this effort and looks forward to continuing to work with the Court in periodically reviewing the Court's civil justice expense and delay reduction plan.

APPENDIX 1

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APPENDIX 2

ADVISORY GROUP SUBCOMMITTEES

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CIVIL JUSTICE REFORM ACT SUBCOMMITTEES
(Effective 5/3/91)

Subcommittee on Survey of Practicing Bar and Maximizing Benefits of Automation

Richard E. Boyle (Chairperson)
Donald J. Dahlmann
Mary Ann Hatch
Richard O. Hart
C.E. Heiligenstein
Gordon Lambert
Theodore J. McDonald
Michael J. Reagan
David R. Freeman

Subcommittee on Trial, Post-Trial and Alternate Dispute Resolution

Mary Ann Hatch (Chairperson)
Richard Horstman
Milan Chestovich
James Batliner
Harry Crisp
Dean Harry J. Haynsworth
Larry E. Foster
Thomas E. Kennedy, III
Alexis Otis-Lewis
Robert Shanks

Subcommittee on Filing Process, Discovery and Motion Practice

Donald J. Dahlmann (Chairperson)
Richard E. Boyle
Richard O. Hart
Robert Shanks
Robert Simpkins
C.E. Heiligenstein
Gordon Lambert
Theodore J. McDonald
Michael J. Reagan
Melvin C. Wilmsmeyer

Subcommittee on Magistrate Role and Prisoner Petitions

Robert Simpkins (Chairperson)
David R. Freeman
Melvin C. Wilmsmeyer
Milan Chestovich
Larry E.Foster
Dean Harry J. Haynsworth
Thomas E. Kennedy, III
Harry Crisp
Alexis Otis-Lewis
Richard Horstman

Donald E. Weihl and Mark C. Goldenberg, as Chair and Vice-Chair of the Advisory Group, will serve as ex-officio members of each subcommittee and will act in a liaison and facilitator capacity for all subcommittees.

Executive Committee

Donald E. Weihl, (Chair)
Mark C. Goldenberg, (Vice-Chair)
Richard E. Boyle
Ann Hatch
Donald J. Dahlmann
Robert Simpkins
Stuart J. O'Hare (ex officio)
Harry J. Haynsworth (ex officio)

SUBCOM.LST

APPENDIX 3

TEXT OF CIVIL JUSTICE REFORM ACT

PUBLIC LAW 101-650 [H.R. 5316]; December 1, 1990

JUDICIAL IMPROVEMENTS ACT OF 1990

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

The Congress makes the following findings:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

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

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting 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;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

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

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) 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 nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition 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. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 479. Information on litigation management and cost and delay reduction

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

(3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans ..... 471".

SEC. 104. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

SEC. 106. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

APPENDIX 4

COURT STATISTICS

ILLINOIS PRISON POPULATION
SOUTHERN DISTRICT OF ILLINOIS

STATE PRISONS

		POPULATION				
Existing	**SECURITY**	**91**	**90**	**89**	**88**	**87**
Menard	Maximum	2464	2626	2555	2381	2395
Menard Psychiatric Division	Maximum	384	382	393	377	340
Centralia	Medium	1127	1125	1070	1010	1016
Vienna	Minimum	1103	1076	879	882	886
Shawnee	Medium	1467	1376	1101	1058	1042
Vandalia	Minimum	1005	1016	918	865	852
Robinson	Minimum	693				
Total Existing		8243	7601	6916	6573	6531
Projected		**1991**				
Rend Lake (Big Muddy River)	Medium	952	Scheduled to Open = Depending on Funding			
Assumption (ESTL)	Minimum	560	Scheduled to Open = Depending on Funding			
Total Projected		1512				

FEDERAL PRISONS

		POPULATION				
		91	**90**	**89**	**88**	**87**
Marion	Maximum	324	368	415	434	374
Marion Camp	Minimum	268	242	234	193	189
Total Existing		592	610	649	627	563
Projected		**1991**				
Greenville	Medium	500	Scheduled to Open = End of 93 (Projected)			
Greenville Camp	Minimum	300	Scheduled to Open = End of 93 (Projected)			
Total Projected		800				

TOTAL PRISON POPULATION

	POPULATION				
	91	**90**	**89**	**88**	**87**
State Existing	8243	7601	6916	6573	6531
Federal Existing	592	610	649	627	563
Total Existing	8835	8211	7565	7200	7094

Projected Population	**1991**
State Prison	1512
Federal Prison	800
Total Projected	2312

Current Population	Projected Population
8835	11147

SUMMARY	**1991**
ng State	8243
cted Additional State	1512
ing Federal	592
jected Additional Federal	800
TOTALS	11147

PROJECTED PRISON POPULATION INCREASE
26%

Condition of Docket to June 30, 1991
U.S. District Court, Southern District of Illinois

NATURE OF SUIT	DAYS PENDING	NUMBER OF CASES	% OF CASES TO TOTAL
Contracts	56.193	142	9.61%
Real Property	13.137	63	4.27%
Personal Injury	89.768	246	16.66%
Medical Malpractice	4.889	10	0.68%
Product Liability	40.364	76	5.15%
Asbestos	77.922	44	2.98%
Personal Property	5.070	11	0.74%
Property Damage Pro. Liability	450	1	0.07%
Bankruptcy	5.275	20	1.35%
Banks/Banking	61	1	0.07%
Anti–Trust	564	1	0.07%
Civil Rights	39.572	93	6.30%
Racketeer	4.254	5	0.34%
Prisoner	244.526	484	32.77%
Death Penalty	669	1	0.07%
Forfeit/Penalty	7.617	28	1.90%
Drug Related Seizure	54	1	0.07%
Labor	64.072	155	10.49%
Property Rights	2.511	5	0.34%
Securities, Commodities & Ex.	6.967	9	0.61%
Social Security	10.244	34	2.30%
Tax Suits	2.325	8	0.54%
Agriculture Acts	965	2	0.14%
Environmental Matters	4.137	8	0.54%
Freedom of Information Act	103	1	0.07%
Other Statutory Actions	13.161	28	1.90%
TOTALS	694.870	1,477	

JUDGE OR MAGISTRATE	DAYS PENDING	NUMBER OF CASES	% OF CASES TO TOTAL
FOREMAN	125.993	311	21.06%
BEATTY	217.240	478	32.36%
STIEHL	262.713	579	39.30%
COHN	74.112	91	6.16%
FRAZIER	12.901	16	1.08%
BAKER	1.911	2	0.14%
TOTALS	694.870	1,477	

CIVIL CASE FILINGS & CLOSINGS
1 JULY 1990 TO 30 JUNE 1991

	NON – PRISONER		PRISONER		TOTAL	
Date	CASES FILED	CASES CLOSED	CASES FILED	CASES CLOSED	CASES FILED	CASES CLOSED
July 1990	64	69	43	39	107	108
Aug 1990	85	64	43	40	128	104
Sep 1990	73	85	31	30	104	115
Oct 1990	65	88	39	49	104	137
Nov 1990	72	55	20	45	92	100
Dec 1990	71	65	42	23	113	88
Jan 1991	70	85	43	37	113	122
Feb 1991	62	80	31	39	93	119
Mar 1991	72	62	48	55	120	117
Apr 1991	67	81	41	38	108	119
May 1991	90	67	41	39	131	106
Jun 1991	78	72	31	45	109	117
TOTALS	869	873	453	479	1322	1352

	% TO TOTAL NON – PRISONER		% TO TOTAL PRISONER	
Date	Cases Filed	Cases Closed	Cases Filed	Cases Closed
July 1990	59.81%	63.89%	40.19%	36.11%
Aug 1990	66.41%	61.54%	33.59%	38.46%
Sep 1990	70.19%	73.91%	29.81%	26.09%
Oct 1990	62.50%	64.23%	37.59%	35.77%
Nov 1990	78.26%	55.00%	21.74%	45.00%
Dec 1990	62.83%	73.86%	37.17%	26.14%
Jan 1991	61.95%	69.67%	38.05%	30.33%
Feb 1991	66.67%	67.23%	33.33%	32.77%
Mar 1991	60.00%	52.99%	40.00%	47.01%
Apr 1991	62.04%	68.07%	37.96%	31.93%
May 1991	68.79%	63.21%	31.30%	36.79%
Jun 1991	71.56%	61.54%	28.44%	38.46%

	% TO TOTAL NON – PRISONER		% TO TOTAL PRISONER	
	Cases Filed	Cases Closed	Cases Filed	Cases Closed
TOTALS	65.73%	64.57%	34.27%	35.43

NOTE: Magistrate Cohn = 60% of all State Prisoner Cases
Magistrate Frazier = 40% of all State Prisoner Cases
Magistrate Frazier = 100% of all Federal Prisoner Cases

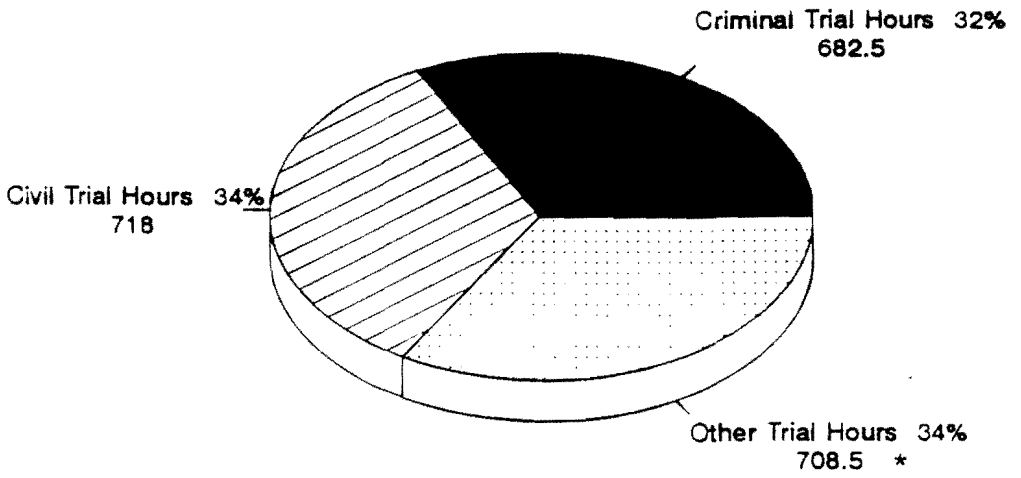
CIVIL CASE FILINGS
12/31/86 THRU 6/30/91

	1986	1987	1988	1989	1990	1991*
Contract	137	448	243	171	141	140
Property	70	58	37	58	70	84
FELA	7	60	20	74	27	23
PI/Torts	349	312	317	221	221	241
Antitrust	2	1	1	1	2	0
Cv Rights	83	71	97	58	67	70
Prisoner	505	538	498	454	463	481
Forteiture	10	8	27	38	29	26
Labor	89	119	109	112	129	149
Soc Sec	32	54	53	32	13	30
Tax	15	12	6	9	5	6
Copyright	7	14	12	12	7	5
Other	62	69	68	61	69	66
TOTAL	1368	1764	1488	1301	1243	1321

* January 1 to June 30, 1991 totals

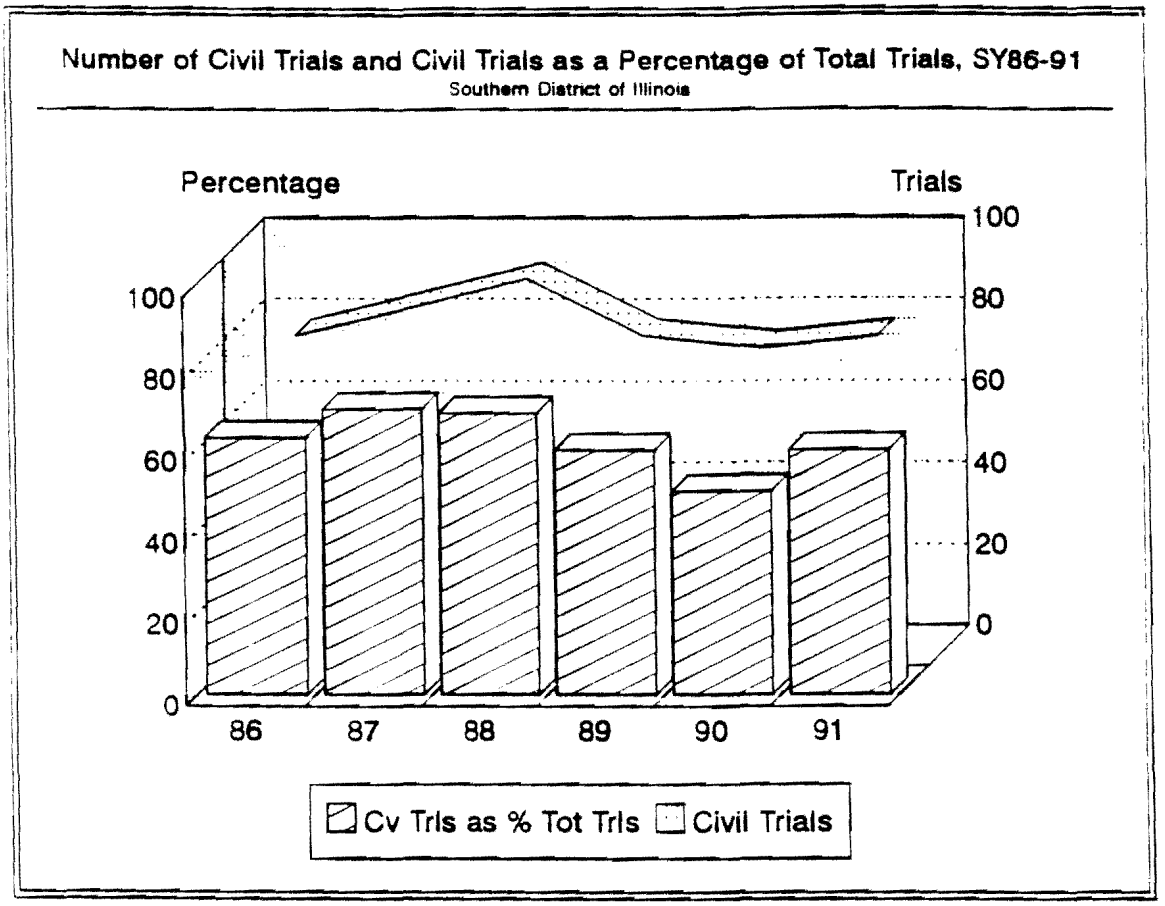
Breakdown of Court Hours

United States District Judges



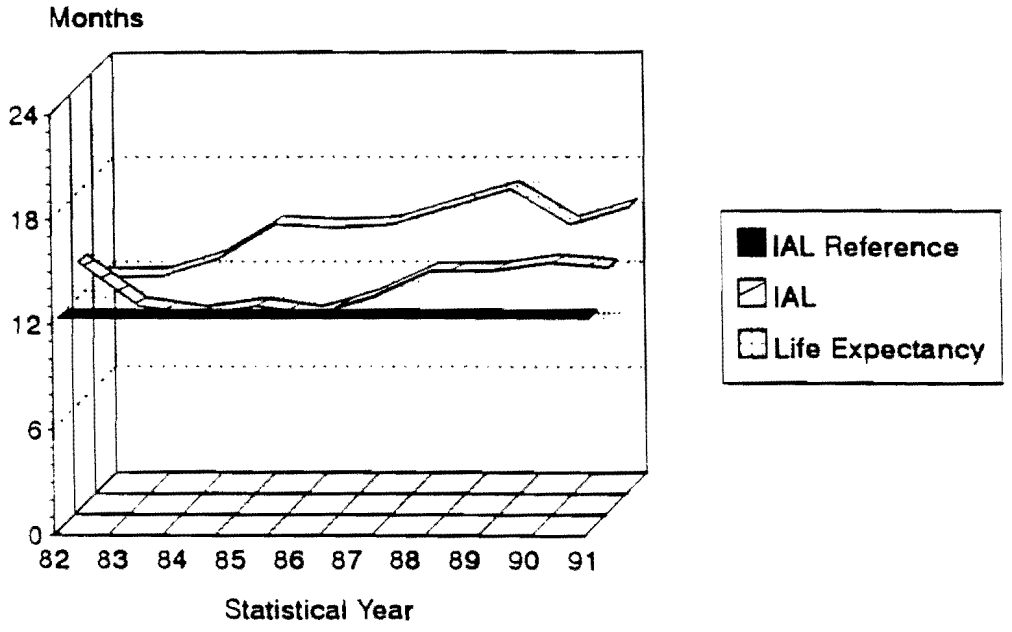
July 1, 1990 - June 30, 1991

* (motions, criminal sentencings, naturalizations and the like)


Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY86-91
Southern District of Illinois
Percentage
Trials
100
80
60
40
20
0
100
80
60
40
20
0
86
87
88
89
90
91
Cv Trls as % Tot Trls
Civil Trials

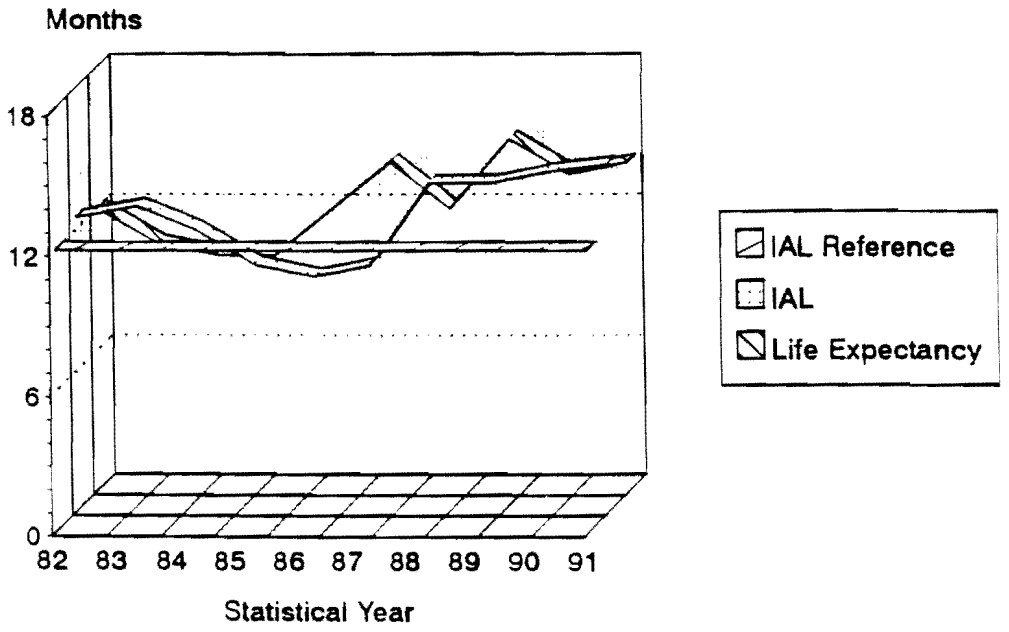
Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY82-91

Southern District of Illinois



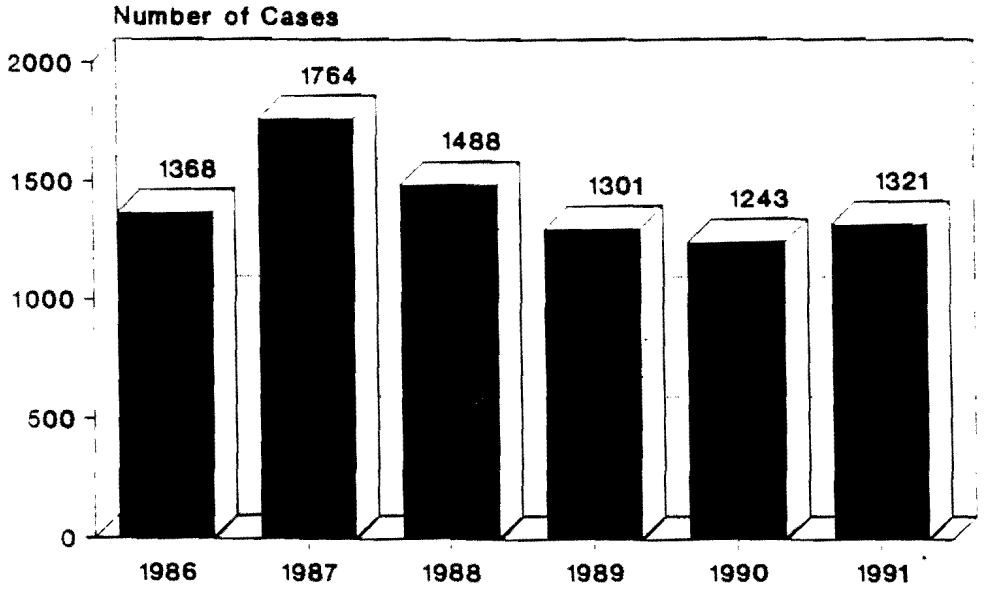
Life Expectancy and Indexed Average Lifespan, All Civil Cases SY82-91

