UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
OFFICE OF THE CLERK

SOFRON B. NEDILSKY
CLERK

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December 27, 1991

Mr. Abel Mattos
Administrative Office of the
United States Courts
Washington, D.C. 20544

Dear Mr. Mattos:

I am pleased to enclose a copy of the ***Civil Justice Expense and Delay Reduction Plan*** adopted by the Eastern District of Wisconsin pursuant to the Civil Justice Reform Act of 1990.

Very truly yours,

Sofron B. Nedilsky
Clerk, U.S. District Court

SBN:jls

Enclosure

CIVIL JUSTICE REFORM ACT OF 1990

CIVIL JUSTICE

EXPENSE AND DELAY REDUCTION PLAN

Adopted Pursuant to the Civil Justice Reform Act of 1990

UNITED STATES DISTRICT COURT * EASTERN DISTRICT OF WISCONSIN

HON. TERENCE T. EVANS

CHIEF JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

In Re:

Civil Justice Expense and Delay Reduction Plan Adopted Pursuant to the Civil Justice Reform Act of 1990

INTRODUCTION

The United States District Court for the Eastern District of Wisconsin has been designated by the Judicial Conference of the United States as one of ten "Pilot Districts" under the Civil Justice Reform Act of 1990. As directed by the act, the court appointed an advisory group to make recommendations regarding an expense and delay reduction plan to be implemented in this district.

The 18-person advisory group appointed under the act was broadly representative of the diverse mix of litigants who appear before the court in this district. It was a group of unusually talented individuals. Under the able and dedicated leadership of Chairperson John B. Dawson, the group energetically devoted itself to completing its assignment of preparing a report that would assist the court in fashioning a plan capable of reducing expense and delay in the processing of civil litigation in this district. In addition to Chairperson Dawson, the advisory committee consisted of attorney Gregory Conway, attorney Francis Croak, Wisconsin Deputy Attorney General Patricia Gorence, Deputy United States Attorney Nathan A. Fishbach, United States Attorney John Fryatt, Magistrate Judge Aaron Goodstein,

Professor Jay Grenig of the Marquette University Law School, Mr. George Kaiser, retired managing partner of Arthur Andersen & Co., attorney William Mulligan, Clerk of Court Sofron Nedilsky, attorney Stuart Parsons, director of corporate communications for the Wisconsin Gas Company, Sue Riordan, attorney Jane Schlict, attorney Judith Spangler, attorney Glenn Starke, consultant Jean White, and Daniel Wright, Assistant City Attorney, Racine, Wisconsin. A biographical listing of the members of the advisory group can be found in appendix A to the advisory committee report.

The advisory group submitted its report to the court on December 9, 1991. Not all of the recommendations of the advisory group were addressed to the court, and as a result not all are appropriate for inclusion in the court's plan. For example, the advisory group noted, "By having more experienced attorneys represent criminal defendants, it is believed that the criminal matters will be litigated with greater efficiency. The hourly and maximum rate of compensation for court-appointed attorneys should be increased by the Administrative Office of the U.S. Courts to attract more experienced attorneys." The advisory group also observed, "The advantages of the Sentencing Guidelines seem to be outweighed by the added effort and delay they impose upon the system."

The advisory group also noted the need for what it called "Enhanced Judicial Resources." In that respect, the group observed that two additional magistrate judge positions should be created in the district. As to district court judgeships, the advisory group noted:

> Judicial case load statistics maintained by the Administrative Office of the United States Courts are misleading and understate the actual judicial work load in this district. The statistics fail to take into account the impact of criminal cases on trial time in this district. . . . Furthermore, because of the heavy reliance in this district on senior judges, when one or more of the senior judges discontinue handling their present case loads, there will be a serious impact on the ability of the judges in this district to handle existing case loads and to meet the goal of the Civil Justice Reform Act that all civil cases be tried within 18 months of the filing of the complaint. Because of this, two additional district judgeships should be authorized and promptly filled in this district.

While the judges of this court share the advisory group's sentiments as to these and other observations in the group's report, we, as a court, are powerless to act on them. We will, however, pass these recommendations and observations on to the Judicial Conference of the United States for its consideration.

