Civil Justice Reform Act of

DISTRICT ADVISORY GROUP

UNITED STATES DISTRICT COURT ★ EASTERN DISTRICT OF WISCONSIN

December 16, 1991

TO: Civil Justice Reform Act Pilot District Advisory Group Chairs

Civil Justice Reform Act Early Implementation District Advisory Group Chairs

I am pleased to enclose a copy of the Report and Proposed Plan of the Advisory Group of the Eastern District of Wisconsin.

Very truly yours,

John R. Dawson
Chair

Enclosure

cc: Sofron Nedilsky; Clerk, U.S. District Court
Donna Stienstra, Federal Judicial Center
Abel Mattos, Administrative Office of U.S. Courts

CIVIL JUSTICE REFORM ACT OF 1990

REPORT AND PROPOSED PLAN

OF THE

ADVISORY GROUP

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF WISCONSIN

DECEMBER 1991

TRANSMITTAL

Title I of the Judicial Improvements Act of 1990, Public Law 101-650, entitled the Civil Justice Reform Act of 1990 (the "Act"), created Chapter 23 of Title 28, United States Code, concerning Civil Justice Expense and Delay Reduction Plans.

The Act requires implementation by each United States district court of a civil justice expense and delay reduction plan. 28 U.S.C. § 471. Such a plan is to be implemented "after consideration of the recommendation of an advisory group appointed in accordance with section 478 of this title." 28 U.S.C. § 472(a).

The Act requires the Advisory Group, among other things, to submit to the court its report assessing the civil and criminal dockets in this district, identifying trends in case filings, identifying "the principal causes of cost and delay in civil litigation," recommending measures, rules and programs to reduce cost and delay in civil litigation, and explaining in particular how the Group's recommendations comply with certain "principals and guidelines of litigation management and cost and delay reduction." 28 U.S.C. §§ 472(b) and 473(a).

As a district designated by the Judicial Conference of the United States as a Pilot District, the court of this district is obliged to "implement [an] expense and delay reduction plan" by December 31, 1991, and the plan in this district is to remain in effect for a period of three years. §§ 105(b)(1)and (3), P.L. 101- 650.

The Advisory Group submits this report and a recommended plan of expense and delay reduction in accordance with the Act. The essential elements of the proposed plan are those which encourage and facilitate negotiated disposition, those which limit and streamline pretrial discovery, and those which call for more efficient methods of criminal case management. We are optimistic that adoption of these elements of the plan would have a positive impact upon the disposition of civil cases in the Eastern District.

Because reports from all advisory groups are to be reviewed by several different bodies, the Judicial Conference Committee on Court Administration and Case Management has recommended that the reports follow a standardized format to the extent possible. This report follows the format recommended by the Judicial Conference.

Respectfully submitted,

Advisory Group for the Eastern
District of Wisconsin

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

FOR THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF WISCONSIN

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REPORT OF THE ADVISORY GROUP OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

I. Description of the U.S. District Court for the Eastern District of Wisconsin

A. Location of District and Number of Judgeships

The United States District Court for the Eastern District of Wisconsin consists of the eastern one-third of Wisconsin. There are 16,276 square miles in the district and it has a population of nearly three million people. The principal metropolitan areas in the district are Milwaukee, Sheboygan, Racine, Kenosha, Appleton, Oshkosh, Green Bay, Waukesha, and Fond du Lac. The economy of the district is diverse. There are seven major state correctional institutions in the district.

The district is authorized four judgeships, two full-time magistrate judge positions, and one part-time magistrate judge position. The part-time magistrate judge is used mainly for initial appearances in criminal cases in the Green Bay area. One of the judgeships is presently vacant.

There are three senior judges in the district. One senior judge handles only civil cases and another handles civil cases and very few criminal cases. The third senior judge, who recently elected senior status, is currently handling a full case load. It is unlikely that the senior judges will continue to handle their case loads for an extended period of time. Reduction in the senior judges' case loads will have an immediate adverse impact on the civil docket.

B. Special Statutory Status

In March 1991 the Judicial Conference designated this district as a pilot district under the Civil Justice Reform Act of 1990.

II. Assessment of Conditions in the District

A. Condition of the Docket

1. Civil Docket

a. Statistics /Types of Cases

The Advisory Group reviewed all civil cases filed in the district in the last three years (1988-1990). Approximately 90% of all civil cases filed in this district settle before trial. On average over the three years, 36% of civil trials were held within 18 months of commencement of the case. Fifty-seven percent of the civil trials were held within two years of commencement and 80% were held within 36 months of commencement. The trend over the past three years has been toward increasingly early disposition of civil cases. Whereas 31% and 47% of civil trials in 1988 were held, respectively, within 18 months and 24 months of date of commencement of the suit, in 1990 the comparable percentages were 45% and 64%. Similarly, above the three-year average, the figures for 1990 showed that 77% of all civil trials were conducted within 30 months of commencement of the case and 86% were concluded within three years. In summary, the median time within which a civil trial was conducted in this district was 19.9 months following joinder of issue.

Civil rights cases were the largest segment of the cases actually tried during the last three years in this district. In 1988, 44% of all cases tried were civil rights cases; in 1989, 32% were civil rights cases; and in 1990, 22% were civil rights cases. On average, this category took 27 months from filing to disposal. Other than civil rights, no category represented such a significant percentage of the civil trials conducted in the district during the last three years.

In October 1991 the Administrative Office of the United States Courts prepared a 1991 SY Statistics Supplement showing the distribution of case filings in the Eastern District of Wisconsin for SY 89-91, the number of civil trials and civil trials as a percentage of total trials for SY 86-91, and the number of criminal trials and criminal trials as a percentage of total trials for SY 86-91. These charts are reproduced in Appendix F of this report.

b. Case Management

With a few exceptions, civil actions in this district are assigned randomly to a district judge and are assigned simultaneously to a magistrate judge on the basis of case number--odd numbers to one magistrate, even to the other. One exception is that a case related to a pending case will be assigned to the judge handling the pending case; another is that a case brought by a prisoner who has another case pending is assigned to the judge handling the pending case. Occasionally, a large number of routine related cases are filed. In that case, the chief judge is consulted as to how the cases should be assigned. Miscellaneous matters are assigned to the "duty" judge.

There is individualized case management of certain categories of cases in this district. It appears that the creation of formal ways of differentiating the treatment of additional types of cases is unnecessary. There are not enough cases in any one category to warrant formal differential treatment, and, in addition, there is such variation in the complexity of other types of cases that standardized procedures could hinder efficiency as much as help it. It is also clear that, through scheduling conferences, the judges on a case-by-case basis provide differential treatment for different cases.

At the present time, several categories of cases, as discussed below, are treated differently from the bulk of civil cases. These cases are assigned through the normal assignment process; however, they are not, immediately after being filed, routed directly to the assigned judge or magistrate judge. The following types of cases lend themselves to management by persons other than the judges:

***In Forma Pauperis* Requests.** Certain cases (Social Security, employment discrimination, prisoner cases, other civil rights cases, and petitions for habeas corpus) in which requests are made to proceed *in forma pauperis* are routed to the district's *pro se* law clerk. The law clerk examines the requests to proceed *in forma pauperis* and writes a recommendation to the assigned district judge. At that point, employment discrimination and civil rights cases (other than those in which a prisoner is the plaintiff) are transferred to the assigned district judge.

Prisoner Civil Rights Cases. For the year ending June 30, 1990, 333 prisoner cases were filed, representing 22.6% of its total civil case filings. In most of these cases, the plaintiff is not represented by counsel and seeks

leave to proceed *in forma pauperis*. If leave to proceed *in forma pauperis* is granted, or after the filing fee is paid, the *pro se* law clerk monitors prisoner civil rights cases. Motions are handled by the magistrate judge to whom the case is assigned. On dispositive motions the magistrate judge issues a decision if the parties have consented to his jurisdiction or a recommendation to the assigned district judge if they have not. The parties have 10 days to object to the recommendation. If there are objections, the district judge must give *de novo* consideration to the portions of the recommendation to which the objections are directed. If a case survives summary judgment, the case is tried by a magistrate judge with consent or by the district judge if there is no consent. Problems associated with this category of cases are discussed in subsection (c) below.

Social Security Reviews. Social Security reviews are decided on the basis of dispositive motions. When the case is filed, and after a request, if there is one, to proceed *in forma pauperis* is granted, personnel from the office of the clerk of court establish a schedule for the filing and briefing of summary judgment motions. When the motions are fully briefed, the case is referred directly to the assigned magistrate judge. If the parties have consented to the jurisdiction of the magistrate judge, he issues a decision disposing of the case. If the parties have not consented to the jurisdiction of the magistrate judge, the magistrate judge issues a recommendation to the assigned district judge.

Habeas Corpus. If a habeas petitioner asks to proceed *in forma pauperis*, the *pro se* law clerk examines the petition and provides a recommendation to the district judge. If the petitioner has paid the filing fee, the case goes directly to the district judge. The district judge must give the case preliminary consideration (Rule 4 of the rules governing § 2254 proceedings) and determine whether the respondent is required to file a responsive pleading or whether the petition should be summarily dismissed. If a responsive pleading is required, a briefing schedule is established and the case is ordinarily disposed of on the basis of written submissions.

Government Collections. Government collection cases are maintained in the office of the clerk of court. Ordinarily the cases are disposed of by the entry of a consent order or default judgment. If a case is contested, the file is forwarded to the district judge.

Appeals from the Bankruptcy Court. Bankruptcy appeals are reviews on the record by the district judges. The briefing schedule is established by the clerk's office before the file is sent to the district judge.

c. *Prisoner Civil Rights Cases*

Prisoner civil rights cases constitute the single largest category of civil cases filed in this district and contribute substantially to the district's administrative and judicial work loads. The lack of available state alternatives is largely responsible for this large volume of federal civil litigation.

Section 1997e of 42 U.S.C., the Civil Rights of Institutionalized Persons Act of 1980, provides that a § 1983 action pending in federal court may be continued at the court's discretion for up to 90 days while the inmate is required to exhaust the available state administrative remedies. 42 U.S.C. § 1997e(a)(1). However, the state's administrative remedies must be in substantial compliance with the minimum acceptable standards promulgated by the U.S. Attorney General under § 1997e(b). *Lewis v. Meyer*, 815 F.2d 43 (7th Cir. 1987). Wisconsin applied to the Attorney General for certification on November 19, 1984, and state officials provided supplementary information to the Attorney General on July 2, 1986.

The grievance systems of only a few states have been approved by the U.S. Attorney General. The principal deterrent to certification of more states grievance procedures is the federal requirement of inmate participation in the formulation, implementation, and administration of a state's grievance system. Wisconsin apparently received an oral rejection of its grievance procedure from the U.S. Attorney General, because Wisconsin's inmate complaint review system did not, in the Attorney General's opinion, meet the federal standards in this respect.

Wisconsin has two possible courses of action to make § 1997e available to the federal district courts in prisoner § 1983 actions. First, Wisconsin can revise its grievance procedure to make it acceptable to the U.S. Attorney General, by providing for an annual review of the system by an inmate's committee. Second, Congress could take action to make the certification standards more acceptable to state correction officials. Although this would be a more protracted process, some congressional action is necessary since § 1997e may not apply to state courts in which prisoners begin § 1983 actions.

If the statute is not amended, prisoners will avoid the exhaustion requirement by bringing their § 1983 actions in state court.

The Wisconsin Supreme Court has attempted to impose an exhaustion requirement on prisoner § 1983 actions brought in state court. However, in these cases, the court did not discuss *Felder v. Casey*, 487 U.S. 131 (1988), which the Wisconsin Supreme Court has since recognized "established as a general rule that the states cannot impose an exhaustion requirement on plaintiffs who assert § 1983 claims in state courts." *Hogan v. Musolf*, 163 Wis. 2d 1, 13 (1991).

On September 12, 1990, an appeal was certified to the Wisconsin Supreme Court in which the court was asked to decide whether inmates may be required to exhaust the inmate complaint review process before maintaining a § 1983 action. *Casteel v. Vaade*, No. 90-0103. As of December 3, 1991, this appeal was still pending before the court. The court may recede from its position in its earlier decisions, especially in view of the following language of the U.S. Supreme Court in *Patsy v. Florida Board of Regents*, 457 U.S. 496, 508 (1982):

> In § 1997e, Congress . . . created a specific, limited exhaustion requirement for adult prisoners bringing actions pursuant to § 1983. Section 1997e and its legislative history demonstrate that Congress understood that exhaustion is not generally required in § 1983 actions, and that it decided to carve out only a narrow exception to this rule. A judicially imposed exhaustion requirement would be inconsistent with Congress's decision to adopt § 1997e and would usurp policy judgments that Congress has reserved for itself.

2. Criminal Docket

The increasing number and complexity of criminal cases in the Eastern District of Wisconsin is placing greater demands on limited court resources which directly impact on civil cases. In 1990, 224 criminal cases charging a total of 388 defendants were filed in the district. These cases resulted in 37 trials, consuming 214 trial days. The original trial date had to be rescheduled in twenty-six (or 70%) of these trials.

While the number of criminal cases has increased somewhat in recent years, the average number of defendants per case has steadily increased. In

calendar only to have the criminal case that caused this removal also rescheduled.

Pursuant to rates set by the Administrative Office of the United States Courts, appointed criminal defense counsel are paid at the rate of $60 per hour for every in-court hour and $40 per hour for every out-of-court hour spent on the case. For a felony case, the maximum compensation the district judge can allow is $3,500 ($1,000 for a misdemeanor). An attorney may receive compensation in excess of the maximum if the assigned judge certifies to the Chief Judge for the Seventh Circuit that the services rendered were of "an unusual character or duration."

Even though these rates are low, many attorneys accept criminal appointments. For the newer attorney, this is a good way to obtain experience. For the experienced attorney, cases are frequently accepted out of a sense of obligation to the criminal justice system. Unfortunately, the number of experienced attorneys willing to accept appointments, especially in lengthy or multi-defendant cases, has diminished significantly over the years. An attorney with a busy practice is unable to devote a substantial block of his or her time to the defense of a criminal case at the present level of compensation. The unfortunate side effect is that attorneys with less familiarity with the federal system are appointed in complex cases.

3. Trends in Case Filings

In 1986, there were 1,586 case filings in the district. In 1991, there were 1,545, a decline of 2.5%. In 1986, there were 1,357 cases pending and in 1991 there were 1,517 cases pending, an increase of 11.7%. In 1986, 8.8% of the cases filed were criminal felony cases, while in 1991 14.5% of the cases filed were criminal felony cases--an increase of 64%. Since 1986, the number of criminal felony cases filed has increased from 35 per judgeship in 1986 to 56 per judgeship in 1991--an increase of 60%. Weighted annual filings per judgeship have increased from 404 in 1986 to 425 in 1991.

Although there was a slight decrease in criminal felony filings between 1990 and 1991, in view of the long term trend and new and pending federal criminal legislation, there is every reason to believe that case filings per judge will continue to increase. Furthermore, much of that increase will be criminal felony cases that will go to trial and that will require a disproportionate amount of judicial trial time.

Charts showing current trends in case filings are included in Appendix F of this report.

4. Trends in Court Resources

This district's allocation of four district judgeships has remained the same since 1979. In 1979, one full-time magistrate judge and a part-time magistrate judge served the district; an additional full-time magistrate judge was added in 1985.

In contrast, since 1979, the United States Attorney's office has expanded from 14 attorney positions to 30. Seven officers and two supervisors staffed the U.S. Probation Office in this district in 1985. In 1991 the district's U.S. Probation Office was authorized 18 probation officers and three supervisors. A similar increase has occurred in the number of federal law enforcement agents assigned to this district. For example, the number of agents in the Bureau of Alcohol, Tobacco and Firearms and the Organized Crime and Drug Enforcement Task Force has more than doubled in the last decade.

The Advisory Group believes that the data used to measure judicial work load are inadequate. The data fail to take into account the case load handled by the senior judges and thus ignore their key contribution. The Federal Judicial Statistics Report of the Administrative Office of the United States Courts shows that 386 cases were disposed of by four judgeships in this district in 1991, when in actuality it took six judges and two magistrate judges to dispose of these cases. Out of 94 federal districts, only a handful are forced, as is this district, to rely upon nearly as many senior judges as authorized judgeships.

B. Excessive Cost and Delay

1. Introduction

Whether or not delay or cost is excessive is a subjective assessment. To measure perceptions, the Advisory Group conducted interviews and surveys of judges, attorneys, and litigants, as described in Appendix B.

2. Existence of Excessive Cost

Of those surveyed, 41.7% of the litigants and 18.7% of the attorneys responded that the cost of litigation was much too high or slightly too high. Some attorneys have commented that market conditions serve to reduce or control costs. Some insurance companies and large corporations keep close control on litigation expenses and often require cost estimates at the outset.

3. Causes of Excessive Cost

a. Overview

The cost of litigation has many dimensions. Among the obvious ones are the out-of-pocket transaction costs for attorneys fees, consultants, expert witnesses, deposition transcripts, travel, copying, computer research, and litigation support. Other costs, which may be less obvious, are time spent by litigants or their employees in assisting the process, including responding to discovery, locating and preparing consultants and expert witnesses, appearing for depositions, and attending to the case itself. In many cases, there are costs resulting from delayed or lost economic opportunities. Some members of the local bar observed that excessive streamlining of litigation (e.g., elimination or significant reduction in permissible discovery) may actually create additional costs to all participants as more cases will be tried rather than settled.

b. Settlement Negotiations

One of the most frequently cited factors for increased costs in civil cases is the lack of early settlement negotiations. This was cited by 78.7% of the litigants who thought that litigation costs were excessive and by 45.8% of the attorneys who believe costs were excessive. Of those who thought that there was excessive delay, 76.8% of the litigants and 58.1% of the attorneys thought that early settlement conferences would reduce costs or delay in civil litigation.

Some lawyers believe that initiating settlement negotiations at an early date will be viewed as a sign of weakness. Other attorneys believe that early settlement negotiations may fail because the parties will not have had the benefit of discovery. Several judges and magistrate judges cautioned about conducting settlement discussions too soon after issue is joined. If set-

tlement discussions are commenced too soon, the lawyers frequently do not have sufficient command of the facts or the issues. However, delaying serious settlement negotiations in cases to a later point in the litigation process compounds scheduling problems and calendar congestion. To the extent that cases are settled and leave the judicial system at an early date, scarce judicial resources may be directed to the cases which will require judicial attention.

The Advisory Group believes that a plan to reduce cost and delay in civil cases must include early settlement negotiations with a judge, magistrate judge, neutral evaluator, or mediator skilled in and devoted to facilitating settlement. The Advisory Group has concluded that the settlement negotiations should begin shortly after pleadings and voluntary disclosure and before the parties engage in further discovery and trial preparation.

c. Discovery

Attorneys, litigants, judges, and magistrate judges generally agree that excessive discovery and discovery abuse significantly contribute to increasing litigation costs and, perhaps to a lesser extent, to delay in the disposition of cases. Abusive and excessive discovery includes unnecessary discovery and discovery that is disproportionate to the nature of the case. Among the attorneys surveyed who believed litigation costs were excessive, factors cited as increasing the costs included: burdensome document production (46.8%), discovery problems with other party or non-party (45.9%), excessive discovery (41.0%), too many depositions (37.7%), burdensome written interrogatories (34.4%), too much time for discovery (33.3%), and excessively long depositions (27.4%). Litigants surveyed who believed litigation costs were excessive cited burdensome document production (79.2%), too much discovery (70.2%), and too many depositions (63.0%) as the principal reasons for such excessive costs.