Southern District of Illinois



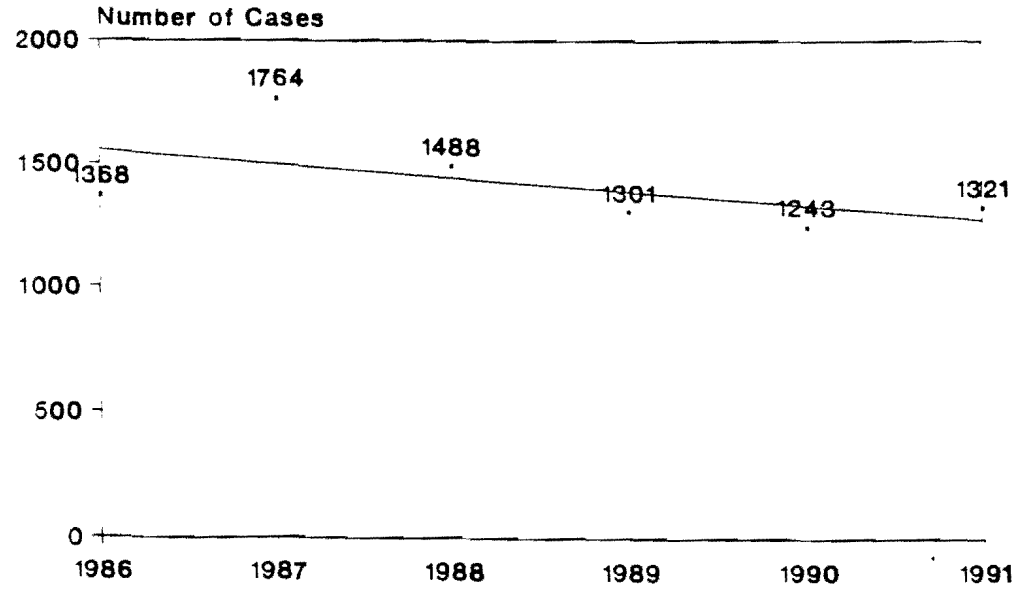
Filing Trends: Caseload Forecast

Total Civil Filings
12/31/86 - 12/31/91*



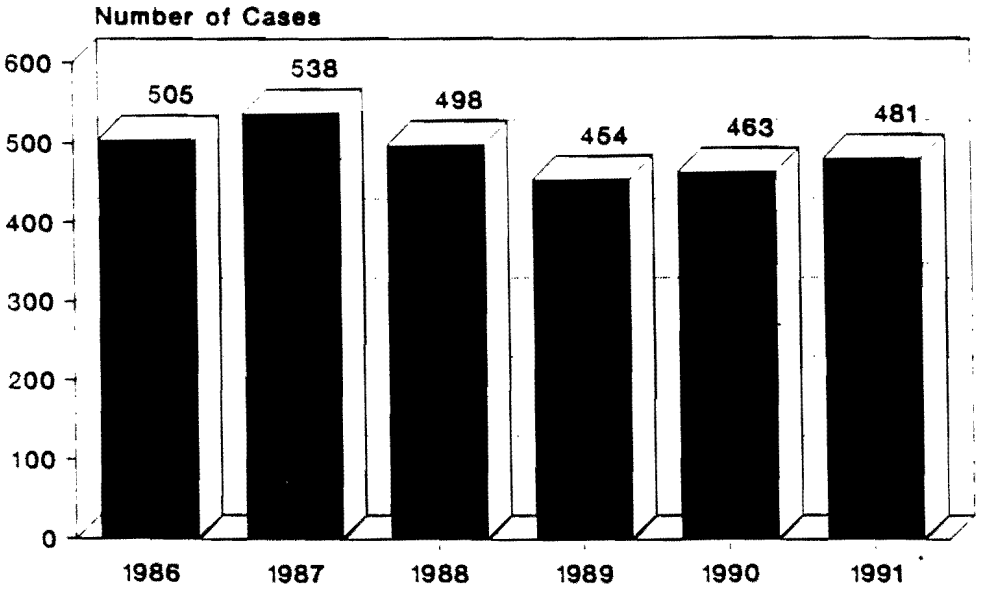
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Total Civil Filings
12/31/86 - 12/31/91*



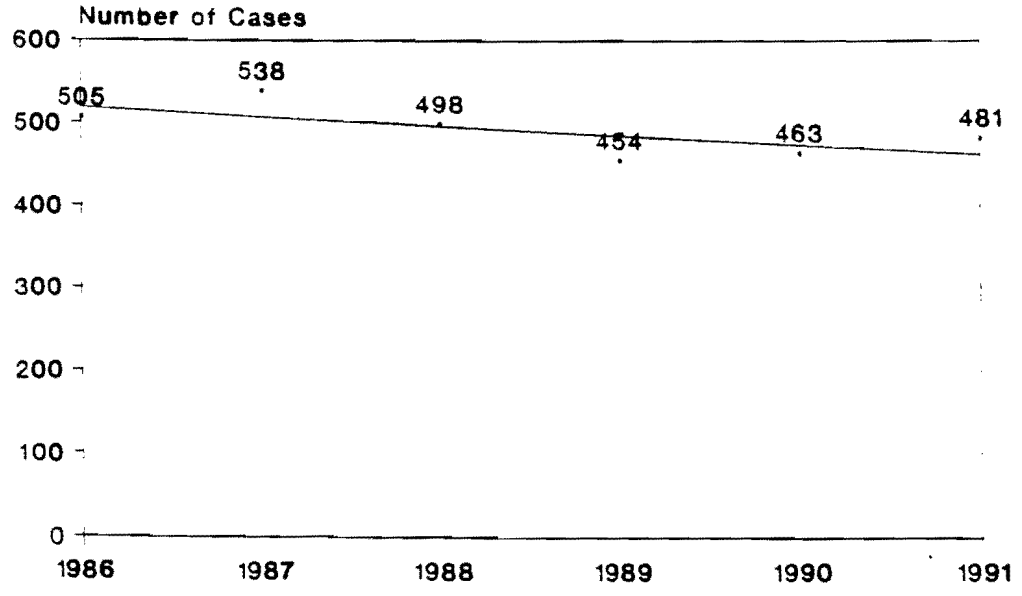
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Prisoner Cases
12/31/86 - 12/31/91*



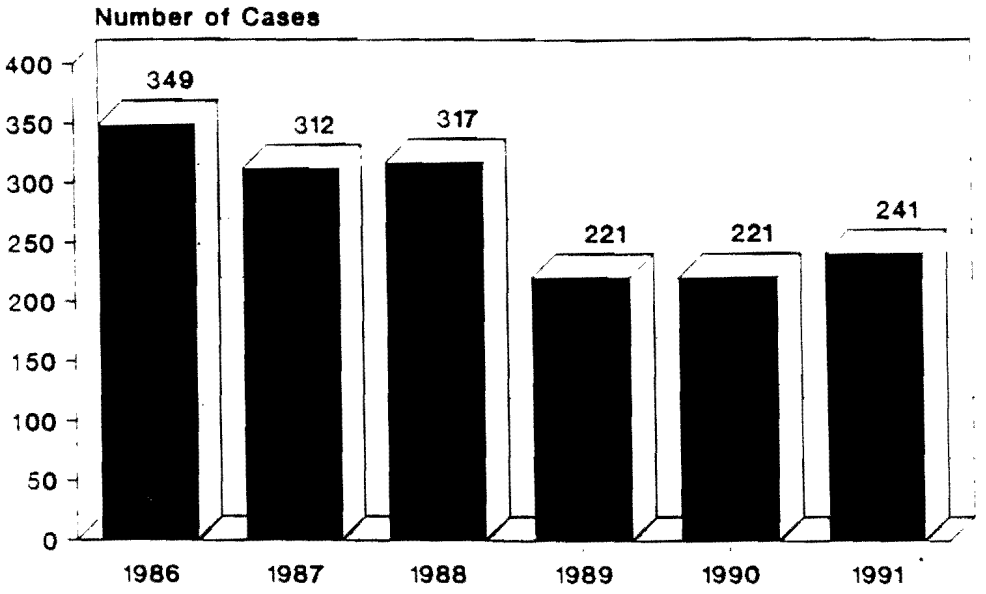
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Prisoner Cases
12/31/86 - 12/31/91*



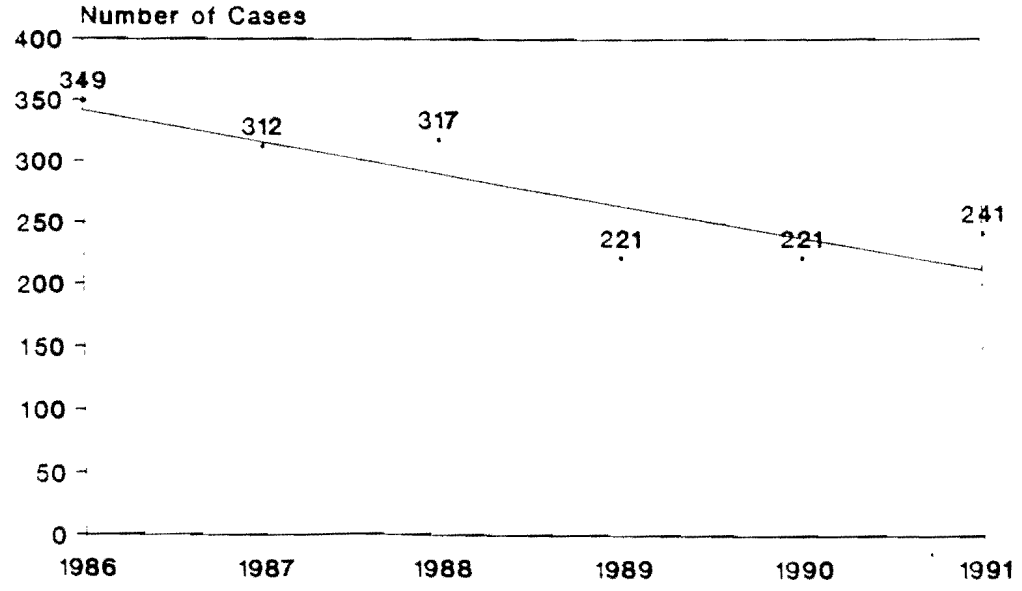
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Personal Injury/Other Torts
12/31/86 - 12/31/91*



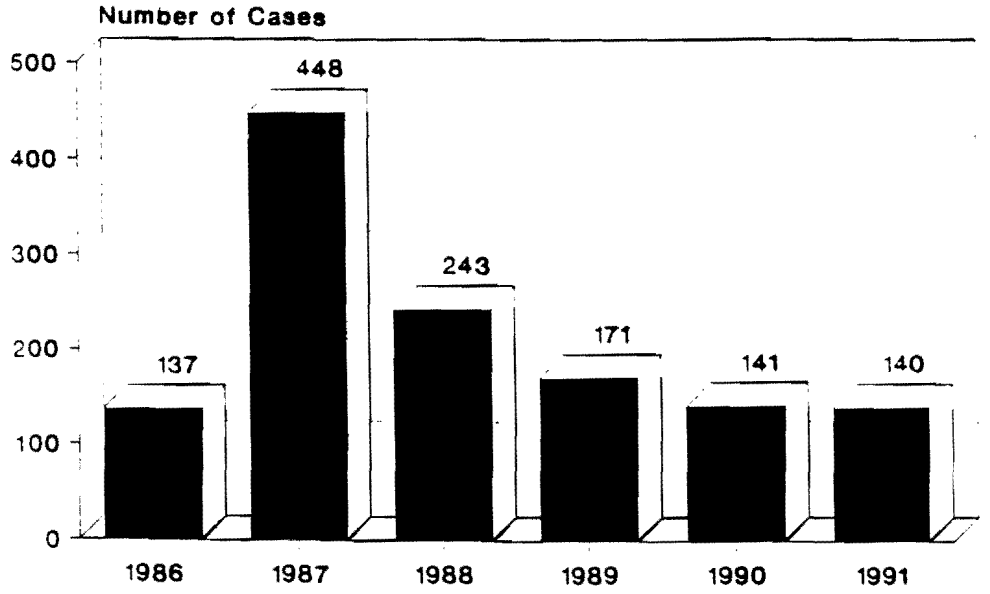
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Personal Injury/Other Torts
12/31/86 - 12/31/91*



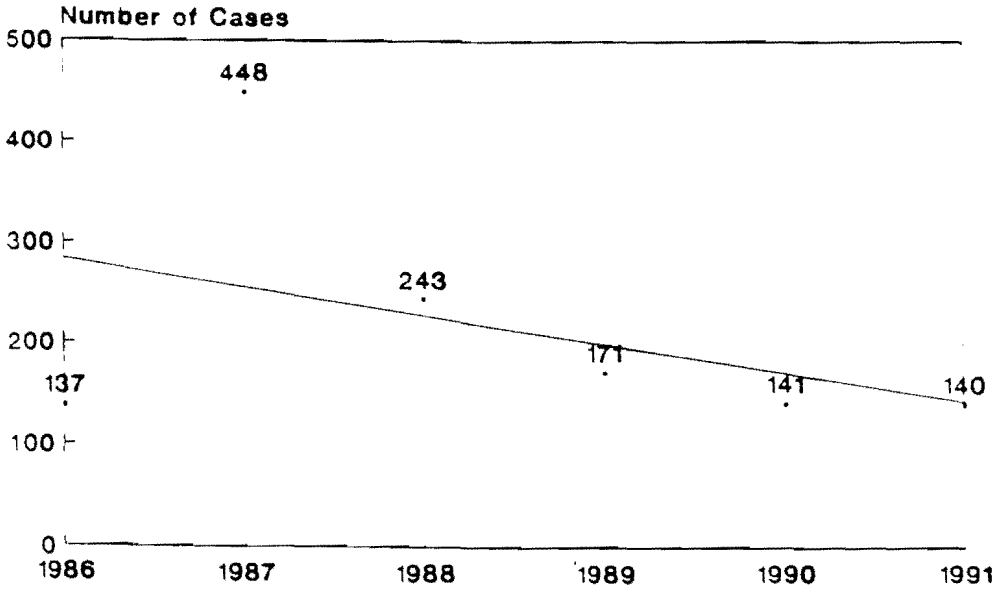
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Contract Cases
12/31/86 - 12/31/91 *



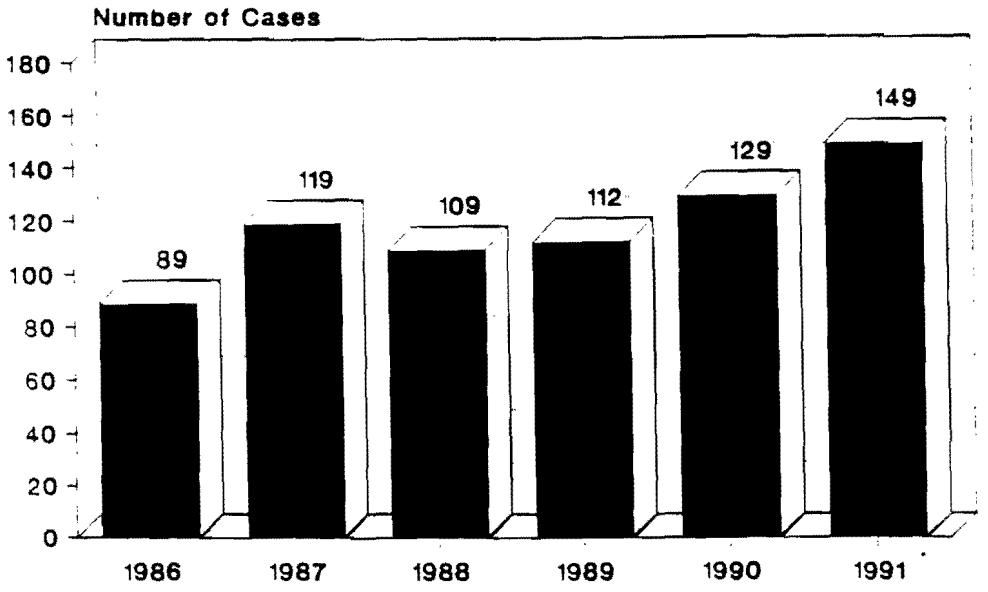
Source: AO Annual Report
*1991 - Estimated
Margin of Error - 5%

Contract Cases
12/31/86 - 12/31/91 *



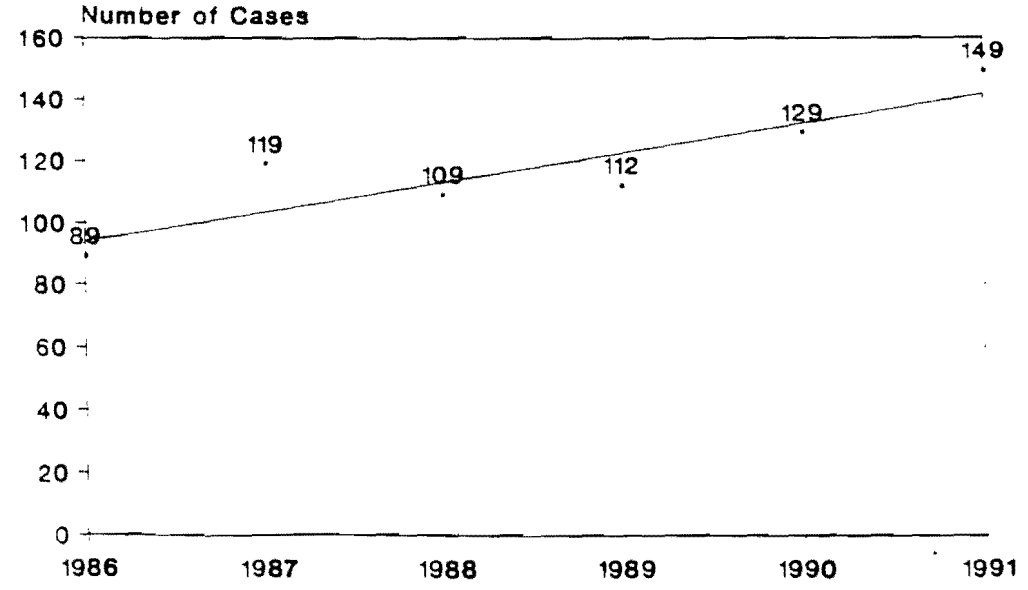
Source: AO Annual Report
*1991 Estimated
Margin of Error - 5%

Labor Cases
12/31/86 - 12/31/91*



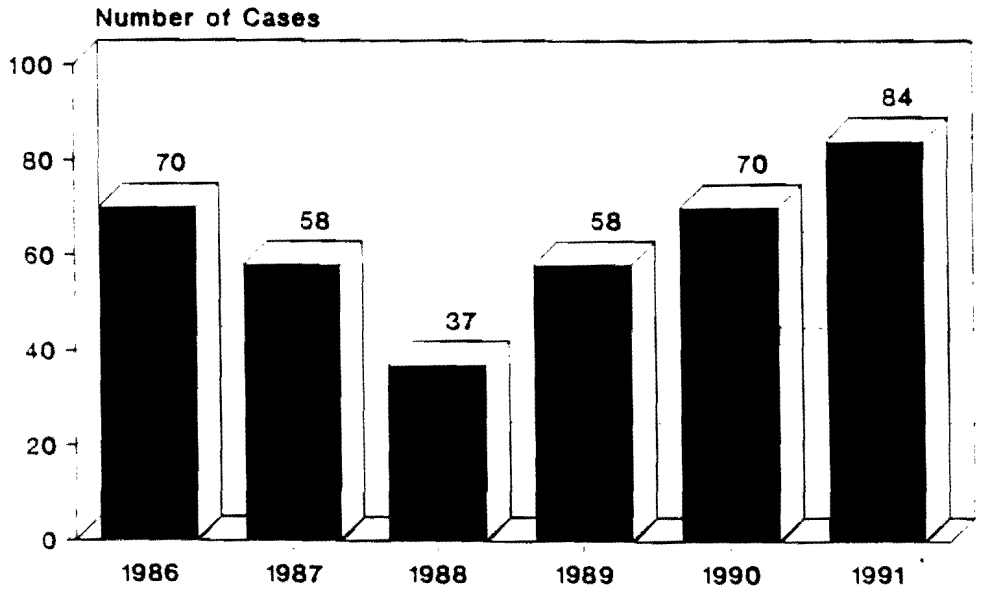
Source: AO Annual Report
*1991 Estimated - Margin of Error + 3%