The court has carefully studied those recommendations of the advisory group that are within the authority of the court to adopt. We are indebted to the advisory group for its comprehensive review of our procedures for processing civil litigation. We will be adopting many of the recommendations that have been made. Before we get to the actual implementation of the plan, however, an observation must be made.

The recommendations prepared by the advisory group which we will adopt may have a positive effect on reducing costs and delays in processing civil litigation in this district. But we believe that these measures amount only to tinkering

about the periphery of the real problem adversely affecting the administration of civil justice in this district. The real problem is the enormous growth of our criminal docket. This problem infects all federal district courts in the United States.

As noted by J. Stratton Shartel in Inside Litigation, the criminal justice process has become the "favored child" of the federal legal system. Congress has effectively "orphaned" the federal civil justice system to a secondary status. The developments that have contributed most to the increased delay and expense in processing civil cases are (1) the enactment of the federal criminal Speedy Trial Act; (2) the promulgation of rigid, mandatory, and formalistic federal criminal sentencing guidelines; and (3) the increasing federalization of crime.

The Administrative Office of the U.S. Courts reported that the civil case filings in federal district court rose from 171,074 in 1980 to 217,879 in 1990. The criminal filings in those 10 years more than tripled in number. This is a national phenomenon. The slight increase in judicial appointments during this 10-year period has not kept pace with the increase in filings. From 1980 to 1990 the number of federal prosecutors doubled, from 1,900 to 3,900. In this district, 14 assistant United States attorneys practiced before 4 regularly authorized Article III judges in 1981. In 1991, the number of authorized judges was still 4, but the number of assistant U.S. attorneys had risen to 28. Nationally, the number of drug cases alone increased fivefold, from 3,100 to 16,400, between 1980 and 1990, while the number of district judges increased by only 10 percent, from 516 to 575.

Several laws and policies have played a significant role in increasing the federal criminal docket. The Speedy Trial Act mandates that criminal cases be given priority in the federal system. When two cases, one civil and one criminal, are ready to go at the same time, the civil case must be adjourned to accommodate the criminal case. This is true regardless of the ages of the cases or their significance. A 70-day-old criminal case alleging the misappropriation of a Social Security check is, under the present law, deemed more worthy of the courts' immediate attention than a 3-year-old civil suit involving numerous parties and millions of dollars.

An initiative called "Operation Triggerlock" directs every United States Attorney in the nation to create teams consisting of federal investigators and state police to look for cases that violate federal weapons laws. This initiative was put into operation despite the fact that the prosecution of firearms violations has traditionally been viewed as the responsibility of state prosecutors.

Similarly, the Violent Crime Control Act (S. 1241), passed by the U.S. Senate in July, includes the D'Amato amendment, which calls for federal prosecution of cases in which a firearm was used to commit a homicide provided that at some point the firearm crossed state lines. Because few, if any, firearms are made in Wisconsin, every street homicide could potentially end up in federal court under this proposed but ill-advised bill. This provision nationally could add as many as 12,000 homicide cases a year to the federal court's criminal dockets.

A second provision of the bill would require that the death penalty be imposed for more than 50 federal offenses that were previously not subject to the

ultimate sentence. Another part of the bill would impose severe time limits on the federal courts within which to dispose of habeas corpus petitions.

There is concern in this district and around the country that the character of the federal docket is becoming indistinguishable from that of the state criminal courts. Until recent years, violent crimes and drug offenses were almost always tried in state courts, but under the succession of laws passed by Congress since 1986, the federal government has assumed the authority to bring more criminal cases into the federal courts. Police and prosecutors seem to prefer federal rather than state prosecutions because the sanctions under federal law are more severe. Many federal laws provide for significant mandatory minimum prison terms, and all are now subject to federal sentencing guidelines. Also, all federal sentences are now served without the possibility of parole.

If the current trend toward increasing federal criminal prosecutions of drug and firearm cases continues, and the restrictions of the federal Speedy Trial Act and the sentencing guidelines remain unchanged, the criminal docket will take an increasingly larger portion of the court's time. If the decision is made to continue in this direction, the effect of that decision will be to further overload an already overloaded court system.