Overwhelmingly, the judges and magistrate judges identified the volume of documents requested and nonresponsiveness to discovery requests as the most frequently observed discovery abuses. Many suggested that more informal resolution of these disputes, as opposed to lengthy briefs and decisions, would facilitate speedier disposition. Several judges recommended uniform use of Local Rule 6.06 to speed up resolution of discovery motions. While several judges suggested using magistrate judges for discovery disputes, most acknowledged that the magistrate judges in the district already have so many responsibilities and demands on their time that they would not

be able to assume these duties. The judges and magistrate judges had mixed reactions to the effectiveness of Rule 11 in curbing abuses, including discovery abuses. Several suggested that the mere presence of Rule 11 provided some benefit.

Under the present Federal Rules of Civil Procedure, a party can videotape a deposition only if the parties stipulate to such videotaping or the court orders videotaping. In contrast, under Wisconsin law, one may videotape a deposition simply by providing the appropriate notice. The technology involved in videotaping depositions has reached the point where the recording is accurate, reliable, and trustworthy.

Abusive and excessive discovery is a matter which must be addressed in any effective plan to reduce delay and costs. Considering the status of the Eastern District of Wisconsin as a pilot district, the significant expense, delay, and judicial resource problems relating to discovery, and the success of open file discovery in criminal cases in this district, the Advisory Group recommends that fundamental changes be made in discovery procedures in this district. These changes should include establishment of compulsory disclosure prior to any discovery, limitation on the extent of discovery, and prompt presentation and resolution of discovery disputes.

d. Postponement of Trials

The postponement of trials shortly before the trial date is seen as a major factor in increasing the cost of civil litigation. Of those surveyed who felt there were excessive costs, 50% of the litigants and 30.4% of the attorneys thought postponement of trials was a factor. Of those surveyed who thought delay was excessive, 53.9% of the attorneys thought that setting firmer trial dates and 68.3% of the litigants thought that not changing trial dates would reduce delay.

Lawyers typically devote a substantial portion of their time for one or more weeks before a trial to intensive trial preparation. This preparation includes reviewing pleadings and discovery, developing direct examination and cross-examination, preparing witnesses for direct and cross-examination, and preparing and refining opening statements and closing arguments. This intensive preparation is a significant cost of civil litigation, reflected in billings to clients or the fixing of contingent fees or fixed fees. Much of this

trial preparation is lost and must be repeated when a case is postponed, at additional cost to the parties.

Some parts of trial preparation, including preparation of *voir dire*, jury instructions, special verdict questions, trial briefs, motions *in limine*, exhibits, and evidentiary objections, will be used for the rescheduled trial, but they will normally require further review and updating. Although some trial preparation work is salvageable, there are significantly large trial preparation costs that are lost and must be repeated, with resultant economic waste, whenever a trial is adjourned close to the scheduled date.

e. Summary Judgment Motions

The six-month reports for the period ending September 30, 1991, of undecided matters filed by judicial officers under the Civil Justice Reform Act shows instances of summary judgment motions pending in this district for over two years. Preparing or responding to summary judgment motions was cited by 47.5% of the attorneys surveyed who thought litigation costs excessive as the principal cause of increased costs of litigation. Of the surveyed litigants, who thought there were excessive costs, 52.2% cited summary judgment motions as a factor. It is not clear whether the source of the complaint is the cost associated with such motions or, more probably, the cost that is seen as wasted when a motion languishes unresolved for months or ultimately is denied on a cursory, "factual dispute" basis.

Both magistrate judges and two of the district judges believed that access to an additional law clerk would assist them in researching, reviewing briefs, and drafting opinions. Several judges agreed that limiting the length of briefs, requiring stipulated facts, and permitting more informal resolutions by rulings from the bench would help in reducing the time to resolve dispositive motions. A majority of the judges and magistrate judges agreed that oral argument rarely assists in the resolution of dispositive motions. Only one judge regularly schedules oral argument on summary judgment motions. Some members of the Advisory Group believe oral argument is helpful in crystallizing the matters for prompt decisions.

f. Pleading Disputes

Among the factors cited as increasing the cost of civil litigation are pleading disputes. Some pleading disputes are in reality dispositive motions. In other instances, they are attempts to narrow or limit the issues (such as

disputes over the sufficiency of the pleadings or efforts to establish the law of the case). To the extent that pleading disputes delay a civil case and increase its cost, they need to be addressed.

4. Existence of Excessive Delay

There is a modest divergence of opinion as to whether there is excessive delay in civil litigation in this district. Slightly more than one-third (38.5%) of the attorneys surveyed and about one-half (52.5%) of the litigants surveyed thought their cases had taken too long. While nearly one-half (46.7%) of the surveyed attorneys who represented plaintiffs thought the case took too long, less than a third (29%) of attorneys who represented defendants shared that assessment. Approximately two-thirds (62.7%) of the plaintiffs surveyed and less than half of the defendants surveyed thought their cases had taken too long. In the judicial survey, five of the judges and magistrate judges said civil cases take too long and three said they did not.

5. Causes of Excessive Delay

a. Overview

Significant delay in the disposition of civil cases increases the number of hours spent by attorneys, paralegals, consultants, experts, and others. If significant time elapses between steps in the litigation process (e.g., between the making of a motion for summary judgment, decision on that motion, and any conferences or trial), the attorneys are almost certain to spend additional hours refamiliarizing themselves with the case. The need repeatedly to review a file in the course of extended litigation directly impacts on total hours and total costs.

Reducing total elapsed time from the commencement of litigation until its termination may have an impact on cost to the litigant by (1) eliminating non-productive hours spent in review of files that could have been avoided, and (2) fostering earlier settlements that reduce transaction costs. However, the fact that delay may increase the cost of litigation does not mean that reduction of delay will automatically reduce it. Compressing the time available for trial preparation may, in some circumstances--as in the case of a party brought into the litigation at a late stage--result in a more intensive schedule that will not reduce the total number of hours expended and may even result in premium billing. Members of the local bar commented that excessive streamlining of litigation (e.g., elimination or significant re-

duction in permissible discovery) may actually create additional costs to all participants since more cases will be tried rather than settled.

When asked which categories of cases cause more delay than others in their calendars, all of the judges and magistrate judges mentioned civil rights cases, especially prisoner *pro se* cases. Other categories mentioned include copyright and patent cases, social security cases, and personal injury cases, especially class actions. When asked overall what the most time-consuming aspects of their dockets were the judges basically agreed: (1) criminal trials, especially post-conviction *pro se* (among the active judges and two magistrate judges who hear criminal trials); (2) criminal sentencing; and (3) reading, reviewing, researching, and writing opinions, especially on dispositive motions.

Several judges expressed frustration with the lack of time available to them for preparing decisions on dispositive motions which are justified in every particular. They suggested procedural changes which would allow them to limit the number of pages of the briefs submitted and require the parties to agree to a stipulated set of facts, either as part of the motion packet or through an informal hearing.

The judges and magistrate judges were asked to comment on the general preparedness of attorneys practicing civil law before them. They agreed that, except for a few, lawyers are prepared and perhaps even overzealous in their use of tools available to them. The number of documents requested and nonresponsiveness to interrogatories were cited by all the judges as being major problems. All of the judges are interested in finding ways to counteract the overuse of discovery. Although there was agreement that discovery motions are a prime source of delay in civil litigation, the judges tend to handle these and other nondispositive motions informally, by phone or by brief, and out of court, feeling that this saves both time and money.

The final question on the judges' questionnaire listed 23 proposals for reducing cost and delay in civil cases. The judges were asked to select those which they thought would help. They agreed unanimously that setting firm and certain trial dates and limiting trial time were two of the tools that should definitely be used if civil cases are to be disposed of in a timely fashion. Six of the eight thought that judges should have the authority to limit the number of expert witnesses used in a trial. Six of the eight interviewees thought procedures or rules should be developed to control the extent of

discovery, the time for completion of discovery, and ensuing compliance with appropriate requested discovery. Seven of the eight thought there should be more voluntary exchange of information among litigants and their attorneys. Six of the eight thought four other proposals might yield positive results: (1) setting deadlines for filing motions and a time framework for their disposition; (2) authorization to refer appropriate cases to alternative dispute resolution programs; (3) limiting reading of deposition testimony during trials; and (4) ruling on admissibility of exhibits during the pretrial conference.

Of the attorneys who responded that there was excessive delay, 43.4% were of the opinion that alternative dispute resolution techniques would assist in reducing cost or delay. The Civil Justice Reform Act also requires the implementation of such techniques.

b. Criminal Cases

The most significant factor having an impact on the civil calendars of the courts in this district is the increasing demand of the criminal calendar. The mix of filings per judgeship is 14.2% (61) criminal and 85.8% (369) civil. This does not begin to tell the story. This district has had an extensive increase of multi-defendant, multi-count cases. It has had more multi-defendant cases charged and more criminal trials lasting four or more days than any other district in the Seventh Circuit. In part, this is attributable to an increase in the number of assistant U.S. Attorneys and federal law enforcement agents.

Criminal cases here have a disproportionate impact on judicial trial time. One judge in this district who tracked his trials completed in 1990 found that 64% of the trials over which he presided were criminal and that those criminal trials occupied 74% of the total number of trial days in 1990 and 85% of the jury trial days in 1990.

The Speedy Trial Act and its implementation in this district frequently result in the postponement of long-scheduled civil trials. The rescheduling of the civil cases adds additional delay to the civil calendar. In this district, the Speedy Trial Act was phased in during 1976. Initially, criminal trials were to commence within 180 days from arraignment. This time was subsequently reduced to 70 days. The impact the Act has had on the civil docket is apparent. Beginning in 1977, the median number of months to dispose of a criminal matter began to decline rather dramatically, while the median num-

ber of months to trial on a civil matter began to increase. The number of civil cases over three years old increased significantly in 1976.

On rare occasions, criminal cases have been tried in this district with over ten defendants. As these cases usually focus upon defendants charged with drug violations or violent crimes, the defendants are frequently detained from the time of their arrest through the trial process. Because the defendants have been detained, the court has attempted to start the trial at an early date following issuance of the charges. Although this type of trial is infrequent, it causes the court to spend a substantial amount of time solely on this criminal matter. For the most part, other litigation before the court (particularly civil matters, since they are not subject to the Speedy Trial Act) is deferred pending completion of the trial.

The scheduled trial date is the driving force in processing the criminal case. Both the magistrate judge and the parties often encounter difficulties in adhering to this date since discovery may be incomplete, complex motions may be filed, or evidentiary hearings on certain motions must be scheduled. Unless the district judge grants a motion for continuance of the trial date, the magistrate judges are usually unwilling to grant a defendant's request to extend the time for filing motions. The scheduling and rescheduling of criminal trial dates have resulted in both inadequate time and undue pressure on the parties and the court in the pretrial processing of the case. Judges often schedule civil trials on the same day as criminal trials so that, if the criminal trial is cancelled, the civil case can proceed. Some district court judges believe that plea agreements are finalized just before the start of criminal trials and that, by the time the court has been notified of the agreement, the parties in the civil trial scheduled for the same date have already been advised that their case will not go to trial as scheduled.

The criminal case load places heavy demands on the magistrate judges who handle a large portion of the pretrial processing of criminal cases. At present, all criminal motions, both nondispositive and dispositive, are resolved by the magistrate judges. All motions are in writing, they are briefed by both sides, and a written decision (or recommendation for dispositive motions) is issued by the magistrate judge. The standard for review by the district judge for a nondispositive motion is clearly erroneous, and for a dispositive motion is *de novo*. Types of nondispositive motions in criminal cases are discovery related bills of particular and motions for severance. For most of the motions, the law is fairly well defined. These motions are usually sup-

ported by the same "boilerplate" briefs and answered by the same "boilerplate" responses. The time devoted to drafting a written decision could be avoided if oral decisions were rendered. The magistrate judges are not precluded from rendering oral decisions, but refrain from doing so because a written decision is easier to review.

The Sentencing Guidelines and associated restitution provisions have drastically increased the time necessary for judges to review presentence reports, prepare for sentencing, and conduct sentencing hearings. Due to the rigid standards of the Guidelines, the criteria used in the Guidelines have caused time consuming contests of their applicability. Although it is not possible to document this, experienced practitioners have told the Advisory Group that the Sentencing Guidelines discourage plea bargaining and encourage going to trial. The use of the Sentencing Guidelines takes substantial time in misdemeanor cases, even when there is little dispute as to the eventual outcome.

Representatives of the criminal justice system have told the Advisory Group that they anticipate increased criminal case filings in the future. In addition, legislation currently under consideration would increase the number of federal crimes and apply a federal death penalty to what are currently state criminal offenses. The Advisory Group is concerned that these developments will turn the federal district courts into virtually criminal courts at the expense of civil litigants.

Several recommendations were made by the judges to reduce the influx of criminal cases into the system. Some recommended strongly that the Sentencing Guidelines be made advisory rather than mandatory and that appellate review of these decisions be limited. Several judges cautioned about the constitutional implications of "penalizing" a defendant for exercising his or her right to a trial. The Advisory Group concludes that, if this district is to achieve any meaningful reduction in the delay of civil cases, the problems with the criminal docket must be addressed.

c. Dispositive Motions in Civil Cases

The Advisory Group is aware of numerous occasions on which it has taken an inexplicably long time to resolve dispositive motions, including summary judgment motions pending for more than two years. The Advisory Group is concerned with the increased cost and delay resulting from delays in

the resolution of dispositive motions. For example, discovery which proves to be unnecessary continues while dispositive motions are under advisement or discovery which proves to be necessary is postponed and witnesses are no longer available or evidence becomes more difficult to locate.

d. Inadequate Number of Judicial Officers

Having too few judicial officers renders trial dates less certain and causes greater delay in the disposition of motions. The fundamental problem is an excess of trials for the available trial days. Delay is the inevitable result. Without an adequate number of judicial officers and with an increasing criminal case load, civil trial dates inevitably carry the clearly understood caveat "subject to criminal trials."

6. Extent to Which Cost and Delay Could Be Reduced by Better Assessment of the Impact of New Legislation

a. Sentencing Guidelines

As discussed earlier, the Sentencing Guidelines cause excessive delay in the management of criminal litigation. This has a direct and adverse impact on the management of the court's civil docket.

b. Mandatory Minimum Sentence Statutes

There are now over 60 criminal statutes that contain mandatory minimum penalties, 49 of which have been enacted since 1984. Many of these statutes are rarely used, however, and most convictions where mandatory minimums are involved are under four of the provisions which relate to drug and weapons offenses. The Violent Crime Control Act (SB 1241), would have provided approximately two dozen new mandatory minimum provisions. There are also about 30 miscellaneous bills containing mandatory minimum sentencing provisions pending before Congress.

A defendant facing a charge with, for example, a 30-year mandatory minimum sentence without parole, has little incentive to plead guilty. Increasing the number of statutes with mandatory minimums and increasing the lengths of those sentences has the potential for adding additional burdens on the courts.

c. Increase in Federal Crimes

Recent and pending legislation has increased the number of crimes subject to federal jurisdiction, thus having the potential of increasing the criminal case load. In the Violent Crime Control Act (SB 1241), for instance, there were provisions for federal jurisdiction over a number of crimes usually thought of as state offenses, including drug-related drive-by shootings. The basis for federal jurisdiction for these crimes is that the firearm has traveled in interstate or foreign commerce.

The Violent Crime Control Act authorized the death penalty for eleven offenses, including drug kingpins, drive by shootings, a death resulting from terrorist activities, hostage taking in which a death results, and for a bank robbery if a death results. Death penalty cases are more expensive and require more judicial time than other cases. According to the impact statement on the Violent Crime Control Act prepared by the Administrative Office of the United States Courts, the floor debate on the bill indicates that it is aimed at the 14 states (including Wisconsin) which do not have a death penalty.

III. Recommendations and Their Bases

A. Recommended Measures, Rules, and Programs

1. Enhanced Settlement Procedures in Civil Cases

a. Settlement Conferences

In the surveys of litigants and attorneys, one of the most frequently cited factors for increased costs in civil cases was the lack of early settlement negotiations. This was cited by 78.7% of the litigants and 45.8% of the attorneys surveyed who said that costs were too high. In addition, 76.8% of the litigants and 58.1% of the attorneys who said that the length of time it took to resolve their cases was too long or that the fees and costs incurred were too high believe that early settlement conferences would reduce cost or delay in civil litigation.

The Advisory Group recommends that the court adopt a local rule requiring that settlement conferences be held by a judicial officer within 180 days after commencement of the suit and permitting the court to refer cases for early neutral evaluation or mediation to a special master or lawyer appointed by the court and paid by the parties. Proposed Local Rule 7.12, as set forth in Appendix H, would effectuate this recommendation.

The Advisory Group believes the most effective and useful alternative dispute resolution techniques available in this process are early neutral evaluation and mediation. The judicial officers are encouraged to use these dispute resolution techniques. The Milwaukee Bar Association has a successful state court case mediation program with trained and experienced mediators whose services could be helpful to the federal court. These techniques are described in Appendix I.

b. Scheduling Conference

The Advisory Group recommends that a routine item at the Rule 16 scheduling conference be the setting of a date for a settlement conference to be conducted in accordance with proposed Local Rule 7.12.

2. Discovery

a. Mandatory Discovery

The Advisory Group recommends that the local rules be amended to provide for a system of initial mandatory discovery and of disclosure of expert testimony. The costly abuse of premature, uninformed, and burdensome discovery would be substantially alleviated were parties first required to provide basic information supportive of their respective positions. Proposed new Rule 7.07, as set forth in Appendix H, would effectuate this recommendation.

b. Timing and Sequence of Discovery

To enforce the proposed rules regarding mandatory discovery, the Advisory Group recommends adoption of a local rule based on the proposed amendment to Rule 26(d) of the Federal Rules of Civil Procedure, limiting discovery before disclosure of the information required under proposed Local Rule 7.07. Proposed Local Rule 7.08, as set forth in Appendix H, would effectuate this recommendation.

c. Standard Definitions Applicable to All Discovery Requests

In order to create uniformity of practice in discovery and to reduce the costs attendant argument over definitions used in discovery requests and responses, the Advisory Group recommends that the parties be governed by the same definitions of standard terms. At present, each party in submitting its discovery request to the opposing party sets forth its own definition of terms. These definitions vary from attorney to attorney and often result in a "battle of the forms." The proponent says to answer the written interrogatories with those definitions in mind. The respondent either objects to these definitions and/or says that the answers submitted are in accord with other definitions. A local rule, such as that now used in the Southern District of New York (Local Rule 47), should be adopted, putting all parties on notice that specified definitions apply to all discovery requests. Proposed Local Rule 7.09, as set forth in Appendix H, would effectuate this recommendation.

d. Videotaping of Depositions

To obviate the cost of a motion to permit the videotaping of a deposition, the Advisory Group recommends that the court adopt a local rule permitting alternative means of recording depositions, including, but not limited to, videotaping as provided in the recommended amendments to Rule 30 of the Federal Rules of Civil Procedure. Proposed Local Rule 7.10, as set forth in Appendix H, would effectuate this recommendation.

e. Limitations on Depositions

Too often, the inexperienced or obstructionist attorney wastes time and money requiring testimony which is irrelevant and/or unnecessary. The local rules should be amended to limit the length of depositions to six hours as provided in the proposed amendment to Rule 30(d) of the Federal Rules of Civil Procedure. Proposed Local Rule 7.10, as set forth in Appendix H, would effectuate this recommendation.

f. Limitation on Interrogatories

To an unfortunate degree, burdensome and usually futile interrogatories have become the norm in civil litigation. The Advisory Group recommends that Local Rule 7.03 be amended to limit the number of interrogatories which may be served without the prior order of the court to 15 (instead of 35) in accordance with the proposed amendment to FRCP 33(a). Proposed Local Rule 7.03, as set forth in Appendix H, would effectuate this recommendation.

g. Automatic Protection of Confidential Information

One aspect of discovery and pretrial maneuvering which frequently requires excessive attorney time and produces consequent delay in proceedings is the parties' insistence upon protective orders for the preservation of confidentiality of business records. The intractable positions frequently taken in negotiating the terms of confidentiality agreements contribute to the cost of civil litigation.