Labor Cases
12/31/86 - 12/31/91*



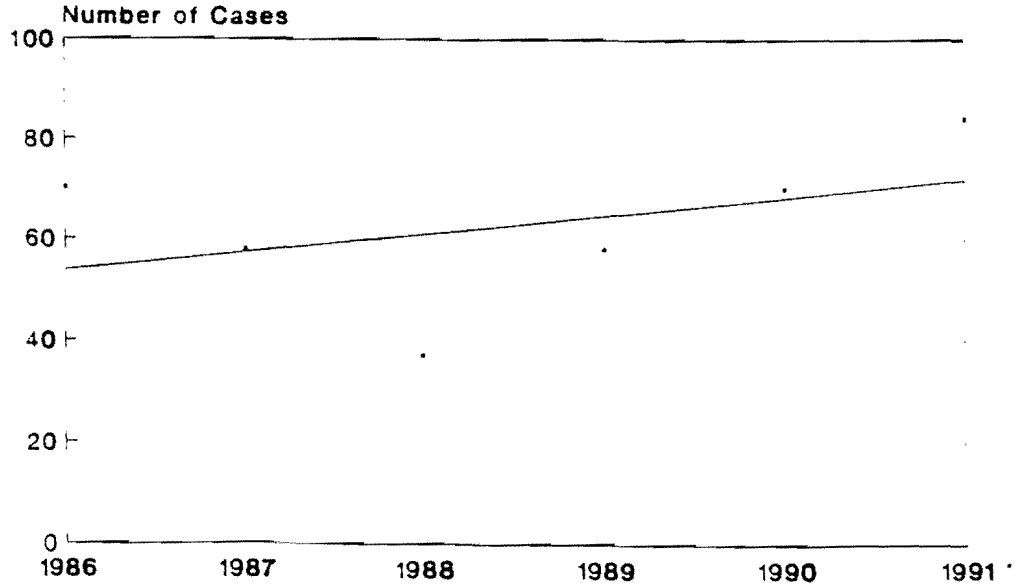
Source: AO Annual Report
*1991 Estimated - Margin of Error + 3%

Real Property Cases
12/31/86 - 12/31/91 *



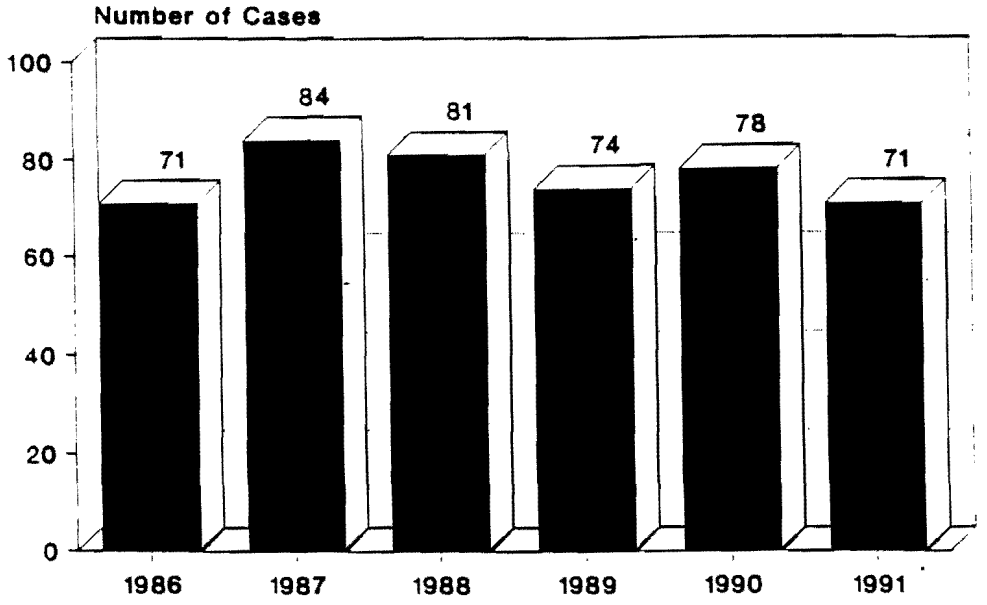
Source: AO Annual Report
*1991 Estimated - Margin of Error + 3%

Real Property Cases
12/31/86 - 12/31/91 *



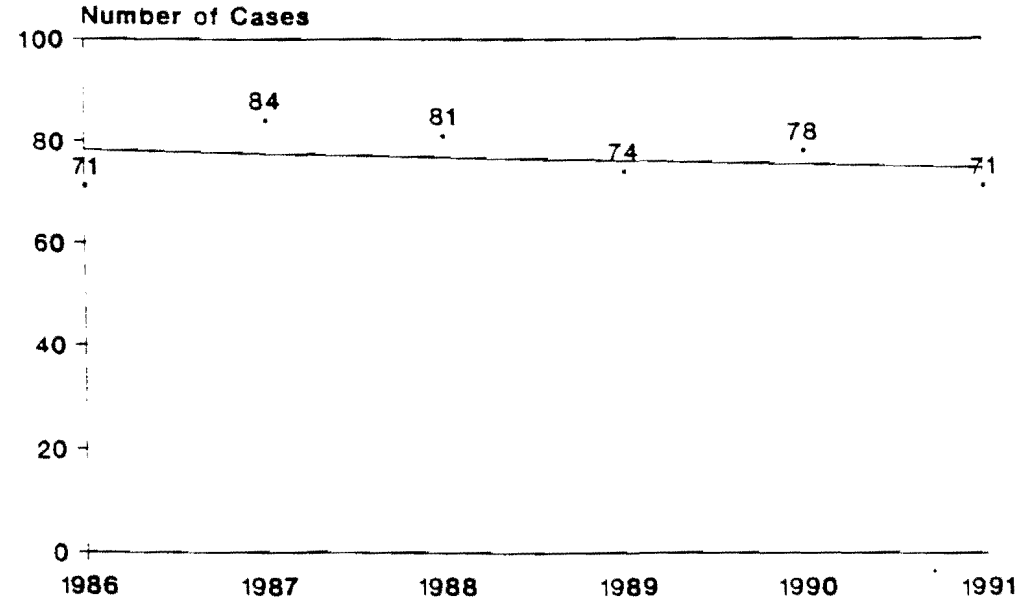
Source: AO Annual Report
*1991 Estimated - Margin of Error + 3%

Antitrust, Copyright & Other Cases
12/31/86 - 12/31/91*



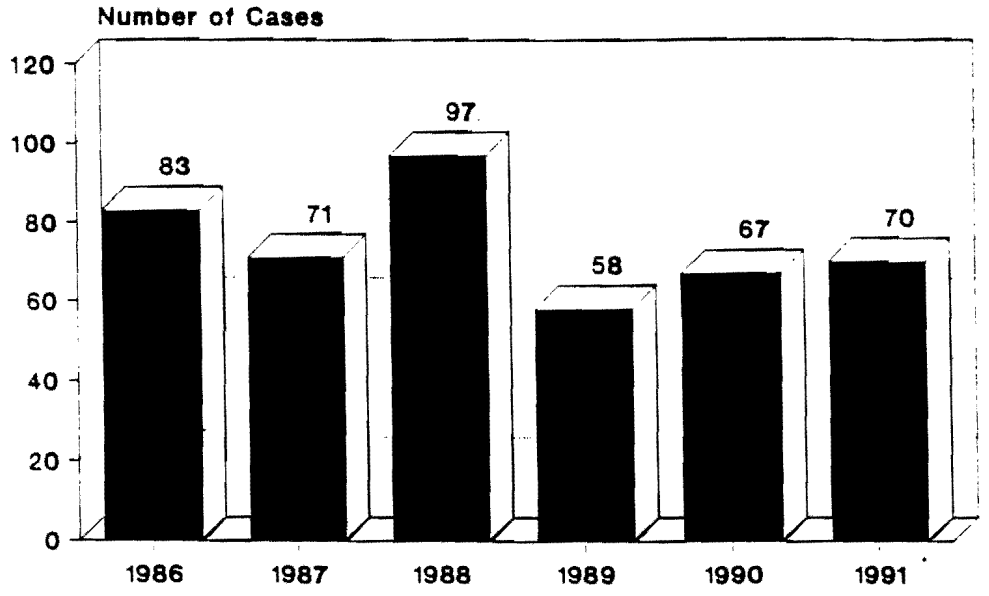
Source: AO Annual Report
*1991 Estimated - Margin of Error = 3%

Antitrust, Copyright & Other Cases
12/31/86 - 12/31/91*



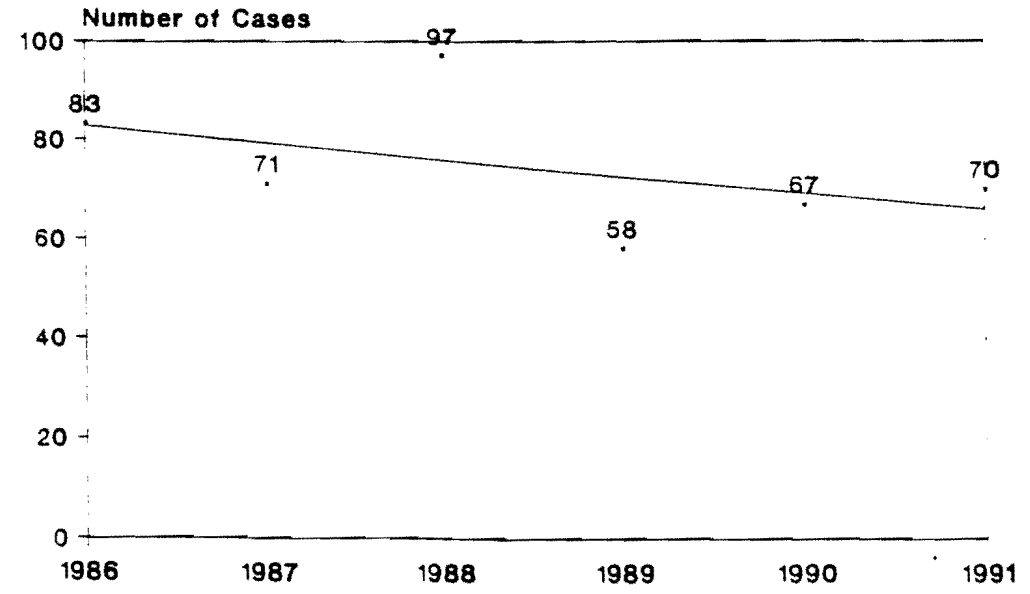
Source: AO Annual Report
*1991 Estimated - Margin of Error = 3%

Civil Rights Cases
12/31/86 - 12/31/91*



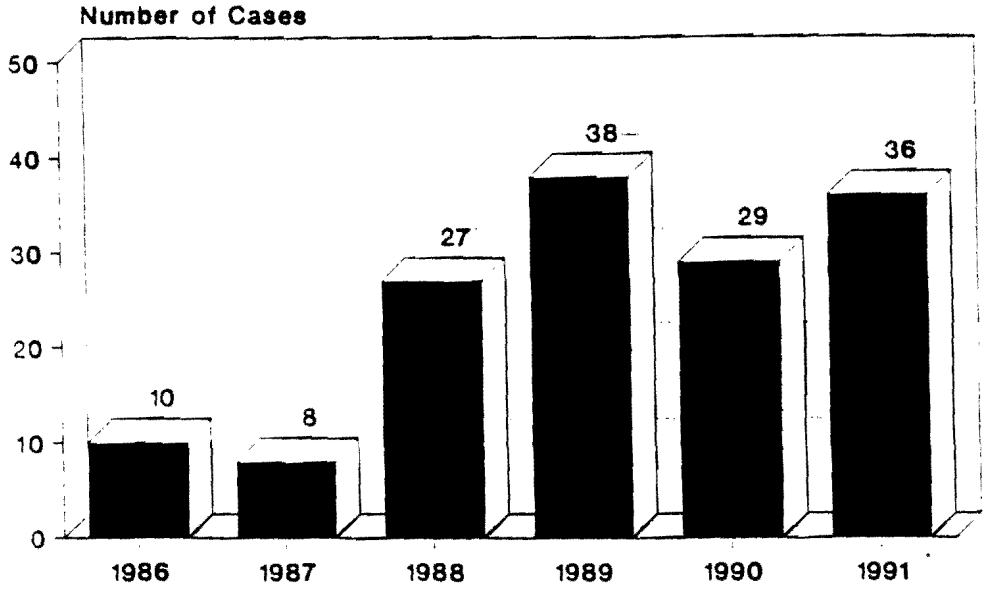
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Civil Rights Cases
12/31/86 - 12/31/91*



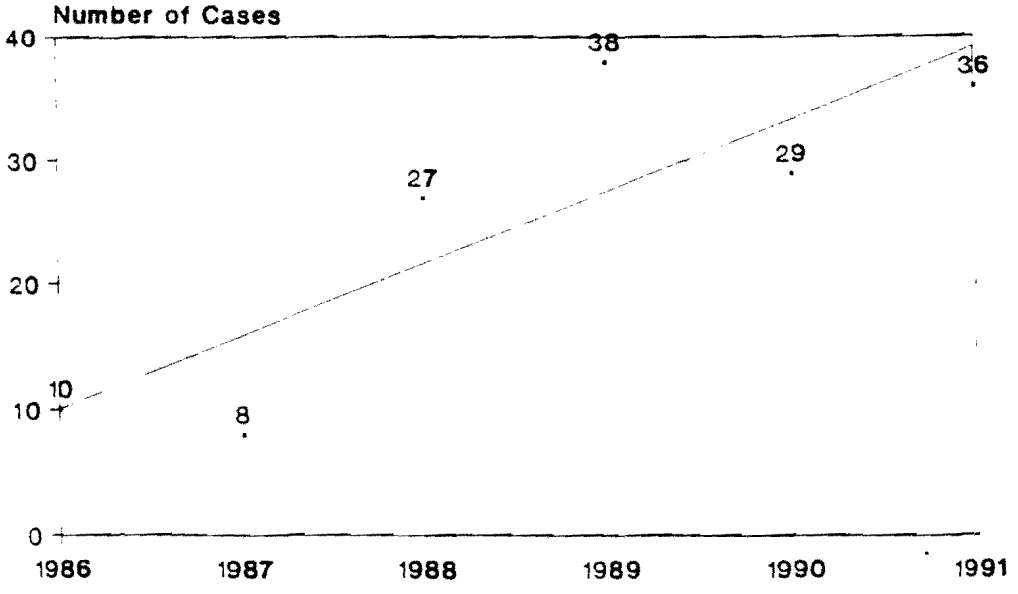
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Forfeiture Cases
12/31/86 - 12/31/91*



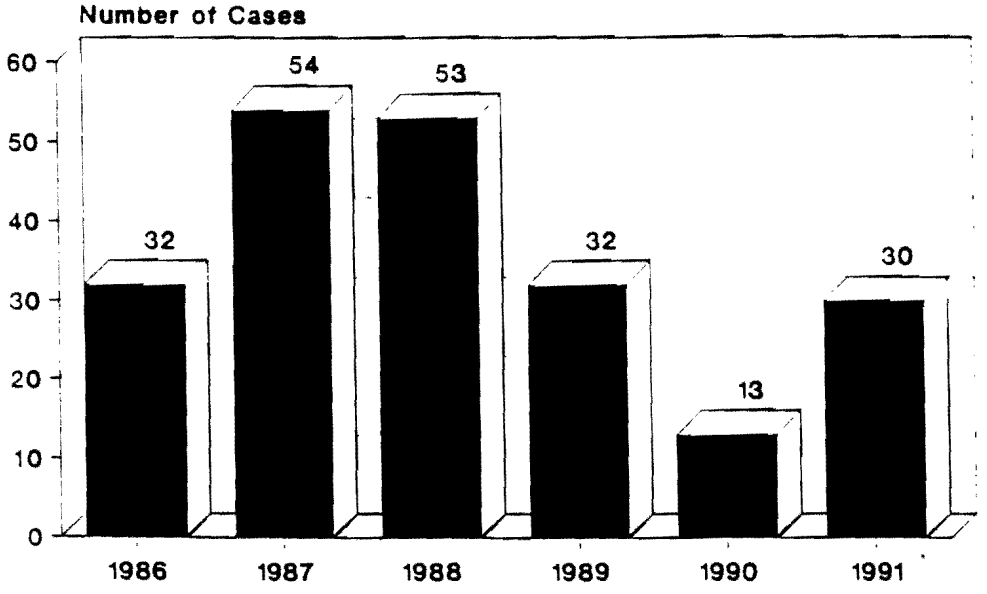
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Forfeiture Cases
12/31/86 - 12/31/91*



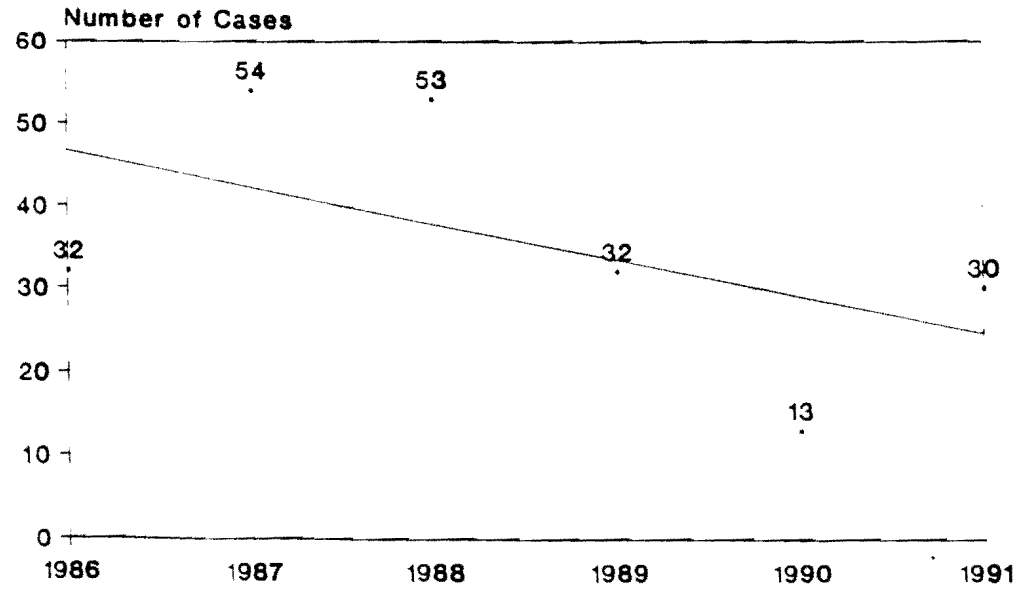
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Social Security Cases
12/31/86 - 12/31/91*



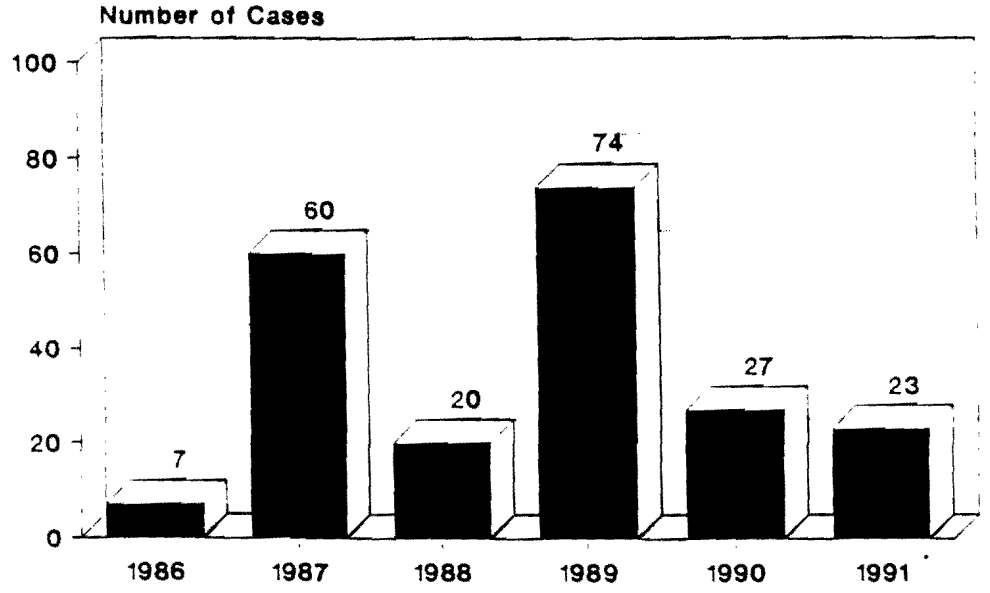
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Social Security Cases
12/31/86 - 12/31/91*