If the present trends continue, more judges, facilities, and support personnel must be provided to keep pace with the increased burdens that will result or the federal civil court system will simply cease to function. A glimpse of what is going on around the country proves the point. One judge in the Eastern District of

New York reported that he had tried only one civil case in a period of 2 years.[1] In the District of Massachusetts, almost a third of the civil cases have been pending for more than 3 years.[2] The Southern District of California tries fewer than 60 of the 1925 civil cases filed each year[3] and spends more than 70 percent of its time on routine drug and gun cases.[4] The Middle District of Florida has instituted a moratorium on civil cases.[5]

It is simply unrealistic, we believe, to greatly expand the scope of the federal criminal law, increase the penalties, and increase the number of prosecutors and at the same time expect the courts to handle the increased workload without a commensurate increase in the number of judges, courtrooms, and support personnel. The federal court system is over capacity. The result is that the civil docket is backing up and grinding ever so slowly toward a halt.

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[1]See The National Law Journal, p. 13 (July 22, 1991).

[2]1990 Federal Court Management Statistics, at 38.

[3]Id. at 130.

[4]Hinds, "Bush Aides Push Gun-Related Cases on Federal Courts," The New York Times, p. B11 (May 17, 1991).

[5]Statement made at the meeting of advisory group representatives in Naples, Florida, May 1991.

With these gloomy observations in mind, we adopt the following as the expense/delay reduction plan for the United States District Court of the Eastern District of Wisconsin. In adopting our plan, we have given careful consideration to the report of our advisory committee. We have been mindful, however, of our duty to make an independent decision as to wisdom and feasibility of all aspects of the plan that we hereby adopt.

THE PLAN

Changes in Local Rules.

The following local rules are repealed.

Local Rules 1.01, 6.01, 7.01, 7.03, 7.04, and 7.06 of the United States District Court for the Eastern District of Wisconsin are repealed.

The following local rules are renumbered.

Local Rule 6.05 is renumbered Local Rule 6.06
Local Rule 6.06 is renumbered Local Rule 6.07
Local Rule 8.04 is renumbered Local Rule 8.05
Local Rule 8.05 is renumbered Local Rule 8.06
Local Rule 8.06 is renumbered Local Rule 8.07

The following new local rules are adopted.

Section 1.01--Application. These rules are intended to govern litigation in this district. Compliance with the rules is expected. However, the rules are intended to be enforced primarily upon the court's own initiative, and the filing of motions alleging noncompliance with a rule, other than rule 7.07, should be reserved for egregious cases.

Section 6.01. (a) Every motion shall set forth the rule pursuant to which it is made and shall be accompanied by (1) a supporting brief and, when necessary, affidavits or other documents, or (2) a certificate of counsel stating that no brief or other supporting documents will be filed. If the movant fails to comply with either (1) or (2) above, the court may deny the motion as a matter of course.

(b) On all motions other than those for summary judgment, the opposing party shall serve an answering brief and, when necessary, affidavits or other documents within 21 days from the service of the motion. The movant may serve a reply brief within 14 days from the answering brief.

On motions for summary judgment, the opposing party shall serve an answering brief and affidavits or other documents within 30 days of the service of the motion; the movant may serve a reply brief within 15 days of the answering brief.

All filings under this rule shall indicate the date and method of service. On a showing of good cause, the court may extend the time for the filing of any brief. Failure to file a timely brief shall be deemed a waiver of the right to submit it. All papers served under this rule shall be filed promptly. See rule (5)(d) of the Federal Rules of Civil Procedure.

Oral argument, if deemed appropriate, may be scheduled at the discretion of the judicial officer.

(c) Except by permission of the court, principal briefs on motions shall not exceed 30 pages and reply briefs shall not exceed 15 pages, exclusive of pages containing the statement of facts, the proposed findings of fact as indicated in rule 6.05, exhibits, and affidavits. A reply brief shall be limited to matters in reply.

Section 6.05--Additional Summary Judgment Motion Procedures. Motions for summary judgment shall comply with rule 56 of the Federal Rules of Civil Procedure and rule 6.01 of these rules. In addition, with the exception of Social Security reviews and cases in which a party appears pro se, the following requirements must be met.

(a) **Motion.** The moving papers must include either (1) a stipulation of facts between the parties, or (2) the movant's proposed findings of fact, or (3) a combination of (1) and (2).

(1) The movant must present only the factual propositions upon which there is no genuine issue of material fact and which entitle the movant to judgment as a matter of law, including those going to jurisdiction and venue, to the identity of the parties, and to the background of the dispute.