The Advisory Group recommends that this district, by local rule, provide for automatic protective orders pertaining to any information claimed in good faith to be confidential information. That automatic protection should

limit disclosure to attorneys of record (in addition to in-house counsel) and experts not employed by or otherwise related to the party who receive the information for purposes of the litigation.

To prevent debate over whether information is in fact "confidential" or not, the local rule governing this procedure should specify that information may not be withheld from discovery on the grounds of confidentiality unless the party claiming a need for protection in addition to that provided by rule, within the time limit imposed under Rule 34, moves for a special protective order. Any agreement on terms less restrictive than those proposed by local rule should never be the basis for withholding requested discovery and the local rule should provide that protection provided by the rule continues to apply until and unless the court orders otherwise or the parties by stipulation consent to a lesser degree of restriction. As is the case in any event, the rule should further provide that the designation of confidentiality by one party may be challenged by the other upon motion and, consistent with Rule 37, actual motion costs should be assessable in favor of the prevailing party in any such motion.

Proposed Local Rule 7.11, as set forth in Appendix H, would effectuate this recommendation.

3. Efficient Civil Case Management

a. Summary Judgment Motions

To improve the clarity with which legal issues and claimed factual disputes are identified in connection with summary judgment motions, a standardized procedure should be implemented requiring the parties to adhere rigorously to a format detailing the record source and materiality of all facts pertinent to the motion. The Advisory Group recommends that the court adopt a uniform procedure for summary judgment. Where possible, judges should issue decisions on summary judgments from the bench with minute orders. Proposed Local Rule 6.07, as set forth in Appendix H, would effectuate this recommendation.

b. Rulings on Motions

The court should adopt a local operating practice that all motions, should be decided either (1) by an oral decision in open court with a brief explanation of the court's reasoning and the application of the law to the issues

raised together with a minute order or judgment, or (2) by a brief written decision explaining the court's reasoning and application of law to the issues raised together with a minute order or judgment. Review could still be taken from the minute order and the transcribed oral explanation. The only exception to this practice should be cases raising significant matters of first impression involving matters of significant development of the law likely to be applicable to other matters or matters of public importance.

c. Expanded Utilization of Magistrate Judges

The Advisory Group strongly believes that there is a need for increased utilization of magistrate judges in the civil area, if this district is to meet the goal of trying of civil cases within 18 months of their commencement. The Advisory Group recognizes that, unless additional magistrate judges are assigned to the district, it will be virtually impossible for the magistrate judges to handle these tasks.

i. Encouraging Consent to Magistrate Judge Jurisdiction

The Advisory Group considered whether it should recommend that the court adopt a local rule under which it would be presumed that the parties consented to the magistrate judge's jurisdiction absent objection. Under the present law, the consent of a party to the exercise of jurisdiction must be voluntary, clear, and unambiguous; it cannot be inferred from the conduct of the parties. *Jaliwala v. United States*, 945 F.2d 271 (7th. Cir. 1991); *Lovelace v. Dall*, 820 F.2d 223 (7th Cir. 1987). It appears that a rule which presumed consent unless the parties rejected it might be contrary to the present law in this circuit.

To encourage parties to consent to the magistrate judges' jurisdiction in civil cases, the Advisory Group suggests that the court add the following statement, in boldface type, to the form for consent to jurisdiction by a magistrate judge:

> **IF THE PARTIES CONSENT TO TRIAL BY THE MAGISTRATE JUDGE, THE PARTIES WILL BE ASSURED A FIRM TRIAL DATE (WITHIN TWELVE MONTHS IF THE PARTIES WISH).**

ii. Avoiding Duplicative Judicial Efforts

In some instances, the district judges, without the consent of the parties, refer dispositive motions in civil cases to the magistrate judges for review. The magistrate judge then prepares "findings and recommendations" from which the parties can appeal *de novo* to the district judge. The Advisory Group is concerned that this practice results in a duplication of efforts by the judiciary and the parties, resulting in greater costs. The Advisory Group believes that the court should adopt a local practice that dispositive motions in civil cases (except Social Security review) should not be referred routinely to magistrate judges for findings and recommendations.

With respect to Social Security cases, the Advisory Group encourages the United States to consent to proceed before the magistrate judge in routine cases. Likewise, the Advisory Group encourages the Wisconsin Attorney General and local government attorneys to consent to proceed before the magistrate judge in prisoner cases.

d. Standardized Pretrial Orders

Standardized pretrial orders could reduce confusion and increase efficiency. The Advisory Group recommends that the court amend Local Rule 7.06 to provide for a standardized pretrial order requiring no more than identification of witnesses who will be called to testify, identification of witnesses who may be called to testify, identification and marking of exhibits, designation and counter-designation of testimony from depositions, and proposed *voir dire* questions. The amended rule also should provide that any witnesses and evidence not identified may not be used at trial except for purposes of impeachment. Further requirements would increase costs and would not improve trial preparation or efficiency.

e. Time Limits for Trying Cases

Judges should be encouraged to establish reasonable time limits for the trial of cases.

4. Steps to Reduce Impact of Criminal Docket

a. Case Management of Criminal Cases

The Advisory Group is convinced that improving the efficiency of criminal case management will reduce the disruption attributable to rescheduled criminal trials. Efforts should be made to set firm and realistic trial dates in criminal cases to minimize the disruption to the judge's civil calendars. As previously noted, under the current procedure the date for the start of a criminal trial is given at an early stage in the litigation (during the arraignment) without considering the nature of the case. This date is frequently changed prior to the actual start of the trial. The Advisory Group recommends that this practice be changed.

The Advisory Group concludes that the magistrate judges should be responsible for individualized case management in all criminal cases. This individualized case management should include a status conference conducted by a magistrate judge. At the status conference, among other things, the magistrate judge should review all anticipated motions and set a realistic and firm trial date, based upon the status of the case and the available trial dates obtained from the judge to whom the case is assigned. The Advisory Group recognizes that delegating substantial control of pretrial criminal case management to the magistrate judges is not feasible without additional magistrate judges.

The district judge should hold a final pretrial conference approximately ten days before the scheduled criminal trial date. By this date, defense counsel and the defendant will have had an opportunity to review all discovery material and assess the merits and weaknesses of the case. This would enable the judge to ascertain whether it is likely that the case will go to trial or whether there will be a plea agreement, reducing the number of civil cases that will have to be rescheduled.

b. Rulings on Nondispositive Motions

In order to save substantial time, the magistrate judges should be encouraged to rule orally on criminal nondispositive pretrial motions. The transcribed oral decision would still provide a record for review by the assigned judge.

c. Court-Appointed Criminal Defense Attorneys

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. In determining the court-appointed attorneys compensation for handling a particular matter, it is suggested that the court take a more realistic view of whether the case is of such an "unusual character or duration" that the attorney is entitled to compensation above the maximum rate. Further, the court should study the feasibility of establishing a Federal Public Defender program in the district.

d. Sentencing Guidelines

The advantages of the Sentencing Guidelines seem to be outweighed by the added effort and delay they impose upon the system. This is particularly true with respect to misdemeanors, where the maximum period of incarceration is one year and the likelihood of gross disparity in sentencing is unlikely. Adherence to the Guidelines increases exponentially the time it takes for a plea and sentencing. The Advisory Group recommends that the Sentencing Guidelines be treated as guidelines. It should be noted that it is the policy of the United States Department of Justice that the Sentencing Guidelines should continue to be utilized in all criminal cases.

In all cases, the U.S. Probation Officer should meet with counsel prior to the sentencing hearing in an attempt to resolve Sentencing Guideline disputes.

5. Enhanced Judicial Resources

a. Additional Magistrate Judges

The addition of two magistrate judges is necessary if the recommendations of the Advisory Group to expand substantially the duties of the magistrate judges are adopted. In summary, the Advisory Group has recommended that the duties of the magistrate judges be expanded by directly participating in settlement conferences for the nearly 1,500 civil cases commenced in this district every year, conducting status conferences and otherwise assuming case management responsibility for the more than 200 criminal cases filed annually in this district, and undertaking an increased respon-

sibility for civil litigation matters to which the parties are being encouraged to consent. It is obvious to the Advisory Group that these additional duties cannot be performed adequately with only the two full-time magistrate judges presently assigned to this district. The district may wish to consider the creation of a pilot project to implement these recommendations and to ascertain whether these recommendations have reduced delay or cost.

b. Additional District Judges

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. Whereas more than 80% of the cases in this district are civil, approximately 50% of the trials are criminal, and, as noted earlier, criminal cases impact disproportionately on court time. 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.

c. Use of Senior Judges from Other Districts

The Advisory Group recommends that the court use the services of senior judges from other districts to handle large criminal cases with numerous defendants, or, in the alternative, the civil trials which have been displaced by large criminal cases. In this way, other litigation is not postponed pending resolution of the large criminal trial.

6. Enhanced Training and Pro Bono Commitment

The Seventh Circuit Bar Association should continue to provide continuing education and training on pro bono cases and federal substantive and procedural matters. It should be encouraged to identify a pool of attorneys willing to provide legal services or accept appointments in the district to assist low income persons.

B. How Recommended Actions Include Significant Contributions to Be Made by the Court, the Litigants, and the Litigants' Attorneys

The Civil Justice Reform Act requires each advisory group to ensure that its recommendations include significant contributions by the court, litigants, and the litigants' attorneys.

The Advisory Group's recommendations would require the court to adopt and implement rules with respect to the handling of dispositive and nondispositive motions, to set time limits for trials, to hold effective, dedicated settlement conferences and to hold them earlier, to review how criminal pretrial matters are handled, and to adopt standardized pretrial orders and summary judgment procedures.

The Advisory Group's recommendations would require litigants to cooperate in the disclosure of certain information at the beginning of civil litigation and to participate in settlement conferences and alternative dispute resolution procedures.

The recommendations of the Advisory Group would require litigants attorneys to implement and to adapt to a number of new practices and procedures. They would be required to participate in new methods for resolution of disputes, to adapt to new procedures for and limitations on discovery, to comply with time limits for trials, and to participate in earlier settlement conferences.

C. How the Recommendations Comply with § 473

1. Principles and Guidelines of Litigation Management and Cost and Delay Reduction

Pilot district plans must include the six principles of litigation management described in § 473(a) of the Civil Justice Reform Act.

a. Systematic, Differential Treatment of Civil Cases that Tailors the Level of Individualized and Case Specific Management to Such Criteria as Case Complexity, the Amount of Time Reasonably Needed to Prepare the Case for Trial, and the Judicial and Other Resources Required and Available for the Preparation and Disposition of the Case (28 U.S.C. § 473(a)(1))

As described above, the district already has in place a program of systematic, differential treatment of civil cases. The program is working satisfactorily.

b. Early and Ongoing Control of the Pretrial Process Through Involvement of a Judicial Officer in Assessing and Planning the Progress of a Case, 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 There is Good Cause for Delay (28 U.S.C. § 473(a)(2))

Pursuant to § 473(a)(2), the Advisory Group analyzed the judges existing procedures for early and ongoing control of the pretrial process through involvement in assessing and planning the progress of the case, setting early, firm trial dates within 18 months after the filing of the complaint, controlling the extent of discovery and setting deadlines for filing motions and a time framework for their disposition. The judges in this district currently conduct the pretrial process as described in § 473(a)(2), except to the extent that the criminal docket precludes realistically setting civil cases for trial within 18 months. The Advisory Group has recommended implementation of procedures which should reduce problems related to the criminal docket and increase the likelihood that civil cases can be set for trial within 18 months.

Ordinarily the judges do not set a time framework for the disposition of motions, and the Advisory Group does not recommend this because the nature and substance of pretrial motions are not necessarily predictable at the commencement of the action and vary widely from case to case. However, pretrial motions sometimes (some would say frequently) remain under advisement without decision for too long, without explanation or apparent reason. The Advisory Group has recommended that, where appropriate, the judges schedule motions for determination (including, if appropriate, oral

argument) and render a decision from the bench, with the attorneys present either in person or by telephone. The reasons for the decision can be explained on the record, and a "minute order" or similar procedure followed for recording disposition on the docket. The Advisory Group believes that written, scholarly decisions are unnecessary on many motions which currently remain under advisement too long. Frequently, the parties are better served by a prompt decision rather than a scholarly opinion.

c. *For All Cases that the Court 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 Explores the Possibility of Settlement, Identifies or Formulates the Principal Issues in Contention, and Prepares a Discovery Schedule and Plan (28 U.S.C. § 473(a)(3))*

Insofar as judicial resources permit, the judges in this district already monitor complex and other appropriate cases through discovery-case management conferences. New procedures for discovery-case management are unnecessary. The Advisory Group has recommended new procedures designed to encourage early settlement and resolution of civil cases.

d. *Encouragement of Cost-Effective Discovery Through Voluntary Exchange of Information Among Litigants and Their Attorneys and Through the Use of Cooperative Discovery Devices (28 U.S.C. § 473(a)(4))*

The Advisory Group has recommended changes in the local rules intended to encourage the "voluntary" exchange of information and the use of cooperative discovery devices.

e. *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 (28 U.S.C. § 473(a)(5))*

Local Rule 6.02 already mandates this procedure. Generally, this rule has been effective in reducing cost and delay by encouraging parties to resolve discovery disputes informally.

f. Authorization to Refer Appropriate Cases to Alternative Dispute Resolution Programs that Have Been Designated for Use in a District Court or that the Court May Make Available (28 U.S.C. § 473(a)(6))

The Advisory Group has recommended the adoption of a rule requiring a settlement conference within 180 days of commencement of the action, which could include early neutral evaluation or case mediation.

2. Litigation Management and Cost and Delay Reduction Techniques

The Civil Justice Reform Act requires pilot districts to consider the six techniques of cost and delay reduction described in § 473(b).

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 (28 U.S.C. § 473(b)(1))

The Advisory Group has carefully considered this provision and rejects it unanimously. The Advisory Group believes that adoption of this requirement will not reduce cost or delay in the district. The Advisory Group has recommended other measures related to discovery which it believes will be effective in reducing cost and delay.

b. Requirement that Each Party Be Represented at Each Pretrial Conference by an Attorney Who has Authority to Bind that Party Regarding All Matters Previously Identified by the Court for Discussion at the Conference and All Reasonably Related Matters (28 U.S.C. § 473(b)(2))

This is presently the practice in this district. Attorneys appear at pretrial conferences with authority to bind their parties regarding matters previously identified by the court for discussion.

c. *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 (28 U.S.C. § 473(b)(3))*

This suggested technique appears to be based upon a fear that attorneys do not confer with their clients before making requests for extensions of deadlines or for postponements. This is not a problem in this district and adoption of this technique will not reduce cost and delay.

d. *Neutral Evaluation Program for the Presentation of the Legal and Factual Basis to a Neutral Court Representative Selected by the Court at a Nonbinding Conference Conducted Early in the Litigation (28 U.S.C. § 473(b)(4))*

The Advisory Group has recommended the adoption of a rule requiring a settlement conference within 180 days of commencement of the action, which could include early neutral evaluation or case mediation.

e. *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 (28 U.S.C. § 473(b)(5))*

This is the current practice in the district. It is noted that in certain matters, the U.S. Attorney's Office and other governmental agencies do not have the authority to bind their clients.

f. *Other Features Considered Appropriate (28 U.S.C. § 473(b)(6))*

The Advisory Group has considered other techniques for reduction of cost and delay. Those adopted by the Advisory Group are included in its recommendations and the proposed Civil Justice Delay and Expense Reduction Plan.

D. Recommendation for Development of a Cost and Delay Reduction Plan

The Advisory Group presents this report to the judges of the Eastern District of Wisconsin for their consideration in formulating a Civil Justice

Expense and Delay Reduction Plan. The proposed plan is set forth in Appendix H of this report.

Anticipating that widespread and effective public dissemination of any plan adopted by the court will be essential to its successful implementation, the Advisory Group offers its assistance to the court in publicizing the court's plan.

Because the district is a pilot district and must file its plan by the end of 1991 and because 28 U.S.C. § 477(a) contemplates that the Judicial Conference will base its model plans on plans submitted within the same deadline, the Advisory Group regards as inapplicable to this district the provision of 28 U.S.C. § 472(b)(2) asking for an explanation of the reasons why the Advisory Group recommends that the court develop a plan in accordance with these recommendations.

Respectfully Submitted,

Civil Justice Reform Act
Advisory Group for the Eastern
District of Wisconsin

APPENDICES

APPENDIX A

MEMBERSHIP OF THE ADVISORY GROUP

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Mr. Conway is a practicing attorney admitted to the Bar in 1970. He is a partner in his firm where his practice emphasizes personal injury, insurance and business litigation. He served as law clerk to Justice Leo Hanley of the Wisconsin Supreme Court and is the author of numerous articles in state bar publications. Mr. Conway has served as a member of the State Board of Directors of the Wisconsin Civil Liberties Union, was chair of the Wisconsin State Bar Committee on Regulations for Lawyer Advertising, was appointed by the governor and the chief justice of Wisconsin to the Wisconsin State Election Board and is a fellow of the American College of Trial Lawyers.

Mr. Francis R. Croak
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Mr. Croak has been a practicing attorney since 1953. He is a partner in the firm of Cook & Franke, S.C. He is a trial lawyer with a varied and extensive civil and criminal litigation practice. He formerly was a member of the Wisconsin Judicial Council and served for five years as first assistant district attorney of Milwaukee County. Mr. Croak is a member of the American Law Institute and is a fellow of the American College of Trial Lawyers.
Mr. John R. Dawson

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Mr. Dawson is an attorney in private practice since 1970 with the Milwaukee firm of Foley & Lardner. His practice experience is litigation, principally in the federal courts, and generally on the defense side of corporate litigation. Mr. Dawson is a director of the Milwaukee Bar Association. He served as chair of the Advisory Group.

Mr. Nathan A. Fishbach
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Mr. Fishbach serves as a Deputy United States Attorney and the Chief of the Civil Division in the United States Attorney's Office for the Eastern District of Wisconsin. Mr. Fishbach serves on this district's Advisory Committee on Practice and Procedure and is the Chairperson of the district's Environmental Crimes Subcommittee. Mr. Fishbach is the Vice President of the Milwaukee Bar Association and will assume the post of President in 1993.