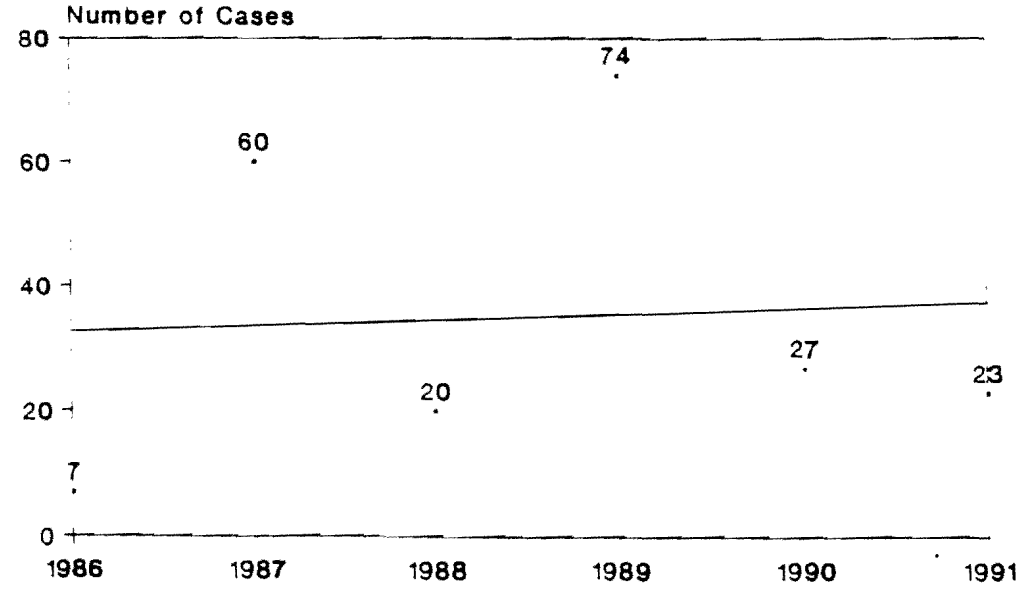
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Federal Employee Liability Act
12/31/86 - 12/31/91*



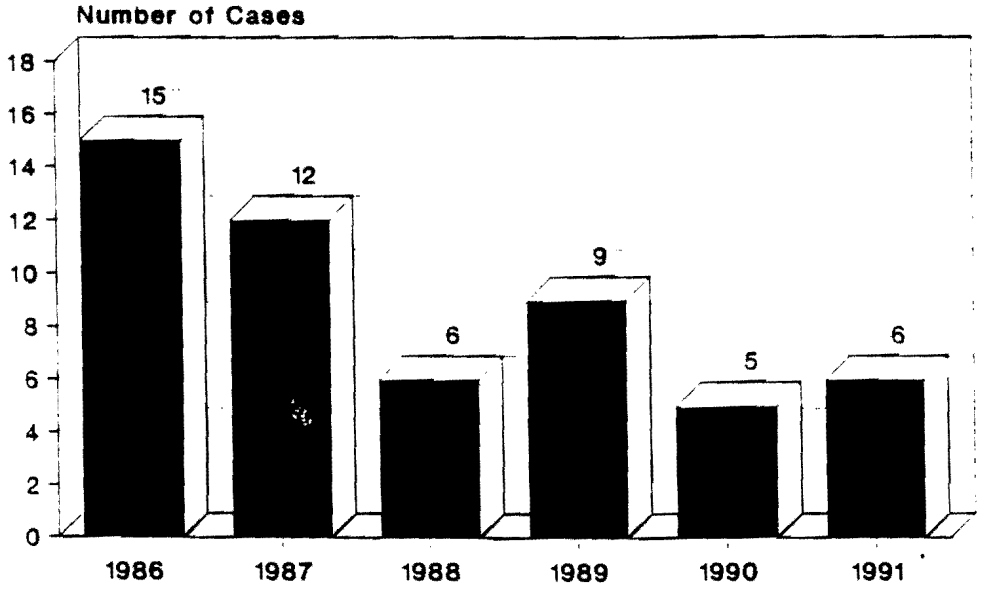
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Federal Employee Liability Act
12/31/86 - 12/31/91*



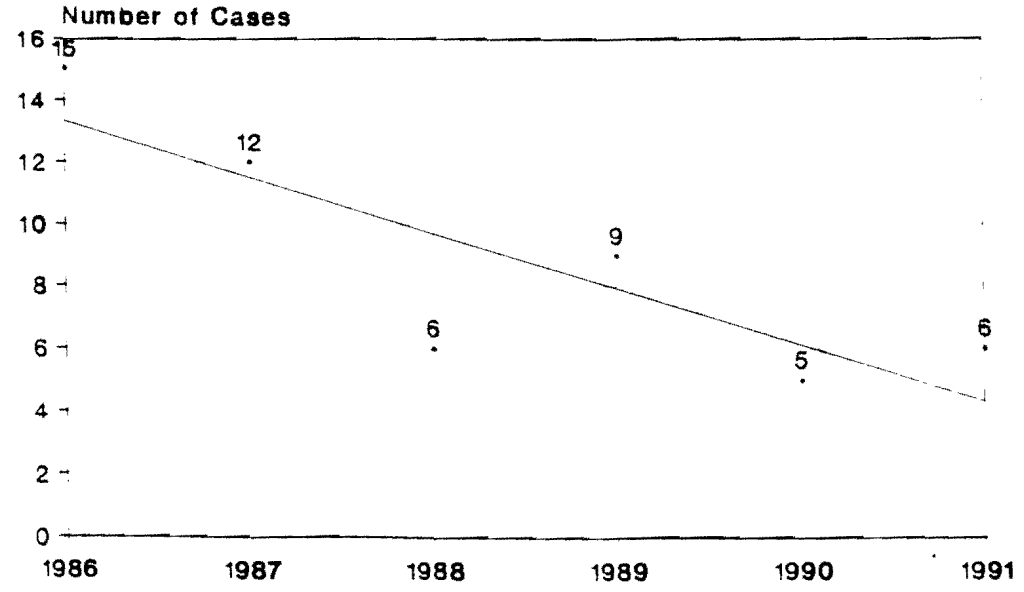
Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Tax Cases
12/31/86 - 12/31/91*



Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

Tax Cases
12/31/86 - 12/31/91*



Source: AO Annual Report
*1991 Estimated - Margin of Error - 3%

APPENDIX 5

ADVISORY GROUP
CIVIL JUSTICE REFORM ACT SURVEY

INTRODUCTION

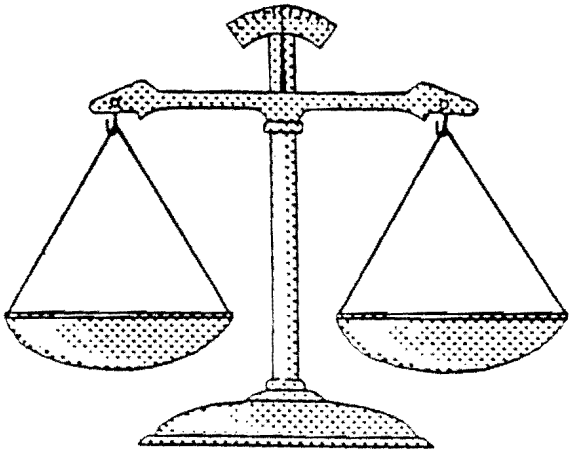
Five hundred fifteen (515) questionnaires were mailed to attorneys who practice within the Southern District of Illinois on August 15, 1991. The attorneys were selected from the Court's database on a purely random basis. Three hundred thirty six (336) were returned for a response rate of 65%.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF ILLINOIS

CIVIL JUSTICE REFORM ACT

SURVEY RESULTS



DONALD E. WEIHL, CHAIRMAN
Civil Justice Reform Act Advisory Group
for the Southern District of Illinois

RICHARD E. BOYLE, CHAIRMAN
Subcommittee on Survey of Practicing Bar
and Maximizing Benefits of Automation

Compiled by:
Clerk, U.S. District Court

INDEX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

CIVIL JUSTICE REFORM ACT SURVEY RESULTS

Question # 1. **Have you participated in any civil cases in the U.S. District Court for the Southern District of Illinois within the last eighteen months? (Circle one number to indicate your answer). A TOTAL OF 515 QUESTIONNAIRES WERE MAILED.**

RESPONSE	RETURNED	PERCENTAGE OF TOTAL
NO	32	10%
YES	280	90%

NUMBER OF CASES, AS REPORTED:

BENTON	581	28%
ESTL	1502	72%
TOTAL	2083	

Question # 2. **Case management is one way that has been proposed to reduce costs and delays in the court.**

What level of case management by the court do you believe to be the most efficient to reduce delays and costs while maintaining justice. (Circle one number to indicate your answer)

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
0 NONE	7	3%
1 LOW	53	20%
2 MODERATE	158	60%
3 HIGH	45	17%

Question # 3. **How important is oral argument to the outcome of civil motions?**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
0. Not at all important	27	10%
1. Somewhat important	125	46%
2. Very important	92	33%
3. Extremely important	31	11%

Question # 4. **How often should a motion docket for oral argument be scheduled?**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
1. Only when necessary	104	38%
2. Once per month	76	27%
3. More than once per month	98	35%

Question # 5. **How often should the Court be available for informal matters (i.e., routine Extensions of Time, Motions to Quash Discovery, Continuances or other brief matters)?**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
1. Once a month	28	10%
2. Once every two weeks	65	24%
3. Once a week	121	44%
4. Once a day	62	22%

Question # 6. **To what number (if any) should written interrogatories be limited?**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
0. Should not be limited	58	22%
1. Limited to 20	86	33%
2. Limited to 35	97	37%
3. Limited to 50	23	8%

Question # 7. **How (if at all) should the number of experts in a case be limited?**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
0. Should not be	77	27%
1. Limited by the Court through local rule	14	5%
2. Limited by the Court after Pre-Trial conference on a case by case basis	189	68%

Listed below are several case management actions that can be taken by the court in litigation. Indicate whether you believe the action would be appropriate for SIMPLE, STANDARD, and/or COMPLEX CASES.

Question # 8. **Hold mandatory Case Management Conferences shortly after an answer or other responsive pleading to be filed.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	77	18%
STANDARD	131	31%
COMPLEX	218	51%

Question # 9. **Set and enforce time limits on allowable discovery.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	155	29%
STANDARD	194	37%
COMPLEX	176	34%

Question # 10. **Narrow issues through conferences or other methods.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	84	18%
STANDARD	169	36%
COMPLEX	220	46%

Question # 11. **Refer the case to Alternate Dispute Resolution, such as mediation or arbitration.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	155	51%
STANDARD	72	23%
COMPLEX	79	26%

Question # 12. **Set an early and firm trial date.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	215	51%
STANDARD	148	35%
COMPLEX	59	14%

Question # 13. **Conduct or facilitate settlement discussions.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	180	30%
STANDARD	225	38%
COMPLEX	194	32%

Question # 14. **Exercise firm judicial control over trial proceedings.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	174	30%
STANDARD	204	36%
COMPLEX	196	34%

Question # 15. **Expand cover sheet used by the Clerk to facilitate assignment of cases based upon complexity of case.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	53	20%
STANDARD	82	31%
COMPLEX	126	49%

Question # 16. **Implement a staged discovery process.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	65	28%
STANDARD	119	33%
COMPLEX	176	49%

Question # 17. **Implement a staged disposition of issues process.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	53	28%
STANDARD	85	28%
COMPLEX	163	54%

Question # 18. **Implement a stringent "good cause" justification for delaying trials and discovery deadlines.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	140	36%
STANDARD	135	35%
COMPLEX	113	29%

Question # 19. **Develop standard period for the diposition of motions by judges.**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	194	33%
STANDARD	218	37%
COMPLEX	176	30%

For each of the Case Management Actions listed below, rate their differences in reducing (1) Delays and (2) Costs. Refer to the following scale in making your responses:

1 NOT AT ALL EFFECTIVE
2 SOMEWHAT EFFECTIVE
3 MODERATELY EFFECTIVE
4 VERY EFFECTIVE
5 EXTREMELY EFFECTIVE

Question # 20. **Hold mandatory Case Management Conferences shortly after an answer or other responsive pleading has been filed.**

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	54	19%	82	30%
2	47	17%	57	21%
3	80	29%	75	28%
4	57	21%	30	11%
5	38	14%	27	10%

Question # 21. **Set and enforce time limits on allowable discovery.**

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	17	17%	43	16%
2	33	12%	70	26%
3	87	31%	76	28%
4	87	31%	47	17%
5	53	19%	34	13%

Question # 22. **Narrow issues through conferences or other methods.**

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	23	9%	35	13%
2	44	16%	51	19%
3	74	27%	63	24%
4	88	33%	66	25%
5	40	15%	47	18%

Question # 23. Refer the case to Alternative Dispute Resolution, such as mediation or arbitration.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	82	31%	73	28%
2	53	20%	51	20%
3	58	22%	49	19%
4	47	17%	47	18%
5	28	10%	40	15%

Question # 24. Set an early and firm trial date.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	21	8%	40	15%
2	34	12%	72	26%
3	52	19%	62	23%
4	90	32%	52	19%
5	78	28%	47	17%

Question # 25. Conduct or facilitate settlement discussions.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	17	6%	24	9%
2	44	15%	28	11%
3	82	30%	77	29%
4	77	29%	85	32%
5	55	20%	55	19%

Question # 26. Exercise firm judicial control over trial proceedings.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	33	12%	54	21%
2	33	12%	43	16%
3	67	25%	68	25%
4	78	29%	55	21%
5	60	22%	47	17%

Question # 27. Expand cover sheet used by the Clerk to facilitate assignment of cases based upon complexity of case.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	106	43%	124	50%
2	59	24%	53	22%
3	47	18%	41	16%
4	30	12%	22	9%
5	8	3%	8	3%

Question # 28. Implement a staged discovery process.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	45	16%	59	23%
2	49	19%	64	25%
3	101	38%	87	34%
4	51	19%	38	14%
5	21	8%	12	4%

Question # 29. Implement a staged disposition-of-issues process.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	43	17%	47	18%
2	60	22%	76	29%
3	86	33%	74	29%
4	57	22%	41	16%
5	17	6%	19	8%

Question # 30. Implement a stringent "good cause" justification for delaying trials and discovery deadlines.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	34	12%	62	23%
2	38	13%	64	23%
3	71	26%	75	28%
4	75	28%	36	14%
5	57	21%	34	12%

Question # 31. **Develop standard period for the disposition motions by judges.**

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	11	4%	36	13%
2	29	10%	58	22%
3	61	22%	80	30%
4	87	32%	41	15%
5	87	32%	55	20%

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*****
****

The following statements refer to suggestions for procedures regarding witness discovery, pre-trial conferences, trials diversity removal jurisdiction, and alternative dispute resolution. Indicate your level of agreement with the suggestion by circling the number on the corresponding scale:

1 STRONGLY DISAGREE
2 DISAGREE
3 NEITHER AGREE NOR DISAGREE
4 AGREE
5 STRONGLY AGREE

Question # 32. **Uniformity of court procedures among all the Southern District of Illinois Judicial Officers would improve the litigation process.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	7	3%
DISAGREE	20	7%
NEITHER	73	26%
AGREE	102	37%
STRONGLY AGREE	75	27%

Question #33. **The sequencing of expert disclosure and dispositions should be done by the court after a pre-trial conference.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	11	5%
DISAGREE	33	11%
NEITHER	41	15%
AGREE	127	45%
STRONGLY AGREE	65	24%

Question # 34. **The court should adopt a local rule (similar to Illinois Supreme Court Rule 220) requiring disclosure of all experts' opinions within 60 days prior to the initial trial setting.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	24	8%
DISAGREE	37	13%
NEITHER	30	11%
AGREE	114	41%
STRONGLY AGREE	74	27%

Question # 35. **After an answer or other responsive pleading has been filed, a pre-trial conference should be held to schedule discovery, including expert disclosure.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	17	6%
DISAGREE	37	13%
NEITHER	49	17%
AGREE	112	41%
STRONGLY AGREE	63	23%

Question # 36. **At some time prior to the trial setting, the court should hold mandatory settlement conferences with compulsory attendance of the parties or representatives with decision making authority on behalf of the parties.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	26	9%
DISAGREE	44	16%
NEITHER	37	14%
AGREE	92	33%
STRONGLY AGREE	79	28%

Question # 37. **Pre-trial conferences, other than final pre-trial conferences the week before trial, are not necessary.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	78	28%
DISAGREE	96	34%
NEITHER	39	14%
AGREE	42	15%
STRONGLY AGREE	24	9%

Question # 38. **The court should require the parties to meet and confer seven (7) days prior to initial trial setting to review exhibits and come to an agreement (or disagreement) concerning the admissibility of each exhibit the parties intend to introduce at trial.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	24	9%
DISAGREE	30	11%
NEITHER	40	14%
AGREE	124	44%
STRONGLY AGREE	61	22%

Question # 39. **The Clerk's Office should make available to the trial attorneys the biographical information on summoned jurors on the Friday before trial.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	15	5%
DISAGREE	13	5%
NEITHER	23	8%
AGREE	94	34%
STRONGLY AGREE	133	48%

Question # 40. **If I could have the court involved in one aspect of litigation prior to trial, it would be:**

ANSWER	FREQUENCY	PERCENT
No response	93	35%
Settlement	78	30%
Discovery	44	17%
Narrow issues	17	6%
Expert disclosure	16	5%
Motions	9	3%
Early trial date	4	2%
Oral argument	4	2%

Question # 41. **The court should increase the use of Alternate Dispute Resolution programs.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	54	19%
DISAGREE	47	17%
NEITHER	64	24%
AGREE	71	25%
STRONGLY AGREE	39	15%

Question # 42. **Diversity removal jurisdiction should be continued.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	34	12%
DISAGREE	13	4%
NEITHER	50	18%
AGREE	76	28%
STRONGLY AGREE	103	38%

Question # 43. **At what dollar limit do you believe diversity removal jurisdiction should begin?**

ANSWER	FREQUENCY	AMOUNT
1	135	$50,000
2	48	N/E
3	35	$100,000
4	18	$25,000
5	15	$10,000
6	7	$500,000
7	7	$15,000
8	4	$1,000,000
9	4	$30,000
10	3	$250,000
11	3	$75,000
12	3	AS NOW
13	2	NONE
14	1	$150,000
15	1	$20,000

****

A range of Alternate Dispute Resolution (ADR) Programs have been proposed as a way of reducing costs and delays. The value and appropriateness of these programs may vary with the complexity of the case. This section seeks your views about these programs. For each program, indicate in what proportion of cases it should be used for (1) SIMPLE, (2) STANDARD, (3) COMPLEX CASES. (Circle one number for each case type). Refer to the following scale in making your responses:

Question # 44. Mediation settlement conferences.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	53	20%
1 IN SOME CASES	34	13%
2 HALF THE CASES	14	5%
3 IN MOST CASES	73	28%
4 IN ALL CASES	88	34%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	41	16%
1 IN SOME CASES	45	17%
2 HALF THE CASES	48	19%
3 IN MOST CASES	79	31%
4 IN ALL CASES	45	17%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	49	19%
1 IN SOME CASES	62	24%
2 HALF THE CASES	27	11%
3 IN MOST CASES	53	21%
4 IN ALL CASES	65	25%

Question # 45. Non–binding summary jury trial.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	171	68%
1 IN SOME CASES	33	13%
2 HALF THE CASES	12	5%
3 IN MOST CASES	24	10%
4 IN ALL CASES	11	4%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	139	56%
1 IN SOME CASES	54	22%
2 HALF THE CASES	29	12%
3 IN MOST CASES	19	8%
4 IN ALL CASES	5	2%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	131	52%
1 IN SOME CASES	53	21%
2 HALF THE CASES	18	7%
3 IN MOST CASES	35	14%
4 IN ALL CASES	14	6%

Question # 46. **Non–binding summary bench trial.**

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	150	60%
1 IN SOME CASES	36	14%
2 HALF THE CASES	13	5%
3 IN MOST CASES	33	13%
4 IN ALL CASES	19	8%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	130	53%
1 IN SOME CASES	54	22%
2 HALF THE CASES	29	12%
3 IN MOST CASES	26	10%
4 IN ALL CASES	8	3%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	123	49%
1 IN SOME CASES	59	24%
2 HALF THE CASES	16	6%
3 IN MOST CASES	33	13%
4 IN ALL CASES	18	8%

Question # 47. Mini–trial.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	153	62%
1 IN SOME CASES	42	17%
2 HALF THE CASES	11	4%
3 IN MOST CASES	28	11%
4 IN ALL CASES	14	6%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	124	51%
1 IN SOME CASES	70	29%
2 HALF THE CASES	28	11%
3 IN MOST CASES	18	7%
4 IN ALL CASES	4	2%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	126	51%
1 IN SOME CASES	64	26%
2 HALF THE CASES	20	8%
3 IN MOST CASES	30	12%
4 IN ALL CASES	9	3%

Question # 48. Compulsory, non–binding arbitration.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	129	50%
1 IN SOME CASES	44	17%
2 HALF THE CASES	18	7%
3 IN MOST CASES	38	15%
4 IN ALL CASES	27	11%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	126	50%
1 IN SOME CASES	48	19%
2 HALF THE CASES	38	15%
3 IN MOST CASES	31	12%
4 IN ALL CASES	8	4%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	134	53%
1 IN SOME CASES	56	22%
2 HALF THE CASES	29	12%
3 IN MOST CASES	24	10%
4 IN ALL CASES	8	3%

Question # 49. ADR programs generally.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	75	30%
1 IN SOME CASES	62	25%
2 HALF THE CASES	32	13%
3 IN MOST CASES	39	15%
4 IN ALL CASES	44	17%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	67	26%
1 IN SOME CASES	77	30%
2 HALF THE CASES	54	21%
3 IN MOST CASES	31	13%
4 IN ALL CASES	24	10%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	76	30%
1 IN SOME CASES	85	34%
2 HALF THE CASES	37	15%
3 IN MOST CASES	24	10%
4 IN ALL CASES	28	11%

For each ADR program, incidate whether you believe its use should be voluntary (decided by the parties) or mandatory (decided by the Court). Use the following scale and circle one number for each type of case.