(2) Factual propositions shall be set out in numbered paragraphs, with the contents of each paragraph limited as far as practicable to a single factual proposition.

(b) **Response.** Any materials in opposition to a motion filed under this rule must be filed within 30 days from service of the motion and must include:

(1) A specific response to the movant's proposed findings of fact, clearly delineating only those findings to which it is asserted that a genuine issue of material fact exists. The response must refer to the contested finding by paragraph number and must cite evidentiary materials which support the claim that a dispute exists.

(2) A party opposing a motion may present additional factual propositions deemed to be relevant to the motion, in accordance with the procedures set out in (a)(2) of this rule. These propositions may include additional allegedly undisputed material facts and additional material facts which are disputed and which preclude summary judgment.

(c) **Reply.** The movant may serve and file a reply within 15 days of service of the response. The reply must include any relevant response to previous proposed findings, in accordance with (a)(2) of this rule.

(d) In deciding a motion for summary judgment, the court will conclude that there is no genuine material issue as to any proposed finding of fact to which no response is set out.

Section 7.01--Completion of Discovery. Unless the court orders otherwise, all discovery must be completed 30 days prior to the date on which trial is scheduled.

Completion of discovery means that discovery (including depositions to preserve testimony for trial) must be scheduled to allow depositions to be completed, interrogatories and requests for admissions to be answered, and documents to be produced prior to the deadline and in accordance with the provisions of the Federal Rules of Civil Procedure.

For good cause, the court may extend the time during which discovery may occur or may reopen discovery.

Section 7.03--Limitation on Interrogatories. Any party may serve upon any other party up to 15 written interrogatories. The 15 permissible interrogatories may not be expanded by the creative use of subparts. The interrogatories are to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.

For the purpose of computing the number of interrogatories served:

(a) Parties represented by the same attorney or law firm shall be regarded as one party.

(b) Mandatory interrogatories under local rule 7.07 and interrogatories inquiring about the names and locations of persons having knowledge of discoverable information or about the existence, location, or custodian of documents or physical evidence shall not be counted toward the 15 interrogatory limit.

Without leave of court or written stipulation, written interrogatories may not be served before the time specified in local rule 7.08.

If a party believes that additional interrogatories are necessary, the party should promptly consult with the party to whom the additional interrogatories would be propounded and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. The stipulation shall not be filed with the court unless a motion to compel answers becomes necessary. If a stipulation cannot be reached, the party seeking to serve additional interrogatories may move the court for permission

to serve additional interrogatories. The motion shall show the necessity for the relief requested and shall be accompanied by a written statement that after consultation with the adverse party to the motion and after sincere attempts to resolve their differences the parties are unable to reach an accord concerning the additional interrogatories. The statement shall also recite the date, time, and place of such consultation and the names of all parties participating in it.

The court will not compel a party to answer any interrogatories served in violation of this rule.

Section 7.04--Preliminary Pretrial Conferences. The court may require the parties to appear to consider the future conduct of the case. Whether these preliminary pretrial conferences are designated as status conferences, scheduling conferences, discovery conferences, or in any other manner, at each conference in civil actions counsel shall be prepared to discuss the matters enumerated in Fed. R. Civ. P. 16 and Fed. R. Civ. P. 27(f), and in criminal actions the matters enumerated in Fed. R. Crim. P. 17.1. In all actions, counsel should be prepared to state:

(a) The nature of the case in one or two sentences;

(b) Any motions which are contemplated;

(c) The amount of further discovery each party contemplates and the approximate time for completion of such discovery;

(d) Such other matters as may affect further scheduling of the case for final disposition.

At or following the conference, the court may enter any orders which appear necessary to aid in further scheduling the action, including dates for further conferences, briefing, schedules for motions, and cut-off dates for completing discovery. The court in civil actions may also enter any orders permitted under Fed. R. Civ. P. 16 and Fed. R. Civ. P. 27(f). In criminal actions the court may enter any orders permitted under Fed. R. Crim. P. 17.1.