Mr. John E. Fryatt
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Mr. Fryatt is the United States Attorney for the Eastern District of Wisconsin, a position he has held since 1988. Previously, Mr. Fryatt served in the District Attorney's Office for Waukesha County for 17 years, the last five as the District Attorney. Mr. Fryatt is a past president of the Wisconsin District Attorneys Association. Mr. Fryatt serves as a member of the United States Attorney General's Environmental Crimes and Indian Affairs Subcommittees and is the Chairperson of this district's Law Enforcement Coordinating Committee.

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Magistrate Judge Goodstein was appointed to his position in 1979. He is one of two magistrate judges in this federal district. Prior to his appointment, he served as law clerk to Judge Myron L. Gordon, Eastern District of Wisconsin, and was engaged in the private practice of law with an emphasis on civil and criminal litigation. Magistrate Judge Goodstein also serves as Chair of this district's Advisory Committee on Practice and Procedure.

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Ms. Gorence is the Deputy Attorney General of the State of Wisconsin. Previously, she has served as First Assistant United States Attorney and United States Attorney for the Eastern District of Wisconsin. She is currently Secretary of the State Bar of Wisconsin, Chair of its Professionalism Committee, and General Chair of the Seventh Circuit Bar Association's Rules and Practices Committee. She is a member of the Board of Attorneys' Professional Responsibility District 2 Committee. She also has served as law clerk for District Judge Robert Warren.

Professor Jay E. Grenig
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Professor Grenig is a professor of law and the Associate Dean for Academic Affairs at the Marquette University Law School. He is the author of several volumes on federal civil procedure and is a member of the American Law Institute. He is a member of the Board of Governors of the National Academy of Arbitrators, chair of the Labor Relations and Employment Law Section of the Association of American Law Schools, and a director and secretary of the Center for Public Representation. Professor Grenig served as the reporter to the Advisory Group.

Mr. George C. Kaiser
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Mr. Kaiser is one of the lay members of the Advisory Group. He is a CPA and retired managing partner of the Milwaukee office of Arthur Andersen & Co. Mr. Kaiser currently is Chairman of the Board of Hanger Tight Company and for many years has been a leading member of Competitive Wisconsin, Inc., a not-for-profit public interest group of businesspersons and lawyers working with state government to enhance the business climate in Wisconsin. He is formerly a Secretary of Administration for the State of Wisconsin.

Mr. William J. Mulligan
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Mr. Mulligan has been a practicing attorney since 1960. He is a partner in the Milwaukee law firm of Davis & Kuelthau, S.C. His practice emphasizes civil and criminal litigation. Mr. Mulligan served for five years as the assistant United States Attorney and then for four years as the United States Attorney, Eastern District of Wisconsin. He has been a member of the district's Advisory Committee on Practice and Procedure, chair of the Board of Governors of the State Bar of Wisconsin, and President of the National Association of Former United States Attorneys, and member of the Board of Governors of the Bar Association of the Seventh Federal Circuit.

Mr. Sofron B. Nedilsky
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Mr. Nedilsky is the Clerk, United States District Court, Eastern District of Wisconsin. Mr. Nedilsky has been Clerk of the Eastern District since 1981. He was previously appointed as first Director of Judicial Education for the Wisconsin Supreme Court in 1971.

Mr. Stuart Parsons
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Mr. Parsons was admitted to the Bar in 1967 and is a partner in the Milwaukee law firm of Quarles & Brady. A fellow in the American College of Trial Lawyers, he is certified in civil trial advocacy by the National Board of Trial Advocacy. He served as chair of the Rules and Practice Committee of the Seventh Circuit Bar Association and is now a member of that Association's Board of Governors. He is a member of the district's Advisory Committee on Practice and Procedure. He is an adjunct assistant professor of law at Marquette University Law School, teaching complex litigation, and author of "Civil Procedure" in *Annual Survey* of Wisconsin Law (ATS-CLE, 1984-1991).

Ms. Sue Riordan
Director, Corporation Communications
Wisconsin Gas Company
626 East Wisconsin Avenue
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Ms. Riordan is one of the lay members of the Advisory Group. She served as press secretary for Wisconsin Governor Dreyfus and has worked in various public relations and communications capacities in the local broadcasting market. Her present position is director of corporate communications for the Wisconsin Gas Company, the gas utility serving metropolitan Milwaukee.

Ms. Jane C. Schlicht
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Ms. Schlicht is an attorney who has been in private practice since 1983. She is a shareholder with the Milwaukee law firm of Godfrey & Kahn, S.C. Her practice emphasizes civil commercial litigation and her experience is with both plaintiffs and defendants in such litigation.

Ms. Judith Spangler
Law Clerk
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Ms. Spangler has served as a district judge law clerk in this district since 1978. Her present position is senior law clerk to Chief Judge Terence Evans. Ms. Spangler is a member of the district's Advisory Committee on Practice and Procedure and is on the Board of the Individual Rights and Responsibilities Section of the State Bar of Wisconsin.

Mr. Glenn O. Starke
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Mr. Starke was admitted to the Bar in 1950 and since that time has been in private practice with the firm of Andrus, Sceales, Starke & Sawall. His experience specifically is in the areas of intellectual property and intellectual property litigation, almost exclusively in the federal courts. He has served as president of the Bar Association of the Seventh Federal Circuit and is a member of the Board of Governors of that association.

Ms. Jean White
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Ms. White is one of the lay members of the Advisory Group. She is an urban planner and court administrator by training with experience in both the public sector and as a consultant for Arthur Young & Co.

Mr. Daniel P. Wright
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City of Racine
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Racine, Wisconsin 53403
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Mr. Wright is an attorney whose experience is exclusively in the public sector. He was a member of the Air Force Judge Advocate General Corps and has been Deputy City Attorney for the City of Racine, Wisconsin for 15 years. In that capacity, he has defended the city and its employees in Federal civil rights litigation.

APPENDIX B

OPERATING PROCEDURES OF THE ADVISORY GROUP

The Advisory Group consists of attorneys with substantial federal court litigation experience, attorneys and related professionals with substantial experience in federal court administration, attorneys with experience in representing governmental interests in the federal courts, and lay persons with diverse and successful backgrounds useful to the Advisory Group. To the extent the Group did not contain within itself individuals representative of the wide range of interests affected by the Civil Justice Reform Act, effort was made to seek out and solicit views from appropriate representatives of those interests.

The Advisory Group was appointed by then Chief Judge Robert W. Warren. Its first meeting was held on May 21, 1991. Current Chief Judge Terence T. Evans and Judge Thomas Curran were available for consultation and they regularly attended Group meetings.

The Advisory Group met regularly from its creation through the completion of its report and recommended plan to the judges of this district. Meetings were held roughly every two- three weeks. By agreement and effort, most meetings were concluded within two hours with several major exceptions. Principal exceptions were a nine hour session over a two-day period, September 29-30, and several other sessions which lasted for three hours or more. The Group met in combined sessions in excess of 50 hours. As noted below, however, considerably more man hours were devoted to the project through the working sub- groups by which the Advisory Group carried out its task of investigation and discovery and by the necessity of reviewing materials submitted by members and by its sub-groups in advance of each meeting.

Throughout the course of our effort the Advisory Group had access to and utilized materials provided by the Administrative Office of the United States Courts and by the Federal Judicial Center. These materials were thoughtful, invariably helpful, and probably provided at least as much, if not more, information as the Group realistically could assimilate. The Advisory Group also had access to materials provided by independent private organi-

zations such as the Center for Public Resources and individual members of the Group obtained background information and useful data relating to the particular areas of responsibility to which they were assigned.

At the second meeting of the Group, it was organized into five working sub-groups. Although the Group as a whole continued to meet on the schedule described above, these sub-groups met personally and by telephone in between the meetings of the entire Group and actually carried forward the work of the Group through these smaller committees. Each sub-group carried out its responsibility and reported to the Advisory Group as a whole, from which it took instruction for further work.

The five sub-groups into which the Advisory Group was organized were as follows:

Civil Docket Analysis, coordinated by Group member Francis Croak. The responsibility of this group was to analyze the civil docket in the Eastern District of Wisconsin, to attempt to determine the nature and number of cases filed in this district, the trends associated with that data, and to identify also any particular kinds of cases which appeared to impact the system out of proportion to their absolute numbers.

Criminal Docket Analysis, coordinated by Group member Patricia Gorence. The responsibility of this sub-group was to examine the criminal docket in this district, to assess the trends and nature of criminal cases filed and disposed of in this district, and to attempt to assess the impact which the criminal docket, or procedures/legislation affecting that docket, had upon civil litigation in this district.

Costs of Civil Litigation - Sources and Control, coordinated by Group member William Mulligan. The substantial responsibility of this sub-group was to assess whether, and if so to what extent, civil litigation in this district incurred "excessive" cost or entailed "excessive" delay. This group was also charged with the responsibility of investigating the reasons for such "excessive" costs and/or delay, if either was found to exist.

Cost/Delay Reducing Principles and Techniques, coordinated by Group member Stuart Parsons. The focus of this sub- group was to assess and advise the Advisory Group on various methods and techniques by which excessive cost and/or delay might be reduced, emphasizing the principles set out at Section 473(a) of the statute.

Public Education/Liaison, coordinated by Group member Susan Riordan. The responsibility of this sub-group was to fulfill the Group's responsibility and desire to solicit appropriate comment and criticism from the public and to inform and educate the public of the Group's existence and its activity. The formation and purpose of the Advisory Group was announced in a press release on June 11, 1991. The press release was sent to all daily newspapers and bar associations in the district. The major newsletters of the State Bar of Wisconsin and the Milwaukee Bar Association also received press releases. Through Group members who resided in the various locales, local bar associations were encouraged to devote at least one of their periodic meetings to a review of the Civil Justice Reform Act and to the workings of the Advisory Group. Presentations were made to members of the Bar Association of Racine County and to members of the Milwaukee Bar Association. Comments and opinions were solicited from the participants at both meetings. Similar invitations to the bar associations in Kenosha and Green Bay did not lead to such a presentation.

The Advisory Group solicited views from the public generally as well as from the Bar. Responding to our request for comment, the Director of Legal Action of Wisconsin and the Litigation Director of Legal Aid Society of Milwaukee met with the sub-group analyzing civil docket and civil litigation in this district to inform us of the problems and concerns associated with pro se, indigent and civil rights litigation.

The criminal docket sub-group met with six prominent criminal defense attorneys to learn from their point of view how criminal litigation might be made more efficient and might simultaneously be allowed to have a lesser impact upon civil litigation in this district.

The Group solicited the views of the judges and magistrate judges of this district, both informally through discussion with Judges Evans and Curran at our regular meetings, and through a structured survey and interview of each of the judicial officers. That survey was intended to help us understand from the judges' point of view where particular bottlenecks arose in the system, how those bottlenecks might be relieved, and how the principles of cost and delay reduction announced in the Civil Justice Reform Act might best be implemented, if at all, in this district. A copy of the questionnaire which was used as the basis for the interviews of the judges and magistrate judges is included as Appendix C-1.

The Advisory Group solicited the views of litigants and their lawyers who have had experience in civil litigation in this district in recent months. With the consultation and assistance of an expert in survey methodology, Professor Robert Griffin of the Marquette University College of Communication, Journalism & Performing Arts, telephone surveys were conducted of a randomly selected sample of lawyers and litigants who had civil cases pending in the district on January 1, 1990. Government collection and prisoner cases were not included in the survey. Bisbing Research, Inc., a professional market survey organization, conducted the survey. Controls were used to limit to one case the interview of each lawyer in order to prevent undue influence on the survey results. The data was then compiled by computer analysts at Marquette University. The questionnaire used for the survey of attorneys is included as Appendix D-1, a summary of the attorneys' responses is included as Appendix D-2, the questionnaire used for the survey of litigants is included as Appendix E-1, and a summary of the litigants' responses is included as Appendix E-2.

Members of our Group exchanged views periodically with members of our companion group in the Western District of Wisconsin. Members of our Group attended two of the meetings of that group and the agenda and minutes of each group were routinely exchanged. In addition, designees of our Group attended the Federal Judicial Center seminars for pilot districts held on May 16, 1991, in Naples, Florida, and on August 1-2, 1991, in Kansas City, Missouri.

The Advisory Group examined in detail each of the principles which the Act directs each pilot district to incorporate into its recommended plan. The starting point of this process was the education, experience and opinion of members of the Group. Based upon the recommendations and initial observations of members, individual responsibilities for investigating each of the principles involved were assigned and the Group's report, and the recommended plan, reflect the consensus of the Group as to the efficacy of the individual principle or technique, informed by the surveys which the Advisory Group conducted of the judges, litigants and attorneys familiar with the practices and procedures in this district.

APPENDIX C-1

JUDICIAL INTERVIEW QUESTIONS

1. Select the five categories of cases, if any, which cause more delay in your calendar than others?

__ Asbestos
__ Bankruptcy
__ Banking
__ Civil Rights
__ Commerce: ICC Rates, etc.
__ Contract
__ Copyright, Patent, Trademark
__ ERISA
__ Forfeiture and Penalty
__ Fraud, Truth in Lending
__ Labor
__ Land Condemnation, Foreclosure Banks
__ Personal Injury
__ Prisoner
__ Pro Se
__ RICO
__ Securities, Commodities
__ Social Security
__ Student Loan and Veterans
__ Tax
__ Other

2. Do you think civil cases take too long in this District?

3. What, in your opinion, is the most effective tool or process to expedite civil cases?

4. What difficulties have you encountered in moving your civil case docket?

5. Do your obligations with regard to criminal cases impact your civil docket? If so, how? How could it be alleviated?

6. Would discretion to consider the time of entry of a criminal plea as a factor in applying the sentencing guidelines alleviate any delay?

7. What other recommendations or suggestions do you have for addressing the cost or delay of civil cases?

8. Do you believe a frank, informal meeting between the Court and counsel (and perhaps, the parties) at the commencement of a civil action would reduce issues to be tried or encourage early settlement? If so, how would such a meeting best be conducted?

9. Would establishing a designated time period for hearing and resolving in court non-dispositive motions pursuant to Section 6.06 of the Local Rules assist in the resolution of discovery motions?

10. What do you perceive to be the most widespread discovery abuses?

___ (a) Responsiveness to document requests

___ (b) Scheduling or nonattendance at depositions

___ (c) Inappropriate questions or nonresponsive answers at depositions

___ (d) The number of documents requested by parties

___ (e) Nonresponsiveness to interrogatories

___ (f) Other - What?

11. What practices or procedures would improve resolution of discovery disputes? (i.e., use of Magistrate Judges)

12. What practices or procedures would expedite resolution of dispositive motions?

13. Would mandatory oral argument on dispositive motions assist you in deciding dispositive motions?

14. Do you believe that lack of preparation by counsel or shortcomings of counsel are a cause of unnecessary delays, expense or protraction of trial time? Give specific examples you have frequently encountered.

15. Do you believe Rule 11 is an effective tool against abuses? Why or why not?

16. Are there any trends with respect to the types of cases that are before you that are factors in causing expense or delay? What are they?

17. What is the most time-consuming aspect of your docket?

18. Do you believe parties in civil cases generally do not consent to ADR because they benefit from delay?

Yes_____ No_____

19. Would the assignment of additional law clerks assist you with handling matters relating to civil matters? If so, how many additional law clerks would you need?

20. Would the assignment of additional law clerks assist you with handling matters relating to criminal matters? If so, how many additional law clerks would you need?

21. Do you routinely approve amendments to scheduling orders when all counsel have agreed? Do you believe this practice is abused? Do you believe this practice is a cause of unnecessary delays in the disposition of civil matters?

22. Which of the following practices do you believe would reduce cost and/or delay?

___ (1) Systematic, differential treatment of civil cases.

___ (2) Setting early trial dates.

___ (3) Setting firm trial dates.

___ (4) Controlling the extent of discovery, the time for completion of discovery, and ensuing compliance with appropriate requested discovery.

___ (5) Setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.

___ (6) Early settlement conference.

___ (7) Earlier definition and resolution of issues.

___ (8) Limiting the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery.

___ (9) Phasing discovery into two or more stages.

___ (10) Setting deadlines for filing motions and a time framework for their disposition.

___ (11) Voluntary exchange of information among litigants and their attorneys.

___ (12) Authorization to refer appropriate cases to alternative dispute resolution programs.

___ (13) Requiring counsel for each party to a case to jointly present a discovery-case management plan for the case at the initial pretrial conference.

___ (14) Requiring 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;

___ (15) A neutral evaluation conducted early in the litigation;

___ (16) Limiting trial time.

___ (17) Limiting number of lay witnesses.

___ (18) Limiting number of expert witnesses.

___ (19) Limiting time for examination of witnesses.

___ (20) Limiting reading of deposition testimony during trial.

___ (21) Limiting number of trial exhibits.

___ (22) Ruling on admissibility of exhibits during the pretrial conference.

___ (23) Referring cases to Magistrates for pretrial case management.

APPENDIX C-2

SUMMARY OF JUDICIAL INTERVIEWS

In order to aid the Advisory Group in its discussions regarding the causes and extent of delay in the processing of civil cases, a subgroup interviewed the district's six judges and two magistrate judges. A questionnaire was developed and is reproduced in Appendix C-1 of this report. Summaries of the discussions with each judge and magistrate judge were prepared.

It is perhaps indicative of the perceived extent of the problem of civil delay in the district that, when asked whether they thought civil cases take too long, five of the judges and magistrate judges said "yes" and three said "no." The increasing number and complexity of criminal cases, however, was unanimously seen as a problem in causing civil cases to be pushed to the "back burner" in terms of judicial attention. The trend seems to be toward more drug-related cases, more petty claims by prisoners, and more multi-defendant cases. The judges urged immediate and perhaps radical measures to curb the influx of criminal cases into the system--they mentioned cutting back prosecuting personnel or agencies and diverting cases back to the state courts. One judge mentioned that he was able to try only three civil cases last year because "criminal takes precedence."

The most annoying, and often the longest, phase in completing a criminal case is the sentencing process. The judges indicated that, because of the Uniform Sentencing Guidelines, simply reading a presentence report takes up to 45 minutes and the sentencing hearing can take even longer. They strongly recommended that the Sentencing Guidelines be made advisory rather than mandatory and that appellate review of these decisions be limited. One magistrate judge urged that the Sentencing Guidelines be eliminated altogether for misdemeanors.

When asked which categories of cases cause more delay than others in their calendars, all of the judges and magistrate judges mentioned civil rights cases, especially prisoner *pro se* cases. Other categories mentioned, although not by all, included copyright and patent cases, social security cases, and personal injury cases, especially when they are class actions. The judges also decried the attachment of RICO complaints to so many "normal" fraud cases.

When asked overall what the most time-consuming aspects of their dockets were, the judges basically agreed: (1) criminal trials, especially post-conviction *pro se* (among the four judges and two magistrate judges who hear criminal cases); (2) criminal sentencing; and (3) reading, reviewing, researching, and writing opinions, especially on dispositive motions.

Several judges expressed frustration with the lack of time available to them for preparing decisions on dispositive motions which seem to have to be justified in every particular. They suggested procedural changes which would allow them to limit the number of pages of the briefs submitted and/or getting the parties to agree to a stipulated set of facts, either as part of the motion packet or through an informal hearing. To address the backlog of motions, one judge is deciding them orally from the bench.