Question # 50. **Mediation settlement conferences.**

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	127	49%
MANDATORY	132	51%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	146	56%
MANDATORY	113	44%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	149	58%
MANDATORY	110	42%

Question # 51. **Non–binding summary jury trial.**

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	239	93%
MANDATORY	17	7%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	242	95%
MANDATORY	13	5%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	232	91%
MANDATORY	23	9%

Question # 52. **Non—binding summary bench trial.**

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	238	90%
MANDATORY	26	10%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	233	91%
MANDATORY	23	9%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	228	89%
MANDATORY	28	11%

Question # 53. **Mini—trial.**

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	228	90%
MANDATORY	25	10%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	238	94%
MANDATORY	14	6%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	237	94%
MANDATORY	16	6%

Question # 54. **Compulsory, non–binding arbitration.**

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	198	78%
MANDATORY	56	22%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	222	87%
MANDATORY	33	13%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	225	88%
MANDATORY	30	12%

Question # 55. **ADR programs generally.**

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	191	73%
MANDATORY	69	27%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	213	83%
MANDATORY	45	17%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	216	83%
MANDATORY	44	17%

For each ADR program listed below, indicate how effective you believe its use would be in (1) Reducing Delays, (2) Reducing costs for standard cases. Refer to the following scale to make your response. Remember to circle one number for each column.

1. NOT AT ALL IMPORTANT
2. SOMEWHAT IMPORTANT
3. MODERATELY IMPORTANT
4. VERY IMPORTANT
5. EXTREMELY IMPORTANT

Question # 56. Mediation settlement conferences.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCING COSTS FREQUENCY	PERCENT
1	56	22%	48	19%
2	44	17%	42	16%
3	69	27%	63	25%
4	49	19%	60	23%
5	37	15%	43	17%

Question # 57. Non-binding summary jury trial.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCING COSTS FREQUENCY	PERCENT
1	125	50%	125	50%
2	64	26%	53	21%
3	43	17%	45	18%
4	15	6%	22	9%
5	3	1%	5	2%

Question # 58. Non-binding summary bench trial.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCING COSTS FREQUENCY	PERCENT
1	118	48%	111	44%
2	55	22%	49	20%
3	47	19%	47	19%
4	18	7%	27	11%
5	10	4%	15	6%

Question # 59. Mini–trial.

ANSWER	REDUCING FREQUENCY	DELAYS PERCENT	REDUCING FREQUENCY	COSTS PERCENT
1	129	52%	125	50%
2	60	24%	55	22%
3	31	13%	37	15%
4	20	8%	25	10%
5	7	3%	7	3%

Question # 60. Compulsory, non–binding arbitration.

ANSWER	REDUCING FREQUENCY	DELAYS PERCENT	REDUCING FREQUENCY	COSTS PERCENT
1	114	46%	112	45%
2	52	21%	51	20%
3	46	19%	44	18%
4	20	8%	25	10%
5	15	6%	18	7%

Question # 61. ADR programs generally.

ANSWER	REDUCING FREQUENCY	DELAYS PERCENT	REDUCING FREQUENCY	COSTS PERCENT
1	85	34%	82	33%
2	59	23%	55	22%
3	58	23%	60	24%
4	32	13%	31	12%
5	18	7%	24	9%

NARRATIVE RESPONSES TO CIVIL JUSTICE REFORM ACT QUESTIONNAIRE TO PRACTICING ATTORNEYS OF THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

Three of the questions called for narrative responses. The questions read:

> If I could have the Court involved in one aspect of litigation prior to trial, it would be?
>
> Considering the existing court procedures of (all judicial listed), what changes could be made in the court procedures that would improve the litigation process in the United States Court for the Southern District of Illinois?
>
> What other suggestions or comments do you have for relieving the delays and costs of processing civil cases in this district? In your response, please consider all portions of the judicial process, including the Court, the Clerk of Court's Offices, and the practicing attorneys. Finally, what areas are well handled by the judicial officers and should be left alone or modified only slightly?

MOTION PRACTICE

Earlier rulings by magistrate & judges, especially on dispositive motions. The Mag's R&R should be carefully scrutinized. Get a magistrate who knows what he's doing! Not some immature punk! Ten days to respond to a Dispositive motion is ridiculous - there's always an extension filed. The two (2) magistrates don't have to set a hearing on every matter!

No oral argument on motions! This is a complete waste of time and money because the parties should present their positions & authority in writing for the judge, who should not "shoot from the hip" and disregard the writer's material.

Motions should be heard and argued orally on a regular basis and briefs should not be required for all motions.

Have set periods within which to expect rulings on motions.

Rule on each motion within 2 weeks or less.

Motions (routine) could be done via telephone conference call.

Uniform disposition of issues varied by motion practice.

I believe the judges could be quicker in ruling on motions.

Minor motions (continuances, discovery amendments) should be decided without trial.

Oral motion court should be implemented w/o the need to file memoranda.

Faster rulings on motions. I've had motions before the court with no ruling made for more than one year.

If motions were ruled on more promptly, a lot of unnecessary discovery could be avoided. There should be a maximum of one or two months after oral arguments to rule on dispositive motions (i.e., summary judgment motions to dismiss).

Specific motion days should be held. Not only would delay be prevented in ruling, but the court can better keep its finger on pulse of progress of case.

There should be a uniform court date system whereby motions can be handled on a weekly basis.

Prompt rulings on dispositive motions. More motion settings.

Quicker rulings on motions less trial settings that are unrealistic - make them more reasonable to begin with and then stick to them.

Those judges who take forever to rule on motions - particularly those who don't allow oral arguments - should change that practice.

It should abolish the practice of holding oral arguments on motions except in unusual circumstances.

Do not hold motion to dismiss hearing.

Regular motion settings with oral arguments with immediate decisions by court on motions.

A motion docket would be helpful to the lawyers although I realize the judges may be too busy to accommodate this.

Right now, oral argument on motions is important & that is why I answered Q3 as I did. But I think most motions can be fairly decided on memos & I would change to that system, leaving it to a judge to decide whether to call for argument.

Have magistrates handle more motions to increase efficiency and save time.

More use of telephone conferencing as in motion arguments.

Faster decisions on motions which are dispositive of the case or a portion of the case such as motions for summary judgment. Some pending motions for summary judgment have

taken months or up to a year to be decided, during which time the parties are hesitant to undertake discovery resulting in requests for extension of discovery cut-off dates and trial delays.

Regular motion hearings.

Need to get quicker response to motions. Much more could be done by telephone.

I believe motion docket with oral arguments helps speed cases along and certainly promotes efficient fair disposition of motions - it should probably be more uniformly used.

This court should abolish any requirement that memo of law be filed in support of and in opposition to motions filed.

This court should hear oral argument on all motions and render its decision drafted by a law clerk which is generally unsatisfactory.

There is a great disparity between judges regarding decisions on motions. A general uniform time frame for deciding motions after full briefing and/or oral argument would be appreciated. Many time delays are created because parties are unwilling to incur additional legal expense until certain motions are decided by the court.

The court should consider the procedures of the Eastern District of VA at Alexandria. Motions are heard on Fridays & for the most part decided on the spot.

Specific periods of time should be established within which to enter rulings on substantive motions. The prolonged and indefinite periods of time during which motions currently remain pending foreclose possibilities of early settlement.

A separate oral argument document should be established for summary judgment motions & other similar substantive motions so that the court gives sufficient weight and attention to these motions.

More prompt in ruling on motions.

The magistrate should not set unreasonable motion deadlines.

Dispositive motions are promptly set for hearing and ruled on usually within sixty days following submission.

Many motions are easily resolved through telephone conferences or hearings.

End briefing requirement for routine motions.

Schedule oral argument of motions only at the court's discretion.

Drop or limit the requirement that every motion must be accompanied by a brief.

Decide motions on briefs.

More efficient handling of both discovery motions and substantive motions, etc.

It would reduce the costs and delays in litigation if the parties would reduce the filings of unnecessary motions during the discovery stages of actions.

Motion settings and access to the court is well handled now.

All motions should be limited and on most motions no memo required.

DISCOVERY

Shorter, more specific briefs less abuse allowed in discovery case flexibility.

Stay on schedule with trial date & discovery schedule.

Set discovery and expert disclosure schedules after a pre-trial conferences to be held shortly after filing of pleadings.

Reasonable discovery and expert disclosure schedules based on complexity of case.

No unrealistic discovery cutoffs.

Establish a pre-trial schedule for discovery and abort joint stipulation, force the parties and counsel to observe it.

Need prompt ruling on discovery disputes, need strict enforcement of discovery cut-offs.

Expand discovery time limits.

Control discovery process to prevent abuses - limit same by local rule if necessary and use sanctions more readily.

Discovery, be it depositions, interrogatories, requests for documents, needs to be judicially scrutinized for abuse.

Referral of most discovery matters to a magistrate.

Enforcing discovery cut-offs.

Discovery time limits should be executed early and through disclosure should be sequenced in the order of the burden of proof.

Discovery and case supervision is a matter of common sense and not rules and penalties.

More use of magistrate judges for discovery.

The magistrates should not set unreasonable discovery deadlines.

The discovery procedures are deplorable. Too many formal procedures must be taken for something simple, such as discovery objections.

Greater control over timely responses to discovery as well as rulings on objections to discovery.

Some type of discovery cut-off.

Aggressive practice on written discovery.

Require attorneys to limit discovery (enforce time limits).

Be given better tools (eg., local rules, coordination with clerk's office) to control discovery (lawyers who make a living on discovery) and get cases to trial - most cases will settle if a firm trial date is set and enforced.

Setting and enforcing discovery deadlines is the single largest factor that will relieve the court of delays and the parties of excessive costs.

Something needs to be done about discovery costs. In my mind it really requires more cooperation on the part of lawyers.

Prevent discovery abuses is most important factor.

Discovery is the most expensive element of litigation.

Developing a staged discovery schedule applicable to all cases should be a top priority. Realistic and firm deadlines should be set.

Early scheduling of discovery.

Realistic and firm deadlines should be set.

Limit discovery abuse

The procedure whereby discovery cut-offs, final pre-trial conferences, & trial dates are established at a very early stage in litigation is very effective and should be maintained.

All discovery should be limited.

UNIFORMITY OF PROCEDURES

Uniformity in procedures.

Standardize local rules throughout 7th Circuit.

More consistency would be helpful.

There should be as much uniformity as possible on pre-trial matters.

Judges should adopt same procedures for motions settings, trial settings, & discovery cut-offs.

Uniform deadlines in most cases impel rather than expedite resolution of case.

Uniformity needed among judges with respect to procedure and pre-trial.

PRE-TRIAL

All should develop and use one pretrial order.

Pre-trial conferences need only be held on complex cases.

Set Pre-Trials more often for status of cases.

Informal pre-trials; 1st to set basic schedule; 2nd to set expert schedule.

Eliminate final pre-trial order system. It requires too much useless work.

Encourage R & R & other pre-trial motions to narrow issues & weed out meritless claims as soon as possible, rather than waiting till trial to narrow issues, claims & defenses.

An effort should be made to work with, not against attorneys. Mandatory pre-trial conference with jury instructions, exhibit list, etc is a waste of time if trial really is not set.

Eliminate lengthy formal pre-trial orders.

Pre-trial orders would help everyone, (numbering of exhibits, witnesses, depositions and dates certain for trial).

Mandatory pre-trial order forms very efficient.

In simple & standard cases relatively early pre-trial where some arm twisting is done to settle case or limit discovery & motion practice.

Ease up on requiring so much pre-trial paperwork especially instructions before trial & such complicated pre-trial orders.

Stop usage of pre-trial orders.

Uniform final pre-trial order required.

Greater flexibility in scheduling pre-trial landmarks.

Telephone pre-trials would help reduce my client's costs, other than that I am satisfied with the procedures.

Practice of court to set a pre-trial schedule is effective.

Strict compliance with final pre-trial order.

Pre-trial orders, re, discovery , witnesses, experts conferences and most important, stringent deadlines on all aspects of pre-trial matters.

Reschedule final pre-trial to no more than one week before trial.

Pre-trial complex orders should be streamlined or dropped.

An early pre-trial conference to narrow issues and establish discovery guidelines if enforced would minimize delays and expenses.

ALTERNATE DISPUTE RESOLUTION

I would advise that more ADR procedures should be used.

Alternate Dispute Resolutions.

More emphasis on ADR as a tool to resolve disputes.

I think binding arbitration and other binding alternative dispute resolutions may be more effective.
ADR programs may only serve to delay the courts handling of cases.

I flatly oppose mandatory ADR procedures. I favor early and repeated settlement efforts. I favor all manner of computerized document control from telecoplier communications to integrated calendar files.

Increase use of ADR in simple and standard cases.

The Southern District does not require hard & fast ADR rules but I think some ADR should be mandatory for each case - whether it is a simple settlement conference or arbitration.

The form ADR takes should be voluntary and tailored to specific cases.

My one case has been handled very efficiently, unfortunately our ADR broke down because the corporate defendant treated the process very lightly.

I live and practice in a district where ADR is the current rage. It is overrated. Like the judicial system, ADR will not work any better than those people who are responsible for its administration.

Only after discovery is complete will ADR programs be truly effective.

TRIAL DATES

Give criminal attys a firm date for a trial, not keep them on hold with their witnesses in case something gets settled. That wastes my time!

Firm trial dates, rather than uncertain docket call.

A reliable trial schedule should be set and maintained.

A trial date that is not a real date is a nuisance.

Attorneys need to know when they are going to trial.

Less continuances & postponements after case has been set for trial.

Establish specific trial schedules for each case and strictly enforce them.

The important thing in my view is to set realistic trial dates early in the litigation process, and then try the case when it comes up.

Set early trial dates and do not allow continuances except for very good causes.

Fixed and firm settings would be great.

Establishment of a trial date is the single most effective court management tool.

Early trial dates settle cases.

The setting of trial dates approximately one year after filing.

Setting trial dates with certainty is good, but could be improved. This would help all phases of litigation and settlement, I believe.

PRE-TRIAL SETTLEMENT CONFERENCES

Need more settlement conferences where judge makes observations about strengths and weaknesses of both sides of case preferably in front of clients. I have observed quick settlements of disputes when this happens both in state and federal courts.

Regular motion docket for oral argument settlement conferences.

Might be more helpful if judges pressed parties more to work toward settlement.

Pre-trial conferences need to be used early.

Settlement conferences w/o trial dates are ill-advised.

Final pre-trial conference 30 days prior to a firm trial date.

More court intervention in settlement conferences.

Mandatory settlement conferences with people having settlement authority could be done by phone conference. File mini-briefs before settlement conference.

Mandatory settlement conferences or mediation (with clients available, not necessarily present) with sanctions for refusal to accept.

FORMALITY-INFORMALITY

All should be available for informal matters at 9:00 am and 1:15 pm.

Informals 2 - 3 Fridays month.

More informal give and take between court and counsel.

More informal matter opportunities.

3 to 6 months before trial, meeting informally with counsel.

The judges are too inaccessible. Prefer some informal time available each week.

More informality. Less mandatory rules.

Weekly informal settings.

The judges need to be more accessible for routine informal matters.

Permit informal matters, e.g. extensions of time, etc. to be taken up by telephone conferences calls rather than requiring appearance of counsel.

CORE ISSUE IDENTIFICATION

More involvement in issue narrowing and/or settlement conference upon completions of discovery.

CASE MANAGEMENT PROCEDURES

Some case management procedures be followed.

I think there should be more pre-trial case management.

Prompt case management & scheduling conference as soon as case is at issue.

The process as it exists is effective, however case management can be enlarged

No one procedure for case management can apply to all cases. Instead, decisions should be made by the judge and parties on a case by case basis.

ORAL ARGUMENT

It should abolish the practice of holding oral arguments on motions except in unusual circumstances.

Do not hold motion to dismiss hearing.

Regular motion settings with oral arguments with immediate decisions by court on motions.

A separate oral argument document should be established for summary judgment motions & other similar substantive motions so that the court gives sufficient weight and attention to these motions.

Schedule oral argument of motions only at the court's discretion.

Motions should be heard on oral argument on request of moving party.

No oral arguments on motions! This is a complete waste of time and money because the parties should present their positions & authority in writing for the judge, who should not "shoot from the hip" and disregard the writer's material.

All should allow oral argument on motions, if oral argument is requested.

Reduce number of court appearances required by attorneys to requested oral arguments by either party, pre-trials.

I believe a motion hearing docket with oral argument and handwritten orders would substantially improve the turn-around & save money on most matters.

Should be oral argument monthly if can't get rulings out since oral argument seems to get court's attention.

Oral argument on motions and less heavy-handed actions by law clerks.

Allowing oral arguments on all motions if requested by any party. This allows the court to have a greater role in the discovery process.