Section 7.06--Pretrial Report. The court may order the parties to prepare a pretrial report. Unless otherwise ordered, the report shall be filed at least 10 days prior to the scheduled start of the trial. The report--standardized for all courts--shall be in the following form:

PRETRIAL REPORT
(effective January 1, 1992)

IT IS ORDERED that all parties prepare and file pretrial reports. Reports are due 10 days before the scheduled start of the trial or, if a final pretrial conference is scheduled, 3 days before the conference. The report must be signed by the attorney (or a party personally, if not represented by counsel) who will try the case. Sanctions, which may include the dismissal of claims and defenses, may be imposed if a trial report is not filed.

The report must include the following:

1. A short summary statement of the facts of the case and theories of liability or defense. The statement should not be longer than two pages.

2. A statement of the issues.

3. The names and addresses of all witnesses expected to testify. A witness not listed will not be permitted to testify absent a showing of good cause.

4. If expert witnesses are to be used, a narrative statement of the experts' background.

5. A list of exhibits to be offered at trial.

6. A designation of all depositions or portions of depositions to be read into the record at trial as substantive evidence. Reading more than five pages from a deposition will not be permitted unless the court finds good cause for permitting such readings.

7. Counsel's best estimate on the time needed to try the case.

8. If scheduled for a jury trial:

   a. All proposed questions that counsel would like the court to ask on voir dire.
   b. Proposed instructions on substantive issues.
   c. A proposed verdict form.

9. If scheduled for a court trial, proposed findings of fact and conclusions of law. See rule 52 of the Federal Rules of Civil Procedure.

_____
United States District Court
Eastern District of Wisconsin

In addition to completing a report, counsel are expected to confer and make a good faith effort to settle the case. Counsel are also expected to arrive at stipulations that will save time during the trial.

Section 7.07--Mandatory Discovery.

(1) **Mandatory Interrogatories for All Parties.** The parties, unless excused by this rule, are required to answer pursuant to FRCP 33 the following mandatory interrogatories. If there is more than one plaintiff or more than one defendant in the action, each plaintiff and each defendant must answer each interrogatory separately unless the answer to the interrogatory is the same for all plaintiffs or all defendants. The answers shall identify the individual attorneys representing a party by full name, address, and telephone number.

(A) **Interrogatories to be Answered by All Plaintiffs.** Each plaintiff's answers to mandatory interrogatories shall be served on all opposing parties within 30 days after an answer is served. In removed cases, the plaintiff shall serve answers 30 days after receiving notice of the removal.

The mandatory interrogatories to be answered by all plaintiffs are as follows:

(1) Identify by full name, address, and telephone number all witnesses presently known with knowledge of any fact alleged in the complaint. For each witness, summarize the facts the witness knows.

(2) Describe or produce for inspection (see FRCP 33(c)) each document or report which you contend supports your claims.

(3) State the full name, address, and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in the complaint and state the basis and extent of such interest.

(B) **Interrogatories to be Answered by all Defendants.** Each defendant's answers to mandatory interrogatories shall be served no later than 30 days after the date of service of plaintiff's mandatory interrogatories.

The mandatory interrogatories to be answered by all defendants are as follows:

(1) If the defendant is improperly identified, state defendant's correct identification and state whether defendant will accept service of an amended summons and complaint reflecting the information furnished in the answer to this interrogatory.

(2) Provide the names of any parties whom defendant contends are necessary parties to this action, but who have not been named by plaintiff. If defendant contends that there is a question of misjoinder of parties, provide the reasons for defendant's contention.

(3) Identify by full name, address, and telephone number all witnesses presently known with knowledge of any fact alleged in the complaint or in the answer to the complaint. For each witness, summarize the facts the witness knows.

(4) Describe or produce for inspection (see FRCP 33(c)) each document which you contend supports your defenses.

(5) If defendant contends that some other person is, in whole or in part, liable to the plaintiff or to the defendant, state the full name, address, and telephone number of such person and describe the basis of such liability.

(6) Provide the names and addresses of all insurance companies that have liability insurance coverage relating to the matter alleged in the complaint, the amount of liability coverage provided in each policy, and the named insured on each policy.

(2) Mandatory interrogatories and answers to mandatory interrogatories shall not be filed with the court.

(3) **Additional Procedures.**

(A) If, after the exercise of reasonable diligence, a party is unable to answer fully a mandatory interrogatory, the party is required to provide the information currently known or available to the party and to explain why the party cannot answer fully, to state what must be done in order for the party to be in a position to answer fully, and to estimate when the party will be in that position.