The judges and magistrate judges were asked to comment on the general preparedness of attorneys practicing civil law before them. They agreed that, except for a few, lawyers are prepared and perhaps even overzealous in their use of tools available to them. The number of documents requested and the nonresponsiveness to interrogatories were cited by all the judges as being major problems. All of the judges are interested in finding ways to counteract the overuse of discovery. Although there was agreement that discovery motions are a prime source of delay in civil litigation, the judges tend to handle these and other non-dispositive motions informally, by phone or by brief, and out of court, feeling that this saves both time and money.

The final question on the questionnaire listed 23 proposals for reducing cost and delay in civil cases. The judges were asked to select those which they thought would help. They agreed unanimous in setting firm and certain trial dates and in judicial intervention to move cases along. Most judges like to get the attorneys in as early as possible for a scheduling conference, although in civil cases it cannot be before the opposing attorney has been served and the issues joined, a time frame of 90-120 days after filing. Most judges set a trial date at the scheduling conference and issue a scheduling order to the attorneys with all the agreed upon dates. One judge sets four trial dates. On the first date, that case will be fourth on the list and it must be ready to go in the event that the three cases scheduled before it are settled. The case moves up the list in successive weeks. Another judge felt it is better to set a firm and certain trial date after the discovery has ended. One judge has his clerk set the trial date first--about 12 months out--and then works in other dates backwards from that.

There was also agreement among the judges that limiting trial time would help in disposing of civil cases in a timely fashion. Six of the eight thought that judges should have the authority to limit the number of expert witnesses used in a trial. Six judges also thought that civil cases should receive systematic, differential treatment, although several indicated that the district is already doing this. Six said that procedures or rules should be developed to control the extent of discovery, the time for completion of discovery, and assuring compliance with appropriate requested discovery. Seven judges thought there should be more voluntary exchange of information among litigants and their attorneys.

APPENDIX D-1

SURVEY QUESTIONS FOR ATTORNEYS

The following questions apply to the case of _____, Civil Action Number _____, in the U.S. District Court for the Eastern District of Wisconsin, in which you are listed as one of the attorneys representing one of the parties.

1. In this case, whom did you represent? The plaintiff? The defendant? A third-party defendant?

    1) Plaintiff 1.____
    2) Defendant
    3) Third Party Defendant
    4) Other

2. What is the status of the case? Is it still pending, on appeal, settled, or closed?

    1) Still pending [GO to Q3a.]
    2) On appeal [GO to Q3a.] 2.____
    3) Settled [GO to Q3b.]
    4) Closed [IF R SAYS CLOSED]:

    2a.) Was a judgment reached? 3.____

        1) No. [GO to Q3b.]
        2) Yes. --- [IF R SAYS YES:]

    2b.) Did your client win? 4.____

        1) No. [GO to Q3b.]
        2) Yes. [GO to Q3b.]

3a. In your judgment, is the time that the case has been pending much too long, slightly too long, about right, slightly too short, or much too short?

[MARK RESPONSES UNDER Q3b.]

3b. In your judgment, was the length of time that it took to resolve the case, from filing to final disposition, much too long, slightly too long, about right, slightly too short, or much too short?

    1) Much too long. [GO to Q4.] 5.____
    2) Slightly too long. [GO to Q4.]
    3) About right. [GO to Q5.]
    4) Slightly too short. [GO to Q5.]
    5) Much too short. [GO to Q5.]

4. The following are some factors that can contribute to delays in the court system. Not all of them, and perhaps not even any of them, might have produced a delay in your case. I'll name a factor that could cause a delay, and you tell me whether you think it substantially delayed your case, slightly delayed it, or did not delay your case.

a) Excessive involvement by the Court 6.____

1. Substantially delayed
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

b) Inadequate case management by the Court 7.____

1. Substantially delayed
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

c) Dilatory actions by counsel 8.____

1. Substantially delayed
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

d) Dilatory actions by the litigants 9.____

1. Substantially delayed
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

e) Delays caused by counsel 10.____

1. Substantially delayed
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

f) Court's failure to rule promptly on motion(s) to dismiss or in regard to pleadings

1. Substantially delayed 11.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

g) Court's failure to rule promptly on discovery or other non-dispositive motions

1. Substantially delayed 12.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

h) Court's failure to rule promptly on motions for partial or complete summary judgment

1. Substantially delayed 13.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

i) Court's postponement of trial because of trial of a criminal case

1. Substantially delayed 14.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

j) Court's postponement of trial because of trial of a civil case

1. Substantially delayed 15.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

k) Court's failure to promptly rule on preliminary injunctive relief

1. Substantially delayed 16.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

l) After court trial, Court's failure to promptly decide a case or enter findings of fact, conclusions of law, etc.

1. Substantially delayed 17.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

m) After jury trial, Court's failure to promptly rule on post-trial motions

1. Substantially delayed 18.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

n) Backlog of cases on Court's calendar 19.____

1. Substantially delayed
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

5. If delay is a problem in the Federal Court in Milwaukee for disposing of civil cases, what suggestions or comments do you have for reducing those delays.

_____ 20.____

6. Were the fees and costs incurred in this case by your client:

1) Much too high [GO to Q7] 21.____
2) Slightly too high [GO to Q7]
3) About right [GO to Q8]
4) Slightly too low [GO to Q8]
5) Much too low [GO to Q8]

7. The following are some factors that can contribute to higher fees and costs incurred in a case. Not all of them, and perhaps not even any of them, might have produced higher fees and costs in your court case. I'll name a factor, and you tell me whether you think it substantially increased fees and costs in your case, moderately increased them, slightly increased them, or had no effect on fees and costs in your court case.

a) Pleading disputes (motions to dismiss etc.)

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 22.____
4. No effect

b) Inadequate time for discovery 23.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

c) Too much time for discovery 24.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

d) Excessive discovery 25.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

e) Too many depositions 26.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

f) Excessively too long depositions 27.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

g) Burdensome document production 28.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

h) Burdensome written interrogatories 29.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

i) Discovery problems with other party or non-party

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 30.____
4. No effect

j) Court's practice on discovery disputes 31.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

k) Preparing/responding to preliminary injunction application

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 32.____
4. No effect

l) Preparing/responding to summary judgment motion

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 33.____
4. No effect

m) Motion practice including briefing requirements

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 34.____
4. No effect

n) Complying with Court's pretrial order 35.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

o) Lack of early settlement negotiations 36.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

p) Use of alternative settlement techniques (e.g. mediation, mini-trial)

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 37.____
4. No effect

q) Multiple trial settings for case 38.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

r) Postponement of trial 39.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

s) Postponement of trial shortly before trial date

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 40.____
4. No effect

t) Attorney's fees 41.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

u) Consultant/expert witness fees 42.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

v) Court reporter and transcript fees 43.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

w) Length of trial 44.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

[The following Q8 should only be asked if R (1) answered Q3a or 3b: 1. - much too long or 2. - slightly too long or (2) answered Q6: 1. - much too high or 2. - slightly too high.]

8. To what extent, if any, will/ would each of the following techniques have reduced cost or delay:

a) Treating categories of cases differently 45.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

b) Setting earlier trial dates 46.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

c) Setting firmer trial dates 47.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

d) Making and enforcing reasonable and cost-effective discovery plan

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 48.____
4. no effect

e) An early settlement conference 49.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

f) Earlier definition and resolution of issues 50.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

g) Limiting discovery 51.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

h) Voluntary discovery (exchange of information)

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 52.____
4. no effect

i) Alternative dispute resolution (e.g. mediation, mini-trial)

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 53.____
4. no effect

j) Requiring all parties to attend a settlement conference

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 54.____
4. no effect

k) Requiring the parties to sign requests for extensions of deadlines or postponements of trial

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 55.____
4. no effect

l) A neutral evaluation at the beginning of the case

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 56.____
4. no effect

m) Limiting the amount of trial time 57.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

n) Limiting the number of lay witnesses 58.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

o) Limiting the number of expert witnesses 59.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

p) Limiting the length of examination of witnesses 60.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

q) Limiting the reading of deposition testimony during trial

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 61.____
4. no effect

r) Limiting the number of trial exhibits 62.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

s) Having the Court rule on the admissibility of exhibits during the pretrial conference

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 63.____
4. no effect

t) Referring cases to magistrate judges for pretrial case management

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 64.____
4. no effect

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APPENDIX D-2

SUMMARY OF ATTORNEY ANSWERS

We have received the results of the telephone survey of attorneys from the Marquette University Computer Service.

The telephone survey was conducted of a randomly selected sample of the approximately 1,200 civil cases which were pending in the United States District Court for the Eastern District of Wisconsin as of January 1, 1990, excluding prisoner and government collection cases. Interviews of attorneys for the plaintiff, for the defense, and for third parties in these cases were conducted by Bisbing Research Inc. and the data was compiled by the Marquette University Computer Service. Professor Robert Griffin has advised because of the random selection, sample size, and response rate that the results of the survey are 95% accurate and the margin of error on responses based on the entire sample of 353 (from a population of about 2,400) would be ±5%. Analysis based on only a part of this sample would have a somewhat larger margin of error, as will be indicated.

By way of background, attorney responses were approximately 52% plaintiffs, 46% defendants and 2% third party defendants or other. Of the civil cases surveyed which were pending on January 1, 1990: 29.2% are still pending, 5.4% are on appeal, 41.9% were settled and 23.5% were closed (judgment, dismissal, etc.).

With respect to the attorneys' assessment of the time duration to resolution:

Too long	38.5%
About right	60.6%
Too short	0.9%

About 46.7% of plaintiffs' attorneys believed that the time to resolution was too long, as compared to 29% of defendants' attorneys. (This difference is larger than what sampling error would account for.)

With respect to the attorneys' assessment of the fees and costs incurred by their clients, the responses were:

Too high	18.7%
About right	79.5%
Too low	1.8%

Attorneys (n=62) who said fees and costs were too high were asked to indicate what led to this increase. The factors most frequently cited by attorneys for increasing fees and costs were:

Preparing/responding to summary judgment motion	47.5%
Burdensome document production	46.8%
Discovery problems with other party or non party	45.9%
Lack of early settlement negotiations	45.8%
Attorney fees	44.8%
Postponement of trial	44.6%
Pleading disputes	43.5%
Multiple trial settings for case	42.9%
Excessive discovery	41.0%
Too many depositions	37.7%
Court reporter and transcript fees	37.3%
Motion practice including brief requirement	36.1%
Burdensome written interrogatories	34.4%
Too much time for discovery	33.3%
Postponement of trial shortly before date	32.1%
Consultant/expert witness fees	29.3%
Excessively long depositions	27.4%
Complying with court pretrial order	25.0%
Court practice on discovery disputes	22.0%

(Margin of error at the 95% level of confidence is ±10.8%.)

Attorneys (n=136) who said the case took too long to resolve were asked the reasons. The reasons most frequently cited for delay were:

Backlog of cases on Court calendar	53.7%
Court's failure to promptly rule on partial/complete summary judgment	46.7%
Court's failure to promptly rule on motion to dismiss	46.3%
Inadequate case management by Court	41.2%
Court postponed case for criminal case	39.2%[1]
Delays caused by counsel	35.0%
Dilatory actions by counsel	29.9%
Court's failure to rule promptly on non dispositive motions	19.7%
Dilatory actions by litigants	18.2%

(Margin of error at the 95% level of confidence is ±7.1%.)

Techniques which would reduce fees and delays which attorneys frequently responded to:

Earlier definition/resolution of issues	60.4%
Setting firmer trial dates	59.2%
Early settlement conference	58.1%
Neutral evaluation at beginning of case	54.2%
Setting earlier trial dates	53.6%
Enforce reasonable/cost effective discovery plan	53.6%
Magistrate judge pretrial case management	53.0%
Requiring all parties at settlement conference	52.9%
Treating categories of cases differently	46.8%

[1]In addition, court postponement for a civil case was responded to by 8.5%.

Alternative dispute resolution	43.4%
Limiting discovery	37.9%
Court ruling on admissibility of exhibits at pretrial conference	37.8%
Voluntary discovery (information exchange)	34.2%
Limiting the number of expert witnesses	30.1%
Limiting the amount of trial time	25.2%
Limiting length of examination of witnesses	22.4%

(Margin of error at 95% level of confidence is ±6.8%.)

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APPENDIX E-1

SURVEY QUESTIONS FOR LITIGANTS

The following questions apply to the case of _____, Civil Action Number _____, in the U.S. District Court for the Eastern District of Wisconsin, in which you or your company/organization are listed as one of the parties.

1. In this case, are or were you a plaintiff, defendant or third party defendant?:

   1) Plaintiff
   2) Defendant — 1.____
   3) Third Party Defendant
   4) Other

2. What is the status of the case? Is it still pending, on appeal, settled, or closed?

   1) Still pending [GO to Q3a.]
   2) On appeal [GO to Q3a.] — 2.____
   3) Settled [GO to Q3b.]
   4) Closed [IF R SAYS CLOSED]:

      2a.) Was a judgment reached? — 3.____

         1) No. [GO to Q3b.]
         2) Yes. --- [IF R SAYS YES:]

      2b.) Did you win? — 4.____

         1) No. [GO to Q3b.]
         2) Yes. [GO to Q3b.]

3a. In your judgment, is the time that the case has been pending much too long, slightly too long, about right, slightly too short, or much too short?

[MARK RESPONSES UNDER Q3b.]

3b. In your judgment, was the length of time that it took to resolve the case, from filing to final disposition, much too long, slightly too long, about right, slightly too short, or much too short?

   1) Much too long. [GO to Q4.]
   2) Slightly too long. [GO to Q4.] — 5.____
   3) About right. [GO to Q5.]
   4) Slightly too short. [GO to Q5.]
   5) Much too short. [GO to Q5.]

4. If the case actually has taken/took longer than you believe/believed reasonable, to what extent, if any, did each of the following factors contribute to the delay:

a) Excessive involvement by the Court 6.____

1. Substantially delayed
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

b) Insufficient involvement by the Court 7.____

1. Substantially delayed
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

c) Actions by counsel to delay the case 8.____

1. Substantially delayed
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

d) Actions by one or more of the parties to delay the case

1. Substantially delayed 9.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

e) The Judge's failure to rule promptly on motions to dismiss

1. Substantially delayed 10.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

f) The Judge's failure to rule promptly on discovery motions

1. Substantially delayed 11.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

g) The Judge's failure to rule promptly on motions for summary judgment

1. Substantially delayed 12.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

h) The Judge's postponement of the trial because of the trial of a criminal case

1. Substantially delayed 13.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

i) The Judge's postponement of the trial because of the trial of a civil case

1. Substantially delayed 14.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

j) The Judge's failure to promptly rule on preliminary injunctive relief

1. Substantially delayed 15.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

k) After a trial to a judge without a jury, the judge's failure to promptly decide the case

1. Substantially delayed 16.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

l) After a jury trial, the Judge's failure to promptly rule on motions filed after the trial

1. Substantially delayed 17.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

m) The backlog of cases on the Judge's calendar

1. Substantially delayed 18.____
2. Slightly delayed
3. Did not delay
4. Don't know [DON'T READ.]

5. If delay is a problem in the Federal Court in Milwaukee for disposing of civil cases, what suggestions or comments do you have for reducing those delays.

_____ 19.____

6. Were the fees and costs incurred in this case by you:

1) Much too high [GO to Q7] 20.____
2) Slightly too high [GO to Q7]
3) About right [GO to Q8]
4) Slightly too low [GO to Q8]
5) Much too low [GO to Q8]

7. The following are some factors that can contribute to higher fees and costs incurred in a case. Not all of them, and perhaps not even any of them, might have produced higher fees and costs in your court case. I'll name a factor, and you tell me whether you think it substantially increased fees and costs in your case, moderately increased them, slightly increased them, or had no effect on fees and costs in your court case.

a) Pleading disputes 21.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

b) Too much discovery 22.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

c) Too many depositions 23.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

d) Burdensome production of documents 24.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

e) Preparing or responding to a preliminary injunction application

25.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

f) Preparing or responding to a summary judgment motion

26.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

g) Complying with the Court's pretrial order 27.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

h) Lack of early settlement negotiations 28.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

i) The use of alternative settlement techniques (for example, mediation, mini-trial)

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 29.____
4. No effect

j) The scheduling of the trial to begin on a number of different dates

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 30.____
4. No effect

k) The postponement of the trial 31.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

l) Postponement of the trial shortly before the trial date

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 32.____
4. No effect

m) The amount of attorney's fees 33.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

n) The amount of consultant and expert witness fees

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased 34.____
4. No effect

o) The amount of fees for transcripts 35.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

p) The length of the trial 36.____

1. Substantially increased fees and costs
2. Moderately increased
3. Slightly increased
4. No effect

[The following Q8 should only be asked if R (1) answered Q3a or 3b: 1. - much too long or 2. - slightly too long or (2) answered Q6: 1. - much too high or 2. - slightly too high.]

8. To what extent, if any, would each of the following techniques have reduced cost or delay:

a) Treating different types of cases differently

1. substantially reduce cost or delay
2. moderately reduce 37.____
3. slightly reduce
4. no effect

b) Setting earlier trial dates 38.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

c) Not changing trial dates 39.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

d) An early settlement conference 40.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

e) Limiting discovery 41.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

f) The use of alternative dispute resolution (e.g. mediation, mini-trial)

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 42.____
4. no effect

g) Requiring the parties to attend a settlement conference

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 43.____
4. no effect

h) Requiring a party to sign any request for any delay of deadlines or the trial

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce 44.____
4. no effect

i) Limiting the amount of trial time 45.____

1. substantially reduce cost or delay
2. moderately reduce
3. slightly reduce
4. no effect

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APPENDIX E-2

SUMMARY OF LITIGANT ANSWERS

The following information is now available on the results of the litigant survey.