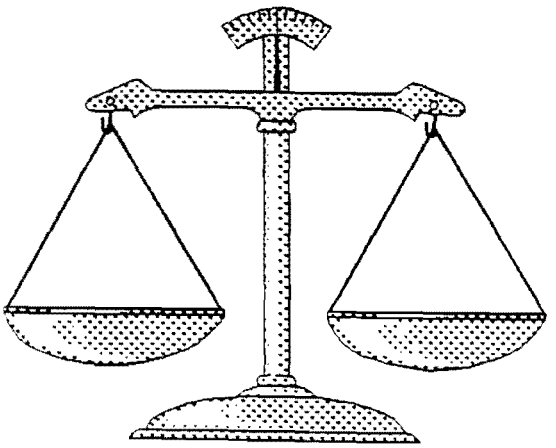
Forego oral argument unless the court believes oral argument would be helpful.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF ILLINOIS

CIVIL JUSTICE REFORM ACT

SURVEY RESULTS



DONALD E. WEIHL, CHAIRMAN
Civil Justice Reform Act Advisory Group
for the Southern District of Illinois

RICHARD E. BOYLE, CHAIRMAN
Subcommittee on Survey of Practicing Bar
and Maximizing Benefits of Automation

Compiled by:
Clerk, U.S. District Court

INDEX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

CIVIL JUSTICE REFORM ACT SURVEY RESULTS

Question # 1. **Have you participated in any civil cases in the U.S. District Court for the Southern District of Illinois within the last eighteen months? (Circle one number to indicate your answer). A TOTAL OF 515 QUESTIONNAIRES WERE MAILED.**

RESPONSE	RETURNED	PERCENTAGE OF TOTAL
NO	32	10%
YES	280	90%

NUMBER OF CASES, AS REPORTED:

BENTON	581	28%
ESTL	1502	72%
TOTAL	2083	

Question # 2. **Case management is one way that has been proposed to reduce costs and delays in the court.**

What level of case management by the court do you believe to be the most efficient to reduce delays and costs while maintaining justice. (Circle one number to indicate your answer)

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
0 NONE	7	3%
1 LOW	53	20%
2 MODERATE	158	60%
3 HIGH	45	17%

Question # 3. **How important is oral argument to the outcome of civil motions?**

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
0. Not at all important	27	10%
1. Somewhat important	125	46%
2. Very important	92	33%
3. Extremely important	31	11%

Question # 4. How often should a motion docket for oral argument be scheduled?

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
1. Only when necessary	104	38%
2. Once per month	76	27%
3. More than once per month	98	35%

Question # 5. How often should the Court be available for informal matters (i.e., routine Extensions of Time, Motions to Quash Discovery, Continuances or other brief matters)?

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
1. Once a month	28	10%
2. Once every two weeks	65	24%
3. Once a week	121	44%
4. Once a day	62	22%

Question # 6. To what number (if any) should written interrogatories be limited?

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
0. Should not be limited	58	22%
1. Limited to 20	86	33%
2. Limited to 35	97	37%
3. Limited to 50	23	8%

Question # 7. How (if at all) should the number of experts in a case be limited?

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
0. Should not be	77	27%
1. Limited by the Court through local rule	14	5%
2. Limited by the Court after Pre-Trial conference on a case by case basis	189	68%

Listed below are several case management actions that can be taken by the court in litigation. Indicate whether you believe the action would be appropriate for SIMPLE, STANDARD, and/or COMPLEX CASES.

Question # 8. Hold mandatory Case Management Conferences shortly after an answer or other responsive pleading to be filed.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	77	18%
STANDARD	131	31%
COMPLEX	218	51%

Question # 9. Set and enforce time limits on allowable discovery.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	155	29%
STANDARD	194	37%
COMPLEX	176	34%

Question # 10. Narrow issues through conferences or other methods.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	84	18%
STANDARD	169	36%
COMPLEX	220	46%

Question # 11. Refer the case to Alternate Dispute Resolution, such as mediation or arbitration.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	155	51%
STANDARD	72	23%
COMPLEX	79	26%

Question # 12. Set an early and firm trial date.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	215	51%
STANDARD	148	35%
COMPLEX	59	14%

Question # 13. Conduct or facilitate settlement discussions.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	180	30%
STANDARD	225	38%
COMPLEX	194	32%

Question # 14. Exercise firm judicial control over trial proceedings.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	174	30%
STANDARD	204	36%
COMPLEX	196	34%

Question # 15. Expand cover sheet used by the Clerk to facilitate assignment of cases based upon complexity of case.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	53	20%
STANDARD	82	31%
COMPLEX	126	49%

Question # 16. Implement a staged discovery process.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	65	28%
STANDARD	119	33%
COMPLEX	176	49%

Question # 17. Implement a staged disposition of issues process.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	53	28%
STANDARD	85	28%
COMPLEX	163	54%

Question # 18. Implement a stringent "good cause" justification for delaying trials and discovery deadlines.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	140	36%
STANDARD	135	35%
COMPLEX	113	29%

Question # 19. Develop standard period for the diposition of motions by judges.

ANSWER	FREQUENCY	PERCENTAGE OF TOTAL
SIMPLE	194	33%
STANDARD	218	37%
COMPLEX	176	30%

For each of the Case Management Actions listed below, rate their differences in reducing (1) Delays and (2) Costs. Refer to the following scale in making your responses:

1 NOT AT ALL EFFECTIVE
2 SOMEWHAT EFFECTIVE
3 MODERATELY EFFECTIVE
4 VERY EFFECTIVE
5 EXTREMELY EFFECTIVE

Question # 20. Hold mandatory Case Management Conferences shortly after an answer or other responsive pleading has been filed.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	54	19%	82	30%
2	47	17%	57	21%
3	80	29%	75	28%
4	57	21%	30	11%
5	38	14%	27	10%

Question # 21. Set and enforce time limits on allowable discovery.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	17	17%	43	16%
2	33	12%	70	26%
3	87	31%	76	28%
4	87	31%	47	17%
5	53	19%	34	13%

Question # 22. Narrow issues through conferences or other methods.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	23	9%	35	13%
2	44	16%	51	19%
3	74	27%	63	24%
4	88	33%	66	25%
5	40	15%	47	18%

Question # 23. Refer the case to Alternative Dispute Resolution, such as mediation or arbitration.

ANSWER	REDUCING FREQUENCY	DELAYS PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	82	31%	73	28%
2	53	20%	51	20%
3	58	22%	49	19%
4	47	17%	47	18%
5	28	10%	40	15%

Question # 24. Set an early and firm trial date.

ANSWER	REDUCING FREQUENCY	DELAYS PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	21	8%	40	15%
2	34	12%	72	26%
3	52	19%	62	23%
4	90	32%	52	19%
5	78	28%	47	17%

Question # 25. Conduct or facilitate settlement discussions.

ANSWER	REDUCING FREQUENCY	DELAYS PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	17	6%	24	9%
2	44	15%	28	11%
3	82	30%	77	29%
4	77	29%	85	32%
5	55	20%	55	19%

Question # 26. Exercise firm judicial control over trial proceedings.

ANSWER	REDUCING FREQUENCY	DELAYS PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	33	12%	54	21%
2	33	12%	43	16%
3	67	25%	68	25%
4	78	29%	55	21%
5	60	22%	47	17%

Question # 27. Expand cover sheet used by the Clerk to facilitate assignment of cases based upon complexity of case.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	106	43%	124	50%
2	59	24%	53	22%
3	47	18%	41	16%
4	30	12%	22	9%
5	8	3%	8	3%

Question # 28. Implement a staged discovery process.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	45	16%	59	23%
2	49	19%	64	25%
3	101	38%	87	34%
4	51	19%	38	14%
5	21	8%	12	4%

Question # 29. Implement a staged disposition–of–issues process.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	43	17%	47	18%
2	60	22%	76	29%
3	86	33%	74	29%
4	57	22%	41	16%
5	17	6%	19	8%

Question # 30. Implement a stringent "good cause" justification for delaying trials and discovery deadlines.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	34	12%	62	23%
2	38	13%	64	23%
3	71	26%	75	28%
4	75	28%	36	14%
5	57	21%	34	12%

Question # 31. Develop standard period for the disposition motions by judges.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCINC COSTS FREQUENCY	PERCENT
1	11	4%	36	13%
2	29	10%	58	22%
3	61	22%	80	30%
4	87	32%	41	15%
5	87	32%	55	20%

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The following statements refer to suggestions for procedures regarding witness discovery, pre-trial conferences, trials diversity removal jurisdiction, and alternative dispute resolution. Indicate your level of agreement with the suggestion by circling the number on the corresponding scale:

1 STRONGLY DISAGREE
2 DISAGREE
3 NEITHER AGREE NOR DISAGREE
4 AGREE
5 STRONGLY AGREE

Question # 32. Uniformity of court procedures among all the Southern District of Illinois Judicial Officers would improve the litigation process.

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	7	3%
DISAGREE	20	7%
NEITHER	73	26%
AGREE	102	37%
STRONGLY AGREE	75	27%

Question #33. The sequencing of expert disclosure and dispositions should be done by the court after a pre-trial conference.

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	11	5%
DISAGREE	33	11%
NEITHER	41	15%
AGREE	127	45%
STRONGLY AGREE	65	24%

Question # 34. **The court should adopt a local rule (similar to Illinois Supreme Court Rule 220) requiring disclosure of all experts' opinions within 60 days prior to the initial trial setting.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	24	8%
DISAGREE	37	13%
NEITHER	30	11%
AGREE	114	41%
STRONGLY AGREE	74	27%

Question # 35. **After an answer or other responsive pleading has been filed, a pre-trial conference should be held to schedule discovery, including expert disclosure.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	17	6%
DISAGREE	37	13%
NEITHER	49	17%
AGREE	112	41%
STRONGLY AGREE	63	23%

Question # 36. **At some time prior to the trial setting, the court should hold mandatory settlement conferences with compulsory attendance of the parties or representatives with decision making authority on behalf of the parties.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	26	9%
DISAGREE	44	16%
NEITHER	37	14%
AGREE	92	33%
STRONGLY AGREE	79	28%

Question # 37. **Pre-trial conferences, other than final pre-trial conferences the week before trial, are not necessary.**

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	78	28%
DISAGREE	96	34%
NEITHER	39	14%
AGREE	42	15%
STRONGLY AGREE	24	9%

Question # 38. The court should require the parties to meet and confer seven (7) days prior to initial trial setting to review exhibits and come to an agreement (or disagreement) concerning the admissibility of each exhibit the parties intend to introduce at trial.

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	24	9%
DISAGREE	30	11%
NEITHER	40	14%
AGREE	124	44%
STRONGLY AGREE	61	22%

Question # 39. The Clerk's Office should make available to the trial attorneys the biographical information on summoned jurors on the Friday before trial.

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	15	5%
DISAGREE	13	5%
NEITHER	23	8%
AGREE	94	34%
STRONGLY AGREE	133	48%

Question # 40. If I could have the court involved in one aspect of litigation prior to trial, it would be:

ANSWER	FREQUENCY	PERCENT
No response	93	35%
Settlement	78	30%
Discovery	44	17%
Narrow issues	17	6%
Expert disclosure	16	5%
Motions	9	3%
Early trial date	4	2%
Oral argument	4	2%

Questionnaire Number	Narrative to Question 40
20	Close supervision of the magistrate.
22	Evaluate the case for what, if anything, the defendant should offer to settle and what the plaintiff should accept to settle. Then, if case does not settle, give the litigants their right to insist on trial to verdict and judgement.
23	Be willing to accord some times for frivilous objections.
27	Magistrate ought to have jurisdiction without the parties consenting.

37 Require firm "will call" witness list exchange 90 days before trial.

53 ADR referral.

93 Have the parties on simple cases go thru a settlement conference (without requiring attendance of out of town clients to attend 6 months before trial, no need to do it sooner).

108 It would be to leave me alone in front of the jury and let me try my case.

114 Case management or status conference.

163 Ruling decisively on substantive motions including motions to dismiss, motions on the pleadings, & motions for summary judgement in order to clarify the courts view of the law of the case clearly, definitively and early.

174 Jury instructions, exhibits admissibility one week before trial.

181 A pre-trial date for filing and ruling upon motions in limine.

223 Motions on pleadings.

267 Early resolution of uncontested issues & determination of remaining issues to fight about.

299 I would like to see a pre-trial conference after initial interrogatories have been answered because realistic appraisal of time requirement is difficult before that and later settings usually end up with the judge asking why the witnesses weren't deposed earlier. Also, I firmly believe that meaningful settlement negotiations do not occur in the absence of a firm trial setting.

Question # 41. The court should increase the use of Alternate Dispute Resolution programs.

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	54	19%
DISAGREE	47	17%
NEITHER	64	24%
AGREE	71	25%
STRONGLY AGREE	39	15%

Question # 42. Diversity removal jurisdiction should be continued.

ANSWER	FREQUENCY	PERCENT
STRONGLY DISAGREE	34	12%
DISAGREE	13	4%
NEITHER	50	18%
AGREE	76	28%
STRONGLY AGREE	103	38%

Question # 43. At what dollar limit do you believe diversity removal jurisdiction should begin?

ANSWER	FREQUENCY	AMOUNT
1	135	$50,000
2	48	N/E
3	35	$100,000
4	18	$25,000
5	15	$10,000
6	7	$500.000
7	7	$15,000
8	4	$1,000,000
9	4	$30,000
10	3	$250,000
11	3	$75,000
12	3	AS NOW
13	2	NONE
14	1	$150,000
15	1	$20,000

****

A range of Alternate Dispute Resolution (ADR) Programs have been proposed as a way of reducing costs and delays. The value and appropriateness of these programs may vary with the complexity of the case. This section seeks your views about these programs. For each program, indicate in what proportion of cases it should be used for (1) SIMPLE, (2) STANDARD, (3) COMPLEX CASES. (Circle one number for each case type). Refer to the following scale in making your responses:

Question # 44. Mediation settlement conferences.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	53	20%
1 IN SOME CASES	34	13%
2 HALF THE CASES	14	5%
3 IN MOST CASES	73	28%
4 IN ALL CASES	88	34%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	41	16%
1 IN SOME CASES	45	17%
2 HALF THE CASES	48	19%
3 IN MOST CASES	79	31%
4 IN ALL CASES	45	17%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	49	19%
1 IN SOME CASES	62	24%
2 HALF THE CASES	27	11%
3 IN MOST CASES	53	21%
4 IN ALL CASES	65	25%

Question # 45. Non-binding summary jury trial.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	171	68%
1 IN SOME CASES	33	13%
2 HALF THE CASES	12	5%
3 IN MOST CASES	24	10%
4 IN ALL CASES	11	4%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	139	56%
1 IN SOME CASES	54	22%
2 HALF THE CASES	29	12%
3 IN MOST CASES	19	8%
4 IN ALL CASES	5	2%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	131	52%
1 IN SOME CASES	53	21%
2 HALF THE CASES	18	7%
3 IN MOST CASES	35	14%
4 IN ALL CASES	14	6%

Question # 46. Non–binding summary bench trial.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	150	60%
1 IN SOME CASES	36	14%
2 HALF THE CASES	13	5%
3 IN MOST CASES	33	13%
4 IN ALL CASES	19	8%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	130	53%
1 IN SOME CASES	54	22%
2 HALF THE CASES	29	12%
3 IN MOST CASES	26	10%
4 IN ALL CASES	8	3%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	123	49%
1 IN SOME CASES	59	24%
2 HALF THE CASES	16	6%
3 IN MOST CASES	33	13%
4 IN ALL CASES	18	8%

Question # 47. Mini–trial.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	153	62%
1 IN SOME CASES	42	17%
2 HALF THE CASES	11	4%
3 IN MOST CASES	28	11%
4 IN ALL CASES	14	6%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	124	51%
1 IN SOME CASES	70	29%
2 HALF THE CASES	28	11%
3 IN MOST CASES	18	7%
4 IN ALL CASES	4	2%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	126	51%
1 IN SOME CASES	64	26%
2 HALF THE CASES	20	8%
3 IN MOST CASES	30	12%
4 IN ALL CASES	9	3%

Question # 48. Compulsory, non–binding arbitration.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	129	50%
1 IN SOME CASES	44	17%
2 HALF THE CASES	18	7%
3 IN MOST CASES	38	15%
4 IN ALL CASES	27	11%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	126	50%
1 IN SOME CASES	48	19%
2 HALF THE CASES	38	15%
3 IN MOST CASES	31	12%
4 IN ALL CASES	8	4%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	134	53%
1 IN SOME CASES	56	22%
2 HALF THE CASES	29	12%
3 IN MOST CASES	24	10%
4 IN ALL CASES	8	3%

Question # 49. ADR programs generally.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	75	30%
1 IN SOME CASES	62	25%
2 HALF THE CASES	32	13%
3 IN MOST CASES	39	15%
4 IN ALL CASES	44	17%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	67	26%
1 IN SOME CASES	77	30%
2 HALF THE CASES	54	21%
3 IN MOST CASES	31	13%
4 IN ALL CASES	24	10%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
0 NOT AT ALL	76	30%
1 IN SOME CASES	85	34%
2 HALF THE CASES	37	15%
3 IN MOST CASES	24	10%
4 IN ALL CASES	28	11%

For each ADR program, incidate whether you believe its use should be voluntary (decided by the parties) or mandatory (decided by the Court). Use the following scale and circle one number for each type of case.

Question # 50. Mediation settlement conferences.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	127	49%
MANDATORY	132	51%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	146	56%
MANDATORY	113	44%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	149	58%
MANDATORY	110	42%

Question # 51. Non–binding summary jury trial.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	239	93%
MANDATORY	17	7%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	242	95%
MANDATORY	13	5%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	232	91%
MANDATORY	23	9%

Question # 52. Non–binding summary bench trial.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	238	90%
MANDATORY	26	10%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	233	91%
MANDATORY	23	9%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	228	89%
MANDATORY	28	11%

Question # 53. Mini–trial.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	228	90%
MANDATORY	25	10%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	238	94%
MANDATORY	14	6%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	237	94%
MANDATORY	16	6%

Question # 54. Compulsory, non-binding arbitration.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	198	78%
MANDATORY	56	22%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	222	87%
MANDATORY	33	13%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	225	88%
MANDATORY	30	12%

Question # 55. ADR programs generally.

SIMPLE ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	191	73%
MANDATORY	69	27%

STANDARD ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	213	83%
MANDATORY	45	17%

COMPLEX ANSWER	FREQUENCY	PERCENT OF TOTAL
VOLUNTARY	216	83%
MANDATORY	44	17%

For each ADR program listed below, indicate how effecive you believe its use would be in (1) Reducing Delays, (2) Reducing costs for standard cases. Refer to the following scale to make your response. Remember to circle one number each column.

1. NOT AT ALL IMPORTANT
2. SOMEWHAT IMPORTANT
3. MODERATELY IMPORTANT
4. VERY IMPORTANT
5. EXTREMELY IMPORTANT

Question # 56. Mediation settlement conferences.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCING COSTS FREQUENCY	PERCENT
1	56	22%	48	19%
2	44	17%	42	16%
3	69	27%	63	25%
4	49	19%	60	23%
5	37	15%	43	17%

Question # 57. Non–binding summary jury trial.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCING COSTS FREQUENCY	PERCENT
1	125	50%	125	50%
2	64	26%	53	21%
3	43	17%	45	18%
4	15	6%	22	9%
5	3	1%	5	2%

Question # 58. Non–binding summary bench trial.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCING COSTS FREQUENCY	PERCENT
1	118	48%	111	44%
2	55	22%	49	20%
3	47	19%	47	19%
4	18	7%	27	11%
5	10	4%	15	6%

Question # 59. Mini–trial.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCING COSTS FREQUENCY	PERCENT
1	129	52%	125	50%
2	60	24%	55	22%
3	31	13%	37	15%
4	20	8%	25	10%
5	7	3%	7	3%

Question # 60. Compulsory, non–binding arbitration.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCING COSTS FREQUENCY	PERCENT
1	114	46%	112	45%
2	52	21%	51	20%
3	46	19%	44	18%
4	20	8%	25	10%
5	15	6%	18	7%

Question # 61. ADR programs generally.

ANSWER	REDUCING DELAYS FREQUENCY	PERCENT	REDUCING COSTS FREQUENCY	PERCENT
1	85	34%	82	33%
2	59	23%	55	22%
3	58	23%	60	24%
4	32	13%	31	12%
5	18	7%	24	9%

Question # 62. Considering the existing court procedures of Chief Judge James L. Foreman, Judge William L. Beatty, Judge William D. Stiehl, Magistrate Judge Gerald B. Cohn, Magistrate Philip M. Frazier and Magistrate Judge John M. Ferguson, what changes could be made in their court procedures that would improve the litigation process in the United States District Court for the Southern District of Illinois? Please do not be judge specific in your answers. Answers in the "SHADED" areas represent answers given by attorneys identified as frequent litigators, (5 or more cases).

106 or 38% of the respondents had NO RESPONSE to this question.

Questionnaire Number	Narrative to Question 62
20	Earlier rulings by magistrate & judges, especially on dispositive motions. The Mag's R&R should be carefully scrutinized. Get a magistrate who knows what he's doing! Not some

immature punk! Ten days to respond to a Dispositive motion is ridiculous – there's always an extension filed. The two (2) magistrates don't have to set a hearing on every matter! Give criminal attys a firm date for a trial, not keep them on hold with their witnesses in case something gets settled. That wastes my time!