(B) All parties have a continuing duty to amend seasonably a prior interrogatory response if the party obtains information which establishes that the party's prior response was either incorrect or, although correct when made, no longer true or complete.

(C) Third-party complaints and answers to third-party complaints shall be treated as separate pleadings subject to mandatory interrogatories under the rule. All other pleadings, including counterclaims and replies, are exempt from the rule.

(4) **Disclosure of Expert Testimony.**

(A) Each party shall disclose to every other party the substance of all expert witness evidence that the party intends to present at trial. The disclosure shall be in the form of a written report prepared and signed by the witness which includes a statement of all opinions to be expressed and the basis and reasons therefor; the data or other information relied upon in forming such opinions; any exhibits to be used as a summary of or support for such opinions; the qualifications of the witness; and a listing of any other cases in which the witness has testified as an expert at trial or in deposition within the preceding four years.

(B) Unless the court designates a different time, the disclosure shall be made at least 90 days before the date the case has been directed to be ready for trial, or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (3)(A), within 30 days after the disclosure.

(5) **Exemption from Mandatory Interrogatories Requirements.** The following cases and categories of cases are exempt from the duty to file mandatory interrogatories under rule 7.07:

(A) Reviews of administrative proceedings, including all Social Security cases

(B) Habeas corpus cases

(C) Collection cases

(D) *Pro se* prisoner litigation

(E) Cases in which the only relief sought is an order forcing arbitration

(F) Cases that are not deemed to be complex or lengthy. To be excused under this exception, counsel for a party seeking to avoid the requirements of rule 7.07 must sign, serve, and file a declaration stating:

(1) That the party will not take more than 3 depositions or seek to obtain answers to more than 15 interrogatories;

(2) That the party, if the case is subsequently tried, will use no more than 10 hours of trial time to present its claims or defenses.

(3) That the party will complete its discovery within 9 months.

Section 7.08--Timing and Sequence of Discovery. Except with leave of court or upon agreement of the parties, a party required to file mandatory interrogatories under rule 7.07 may not seek discovery from any source before making rule 7.07 disclosures and may not seek discovery from another party before the date such disclosures have been made by, or are due from, such other party.

Section 7.09--Standard Definitions Applicable to All Discovery Requests.

(a) The full text of the definitions set forth in paragraph (b) is deemed incorporated by reference in all discovery requests, may not be varied by litigants, but shall not preclude (i) the definition of other terms specific to the particular litigation, (ii) the use of abbreviations, or (iii) a more narrow definition of a term defined in paragraph (b).

(b) **Definitions.** The following definitions apply to all discovery requests:

(1) **Communication.** The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

(2) **Document.** The term "document" is defined to be synonymous in meaning and equal in scope of the usage of this term in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

(3) **Identify**

(a) **With Respect to Persons.** When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(b) **With Respect to Documents.** When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

(4) **Parties.** The terms "plaintiff" and "defendant" as well as a party's full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(5) **Person.** The term "person" is defined as any natural person or any business, legal, or governmental entity, or association.

Section 7.10--Method of Taking and Duration of Depositions. Unless otherwise agreed by the parties, a deposition shall be conducted before a person designated under FRCP 28 and shall begin with a statement on the record by such officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded by other than stenographic means, items (A)-(C) shall be repeated at the beginning of each unit of recorded tape. The appearance or demeanor of deponents or attorneys shall not be distorted by the use of camera or sound-recording techniques. At the conclusion of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

The party taking the deposition shall state in the notice the means by which the testimony shall be recorded. The costs of the deposition, unless the court orders otherwise, shall be borne by the party taking it. Any party may provide for the recording of a deposition by nonstenographic means. With prior notice to the deponent and other parties, any party may designate other means to record the testimony of the deponent in addition to that specified by the person taking the deposition. The additional record of transcription shall be made at that party's expense unless the court otherwise orders.

Unless otherwise authorized by the court or agreed to by the parties, the actual examination of any deponent may not exceed 6 hours. Additional time shall be allowed by the court if needed for a fair examination of the deponent and consistent with the principles stated in rule 26(b)(2), or if the deponent or another party has impeded or delayed the examination. If the court finds such an impediment, delay, or other conduct that frustrates the fair examination of the deponent, it may impose upon the person responsible therefor an appropriate sanction, including the reasonable costs and attorney fees incurred by any parties as a result thereof.