Parties surveyed:

Plaintiffs	49.3%
Defendants	47.8%
Third party defendant or other	2.9%

Case status:

Still pending	31.6%
On appeal	6.6%
Settled	37.5%
Closed	24.3%

Assessment of time to resolution:

	All	Plaintiffs	Defendants
Too long	52.5%	62.7%	41.5%
About right	47.1%	35.8%	58.5%
Too short	.7%	1.5%	

Factors most frequently cited for delay:

Dilatory actions by counsel	63.4%
Backlog on judge's calendar	59.2%
Dilatory actions by litigants	58.6%
Insufficient involvement by Court	42.3%
Judge's delay on summary judgment motion	40.6%
Judge's delay on dismissal motion	40.0%
Excess involvement by Court	33.8%
Judge's delay on discovery motion	32.4%
Postponement for criminal case	30.0%

Assessment of fees and costs incurred:

	All	Plaintiffs	Defendants
Too high	41.7%	41.4%	41.4%
About right	57.5%		
Too low	.8%		

Most frequently cited factors for increasing costs:

Amount of attorney fees	89.8%
Burdensome production of documents	79.2%
Lack of early settlement negotiations	78.7%
Too much discovery	70.2%
Too many depositions	63.0%
Fees for transcripts	61.2%
Pleading disputes	54.3%
Prepare/respond summary judgment motion	52.2%
Postponement of trial	50.0%
Consultant/expert witness fees	50.0%
Multiple trial dates	47.9%
Postponement shortly before trial	37.0%
Alternative settlement techniques	36.2%
Prepare/respond to prelimin. injunc.	35.6%
Complying with court pretrial order	33.3%

Techniques most frequently cited to reduce cost and delay:

Alternative dispute resolution	79.2%
Require party attend settlement conference	78.3%
Early settlement conference	76.8%
Setting earlier trial dates	73.2%
Not changing trial dates	68.3%
Treat different cases differently	67.1%
Limiting discovery	65.8%
Party sign delay request	61.4%
Limiting amount of trial time	51.2%

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APPENDIX F

STATISTICAL SUMMARY OF DISTRICT DOCKETS

Chart 4 shows the number of civil trials completed and the percentage of all trials accounted for by civil cases during the last six years.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY86-91

Eastern District of Wisconsin

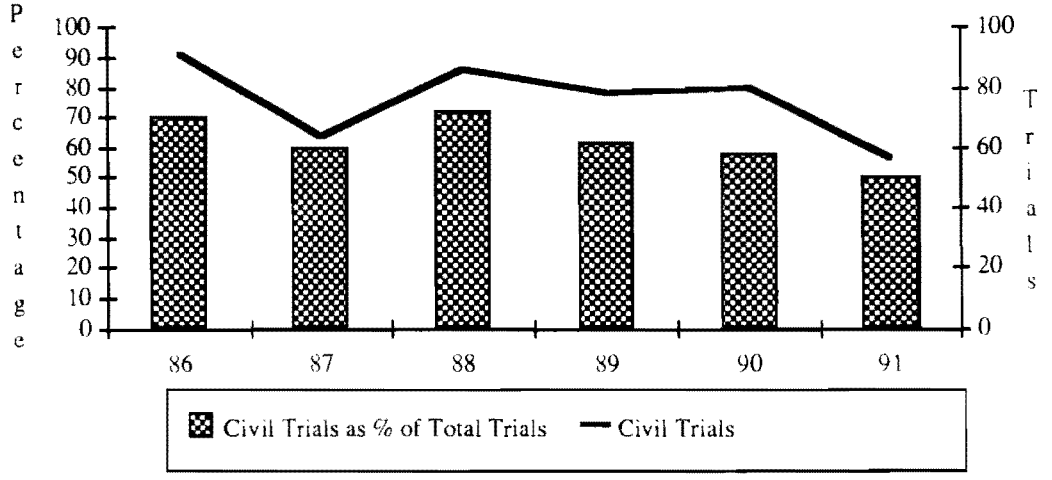
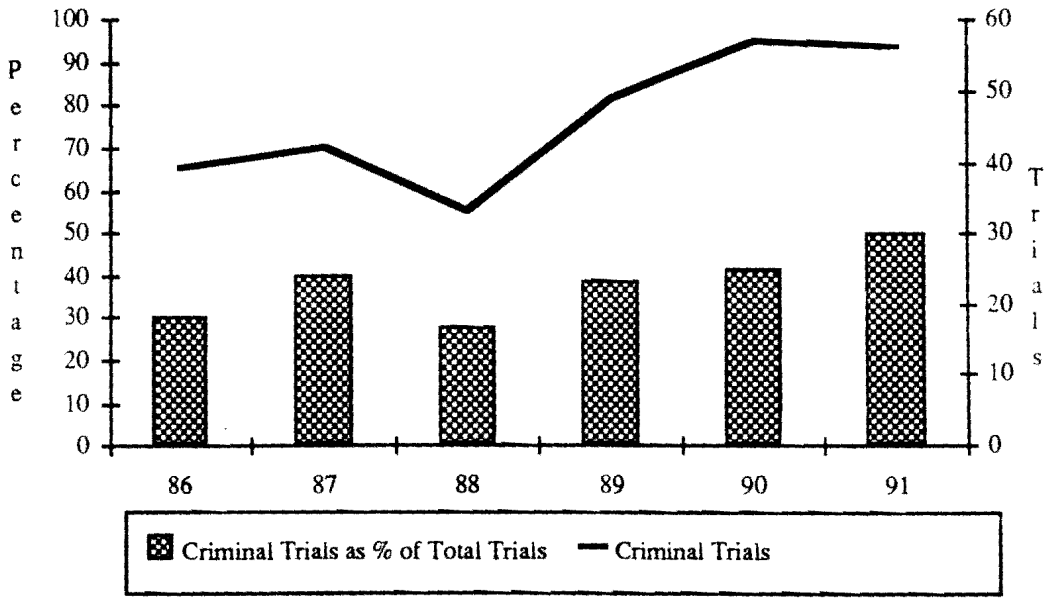


Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY86-91

Eastern District of Wisconsin



U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

WISCONSIN EASTERN

			TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1991	1990	1989	1988	1987	1986		
OVERALL WORKLOAD STATISTICS	Filings*		1,545	1,720	1,744	1,556	1,689	1,586		
	Terminations		1,544	1,676	1,622	1,506	1,693	1,812		
	Pending		1,517	1,542	1,526	1,404	1,354	1,357		
	Percent Change In Total Filings Current Year	Over Last Year		-10.2					75	6
		Over Earlier Years			-11.4	-.7	-8.5	-2.6	26	3
	Number of Judgeships		4	4	4	4	4	4		
	Vacant Judgeship Months		.0	.0	.0	.0	8.9	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	386	430	436	389	422	397	38	4
		Civil	330	369	390	355	393	362	37	5
		Criminal Felony	56	61	46	34	29	35	33	2
	Pending Cases		379	386	382	351	339	339	47	3
	Weighted Filings		425	421	432	395	385	404	19	4
	Terminations		386	419	406	377	423	453	33	3
	Trials Completed		27	34	31	29	26	33	60	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.8	5.3	5.0	4.9	5.6	4.1	49	4
		Civil	9	7	8	10	11	10	34	3
	From Issue to Trial (Civil Only)		19	20	19	22	18	19	60	6
OTHER	Number (and %) of Civil Cases Over 3 Years Old		105 8.0	82 6.0	70 5.0	57 4.4	84 6.6	95 7.5	54	3
	Average Number of Felony Defendants Filed per Case		1.7	1.5	1.7	1.6	1.8	1.6		
	Jurors	Avg. Present for Jury Selection	41.24	40.59	36.90	29.43	29.53	34.79	73	6
		Percent Not Selected or Challenged	25.9	24.1	26.6	20.0	22.9	29.7	34	2

FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS SHOWN BELOW -- OPEN FOLDOUT AT BACK COVER

1991 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1321	33	23	310	89	90	118	223	107	49	180	1	98
Criminal*	224	1	4	15	5	12	12	44	3	93	7	11	17

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.

APPENDIX G

LOCAL RULES FOR THE EASTERN DISTRICT OF WISCONSIN

TABLE OF CONTENTS

RULE 1

APPLICATION - TERM OF COURT

Section 1.01 - Application. These local rules apply to the procedure in all civil and criminal cases, except where specifically limited.

Section 1.02 - Term of Court. The Court shall be in continuous session.

RULE 2

ATTORNEYS

Section 2.01 - Manner of Appearance. All parties to actions filed in or removed to this court must appear either *pro se* or by an attorney admitted to practice in this court.

Section 2.02 - Admission to Practice - Eligibility. Any licensed attorney in good standing before any United States court, the highest court of any State, or the District of Columbia is eligible for admission to practice in this court.

Section 2.03 - Admission to Practice - Procedure. An eligible attorney who seeks admission to general practice in this court or for purposes of a particular case must:

(a) Apply by mail or in person for admission on a form to be prescribed by the clerk.

(b)(1) By Mail. Present to the clerk (1) a certificate of good standing from any United States court, the highest court of any State, or the District of Columbia or (2) the affidavit or sworn statement of an attorney admitted to general practice in this court that the applicant is an attorney in good standing in one of said courts.

(b)(2) In Person. Present to the clerk either the documents required for admission by mail described in (b)(1) or the oral attestation of a member of the bar of this court.

(c) File with the clerk the following oath subscribed and sworn to before any person authorized to administer oaths:

> I do solemnly swear that to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will demean myself as an attorney and counselor of the United States District Court for the Eastern District of Wisconsin uprightly and according to law.

Thereupon, after payment of the prescribed fee to the clerk of court, the applicant shall be admitted to practice before this court by order of the clerk.

(d) At the special request of the applicant and upon motion of a member of this Court and after payment of the prescribed fee, an eligible attorney may also be admitted ceremonially before a judge or magistrate judge. The judge or magistrate judge may

permit an eligible attorney to proceed *pro hac vice* in a particular matter without payment of the prescribed fee.

Section 2.04 - Local Counsel. At any time, upon its own motion, the court may require that a nonresident attorney obtain local counsel to assist in the conduct of the case.

Section 2.05 - Disbarment and Discipline. Upon order of the court for cause, or upon learning that a member of its bar has been disbarred or suspended from practice for cause, other than for the non-payment of dues, by the highest court of any state or the District of Columbia in which the attorney is licensed, the court shall suspend said member from practice before this court. Said attorney shall thereupon be afforded a hearing as to reinstatement within thirty (30) days from the date of the mailing of a notice to him of his suspension and of the provisions of this rule.

RULE 3

SECURITY FOR COSTS

Section 3.01 - When Required. In addition to any security required by law, the court, at any time upon good cause shown, may order original or additional security for costs to be given by any party.

Section 3.02 - Forms of Security. Security for costs shall consist of a cash deposit or a bond, with surety, in the sum of $250.00 unless otherwise ordered, conditioned to secure the payment of costs which the posting party may ultimately be ordered to pay to any party. A corporation authorized by the Secretary of the Treasury of the United States shall be accepted as surety on bonds. An individual resident of the district who owns real or personal property within the district, the unencumbered value of which is equal to the amount of the bond, may be accepted by the court as surety upon a bond. No member of the bar or officer of this court shall be accepted as surety upon any bond or similar undertaking. Any party may raise objections to the form, amount or sufficiency of security for costs.

The foregoing shall not apply to any conditions of release involving a cash deposit, bond or any other undertaking in criminal cases. The judicial officer in a criminal case shall determine what conditions of release are appropriate, including the amount, type and nature of surety acceptable to the court.

Section 3.03 - Execution upon Surety. By becoming surety upon any bond given pursuant to this rule, the surety shall be deemed (1) to have waived all objection to liability as surety based upon grounds of lack of personal jurisdiction or improper venue; (2) to have waived all objections upon procedural grounds to enforcement of such liability upon motion without a separate action; and (3) to have irrevocably appointed the clerk as his agent upon whom any papers affecting his liability on the bond may be served. The clerk shall forthwith mail copies of any motion made under this rule to the surety at his last known address and shall furnish notice to such other parties upon such condition as the court may order.

RULE 4

ASSIGNMENT OF CASES

Section 4.01 - Civil Cases. At the time an action is filed, the case shall be assigned to a judge of this court by a method of random allocation and in accordance with 28 U.S.C. §137. At the time a civil action is filed, the clerk shall inform the plaintiff of his right to consent to an exercise of jurisdiction by a United States magistrate judge pursuant to 28 U.S.C. §636(c) and shall provide the plaintiff with a consent form. The plaintiff shall have the process server serve the consent form on the defendant together with the summons and complaint. The consent forms shall be served and filed with the clerk by the parties within sixty days after the day the action is filed. Thereafter, at any stage of the proceedings and if all of the parties have consented, the assigned judge may refer the case to the magistrate judge. No attempts shall be made by the clerk, the judge or the magistrate judge to persuade or induce the parties to consent to such reference.

The reference designation to the magistrate judge shall be made by written order and shall be filed with the clerk who will enter the order on the docket and notify the parties of its entry. Any district judge may enter a general order requiring the clerk to refer certain categories of his cases to the magistrate judge for such pretrial proceedings as he shall specify in the order. At any time after the reference, the court may, for good cause shown on its own motion or under extraordinary circumstances shown by any party, vacate the reference of the civil case.

Whether or not the parties have consented to the reference of the case to the magistrate judge, the judge assigned to the case may designate the magistrate judge to perform any of the duties authorized by these local rules.

Section 4.02 - Criminal Cases. Upon the return of an indictment or the filing of an information, all non-misdemeanor criminal cases shall be assigned by a method of random allocation to a judge of this court. Thereafter, that judge may designate the full-time magistrate judge to conduct the arraignment as limited by Local Rule 13.06(c), and any other pretrial proceedings authorized by these rules. The district judge may enter a general order requiring the clerk to assign all of his criminal cases or certain categories of cases to the magistrate judge for arraignment and such other pretrial proceedings authorized by these rules.

All misdemeanor and petty offense cases are assigned to the magistrate judge. The magistrate judge shall explain to the person charged that he has a right to trial, judgment, and sentencing by a judge of the district court, and that he may have a right to trial by jury before a district judge or magistrate judge. The magistrate judge shall not try the case unless the defendant files a written consent to be tried before the magistrate judge, specifically waiving a trial, judgment, and sentencing by a district judge. If the defendant elects to be tried before a district judge, the magistrate judge shall return the case to the clerk's office which shall reassign the case to a district judge.

Section 4.03 - Consolidation of Cases. When the consolidation of two or more cases is sought, whether for a limited purpose or for all future proceedings, the motion to consolidate and supporting materials shall be captioned with the case names and numbers of all cases sought to be consolidated. Service and filing shall be effected in all of the cases sought to be consolidated. The motion shall be decided by the district judge to whom the lowest numbered case is assigned. If the motion is granted, the judge to whom the lowest numbered case is assigned shall handle all future proceedings covered by the consolidation order.

When two or more cases are consolidated, all documents relevant to the purposes for which consolidation was granted will thenceforth be docketed only on the docket sheet for the lowest numbered of the consolidated cases. All such documents will be filed in the case file for that case and only the original and one copy of a document shall be filed. A notation to check the docket sheet for the lowest numbered case will be entered on the docket sheet(s) for the higher numbered case(s).

If cases are consolidated for some but not all purposes, documents relating to a particular case will be docketed on the docket sheet for that case and be filed only in that case file.

Section 4.04 - Other Matters. All other matters within the authority of the magistrate judge as contained in these rules are assigned directly to the magistrate judge.

Section 4.05 - Inquiries. All inquiries concerning any pending action are to be directed to the office of the judge or magistrate judge to whom the case is assigned, except inquiries as to whether or not there is a docket entry for a particular item. Inquiries about docket entries are to be directed to the clerk of court.

RULE 5

FILES AND FILING

Section 5.01 - Form. All legal papers in an action, except transcripts, shall be filed in the form of an original and one copy. The judge or magistrate judge to whom the case is assigned may waive this requirement. Every legal paper filed shall contain the typed name, address, and telephone number of the attorney or person submitting it, the name of a person and the firm to whom inquiries may be directed, and the name of the party on whose behalf it is filed. All legal papers filed shall be on 8½ x 11" paper and shall be fastened at the top without backing or special binding.

Section 5.02 - Place of Filing. All legal papers shall be filed in the office of the clerk of court and not in the chambers of the judge or magistrate judge. The clerk shall retain the original of the paper filed, except the original of an order submitted for signature, and shall transmit the copy to the judge or magistrate judge. If a legal paper is filed less than forty-eight (48) hours before the court has stated it is due in the chambers of the court, the attorney or the person making the filing shall be responsible for transmitting a copy to the chambers of that judge or magistrate judge.

Section 5.03 - Responsive Pleadings. Responsive pleadings shall be made in numbered paragraphs corresponding to the paragraphs of the pleading to which it refers.

Section 5.04 - Discovery Materials.

(a) Notices of depositions, depositions upon oral examination, interrogatories, requests for production of documents, requests for admissions, and answers thereto, shall not be filed with the clerk of court, except when ordered by the court or when relevant to a pending motion. When the document is relevant to a pending motion, the party submitting it shall clearly designate on the face of the document or on an accompanying paper the motion in relation to which the document is submitted. In select cases, the court may designate that discovery materials be filed.

(b) In actions in which any of the parties are proceeding *pro se*, the provisions of Local Rule 5.04(a) shall not apply and the documents enumerated in said rule shall be filed with the clerk of the court at the time they are served on the adverse party.

Section 5.05 - Certificate of Interest. To enable the court to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or an *amicus curiae* must furnish a certificate of interest stating the following information:

(a) The full name of every party or *amicus* the attorney represents in a case.

(b) If such party or *amicus* is a corporation:

(1) Its parent corporation, if any; and

(2) A list of corporate stockholders which are publicly held companies owning 10 percent or more of the stock of the party or *amicus*.

(c) The name of all law firms whose partners or associates appear for a party or are expected to appear for the party in this court.

The certificate shall be served and filed with the appearance of the party or attorney or upon the first filing of any paper on behalf of the party, whichever occurs first. The certificate shall be in the following form.

[CAPTION]

The undersigned, counsel of record for [John Doe, plaintiff], furnishes the following list in compliance with Local Rule 5.05,

[Listed by Number Category]

_____

Attorney's Signature

_____

Date

Section **5.06 - Confidential Matters.**

(a) Grand Jury Proceedings. All subpoenas, motions, pleadings and other documents concerning or contesting ongoing grand jury proceedings shall be submitted to the clerk in a sealed envelope conspicuously marked "SEALED" and shall be treated as confidential documents.

(b) All documents which a judge or magistrate judge has ordered to be treated as confidential shall be filed in a sealed envelope conspicuously marked "SEALED".

(c) The court will consider all documents to have been filed publicly unless they are accompanied by a separate motion requesting that the documents, or portions thereof, be sealed by the court.

All documents which a party seeks to have treated as confidential, but as to which no sealing order has been entered, shall be filed in a sealed envelope conspicuously marked "Request for

Confidentiality Pending," together with a motion requesting an appropriate order. The separate motion for sealing shall be publicly filed and shall generally identify the documents contained in the sealed envelope. The documents shall be transmitted by the clerk in a sealed envelope to the judge or magistrate judge, together with the moving papers. If the motion is denied, the documents shall be filed by the clerk in an open file, unless otherwise ordered by the judge or magistrate judge assigned to the case.

Section 5.07 - Civil Cover Sheet.

(a) The clerk is authorized and instructed to require a complete and executed AO Form JS-44(a), Civil Cover Sheet, which shall accompany each civil case to be filed.

(b) The clerk is directed to reject for filing any civil cases which are not accompanied by a complete and executed Civil Cover Sheet.

(c) Persons filing civil cases, who at the time of such filing are in the custody of civil, state, or federal institutions, and persons filing civil cases *pro se* are exempt from the foregoing requirements.

(d) Where the Civil Cover Sheet indicates a pending related case, the new case shall be assigned to the same judge.

RULE 6

MOTION PRACTICE

Section 6.01 - In General. Every motion filed shall set forth the rule pursuant to which the motion is made and shall be accompanied by (1) a supporting brief and, when necessary, an affidavit(s) or other documents, **or** (2) a certificate of counsel stating that he does not intend to file a brief or other supporting documents.

If movant fails to comply with either (1) or (2) above, the court may deny the motion as a matter of course.

Opposing party shall serve an answering brief and, when necessary, affidavit(s) or other documents within 14 days from the service of the motion. The movant may serve a reply brief within 11 days from 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. The failure of a party to serve a timely answering brief or reply shall be deemed a waiver of the right to submit it. All papers required to be served under this rule shall be filed promptly. See Fed.R.Civ.P. (5)(d).

Each judge or magistrate judge shall follow his own practice with respect to the affording of oral argument.

Except by permission of the court, principal briefs on motions shall not exceed thirty (30) pages and reply briefs shall not exceed fifteen (15) pages, exclusive of pages containing the statement of facts, exhibits, and affidavits. A reply brief shall be limited to matters in reply.