21. No oral argument on motions! This is a complete waste of time and money because the parties should present their positions & authority in writing for the judge, who should not "shoot from the hip" and disregard the writer's material.

22. All should develop and use one pretrial order. All should allow oral argument on motions. if oral argument is requested. All should be available for informal matters at 9:00am and 1:15pm.

23. Run trials past 5:00 p.m. but take more vacation days.

26. Reduce number of court appearances required by atty's to requested oral arguments by either party; pretrials. Only when requested, and early trial settings. Trial settings dispose of cases.

27. Motions should be heard and argued orally on a regular basis and briefs should not be required for all motions. Pre–trial conferences need only be held on complex cases.

28. My experience is too limited to be able to provide an answer.

31. Set Pre–trials more often for status of cases.

33. Oral argument – civil motions.

34. Proposed orders should not be required. Judges should set hearing dates & incorporation by reference should be allowed in pleading.

36. Motions should be argued orally; firm trial dates, rather than uncertain docket call.

38. Uniformity in procedures.

40. Oral argument 2x/mo. informals 2–3 Friday's mo. 2 informal pre–trials; 1st to set basic schedule; 2nd to set expert schedule: 2/final pre–trial conference just before trial.

41. Have set periods within which to expect rulings on motions.

42. All of the Judges model their court procedures after Hon. William L. Beatty.

43. 1. Eliminate final pre–trial order system. It requires too much useless work. 2. Rule on each motion within 2 weeks or less. 3. At oral argument on set 5 motions every half–hour. 4. Eliminate rule that when a juror is challenged (pre–emptory) jurors with lower numbers are deemed accepted. 5.Get cases to trial within 2 years. 6. Eliminate requirement for personal conference discovery, etc. 7. Require each venire man/woman called to trial stand and describe background orally.

51. The judges are different & can't answer. Shouldn't ignore cases for several years.

52. 1. More oral argument for motions! 2. No limitations on interrogatories. 3. Procedures more similar to Ill. State Court regarding how liberal discovery should be. 4. Hold informal matters if can't comply w/#3. 5. Motions (routine) could be done via telephone conference call.

53. I can't answer this question without being judge–specific.

54. Oral arguments for motions.

55. Forcing disclosure of experts, witnesses and exhibits early in the litigation coupled with some non–binding hearing will force settlement much earlier in the process.

56. No suggestions for change other than indicated by the foregoing responses.

57. Insufficient experience.

58. I believe a motion hearing docket with oral argument and handwritten orders would substantially improve the turn–around & save money on most matters.

61. Needed are more settlement conferences where judge makes observations about strengths and weaknesses of both sides of case preferably in front of clients. I have observed quick settlements of disputes when this happens both in state and federal courts.

63. 1. Prompt rulings on motions. 2. Scheduling 220 experts after initial discovery to avoid unrealistic time–tables and resultant motions to extend time.

64. Shorter, more specific briefs less abuse allowed in discovery case flexibility.

65. Stay on schedule with trial date & discovery schedule. For parties to deal with & move to resolve issues. Some pretrial session mediary.

67. Firm trial dates.

68. More informal give and take between court and counsel. Less attention to protocol and more attention to expediting cases.

69. 1. Settlement conference with parties present. 2. Mini–trial opportunity increased. 3. Firm on trial settings. 4. Mandatory pre–trial when judge takes action role. 5. More informal matter opportunities.

71. I have no suggestions for significant changes – I think the Southern District works efficiently and fairly.

72. Uniform disposition of issues varied by motion practice.

74. I think things go pretty well. I believe the judges could be quicker in ruling on motions. I would advise that more ADR procedures should be used.

78. Regular motion docket for oral argument settlement conferences.

79. 3 to 6 mo's before trail. Meeting informally with counsel.

83. More involvement in issue narrowing and/or settlement conference upon completions of discovery. Also control to prevent redundant evidence being presented at trial. Also, more timely ruling of court on pending motions.

87. I do not practice sufficiently in your system to have an opinion.

89. A reliable trial schedule should be set and maintained. Approximately 1 month before trial, lawyers should be advised they are subject to being called. Minor motions (continuances, discovery amendments) should be decided without trial.

90. Required prompt rulings on motions.

92. Oral motion court should be implemented w/o the need to file memoranda. Set discovery and expert disclosure schedules after a pre-trial conference to be held shortly after filing of pleadings.

96. Encourage R.R. & other pre-trail motions to narrow issues & weed out meritless claims as soon as possible, rather than waiting till trial to narrow issues, claims & defenses.

97. The judges are too inexcessable. Prefer some informal time available each week.

100. Faster rulings on motions. I've had motions before the court with no ruling made for more than one year.

101. Some case management procedures be followed.

102. If motions were ruled on more promptly, a lot of unnecessary discovery could be avoided. There should be a maximum of one or two months after oral arguments to rule on dispositive motions (i.e., summary jury motions to discuss)

103. An effort should be made to work with, not against, attorneys. Mandatory pre-trial conference with jury instructions, exhibit list, etc is a waste of time if trial really is not set. A trial date that is not a real date is a nuisance.

104. Discovery timetables for interrogatories, request to produce, request to admit and depositions should be more specific.

105. Conference calls could be beneficial in resolving disputes and handling problems that attorneys are having. At the same time, the Judge or Magistrate could determine status of case and push the attorneys a little to develop readiness of case quicker. This has been used recently by one of the Magistrates with, I believe, much success in handling the problems that often develop.

106. Specific motion days should be held. Not only would delay be prevented in ruling, but the court can better keep its finger on pulse of progress of case. Eliminate lengthy formal pre-trial orders.

107. More informality. Less mandatory rules. More courteous in the clerk's office. Clerk's office should not be able to return civil papers w/o calling the attorney first and discussing problem – often serious problems are created by this practice.

108. Beatty's a great guy and a great judge but needs better docket control – Attorneys need to know when they are going to trial. Pre-trial orders would help everyone, (numbering of exhibits, witnesses, depositions and dates certain for trial).

109. There should be a uniform court date system whereby motions can be handled on a weekly basis.

110. Prompt rulings on dispositive motions. More motion settings. Weekly informal settings. Reasonable discovery and expert disclosure schedules based on complexity of case.

111. Might be more helpful if judges pressed parties more to work toward settlement.

112. The key to resolving pending cases is court access. Less formal alternatives to motions, discovery, and trial are better at getting cases resolved. If too many technical ways of defeating a litigation opponent exist, focus on the real substantive issues is delayed.

113. Quicker rulings on motions less trial settings that are unrealistic – make them more reasonable to begin with and then stick to them.

114. Less continuances & postponements after case has been set for trial.

120. Believe certain judges are too arbitrary regarding "petty" deviations from their rules. Ex. Case should not be put over for one year because "trial attorney" did not attend pre-trial (associate did attend).

121. I do not have sufficient experience in the Southern District to be helpful.

123. The system of handling cases by Judge Beatty is the most efficient. Motions on Friday's. No long delays in rulings. No unrealistic discovery cutoffs. Mandatory pre-trial order forms very efficient.

124. I believe court procedures are adequate. We need more judges to handle the criminal load.

126. Eliminate docket calls for all attorneys when the cases will not be reached for significant periods of time. Standardize pre-trial submissions of findings of fact, conclusions of law and pre-trial briefs.

127. Regular availability for informal matters.

129. The court should require the attorney who has principal responsibility for the case to be present for depositions of all parties, key witnesses and expert witnesses. Too often, a variety of associates spend wasted time and effort in misguided zeal. Early attention by principal counsel to clear liability cases might result in earlier settlements.

131. In many civil cases the final pre-trial requiring instructions, exhibit, issued memo, etc., is often too far before the trial. The result is that busy trial attorneys have to redo much of the work to be "fresh"; therefore; an increase in cost to the parties. It is like getting your case ready twice.

132. Establish a pre-trial schedule for discovery and abort joint stipulation, force the parties and counsel to observe it.

133. Placing a time limit on motion ruling.

135. Those judges who take forever to rule on motions – particularly those who don't allow oral arguments – should change that practice.

138. Standardize local rules throughout 7th Circuit.

140. 1. Please allow the lawyers to agree on continuances & not require a PR to dismiss without prejudice to get a continuance. 2. Please stop the limits on interrogatories and request to produce – it's absorbed in, for example, product cases. 3. Please allow lawyers more time in voir dire. We know our case and we need time to talk to the jury.

142. The court should take a firmer stand in enforcing the time limits it sets. It should abolish the practice of holding oral arguments on motions except in unusual circumstances.

146. Do not hold motion to dismiss hearing.

147. More consistency would be helpful. Inmate complaints should be more tightly reviewed to weed out extraneous materials. I think the procedures implemented in Central District are more effective and efficient in the long run.

148. Individual matters, e.g., motions, given a specific time to be heard, rather than at the same time.

149. Motions are under submission for too long. Should be oral argument monthly if can't get rulings out since oral argument seems to get courts attention.

150. Compared to the erratic, informal and inconsistent procedures used by the local Circuit Courts in both Madison and St. Clair County, the existing federal procedures are a joy. I can think of no specific changes needed.

152. The judges need to be more accessibile for routine informal matters. Many discovery disputes could be eliminated without voluminous motions if the parties could discuss the matter with the court and obtain a ruling from the bench. 2. Do not create more paperwork. If the rules are expanded and more pre-trial reports, deadlines, etc., are imposed, the cost of litigation increases.

153. There should be as much uniformity as possible on pre-trial matters. All judges should use oral argument more on motions. It need not be mandatory but it is often, but not always helpful to do it. Let lawyers designate oral argument and allow judge to dispense if he/she doesn't need it.

154. 1. Regular motion settings with oral arguments with immediate decisions by court on motions – especially summary judgment. 2. Eliminate pre-trial form – have pre-trial conference to handle dispositive motion and set case for trial.

157. I do not have necessary experience in these courts to answer.

158. A motion docket would be helpful to the lawyers although I realize the judges may be too busy to accomodate this. The Trial Practice Schedules utilized by most judges are excellent.

159. In simple & standard cases relatively early pre-trial where some arm-twisting is done to settle case or limit discovery & motion practice. Attorneys should have a good idea of what they will do with the case when they file it. I emphasize the relatively early. Promote use of Article 68 offers of judges.

160. Quicker disposition of motions.

161. Firm trial dates prompt ruling on motions.

162. Quicker response to non substantive motions.

163. Right now, oral argument on motions is important & that is why I answered Q3 as I did. But I think most motions can be fairly decided on memos & I would change to that system, leaving it to a judge to decide whether to call for argument. Otherwise, I just emphasize the need for definitive answers to pre-trial motions.

164. Need prompt ruling on motions, need prompt ruling on discovery disputes, need strict enforcement of discovery cut-offs.

165. Ease up on requiring so much pre-trial paperwork especially instructions before trial & such complicated pre-trial orders. Expand discovery time limits.

167. Personally, I am tired of judicial attempts to scare and browbeat my clients into settling. Judges should let disputes be where they have been settled for years... the courtroom by juries. We didn't have any toruble with courtroom delays until we adopted this "show the other side what you have" attitude to discovery.

169. Prompt rulings on motions.

170. At trial – allow attorneys to move freely about the courtroom.

171. Establishing specific trial schedules for each case and strictly enforcing them. Control discovery process to prevent abuses – limit same by local rule if necessary and use sanctions more readily.

173. Have magistrates handle more motions to increase efficiency and save time.

174. Firm trial dates are the only quam I have. The alternative is at least provide us with firm alternative dates, giving some consideration to our calendar's i.e., state court trial settings. This problem arises as a result of the overload of criminal trials uncertainty. In essence it is very costly on the defense to be on hold for a week, further from a plaintiff's standpoint, as defendants it is a nightmare when experts are involved.

175. Only attorneys with criminal defense experience (recent) should be appointed for indigents in criminal cases.

178. Oral argument of motion with ruling from bench. Comply with rule 2604 (Govt) & follow same with pre–trial orders.

179. More use of telephone conferencing as in motion arguments.

180. It isn't going to happen with criminal backlog.

182. Faster decisions on motions which are dispositive of the case or a portion of the case such as motions for summary judgment. Some pending motions for summary judgment have taken months or up to a year to be decided, during which time the parties are hesitant to undertake discovery resulting in requests for extension of discovery cut–off dates and trial delays.

183. The magistrates should have more authority to alter the trial practice schedule and other dates and deadlines to accomodate the reasonable needs of the attorneys and parties.

184. Judges should adopt same procedures for motions settings, trial settings, & discovery cut–offs.

188. Uniform deadlines in most cases impell rather than expedite resolution of a case. Practicing lawyers spend their time trying to adjust deadlines instead of working in their cases. There should be 3 deadlines (1) discovery (2) disclosure of experts & (3) trial date.

189. Discovery, be it depositions, interrogatories, requests for documents, needs to be judicially scrutinized for abuse.

190. I don't see a need for oral arguments in most motions. I think there should be more pre-trial case management. I also believe there should be quicker responses to matters taken under advisement.

191. 1. Compulsory settlement conference 2. Regular motion hearings. 3. Alternative Dispute Resolution.

192. I have not had sufficient experience to suggest any effective alternative procedures.

193. Need to get quicker response to motions. You can wait up to a year to hear on a motion. Should be much faster turn-around time. Also, much more could be done by telephone. Some judges use it a lot. That is good. Some do not.

195. A. Referral of most discovery matters to a magistrate. B. Adoption of a local rule requiring disclosure of witnesses, documents, experts, etc. before discovery can be commenced – like the state law practice of filing a combined statement of finances in family cases in St. Clair Cty or Monroe Cty or the automatic disclosure rule in Ill Sup Ct Rule 222.

196. Firm trial dates, set early in litigation.

197. The important thing in my view is to set realistic trial dates early in the litigation process, and then try the case when it comes up. If a case is set over for an extended period after it is ready for trial the evidence gets stale. This hurts the trial.

200. I believe motion docket with oral arguments helps speed cases along and certainly promotes efficient fair disposition of motions – it should probably be more uniformly used. There should be more certainty about trial settings and cases reset if not reached during first setting. It would avoid unnecessary trial preparation and, at the same time, ensure better trial preparation if litigants know when they will probably be heard.

204. Eliminate the "Monster" monthly docket – go to one week or two week dockets.

207. Permit informal matters, e.g. extensions of time, etc. to be taken up by telephone conference calls rather than requiring appearance of counsel; prioritizing cases on docket in advance of docket call so that parties and counsel may better guage when cases will most likely be reached for trial.

208. Make procedures uniform, stop usage of pre-trial orders, have judges more available to hear motions.

209. Enforcing discovery cut-offs and 2nd trial dates, especially in simple cases; standardized handling of motions.

213. 1. Move hearings on substantive motions. 2. Elimination of final pre-trial memos in non-complex cases. 3. Greater opportunities (voluntary) for mini-trials in complex cases.

214. This court should abolish any requirement that memo of law be filed in support of and in opposition to motions filed. Additionally, this court should hear oral argument on all motions and render its decision drafted by a law clerk which is generally unsatisfactory.

216. Trial dates could be firmer. The use of telephone conferences for hearings would reduce litigation expenses dramatically. This is done in the Central District very effectively.

217. Prompt case management & scheduling conference as soon as case is at issue. Settlement conference at final pre-trial.

218. 1. Uniform rules for all judges. 2. Eliminate oral arguments on motions unless good cause is shown. 3. Conduct pre-trial conference reasonably early to narrow issues and establish discovery guidelines and place reasonable limits on discovery.

221. Allow oral argument on all motions.

222. More emphasis on ADR as a tool to resolve disputes.

223. 1. Daily informal matters. 2. Motion act more frequently and prompt disposition of matters under submission.

227. Reducing costs and reducing delays does not translate to "the improvement of the litigation process" although the goals are admirable and should always be kept in mind the party's "fair day in court" should not be sacrificed for the sake of a judge's precious statistics. Judge each case, each motion on its individual merits, be firm but flexible – listen to counsel!!!

229. More efficient handling of both discovery motions and substantive motions i.e., summary judgment, dismiss, etc. Use of phone conferences on routine matters.

230. Pre-trial conferences need to be used early. Discovery time limits should be executed early and through disclosure should be sequenced in the order of the burden of proof.

231. Insufficient information.

232. Early trial dates settle cases. Settlement conferences w/o trial dates are ill-advised. Small cases can be voluntarily arbitrated.

233. Uniformity in court procedures.

235. Follow practice of courts in Eastern District of Missouri – setting earlier trial dates so parties/counsel have to be on their toes to get cases ready. Grant continuances where warranted but keep the pressure on.

237. In single case, hold early mediation conferences.

240. Specific trial dockets so that a case is on call for a limited time. If not reached, case should be rescheduled.

241. Insufficient experience to compare, S.O. Ill with other districts. However, greater control over the nature of discovery to be conducted would be helpful, i.e., staged discovery, limit on interrogatories and number of depositions, etc.

242. Firm case supervision and discovery supervision paint into account the absolute fact that pre-trial on a large number of rules won't do anything except humiliate even the most competent attorney. Discovery and case supervision is a matter of common sense and not rules and penalties. If parties or attorneys sense an abuse by the opponent morion practice is adequate to handle the problem.

243. Allow oral argument on civil motions.

245. Quickly dealing with motions under advisement as submission would aid the parties awaiting rulings. Older case should be given priority in attention.

246. Use the Alton Federal Court. Considering 1. witnesses 2. lawyers & place where venue is changed all should be considered.

247. None

250. There is a great disparity between judges regarding decisions on motions. A general uniform time frame for deciding motions after full briefing and/or oral argument would be appreciated. Many time delays are created because parties are unwilling to incur additional legal expense until certain motions are decided by the court.

251. None known.

252. I think oral argument on motions would be helpful – I think we need more judges.

253. Provide more latitude to overworked, understaffed governmental agencies.

254. I am not familiar with S.D. Ill procedures.

255. More frequent use of status conferences & pre-trials.

256. 1. Strict court control over experts; 2. Uniform mandatory settlement conferences; 3. Increase in # of interrogatories; 4. Permit depositions after discovery cut-off as depos are usually for trial purposes. 5. Uniform – final pre-trial order required. 6. Early resolution of in limine orders.

258. More use of magis. Judges for discovery & routine matters.

260. The court should consider the procedures of the Eastern District of VA at Alexandria. Motions are heard on Fridays & for the most part decided on the spot. Trials are generally 6 months from filing.

261. Greater flexibility in scheduling pre-trial time landmarks, e.g., discovery cut-off. Eliminate limitation concerning number of interrogatories.

262. Set early trial dates and do not allow continuances except for very good causes. Also, eliminate oral argument on motions.

263. Oral argument on motions and less heavy-handed actions by law clerks. Law clerks need to be controlled by the federal judge rather than acting as federal judges.

264. Ruling more quickly on motions, issues. Become involved in settlement.

265. Nothing.

266. Prompt rulings on both dispositive and non-dispositive motions. Mandatory settlement conferences mid-way through the discovery process.

267. None.

268. I have practiced in district courts in four states and I find the court procedures in the Southern District most efficient. Telephone pre-trials would help reduce my client's costs, other than that I am satisfied with the procedures.

271. Trial should be held on setting dates or "on call" soon thereafter.

273. Final pre-trial conf. (briefs, exhibits, witness lists, instructions) 30 days prior to a firm trial date.

275. If each devoted a court term to civil or criminal, not both, these would be economies and greater docket movement. Ruling would also be more consistent and procedures uniform.

277. With the volume of criminal cases, they are doing the best they can for the civil docket.

278. I think the system functions very well as is.

279. We need a civil division -- we need to know we are going to trial or settle -- Simple cases can be set quickly as back-up complex cases need certainty of trial dates & discovery.

280. Specific periods of time should be established within which to enter rulings on substantive motions. The prolonged and indefinite periods of time during which motions currently remain pending foreclose possibilities of early settlement.

281. The process as it exists is effective, however case management can be enlarged. Now many delays are granted on inconvenience rather than specific conflict.

285. Screen pro se prisoner complaints so as not to allow the filing of meritless ones. Judge Shadur does this in Northern District.

287. Oral argument on motions and/or earlier decisions on motions; more court intervention in settlement conferences.

289. Allowing oral arguments on all motions if requested by any party. This allows the court to have a greater role in the discovery process.