Section 7.11--Confidentiality of Discovery Materials.

(a) In the absence of a stipulation among the parties, or order of the court, all documents produced in the course of discovery, all answers to interrogatories, all answers to requests for admission, and all deposition testimony shall be subject to the following standing order concerning confidential information:

(1) Designation of confidential information shall be made by placing or affixing on the document in a manner which will not interfere with its legibility the word "CONFIDENTIAL." One who provides material may designate it as "CONFIDENTIAL" only when such person/entity in good faith believes it contains trade secrets or nonpublic technical, commercial, financial, personal, or business information. Except for documents produced for inspection at the party's facilities, the designation of confidential information shall be made prior to, or contemporaneously with, the production or disclosure of that information. In the event that documents are produced for inspection at the party's facilities, such documents may be produced for inspection before being marked confidential. Once specific documents have been designated for copying, any documents containing confidential information will then be marked confidential after copying but before delivery to the party who inspected and designated the documents. There will be no waiver of confidentiality by the inspection of confidential documents before they are copied and marked confidential pursuant to this procedure.

(2) Portions of depositions of a party's present and former officers, directors, employees, agents, experts, and representatives shall be deemed confidential only if they are designated as such when the deposition is taken.

(3) Information or documents designated as confidential under this rule shall not be used or disclosed by the parties or counsel for the parties or any persons identified in paragraph 4 for any purposes whatsoever other than preparing for and conducting the litigation in which the information or documents were disclosed (including appeals). The parties shall not disclose information or documents designated as confidential to putative class members not named as plaintiffs in putative class litigation unless and until one or more classes has been certified.

(4) The parties and counsel for the parties shall not disclose or permit the disclosure of any documents or information designated as confidential under this rule to any other person or entity, except that disclosures may be made in the following circumstances:

(i) Disclosure may be made to employees of counsel for the parties who have direct functional responsibility for the preparation and trial of the lawsuit. Any such employee to whom counsel for the parties makes a disclosure shall be advised of, and become subject to, the provisions of this rule requiring that the documents and information be held in confidence.

(ii) Disclosure may be made only to employees of a party required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed who are identified as such in writing to counsel for the other parties in advance of the disclosure of the confidential information.

(iii) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents. Prior to disclosure to any such court reporter or person engaged in making photocopies of documents, such person must agree to be bound by the terms of this rule.

(iv) Disclosure may be made to consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit. Prior to disclosure to any expert, the expert must be informed of and agree to be subject to the provisions of this rule requiring that the documents and information be held in confidence.

(5) Except as provided in subparagraph 4, counsel for the parties shall keep all documents designated as confidential which are received under this rule secure within their exclusive possession and shall place such documents in a secure area.

(6) All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of documents or information designated as confidential under this rule, or any portion thereof, shall be immediately affixed with the word "CONFIDENTIAL" if that word does not already appear.

(7) (a) To the extent that any answers to interrogatories, transcripts of depositions, responses to requests for admissions, or any other papers filed or to be filed with the court reveal or tend to reveal information claimed to be confidential, these papers or any portion thereof shall be filed under seal by the filing party with the clerk of the court in an envelope marked "SEALED." A reference to this rule should also be made on the envelope.

(b) No information may be withheld from discovery on the ground that the material to be disclosed requires protection greater than that afforded by subdivision (a) of this rule unless the party claiming a need for greater

protection moves for and obtains from the court an order providing such special protection. Any such motion must be made within the time frame contemplated by rule 34, Fed. R. Civ. P.

(c) The designation of confidentiality by a party may be challenged by the opponent upon motion. The movant must accompany such a motion with the statement required by rule 6.02 of these rules. The party prevailing on any such motion shall be entitled to recover as motion costs its actual attorneys fees and costs attributable to the motion.

(d) At the conclusion of the litigation, all material not received in evidence and treated as confidential under this rule shall be returned to the originating party. If the parties so stipulated, the material may be destroyed.

Section 7.12--Settlement Procedures. At the conference held pursuant to rule 16 of the Federal Rules of Civil Procedure, the judicial officer shall determine whether a case is an appropriate one in which to invoke one of the following settlement procedures:

(1) a conference with the judge or a magistrate judge to be held within a reasonable time;

(2) the appointment of a special master;

(3) the referral of the case for neutral evaluation, mediation, arbitration, or some other form of alternative dispute resolution.