Section 6.02 - Discovery Motions in Civil Cases. All motions for discovery and production of documents pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure must be accompanied by a statement in writing by the movant that, after personal consultation with the opposing party and sincere attempts to resolve their differences, the parties are unable to reach an accord. The statement shall also recite the date, time,and place of such conference and the names of all parties participating therein.

Section 6.03 - Evidentiary Hearings. In the case of any motion in which an evidentiary hearing is scheduled by the court, the parties shall file a statement of uncontested facts. It shall be the responsibility of the movant to submit a proposed stipulation of facts to opposing counsel who shall admit or deny the facts proposed and advance any additional facts to be included. A final statement of uncontested facts signed by counsel for the parties shall be filed with the court at least forty-eight (48) hours before the time set for hearing.

RULE 7

PRETRIAL PROCEDURE

Section 7.01 - Completion of Discovery. Unless the court sets a specified date for the completion of discovery, discovery must be completed one week prior to the time counsel are required to meet together to prepare the final pretrial report, or, in the event no final pretrial report is required, one month prior to the first scheduled trial date.

Completion of discovery means that discovery (including the use of depositions to preserve testimony for trial) should be scheduled to allow depositions to be taken by the specified date, the interrogatories and request for admissions to be answered, and documents to be produced in accordance with the time provisions set forth in the Federal Rules of Civil Procedure.

Upon motion, the court, in its discretion and for good cause shown, may extend the time by which discovery is to be completed or may reopen discovery on such terms as it deems just. Contested motions will be granted only if the party seeking the additional time has diligently pursued discovery during the time originally specified.

Section 7.02 - Discovery Responses. An objection or an answer to an interrogatory shall reproduce the interrogatory to which it refers. A response or an objection to a request for admission shall reproduce the request to which it refers. An objection to a request for production of documents shall reproduce the request to which it refers.

Section 7.03 - Limitation on Interrogatories. No party may serve more than a total of thirty-five (35) interrogatories in any case upon any other party without the prior order of the court.

For the purpose of computing the number of interrogatories served,

(a) Each subpart of an interrogatory shall be construed as one interrogatory.

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For the purpose of computing the number of interrogatories served,

(a) Each subpart of an interrogatory shall be construed as one interrogatory.

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

(c) 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 thirty-five (35) interrogatory limit.

If a party believes that additional interrogatories are necessary, he 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. If a written stipulation is reached, the stipulation and a proposed order permitting the propounding of the additional interrogatories should promptly be served on all other parties and filed with the court. If 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 written statement, that after personal 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 therein.

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 before the court 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 pretrial 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 7.05 - Final Pretrial Conference. The court may require counsel to appear for a final pretrial conference to consider the subjects specified in Fed.R.Civ.P. 16 or in Fed.R.Crim.P. 17.1 or to consider other matters determined by the court. At or following the conference, the court may issue any orders which appear necessary to insure the parties' completion of trial preparations or to aid the court in the conduct of the trial. Unless excused by the court, the principal trial counsel for each party must appear at the final pretrial conference.

Section 7.06 - Final Pretrial Report. The court may order the parties to prepare a final pretrial report. Unless otherwise ordered by the court, this report shall be filed at least three business days prior to the final pretrial conference and shall comply with the requirements specified for such reports in the judge's or magistrate judge's standing final pretrial conference order (current copies can be obtained from the chambers of each judge or magistrate judge.)

In civil cases, upon submission and review of the final pretrial report at the final pretrial conference, the court may approve and adopt the final pretrial report pursuant to Fed.R.Civ.P. 16.

RULE 8

TRIALS

Section 8.01 - Number of Jurors. In all civil jury cases, except as may otherwise be expressly required by law or controlling rule, the jury shall consist of not less than six members.

Section 8.02 - Questionnaires. Jury qualification questionnaires shall be available for inspection in the office of the clerk at any time after the jury panel has been notified to appear.

Section 8.03 - Voir Dire Examination. Unless otherwise ordered, the voir dire examination of prospective jurors shall be conducted by the court. Counsel may submit written proposed questions for voir dire. Counsel may request such additional questions as they deem necessary in light of prospective jurors' responses to the court's examination.

Section 8.04 - Requests for Instructions and Form of Verdict. Counsel shall submit written proposed jury instructions and a written form of verdict before the commencement of the trial. Further instructions may be submitted as provided in Fed.R.Civ.P. 51.

Section 8.05 - Examination, Cross-Examination, and Argument. Unless otherwise ordered, only one attorney for each party shall examine or cross-examine a witness.

Section 8.06 - Communication with Jurors. This rule applies to any communication before trial with members of the venire from which the jury will be selected, as well as any communication with members of the jury during trial, deliberations, and after the return of a verdict. No attorneys appearing in any branch of this court, or any of their agents or employees, shall approach, interview, or communicate with any member of the jury except on leave of court granted upon notice to opposing counsel and upon good cause shown. Good cause includes a trial attorney's request for permission to contact one or more jurors after trial for the trial attorney's educational benefit. The juror(s) must be advised at the outset of any communication that his or her participation is voluntary. Any juror contact permitted by the court under this rule shall be subject to the control of the court.

RULE 9

COSTS: ATTORNEY'S FEES - SUPERSEDEAS

Section 9.01 - Bill of Costs. The party in whose favor a judgment for costs is awarded or allowed by law and who claims his costs shall, after the judgment has been entered, serve on the attorney for the adverse parties and file with the clerk his bill of costs. The clerk's office has forms available for this process or the party may use his own forms. Such service and filing shall be made not later than fifteen (15) days after entry of the judgment. If a timely motion for a new trial or amendment of judgment has been made pursuant to Fed.R.Civ.P. 59, time for filing the bill of costs shall commence to run from the entry of the order granting or denying such motion. The parties, by filing a stipulation with the clerk's office, may delay the filing of the bill of costs and taxing until after decision by the Court of Appeals or Supreme Court when an appeal is taken. Absent such a filed stipulation or a court order, the appeal shall not delay the taxing of costs.

Unless otherwise determined by the clerk, the following procedure will apply. The party against whom costs are sought to be taxed shall have ten (10) days to file a written objection, accompanied by a brief memorandum. The party seeking to tax costs shall have five (5) days to respond and the objecting party shall have five (5) days thereafter to reply. Costs will be taxed by the clerk on the basis of the written memoranda.

Section 9.02 - Items Taxable as Costs. The following is the practice of the court concerning items of costs not otherwise allowed or prohibited by statute.

(a) Fees of the Court Reporter for All of or Any Part of the Transcript Necessarily Obtained for Use in the Case. The costs of the original transcript, if paid by the taxing party, and the cost of the taxing party's copy (not to exceed the fee of the court reporter set by Local Rule 15) are taxable. The costs of a transcript of matters prior or subsequent to trial when necessary for appeal, or when requested by the court or prepared pursuant to stipulation of the parties and necessarily obtained for use in the case are also taxable. In the case of a daily transcript, the parties must follow Local Rule 9.02(e).

(b) Deposition Costs. The court reporter's charge for the original of a deposition, if paid by the taxing party, and the taxing party's copy are taxable if the deposition was reasonably necessary for use in the case, whether or not it was used at trial. Reasonable expenses of the reporter, the presiding notary or other official and postage costs for sending the original deposition to the clerk for filing are taxable. Counsel's fees and expenses in attending and taking the deposition are not taxable. Per diem attendance fees for a witness at a deposition are taxable as per 28 U.S.C. §1821. A reasonable fee for a necessary interpreter at the taking of a deposition is taxable.

(c) Witness Fees, Mileage, and Subsistence. The rate for witness fees, mileage, and subsistence are fixed by statute. (See 28 U.S.C. §1821 and Local Rule 9.02(e)). Such fees are taxable whether or not the witness attends voluntarily or is under subpoena, provided the witness testified at the trial and received a witness fee. No party shall receive witness fees for testifying in his or her own behalf. Fees for expert witnesses are not taxable in a greater amount than that statutorily allowable in the case of ordinary witnesses, except in exceptional circumstances by order of the court.

(d) Costs of copies of papers reasonably necessary for use in the case are taxable. (See 28 U.S.C. §1920(4)). Papers include, but are not limited to, maps, charts, photographs, summaries, computations and statistical comparisons.

(e) Costs of demonstrative evidence created for use in the case, daily transcripts, witness fees for mileage for trial witnesses coming from outside of the district in excess of 100 miles from the place of trial, and expert witness fees in excess of the statutory allowance, shall never be taxed unless the party requesting taxation obtained court approval on motion for such costs brought prior to the time the costs were incurred, and in the case of demonstrative evidence, prior to the time such evidence is used at trial.

Section 9.03 - Review of Costs. A party may move for review of the clerk's decision taxing costs pursuant to Fed.R.Civ.P. 54(d) within five (5) days from taxation. The motion, supporting papers and scheduling shall conform to Local Rule 6.01.

Section 9.04 - Attorney Fees. All post-judgment motions for the determination of award of attorney's fees through judgment shall be filed within ninety (90) days of the entry of judgment, except if a different period of time is provided by statute or court order or unless good cause is shown for an extension of time. The claimed amount shall be supported by adequate itemization.

Section 9.05 - Supersedeas. A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus fifteen (15) percent to cover interest and such damages for delay as may be awarded plus $500.00 to cover costs. If eligible under Local Rule 14(b), the supersedeas bond may be approved by the clerk.

When the stay may be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the court may on notice grant a stay on such terms as to security and otherwise as it may deem proper.

Upon approval, a supersedeas bond shall be filed with the clerk and a copy with a notice of filing shall be promptly served on the parties affected thereby. If the appellee objects to the form of the bond or to the sufficiency of the surety, notice of a hearing before the court on such objections shall be given.

RULE 10

DISMISSAL FOR LACK OF PROSECUTION

Section 10.01 - No Service of Process. In all cases in which the plaintiff has not effected service of process on the defendant within 120 days from the filing of the complaint and the defendant has not submitted to the jurisdiction of this court, upon twenty (20) days notice to the attorney of record for the plaintiff, or the plaintiff if *pro se*, an order shall be entered dismissing the action. Such dismissal shall be without prejudice.

Section 10.02 - No Answer or Other Pleading Filed. In all cases in which a defendant has failed to file an answer or otherwise defend within six (6) months from the filing of the complaint and the plaintiff has not moved for a default judgment, the court may on its own motion, after twenty (20) days notice to the attorney of record for the plaintiff, or to the plaintiff if *pro se*, enter an order dismissing the action for lack of prosecution. Such dismissal shall be without prejudice.

Section 10.03 - Lack of Diligence. Whenever it appears to the court that the plaintiff is not diligently prosecuting the action, the court may enter an order of dismissal with or without prejudice. Any affected party can petition for reinstatement of the action within twenty (20) days.

Section 10.04 - Frivolous Action or Pleading. Whenever it appears to the court that the plaintiff's complaint, the defendant's answer or counterclaim or any other pleading, is frivolous, without merit or interposed primarily for any improper purpose, the complaint or other pleading may be dismissed without prejudice after twenty (20) days written notice to the parties.

RULE 11

CUSTODY AND WITHDRAWAL OF PLEADINGS, PAPERS AND EXHIBITS

Section 11.01 - Custody of Exhibits. All exhibits received in evidence shall be placed in the custody of the clerk unless otherwise ordered by the court.

Section 11.02 - Return of Exhibits, Depositions and Briefs. Within thirty (30) days (sixty (60) days for cases in which the United States is a party) after the time for appeal has elapsed and, if there is an appeal, after the filing of the mandate of the reviewing court, the clerk shall return all exhibits and depositions to the attorneys of record for the respective parties. The clerk may return such items by certified mail, or upon ten (10) days written notice, require the attorneys of record to remove them. Any exhibits, depositions or briefs not removed within the time specified for such removal, may be destroyed or otherwise disposed of by the clerk.

Section 11.03 - Withdrawal of Materials in Court Files. No pleading, brief, deposition, exhibit or other material belonging in the file of a case may be withdrawn by an person without an order of the court, except as provided in Local Rule 11.02. Prior to final disposition of the case, the order must be entered by a judge or magistrate judge. After final disposition, the order may be entered by the clerk, but only if the withdrawal is by a member of the bar of this court. In either event, such order shall specify the time for return of such materials.

RULE 12

PRISONER ACTIONS - FORMS

Section 12.01 - *Habeas Corpus.* Petitions for writs of *habeas corpus* by persons in state custody under 28 U.S.C. §2254, and motions attacking a sentence imposed by this court filed pursuant to 28 U.S.C. §2255 shall be on forms supplied by the court and be filed with the clerk of court. Failure to comply with the directions for the preparation of the respective forms may result in the dismissal of the application.

Section 12.02 - 42 U.S.C. §1983 Actions. All actions brought under 42 U.S.C. §1983 filed in this district by incarcerated persons shall be on court-approved forms. The forms and directions for their preparation will be provided without charge by the clerk of court. The clerk is authorized to return any complaints or petitions and affidavits for leave to proceed *in forma pauperis* which are not submitted on the prescribed forms or which do not comply with the directions for their preparation unless the court, in its discretion, accepts for filing a complaint that is not submitted on the approved form.

RULE 13

AUTHORITY OF THE UNITED STATES MAGISTRATE JUDGE

Section 13.01 - Duties under 28 U.S.C. §636(a). In accordance with 28 U.S.C. §636 (a)(1)(2) and (3), the magistrate judge is authorized to perform the following duties:

(a) Exercise all the powers and duties conferred or imposed upon United States commissioners by law or the Federal Rules of Civil and Criminal Procedure, including but not limited to the following:

1. Conduct removal proceedings and issuing warrants of removal in accordance with Fed.R.Crim.P. 40.

2. Conduct extradition proceedings in accordance with 18 U.S.C. §3184.

3. Supervise proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. §1782.

4. Issue administrative inspection warrants.

5. Conduct Internal Revenue Service enforcement proceedings in accordance with 26 U.S.C. §7402(6) and issue attachments or orders to enforce an Internal Revenue Service summons to produce records or give testimony in accordance with 26 U.S.C. §7604(b).

6. Issue warrants for the purpose of carrying out levies on property pursuant to 26 U.S.C. §6331.

(b) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. §3146, and take acknowledgments, affidavits and depositions.

(c) Upon the written consent of the person charged, try persons accused of misdemeanors in accordance with 18 U.S.C. §3401, including conducting jury trials in such cases, ordering a presentence investigation report and sentencing such persons.

Section 13.02 - Duties Under 28 U.S.C. §636(b)(1)(A): Non-dispositive Pretrial Matters.

(a) In accordance with 28 U.S.C. §636(b)(1)(A), the magistrate judge may hear and determine any pretrial motion or other pretrial matter other than those motions specified in Local Rule 13.03(a)(3).

(b) Any party may appeal from a magistrate judge's determination made under this rule within ten (10) days after issuance of the magistrate judge's order unless a different time is prescribed by the magistrate judge or judge. Such party shall file with the clerk of court and serve on all parties a written notice of appeal which shall specifically designate the order or part thereof appealed from and the basis for objection thereto. The judge assigned to the case shall consider the appeal and set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider any matter *sua sponte*.

Section 13.03 - Duties Under 28 U.S.C. §636(b)(1)(B) and (C): Dispositive Pretrial Motions, Prisoner Cases and Other Pleadings.

(a) In accordance with 28 U.S.C. §636(b)(1)(B) and (C), the magistrate judge may conduct such evidentiary hearings as are necessary and submit to a judge proposed findings of fact and recommendations for the disposition of: (1) applications for post-trial relief made by individuals convicted of criminal offenses; (2) prisoner petitions challenging conditions of confinement; (3) motions for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information, to suppress evidence in a criminal case, to dismiss or permit the maintenance of a class action, to dismiss for failure to state a claim upon which relief may be granted, and to involuntarily dismiss an action; (4) review of administrative determinations regarding entitlement to benefits under the Social Security Act and related statutes including, but not limited to, actions filed under 42 U.S.C. §405(g); (5) Internal Revenue Service summons and enforcement proceedings pursuant to 26 U.S.C. §7402 and 7604; and (6) Petitions for writs of *habeas corpus* pursuant to 28 U.S.C. §2254 and 2255.

(b) A record shall be made of all evidentiary proceedings before the magistrate judge. A record may be made of such other proceedings as the magistrate judge deems necessary.

(c) Any party may object to the magistrate judge's proposed findings, recommendations, or report issued under this rule. The party objecting to the recommended disposition shall promptly arrange for the transcription of the record, or portions thereof as all parties may agree upon or the magistrate judge deems sufficient, unless the judge otherwise directs. Within ten (10) days after service of a copy of the recommended disposition, such party shall file with the clerk of court and serve on all parties written objections specifically identifying the portions of the proposed findings, recommendations, or report to which objection is made and the basis for such objection. A party may respond to another party's objections within ten (10) days after service of the objections. The judge shall make a *de novo* determination of those portions to which objection is made and may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may receive further evidence or recommit the matter to the magistrate judge with instructions.

Section 13.04 - Duties Under 28 U.S.C. §636(b)(2): Special Master References.

(a) The magistrate judge may serve as a special master subject to the procedures and limitations of 28 U.S.C. §636(b)(2) and Fed.R.Civ.P. 53.

(b) Where the parties consent, the magistrate judge may serve as a special master in any civil case without regard to the provisions of Fed.R.Civ.P. 53(b).

(c) The magistrate judge is subject to the procedures and limitations of Fed.R.Civ.P. 53 only when the order referring the matter to the magistrate judge expressly states that reference is made pursuant to the rule.

Section 13.05 - Duties Under 28 U.S.C. §636(c): Disposition of Civil Matters:

(a) In accordance with 28 U.S.C. §636(c)(1), the magistrate judge, upon written consent of the parties, may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case.

(b) Upon the entry of judgment an aggrieved party may appeal directly to the Court of Appeals in the same manner as an appeal from any other judgment of a district court.

(c) Notwithstanding the provision of paragraph (b) of this section, at the time of reference to the magistrate judge, the parties may consent to appeal on the record to a judge of the district court. The district court may affirm, reverse, modify or remand the magistrate judge's judgment. Thereafter, the case may be reviewed by the United States Court of Appeals only upon petition for leave to appeal by a party, stating specific objections to the judgment.

(d) Nothing in paragraphs (b) and (c) of this section shall be construed to be a limitation of any party's right to seek review by the Supreme Court of the United States.

(e) For proceedings conducted under Local Rule 13.05, the magistrate judge shall determine, after taking into account the complexity of the particular matter referred, whether the record shall be taken by electronic sound recording means or by a court reporter. Not withstanding the magistrate judge's determination--

1. The proceeding shall be taken down by a court reporter if any party so requests.

2. The proceeding shall be recorded by a means other than a court reporter if all parties so agree.

3. No record of the proceeding shall be made if all parties so agree.

Section 13.06 - Other Duties. The full-time magistrate judge and the part-time magistrate judge may also do the following when requested to do so by a district judge:

(a) Exercise general supervision of the civil and criminal calendars of the court, conduct calendar and status calls and determine motions to expedite or postpone the trial of cases.

(b) Conduct omnibus hearings and preliminary pretrial conferences, whether the latter are designated as status conferences, scheduling conferences or discovery conferences, in accordance with Local Rule 7.04.

(c) Conduct arraignments in cases not triable by the magistrate judge to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or *nolo contendre* and ordering a presentence report in appropriate cases.

(d) Conduct voir dire and select petit juries for the court.