290. No summary jury trials; Fast, firm and fair rulings from the bench; more uniformity among the judges; allow discovery to be continued until date of trial in simple and standard cases (for treating physicians & non-expert witnesses)

291. I am only familiar with the procedures of Judge Beatty, whose procedures I consider to be excellent. I could not improve them, except with regard to promptly ruling on dispositive motions.

292. A separate oral argument document should be established for summary judgment motions & other similar substantive motions so that the ct. gives sufficient weight and attention to these motions.

294. Exhibit conferences, settlement conferences with mandatory reports to judge.

296. More active in settlement negotiations.

298. More prompt in ruling on motions.

299. I think backlogs are reduced by increasing the rate of settlements -- obviously enough. Best ways to do this is in advance of trial are to have a firm trial date and unrealistic change of continuance. Not letting the parties know where they are on the docket can be effective.

Question # 63. **What other suggestions or comments do you have for relieving the delays and costs of processing civil cases in this district? In your response, please consider all portions of the judicial process including the court, the Clerk of the Court's Offices, and the practicing attorneys. Finally, what areas are well handled by the judicial officers and should be left alone or modified only slightly?**

139 subjects had NO RESPONSE to this question.

20. The magistrate should not set unreasonable discovery & motion deadlines. The mag should not set status hearings before the attorney files an answer or other motion. One woman in the Benton Clerk's office should not be answering questions! The clerks should send out all orders to every party, not just the government. Please understand that trips out of town by attorneys & clients must be accomodated, just like the judges. One magistrate constantly cuts slack for his friends & no one else. That results in delays – sometimes outrageous delays and animosity because of unfair treatment. And cut off the ex parte contacts. Sometimes the clerks keep orders in their office for days without docketing them or sending them out. Don't keep all the files in your law clerk's office. Return them to the clerk's office so we can see them.

21. The Clerk's Office does an excellent job & continually initiates improvements. If accorded more authority to enter orders on routine matters, such as extensions of time not involving judicial hearings, such matters would be more quickly resolved without burdening the judge & his clerks. Mr. O'Hare is very sensitive to the needs of the parties & the judges. We all "lucked out" by his taking this job!

22. Early on, sort out which cases ought to settle and which have to be tried. Also, grant summary judgments much more often – there is not "always" a genuine issue of material fact. Let the lawyers try their cases and allow more time for trials to be conducted.

23. If money is available, hire more clerks.

26. Overall fewer required court appearances other than trial settings. Those areas which are well handled varies so I'm unable to make a general statement.

27. The court personnel are very competent and helpful.

28. My experience is too limited to be able to provide an answer.

36. Cases should not be given an initial trial setting more than 12 months after filing.

43. 1. Eliminate requirement of legal memorandum in support of routine motions. 2. Bifurcate all trials. 3. Have pre–signed subpoenas available for lawyers.

46. Increase review of petitions for leave to file in forma pauperis, limit discovery, impose rule II sanctions, mandatory non–binding arbitration or mediation for simple cases.

51. Clerks should not refuse to file items for minor errors. Court should conduct settlement conferences.

52. The discovery procedures are deplorable. Too many formal procedures must be taken for something simple, such as discovery objections. This involves too much paperwork, which costs time & money to the courts and attorneys. I think if the procedures were more like State Court with routine "status" conferences (could be by telephone), it would be advantageous to everyone to move the case

53. See Q 62.

54. Relax filing rules. Be more flexible.

55. I have tried cases before Judge Frank Seay in the Eastern District of Oklahoma (Muskogee. OK). He has a system of pre-trial deadlines which is very effective and moves cases very quickly.

56. No suggestions or comments other than those indicated by the foregoing responses.

57. Dispositive motions are promptly set for hearing and ruled on usually within sixty days following submission.

58. Sequencing and controlling disclosure & number of experts in routine cases. Becoming involved through, perhaps, magistrate in limiting duration and number of dispositions in complex cases and where represented in "standard" cases.

60. Should be a way to charge costs and fees to opponent who causes unreasonable delay or excessive costs.

61. Many motions are easily resolved through telephone conferences or hearings.

65. Use of phone conferences is good. Setting early trial schedules is good.

67. Create a separate division for criminal matters.

68. Too much time spent in requiring compliance w/non-essential rules having nothing to do w/disposition of case such as personal signature for routine pleadings prevents filings, etc. Pre-trial procedures generally well conducted - somewhat less formality beneficial.

69. 1. The clerk's office could run efficiently with 1/3 the staff at ESL, ok at Benton. 2. Court suggestions dealt with in the survey.

71. Same comments as above. I would eliminate limitation discovery interrogatories (it is patently arbitrary) and favor use of Illinois Rule 220 (Fed R.C.P. 26 (b)/wdr(4)) is inferior.

73. Firm control of the courtroom by the judge is fine so long as it is kept in mind that, in all events, the litigation belongs to the parties and their counsel, not the court and court personnel.

74. None.

77. Mandatory settlement conferences with people having settlement authority could be done by phone conference. File mini-briefs before settlement conference.

78. Uniformity needed among judges with respect to procedure and pre-trial.

79. Regular motion days where attorneys can get rulings on discovery. Avoid too strict of compliance with rules - i.e., having attorneys meet to work out differences.

83. Greater control over timely responses to discovery as well as rulings on objections to discovery. Practice of court to set a pre-trial schedule is effective. Court's willingness to modify dates depending on complexity of cases is also helpful. So are phone conferences more effective scheduling of court appearance would be helpful to reduce costs.

87. I do not practice sufficiently in your system to have an opinion.

90. Other than the above, I believe the areas are all well handled.

92. I've found that the filing of frivolous & pro-forma motions greatly increase the cost in any case. If the need for filing written memoranda & proposed orders were eliminated, such costs could be greatly reduced. The hearing of motions orally would do this and would give a judge the hands on feel for the case which might enable him to streamline progress through the system.

96. 1. End briefing requirement for routine motions. 2. Schedule oral argument of motions only at court's discretion. 3. Permit fax filing of pleadings. 4. Establish on-line computer network (ALA St. Louis County) to make court files accessible via attorney PC.

97. Drop or limit the requirement that every motion must be accompanied by a brief. Clerks are being too strict on this.

98. Forego oral argument unless the court believes oral argument would be helpful. Enforce the rules. I serve discovery, the other party does not respond. I file a motion to compel, sometimes the other party responds, sometimes not. Sometimes, even after I get an order, the other side does not respond. Still no sanctions imposed. It should not be that difficult to get discovery responses.

100. I think most important is firm trial dates & some type of discovery cutoff.

101. Adopt Judge Beatty's system. All trials set within one year of filing. Discovery cutoff 90 days after answer filed. Motions heard on next motion docket. These cases move or settle.

102. I think the court is very efficient at setting deadlines & at issuing written orders specifically setting out the judge's rulings.

103. Civil trials should have their own calendar and should not be at the mercy of the criminal calendar. Magistrates should be empowered to try civil cases, not just on a volunteer basis. The court needs to be more accessible. The ability to quickly resolve minor disputes could expedite cases. The interrogatory rule should be done away with.

105. See above response to Q62. Also, the idea of summary jury trial or a mini trial would force the attorneys to develop the cases. Such a process would allow the parties the opportunity to receive unbiased opinions regarding liability and damages. This could open the door for a quicker settlement process.

106. More informal conferences on progress of discovery and trial readiness. Mandatory settlement conferences or mediation (with clients available, not necessarily present) with sanctions for refusal to accept. Aggressive summary judgement practice to weed out frivolous suits. Aggressive practice on written discovery.

107. Ct officers are very professional & efficient. Ct officers are friendly. Lawyers should be given the law clerk's names who should be encouraged to act as liason with the judges.

111. It is somewhat helpful to know timetables well in advance. However when interviewing factors interfere, procedure for adjusting schedule is less clear.

112. Designate one judge for all criminal trials. This would free up the other judges for full-time civil litigation.

114. Require attorneys to limit discovery (enforce time limits); strict compliance with final pre-trial order; in non-jury cases as much reliance on depositions &/or interrogatories as possible to eliminate duplication of testimony; encourage more use of magistrates.

120. Only exp has been with J. Beatty & he does good job on disc & scheduling.

121. I do not have sufficient experience in the Southern District to be helpful. Generally, though, I believe firm trial settings and where possible pre-emptory trial settings reduce costs and delay.

123. I think the way Judge Beatty dockets and handles his cases is excellent and should be implemented with a mandatory pre-trial order form.

125. I would like to see settlement conferences 90 days after a case is filed.

127. Decide motions on briefs.

128. 1. Pre-trial orders re; discovery; witnesses; experts; conferences; and most important, stringent deadlines on all aspects of pre-trial matters; extensions/postponements/continuances only for good cause shown.

131. 1. Reschedule final pre-trial to no more than one week before trial. DO NOT refuse to file documents for minor non substantive form type faults. 2. Please retain regular oral arguments for motions.

138. Issue scheduling orders early on. Once a deadline has expired, don't allow it to be reopened or enlarged w/out good cause.

140. 1. Allow lawyers more control. 2. Allow lawyers to agree on matters. 3. Don't be so struck on time controls & jury settings. 4. Please – remember the demands of practicing law and that we have more than one case in Federal Court. 5. All this looks like more control by the court and not less. We need less control by the courts.

142. Some means must be found to cut down the number of filings. Along with that, procedures should be implemented to dispose of routine matters more quickly so that the court can concentrate on those cases that really need attention.

144. Very strict enforcement of all deadlines, without "good cause". "Good cause" should be limited to emergency situations or pre-calendared conflicts.

147. I think binding arbitration and other binding alternative dispute resolutions may be more effective.

149. It takes too long to get to trial. Set cases 6-9 months after answer filed and grant very few continuances. It's only when case set, that attorneys will get realistic and settle & 90% of cases settle, so set them early.

150. See above.

151. Set trials at an earlier date.

152. 1. Settlement conferences can be helpful. 2. The Clerk's Office is great. They are helpful and assist in many ways.

153. Court is generally well administered and efficient. You should conduct mandatory settlement conferences in most civil cases. I participated in one in another district and found it useful. I also believe mandatory mediation should be considered in a variety of cases.

154. 1. Having each party submit confidential settlement positions to magistrate has ascertained amount of appeal – Hopefully cut through the posturing – if magistrate could then see how close parties really are. 2. Main thing is to dispose of motions quickly – delayed rulings delay cases. Parties cannot proceed efficiently when dispositive motions are left pending.

157. Lack of experience in these courts does not qualify me to answer.

158. In my experience, the Southern District's docket moves as quickly as any other court docket I am involved with. In addition, the motions, etc., are usually dealt with quickly and efficiently (i.e., if it isn't broke – don't fix it). ADR programs may only serve to delay the court's handling of cases.

159. Generally, it is a pleasure for me to be in the federal court system and I elect to file my cases or remove them to there if possible.

160. I believe that the federal system should approve a list of judges, both federal and state, who have left the bench, or qualified attorneys, who may, by agreement of the parties sharing the costs. This would be similar to California's "rent–a–judge" system. The costs of trial are increased when experts are secured for a specific trial calendar and the trial is continued.

161. Firm trial dates, pre–trial conferences strict discovery schedule, prompt ruling on motions.

163. I flatly oppose mandatory ADR procedures. I favor early and repeated settlement efforts. I favor all manner of computerized document control from telecopier communications to integrated calendar files. I think the court is an excellent one, from an administrative point of view, to do business in as it stands.

164. File and enforce strict, reasonable deadlines on discovery and trial practice.

165. Try to abolish diversity jurisdiction thru congress. Be more mindful of Pre–trial attempts to dispose of cases.

167. The courts should let people have their day in court. This country should not short–change justice for the people for the sake of increased profits for big business and insurance companies who can parcel out measured predetermined amounts of money for their sins. Jury trial is the bedrock foundation for democracy.

168. Make the parties come forward with evidence and not rely almost entirely on argument of counsel. Require the use of depositions and virtually eliminate the use of interrogatories.

169. Take into consideration the work habits of attorneys involved and compel the laggards to "push" their cases so as to have cases ready for resolution or trial.

170. Allow service of subpoena by mail. Get more judges. Currently, the judges do a good job in requiring advance preparation of instructions & exhibits.

171. Our judges are very good in making themselves available to resolve problems and in dealing with attorneys. It's comfortable to practice in the district. They should be given better tools (e.g. local rules, coordination with clerk's office) to control discovery (lawyers who make a living on discovery) and get cases to trial – most cases will settle if a firm trial date is set and enforced.

174. Whatever a judge believes works for his particular case load should be left to his discretion. Over regulation defeats justice which is our ultimate goal. Look at the Illinois Criminal

Sentencing reforms, i.e., mandatory terms. Now looking back with sufficient foresight, we now realize what a nightmare we have created. Leave it alone. The settlement conference in the opinion of this writer is a success. It has been well handled, and served a function in client control which otherwise could not have been accomplished in many cases. There it did not, well second time around maybe the repeat clients will listen.

175. I think the court does a good job, generally speaking. I think attorneys are responsible for most delays, trying to juggle too great a case load in order to keep fees and costs down for individual clients but maintaining high fee productivity from a large case load.

178. Set up a fast track docket w/less numerous briefing pre-trial & paper requirements for cases. Most diversity removal cases could be set quicker.

179. 1. See answer to Q 62. 2. Criminal Conference on instructions.

181. A lot of the frivolous claims and defenses need to be eliminated so that the meat of the case can be decided.

182. Permit oral argument of important motions if requested by one of the attorneys. Schedule specific oral argument days for each judge monthly. Increase use of ADR in simple and standard cases.

183. Making the court library more accessible to attorneys including a copy machine at a reasonable per copy cost to facilitate research. Ruling promptly on all motions would avoid delays and costs which result from uncertainty as to how the court will rule.

184. Motions should be heard on oral argument on request of moving party.

188. Too many irrelevant deadlines.

189. Have mandatory arbitration on all cases below $100,000. Have briefs of issues prepared prior to pre-trial – judge then can narrow the focus.

190 We need a quicker summary – type method of dealing with prisoner cases.

191. Overall the federal court system in this district is managed very efficiently.

192. I have not had sufficient experience to suggest any effective alternate procedures.

193. Fixed & firm settings would be great. But it will never happen with criminal cases & other delays. No reason to try where it just won't happen. Most cases move along at a reasonable speed if left alone. The less the court does, the better. Only please decide motions quicker.

194. Setting and enforcing discovery deadlines is the single largest factor that will relieve the court of delays and the parties of excessive costs.

197. Something needs to be done about discovery costs. In my mind it really requires more cooperation on the part of the lawyers. I'm not sure the court can help in this regard.

199. The clerk's office does a great job.

200. The Southern District does not require hard & fast ADR rules but I think some ADR should be mandatory for each case – whether it is a simple settlement conference or arbitration. The form ADR takes should be voluntary and tailored to specific cases.

208. Prevent discovery abuses is the most important factor. Also, pre-trial complex orders should be streamlined or dropped. Areas well-handled include keeping attorneys abreast of status in case settings, keeping over reaching and overly aggressive attorneys in line.

213. Establishment of a trial date is the single most effective court management tool. The courts do an excellent job of establishing that trial date quickly.

214. The filing of instructions prior to trial except as to the standard ones is a waste of time.

216. A scheduling conference could be held after an answer is filed to speed up discovery. Disclosure of experts and medical witnesses would greatly help in reducing delays due to scheduling of expert depositions. The Pro-Se Law Clerk could be more stringent.

217. Increase removal limits so as to keep out routine low damage level removed cases or eliminate diversity jurisdiction. No need for written opinions on motions in all cases. Delay in disposition of motions is very bad.

218. Discovery is the most expensive element of litigation. An early pre-trial conference to narrow issues and establish discovery guidelines if enforced – would minimize delays and expenses.

222. My one case has been handled very efficiently, unfortunately our ADR broke down because the corporate defendant treated the process very lightly.

229. More efficient handling of both discovery motions and substantive motions, etc. Use of phone conferences on routine matters.

231. Insufficient information.

232. Early trial dates settle cases. Settlement conferences w/o trial dates are ill-advised. Small cases can be voluntarily arbitrated.

235. Follow practice of courts in Eastern District of Missouri – setting earlier trial dates, so parties/counsel have to be on their toes to get cases ready. Grant continuances where warranted but keep the pressure on.

237. Motion practice.

240. If a case is not likely to be reached atty's should be so notified as early as possible. Reduce multiple settings to avoid cases being in limbo i.e., parties do not know if or when case will be reached.

241. I live and practice in a district where ADR is the current rage. It is overrated. Like the judicial system, ADR will not work any better than those people who are responsible for its administration.

242. No legible response.

246. Use the Alton Federal Court. Jobs are well handled & should be left alone.

247. Leave alone.

250. Developing a staged discovery schedule applicable to all cases should be a top priority. Realistic and firm deadlines should be set. This would force counsel to prepare their case well in advance of trial. Only after discovery is complete will ADR programs be truly effective.

251. I have been actively engaged in the trial of civil suits for approximately 30 years. I believe our traditional trial procedure is superior to any other procedure in the pursuit of justice. I further believe that alternate to the traditional trial procedure should be voluntary only.

252. I think the rule requiring original signatures and its strict enforcement by the clerk is expensive and asinine. I think the magistrates should alter docket calls of the district judges to see if they can get a civil case or two.

254. None.

255. None.

258. Early scheduling of discovery & use of ADR techniques would be desirable.

261. Treating physicians records should be admissable; were a party adverse to the record, he could then schedule depositions or live testing to refute records. The federal civil process better serves litigants in avoiding delays. The courts scheduling keeps attorneys moving; its flexibility in allowing continuances prevents injustice.

265. More judges.

266. The following procedures work well, and should be maintained: (1) The setting of trial dates approximately one year after filing. (2) Detailed discovery schedule. (3) Detailed final pre-trial order prepared by attorneys. (4) Jury instruction order.

267. 1. In local rule 6, make it an option but not a requirement that any motion be supported by a separate brief. 2. Repeal local rule 14. 3. Repeal 20 interrogatory limit in local rule 15.

268. I would appreciate having a forum to deal with discovery abuses. I realize that could take a lot of time but if lawyers knew that motions to compel and motions for sanctions would be carefully and seriously entertained, I believe the benefit in time saved would be worthwhile. The clerk's office runs exceptionally well and the deputy clerks are well-trained and helpful.

270. It would reduce the costs and delays in litigation if the parties would reduce the filing of unnecessary motions during the discovery stages of action.

271. 1. Limit discovery abuse. 2. Limit # of experts. 3. Limit diversity removal. 4. Set trials quicker. Motion settings and access to the court is well handled now.

273. Issue should be whether defendant has a presence in the forum state vs technical citizenship. Also, pre-trial conferences should press for admissions of parts & documents (Rule 16 (c)(3)) and parties should be required to cite good faith reasons for a refusal to admit, e.g., contra testimony of a witness (signed statement of deposition) or contra expert opinion (report of depositions).

275. A continuous civil docket in 1/3 of our courts would advance civil cases to settlement or trial in greater numbers than we now anticipate. While I wait, my client says. When he seeks action I must discover to keep him happy and he must pay more.

277. Change the Fed laws authorizing frivolous criminal appeals & civil lawsuits by inmates to bring things within reasonable limits.

278. The simple cases could be set on an expedited docket. It might be possible to try liability on some injury cases before getting to the damages aspect of the case.

279. There are no delays on the civil side, cases move along.

280. The procedure whereby discovery cut-offs, final pre-trial conferences, & trial dates are established at a very early stage in litigation is very effective and should be maintained.

284. One judge should be assigned to handle only civil cases without having to also handle criminal cases.

285. Implement the English rule -- loser pays.

287. I do not think there is a delay problem and would leave the current system as it is.

289. No one procedure for case management can apply to all cases. Instead, decisions should be made by the judge and parties on a case by case basis.

290. Judges should work from 8 – 5.

291. 1. The clek's office has been superbly responsive and cordial. 2. I recommend that special hearings regularly be allowed in complex cases in order to avoid court congestion on regular motion days.

292. I believe that compared to some other jurisdictions, the So Ill Fed Ct. is fairly efficient. I would emphasize that control over discovery and prompt rulings on motions would help keep cost down in litigation.

294. Setting trial dates with certainty is good, but could be improved. This would help all phases of litigation and settlement, I believe.

297. All discovery & motions should be limited and on most motions no memo required.