Judges may make referrals under this section to those persons or entities who, in the opinion of the referring judge, have the ability and skills necessary to bring parties together in settlement. The reasonable fees and expenses of persons designated to act under this section shall be borne by the parties as directed by the court.

All cases subject to mandatory discovery under rule 7.07 will presumptively be subject to one of the settlement procedures authorized by this rule.

At settlement conferences, the parties may be required to attend in person or to be available for consultation by telephone. Any documentation or proposal submitted under this rule shall not become part of the official court record.

Section 8.04--Trial Time Limits. After consideration of the final pretrial reports filed under rule 7.06, or at such other time as the court may direct, judges and magistrate judges may establish reasonable time limits for the trial of all civil and criminal cases.

OTHER PROCEDURES

In addition to adopting the local rules set forth above, the court is adopting the following procedures which arise out of the advisory group's report.

(1) In response to the strong feeling among practicing attorneys responding to the survey conducted by the advisory group, the court will make every effort to resolve all dispositive motions within 6 months of the date on which the last brief is filed.

That goal may be made more realistic by the court's also taking to heart the advice that in most cases, a brief but prompt decision is preferable to a delayed but lengthy one.

In addition, as recommended, except in the most unusual of circumstances, no dispositive motions will be referred to a magistrate judge for recommendation. The advisory group correctly pointed out that reference of these motions simply results in two layers of decision and further delay.

(2) In order to encourage parties in civil cases to consent to the exercise of jurisdiction by magistrate judges, the consent form will be amended to include, in bold type, the following statement:

> **MAGISTRATE JUDGES DO NOT CONDUCT TRIALS IN FELONY CASES. ACCORDINGLY, IF THIS CASE IS TRANSFERRED ON CONSENT TO THE MAGISTRATE JUDGE, MAJOR CRIMINAL CASES WILL NOT INTERFERE WITH ITS SCHEDULING AND PROCESSING. IN ALL LIKELIHOOD, THEREFORE, A CONSENT WILL MEAN THAT THIS CIVIL CASE WILL BE RESOLVED SOONER AND MORE INEXPENSIVELY FOR THE PARTIES.**

(3) With the hope that increased efficiency in the handling of criminal cases will lead to increased time for civil cases, the court will delegate further responsibility for the pretrial management of criminal cases to the magistrate judges. Increased responsibility of the magistrate judges will include establishment and altering trial dates in cooperation with the district judge's calendar clerks.

In addition, the district judges will no longer expect written decisions from the magistrate judges on the boiler plate motions which are filed routinely in criminal cases.

EFFECTIVE DATES

The following rules apply to all cases pending as of January 1, 1992, and all cases filed thereafter:

Rule 1.01
Rule 6.01
Rule 6.05
Rule 7.01
Rule 7.04
Rule 7.06
Rule 7.09
Rule 7.10
Rule 7.11
Rule 8.04

The following rules apply to cases filed on or after January 1, 1992:

Rule 7.03
Rule 7.12 --in addition, rule 7.12 applies in such currently pending cases as the court, in its discretion, deems appropriate.

The following rules apply to all cases filed on or after March 1, 1992:

Rule 7.07
Rule 7.08

DISTRIBUTION OF THE PLAN

Pursuant to 28 U.S.C. §§ 472(d) and 474, the court ORDERS that this plan, and the report of the district's Civil Justice Reform Act advisory group, be submitted to (1) the circuit executive for distribution to the chief judges of this circuit sitting as a committee and submission to the Judicial Council, and (2) to the director of the Administrative Office of the U.S. Courts and, through the director as secretary, to the Judicial Conference of the United States for review.

SO ORDERED this 23 day of December, 1991.

BY THE COURT:

TERENCE T. EVANS
CHIEF JUDGE

MYRON L. GORDON
SENIOR U.S. DISTRICT JUDGE

THOMAS J. CURRAN
UNITED STATES DISTRICT JUDGE

JOHN W. REYNOLDS
SENIOR U.S. DISTRICT JUDGE

J.P. STADTMUELLER
UNITED STATES DISTRICT JUDGE

ROBERT W. WARREN
SENIOR U.S. DISTRICT JUDGE