(e) Conduct necessary proceedings leading to the potential revocation of probation.

(f) Conduct examinations of judgment debtors in accordance with Fed.R.Civ.P. 69.

(g) Review petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act.

(h) Receive grand jury returns in accordance with Fed.R.Crim.P. 6(f).

(i) Accept jury verdicts in civil cases in the absence of a judge.

(j) Issue subpoenas, writs of *habeas corpus ad testificandum* or *habeas corpus ad prosquendum*, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings.

(k) Grant applications to proceed *in forma pauperis* pursuant to 28 U.S.C. §1915.

(l) Appoint attorneys for indigent defendants and administer the court's Criminal Justice Act Plan.

(m) Preside at naturalization ceremonies and administer the oath to new citizens.

(n) Impanel grand juries for the district as ordered by the court.

(o) Perform any additional duties consistent with the Constitution and laws of the United States.

RULE 14

ORDERS AND JUDGMENTS GRANTABLE BY THE CLERK

Section 14.01 - Orders and Judgments Grantable by the Clerk. Pursuant to the provisions of Fed.R.Civ.P. 77(c), the clerk or deputy clerk may enter the following orders and judgments without further direction by the court, but his action may be suspended, altered or rescinded by the court for cause shown:

(a) Consent orders for the substitution of attorneys.

(b) Except as otherwise provided by law, all bonds, undertakings and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, whether the amount of such bonds or undertakings has been fixed by a judge or by a court rule or statute.

(c) Consent orders dismissing an action, except in cases to which Fed.R.Civ.P. 23(c) and Fed.R.Civ.P. 66 apply.

(d) Orders canceling liability on bonds other than orders disbursing funds from the Clerk's Registry Account.

(e) Consent orders regarding extensions of time for filing responses, supporting documents and briefs filed pursuant to Local Rule 6.01 for not more than ten (10) days.

RULE 15

COURT REPORTERS AND TRANSCRIPTS

Section 15.01 - Duties. The official court reporters shall attend each session of the court and at every other proceeding that may be designated by rule of procedure or order of court and shall record verbatim by shorthand or by mechanical means (1) all proceedings in all criminal cases held in open court; (2) all proceedings in all other cases held in open court; and (3) such other proceedings as the court may order or as may be required by any rule of procedure.

Section 15.02 - Transcripts. No transcript of any proceeding of the court shall be considered as official except that made from the records taken by the official court reporter, or in the event the official court reporter is unable to be personally present, then of the substitute official court reporter who is authorized by the court. The clerk shall not certify as correct any transcript except the one made by the official court reporter or a substitute official court reporter.

Section 15.03 - Fees. The fee per page of transcript which the court reporters may charge may equal the highest amount authorized at the last Judicial Conference of the United States at which any such fees were promulgated.

RULE 16

LIMITING PHOTOGRAPHING, BROADCASTING AND TELEVISING

Section 16.01 - Limitations. Taking of photographs or recordings and broadcasting of radio or television are prohibited in any of the courtrooms, jury rooms adjacent to said courtrooms, libraries and corridors located on the second, third and fourth floors of the Federal Building, without first obtaining written permission from the person in charge of said offices.

The foregoing prohibitions shall apply to judicial proceedings, including proceedings before a magistrate judge, but shall not apply to ceremonial proceedings.

RULE 17

CAUSING DISTURBANCE OR NUISANCE PROHIBITED

Section 17.01 - Disturbances. Causing of a disturbance or nuisance in the Federal Building is prohibited. Picketing or parading outside of the Federal Building is prohibited only when such picketing or parading obstructs or impedes the orderly administration of justice.

Section 17.02 - Contempt. The Unites States Attorney may require any person who violates Local Rule 17.01 to appear before a judge to answer to a charge of contempt.

Section 17.03 - Enforcement. The United States Marshal, his deputies and the custodian of the Federal Building shall enforce this Local Rule 17.01, either by ejecting violators from the building or by bringing the matter to the attention of the United States Attorney.

RULE 18

MONIES PAID INTO COURT

Section 18.01 - Deposit of Funds by Stipulation or Court Order. Upon stipulation of the parties or motion of the court, the court may order that the monies paid into court in any pending or adjudicated case be paid to a trustee **other than the clerk of court** who is nominated by the parties and/or designated by the court for investment in the following types of securities, interest thereon to inure to the party or parties entitled to said monies. The funds shall be invested in the name of the trustee "under order of the United States District Court for the Eastern District of Wisconsin, Case No. _____."

(a) United States Treasury bills.

(b) Accounts, not to exceed the insurance coverage limits in banks or savings and loan associations insured pursuant to the Federal Deposit Insurance Corporation Act, 12 U.S.C. §1811-1831 or the Federal Savings and Loan Insurance Corporation Act, 12 U.S.C. §1724-1730.

(c) Certificates of deposit in banks that, upon issuance of the certificate, pledge collateral for the deposit with the Federal Reserve Bank pursuant to 12 C.F.R. §9.10.

Section 18.02 - Deposit of Funds. In all other cases all monies paid into court shall be deposited either in a checking account in the United States Treasury or in an interest-bearing account in a designated local depository in accordance with Local Rule 18.01(b).

Section 18.03 - Withdrawal of Funds. The court order shall contain a prohibition against withdrawal, except upon order of the court. A certified copy of the order shall be placed on file with the financial institution involved.

RULE 19

SERVICE OF PROCESS IN CIVIL ACTIONS

Section 19.01 - Service of Process. Service of process in civil actions shall be made as provided in Fed.R.Civ.P. 4 and in the case of subpoenas, Fed.R.Civ.P. 45.

Section 19.02 - Service of Process upon the State of Wisconsin or its Employees When Sued by a State Prisoner Pursuant to 42 U.S.C. §1983. When service of process upon the State of Wisconsin or its employees is made in an action brought by a state prisoner pursuant to 42 U.S.C. §1983, the process server shall, in addition to serving the named defendant or defendants, serve a copy of the summons and complaint upon the Secretary of the Wisconsin Department of Health and Social Services and the Administration of the Legal Services Division of the Wisconsin Department of Justice by first-class mail, postage pre-paid, as provided in Fed.R.Civ.P. 4(c)(2)(C)(ii).

RULE 20

CONFIDENTIALITY OF PRESENTENCE REPORTS

Section 20.01 - Confidentiality of Presentence Reports.

(a) No confidential records of this court maintained by the probation office, including presentence investigation reports and probation supervision records, shall be disclosed except upon written petition to the court establishing with particularity the need for specified information contained in such records. No disclosure shall be made except upon court order. Nothing in this rule shall be construed so as to deny the subject of any presentence report and/or his counsel the right to review such presentence report without consent of the court.

(b) Any copy of a presentence report which the court makes available, or has made available, to the United States Parole Commission or the Bureau of Prisons, constitutes a confidential court document and shall be presumed to remain under the continuing control of the court during the time it is in the temporary custody of these agencies. Such copy shall be loaned to the Parole Commission and the Bureau of prisons only for the purpose of enabling those agencies to carry out their official functions, including parole release and supervision, and shall be returned to the court after such use upon request. Disclosure of a report is authorized only so far as necessary to comply with 18 U.S.C. §4208(b)(2).

RULE 21

SECRECY AND SECURITY OF GRAND JURY PROCEEDINGS

Section 21.01 - Secrecy and Security of Grand Jury Proceedings. All subpoenas, motions, pleadings and other documents filed with the clerk concerning or contesting ongoing grand jury proceedings shall be treated as sealed documents.

RULE 22

ADMIRALTY AND MARITIME CLAIMS

Section 22.01 - Application. These rules apply to any claim governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

Section 22.02 - Pleadings and Parties.

(a) Every complaint filed as a Federal Rules of Civil Procedure action shall state "In Admiralty" following the designation of the court, in addition to the statement, if any, contained in the body of the complaint, pursuant to such rule. If the complaint contains a claim at law, it shall state "at Law and in Admiralty".

(b) In Supplemental Rule B, C, or D actions, the plaintiff's attorney or the plaintiff, if *pro se*, shall include his address and business telephone number.

(c) Every complaint in Supplemental Rule B and C actions shall state the amount of the debt, damages, or salvage for which the action is brought. This amount shall be included in the process, together with description of the nature of any unliquidated items claimed, such as attorneys' fees. The defendant or claimant may give bond or stipulation in such amount, plus interest and costs including an amount stipulated to by the parties or fixed by the court for an unliquidated item, unless a federal statute, procedure or court of applicable state statute shall require some other amount.

(d) Process and complaint shall be served together. The plaintiff shall furnish the person making service with the necessary copies.

(e) In cases of salvage, the complaint shall state, to the extent known, or estimate the value of the hull, cargo, freight and other property salvors, and that the suit is instituted on their behalf and on behalf of all other persons interested or associated with them. An attachment to the complaint shall also list all know salvors, all persons entitled to share in any salvage award, and a statement as to any agreement of consortship available and known to exist among them or any of them, together with a copy of any such agreement.

Section 22.03 - Verification of Pleadings, Answers to Interrogatories and Request for Admissions. Every complaint and claim in Supplemental Rule B, C, and D actions shall be verified on oath or affirmation by a party or an officer of a corporate party. If no party or corporate officer is within the district or readily available, verification of complaint, claim, answer to interrogatories or request for admission may be made by an agent, attorney-in-fact or attorney of record, who shall state the source of his knowledge, declare that the document affirmed is true to the best of his knowledge, state the reason why verification is not made by a party of a corporate officer, and state that he is authorized so to act. Any interested party may

move the court, with or without a request for stay, for the personal oath of a party or all parties, or that of a corporate officer. If required by the court, such verification shall be procured by commission or as otherwise ordered.

Section 22.04 - Suits *in Forma Pauperis*. Unless allowed by the court, no process *in rem* shall issue *in forma pauperis* suits, except upon proof of twenty-four hours notice of the filing of the complaint to the owner of the *res* of his agent.

Section 22.05 - Security for Costs. No complaint in Supplemental Rule B, C, D or F actions shall be filed, except by the United States or by court order, unless the party offering the same filed Security for Cost as prescribed in Local Rule 3.

Section 22.06 - Summons to Show Cause Why Funds Should Not Be Paid into Court. A summons issued pursuant to Supplemental Rule C(3), dealing with freight or the proceeds of property sold or other intangible property, shall direct the person having control of the funds, at a date fixed thereby which shall be at least ten (10) days after service thereof (unless the court, for good cause shown, shortens the period) to show cause why said funds should not be paid into court to abide the judgment. Funds paid into court shall be subject to the provisions of Local Rule 18.

Section 22.07 - Publication.

(a) Publication required by Supplemental Rule C(4) shall be made once without court order in the newspaper of largest general circulation within the district in which the arrest is made.

(b) If the property arrested is not released within ten (10) days after execution of process, publication shall be made by plaintiff or intervenor within seventeen (17) days after execution of process, unless otherwise ordered by the court.

Section 22.08 - Publication of Notice of Sale. Notice of sale of property in suits *in rem* and *quasi in rem*, except in suits on behalf of the United States where other notice is prescribed by statute, shall be caused by the United States Marshal to be published in the newspaper of largest general circulation within the district in which the seizure was made. Such publication shall occur at least twice: the first at least seven (7) calendar days prior to the date of the sale and the second at least three (3) calendar days prior to the date of sale, unless otherwise ordered by the court.

APPENDIX H

PROPOSED COST AND DELAY REDUCTION PLAN FOR THE EASTERN DISTRICT OF WISCONSIN

In accordance with the Civil Justice Reform Act of 1990, the Advisory Group recommends that the United States District Court for the Eastern District of Wisconsin adopt the following Cost and Delay Reduction Plan:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

In Re:

COST AND DELAY REDUCTION

PLAN

Having considered the recommendations of the District's Civil Justice Reform Act Advisory Group appointed pursuant to 28 U.S.C. § 478, the principles and guidelines of litigation management and cost and delay reduction listed in 28 U.S.C. § 473(a), and the litigation management and cost and delay reduction techniques listed in 28 U.S.C. § 473(b), the District Court hereby adopts the following cost and delay reduction plan in accordance with the Civil Justice Reform Act of 1990:

A. Amendments to Local Rules

1. Summary Judgment Motions

With respect to the adoption of a uniform procedure for summary judgment in the district, the following rule is added to the local rules:

Section 6.07 -- Summary Judgment Motion Procedure

(a) **MOTION:** With the exception of Social Security review and cases in which a party appears *pro se*, a motion for summary judgment made pursuant to Fed. R. Civ. P. 56 shall be served and filed in the following form:

1. The motion itself together with such materials permitted by Rule 56(e) and Section 6.01 of these Rules, as the movant may elect to serve and file; and

2. Either (1) a stipulation of facts between the parties to the action, or (2) movant's proposed findings of fact, or (3) a combination of (1) and (2).

i. It is movant's obligation to present *no more* and *no less* than the set of factual propositions upon which movant considers there is no genuine issue of *material fact* and upon which the movant is entitled to judgment as a matter of law. The factual propositions should include all of the "basic" facts necessary to a decision on the motion, including those going to jurisdiction and venue, to the identity of the parties, and to the background of the dispute.

ii. Factual propositions shall be set forth in *numbered* paragraphs, with the contents of each limited as far as practicable to the statement of a single factual proposition.

iii. At the close of each numbered paragraph the movant shall cite appropriate references to the pleadings, deposition transcripts, answers to interrogatories, admissions or affidavits supporting movant's contention that there is no genuine issue as to that factual proposition.

iv. Affidavits must be made on personal knowledge setting forth such facts as would be admissible in evidence, and showing affirmatively the affiant is competent to testify to the matters stated therein. If facts referred to in an affidavit are contained in another document, a copy of the document shall be attached. Voluminous documents need not be attached, and may be submitted separately or, when appropriate, in the form of a verified chart, summary or calculation. *See* Fed. R. Evid. 1006.

v. Citations to the record shall include:

a. in the case of a pleading, the numbered paragraph;

b. in the case of an affidavit, the numbered paragraph;

c. in the case of a deposition transcript, the name of the witness, and the page of the transcript;

d. in the case of an answer to an interrogatory, the number of that interrogatory and the identity of the party to whom it was directed;

e. in the case of an admission in response to, or resulting from a failure to respond to, a request for admission made pursuant to Fed. R. Civ. P. 36, the number of the requested admission and the identity of the party to whom it was directed;

f. in the case of an admission on file which is not in response to, or resulting from a failure to respond to, a request for admission made pursuant to Rule 36, the form such admission takes and the page or paragraph of the document in which that admission is made. Admissions made solely for the purpose of the motion for summary judgment should be so designated.

(b) RESPONSE: Any party who elects to oppose the motion for summary judgment shall serve and file the following within 30 days from service of the motion:

1. Such materials permitted by Rule 56(e) and by Section 6.01 of these Rules which the nonmovant may elect to serve and file in opposition to the motion.

2. A response, in corresponding numbered paragraphs, addressing each of the movant's proposed findings of fact.

i. The response shall state clearly whether there is a genuine material issue as to all or part of the movant's proposed finding; if it is contended that there is a genuine material issue only as to a part of the factual proposition, the response shall precisely identify the part of the numbered paragraph.

ii. The response shall cite the pleadings, deposition transcripts, answers to interrogatories, admissions or affidavits which nonmovant believes give rise to a genuine issue of material fact.

iii. Citations to the record shall be made with the specificity required by (a)2.iii., above.

iv. If the nonmovant believes the motion for summary judgment to be deficient on account of movant's failure to include undisputed material facts, the nonmovant may present such additional factual propositions either by means of:

a. a stipulation of facts between the parties to the action; or

b. a statement of proposed findings of fact; or

c. a combination of "a" and "b."

v. With respect to presentation of factual propositions not stated by the movant, the nonmovant shall comply with the requirements set forth in (a)2., above.

(c) REPLY: The movant may serve and file any or all of the following items in reply within 15 days from service of the response:

1. Such materials permitted by Rule 56(e) and by Section 6.01 of these Rules which movant may elect to serve and file in reply.

2. A reply to the nonmovant's response regarding any numbered finding of fact initially proposed by the movant, and a reply to any numbered finding of fact initially proposed in the response. To the extent the reply requires record citations not earlier made by movant, those references shall be made with the specificity required by (a)2.iii., above.

(d) NOTE PARTICULARLY: In deciding the motion for summary judgment:

1. The court will conclude there is no genuine material issue as to any proposed finding of fact, unless an opposing party asserts that a genuine material issue exists.

2. Where a party asserts a genuine issue exists as to a particular proposed finding of fact, the court will determine whether the proposed fact is material and whether a genuine issue exists.

3. The court is not required to give any weight to a piece of evidence unless it is set forth in the manner described.

(e) Cross-motions for summary judgment are to be treated as *two separate motions,* with separate proposed findings of fact submitted by their respective movants as set forth in section (a). Each party is required to respond as set forth in section (b) on that motion in which they are the nonmovant. The respective movants may reply as set forth in section (c).

2. Limitation on Interrogatories

Local Rule 7.03, regarding the limitation on interrogatories, is amended to provide as follows:

Section 7.03 - Limitation on Interrogatories.

Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding fifteen (15) in number including all subparts, 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. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2).

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 fifteen (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 interrogatories. If a written stipulation is reached, the stipulation and a proposed order permitting the propounding of the additional interrogatories should be served promptly on all other parties and filed with the court. If 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 also shall 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.

3. Standardized Pretrial Orders

With respect to the use and enforcement of standardized pretrial orders, Local Rule 7.06 is amended by adding the following to the end of the current Local Rule 7.06:

The court shall use standardized pretrial orders, requiring no more than the identification of witnesses who will be called to testify, identification of witnesses who may be called to testify, identification and marking of exhibits, designation and counter-designation of testimony from depositions, and proposed *voir dire* questions. Any witnesses or evidence not identified in accordance with the pretrial order may not be used at trial other than for purposes of impeachment.

4. Mandatory Discovery

In connection with mandatory discovery, the following rule is added to the local rules:

Section 7.07 -- Mandatory Discovery.

(a) Mandatory Interrogatories for All Parties

The parties to all civil actions are required to answer pursuant to FRCP 33 the following mandatory standard interrogatories, except that appeals of administrative determinations for review on a completed record are exempted from the requirements of this rule. 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, law firm and mailing address, and telephone number.

(b) Interrogatories to be Answered by All Plaintiffs. Each plaintiff's Answers to Mandatory Interrogatories shall be submitted to the Clerk of Court for filing and served within 30 days after the first answer is served. In removed cases, the plaintiff shall file and serve answers 40 days after receiving notice of 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) If you contend that you have been injured or damaged, provide a separate statement for each item of damage claimed containing a brief description of the item of damage, and the dollar amount claimed.

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

(4) 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 plaintiff's complaint and state the basis and extent of such interest.

(c) Interrogatories to Be Answered by All Defendants. Each defendant's Answers to Mandatory Interrogatories shall be submitted to the Clerk of Court for filing no later than 30 days after the date of service of plaintiff's Answers to Mandatory Interrogatories upon defendant. In cases in which the U.S. government is a defendant, the government's Answers to Mandatory Interrogatories shall be filed 15 days after the date on which its answer to the complaint was filed. Defendant shall simultaneously serve a copy of his interrogatory answers on each plaintiff.

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 or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address, and telephone number of such person or entity 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 number or numbers of such policies, the amount of liability coverage provided in each policy, and the named insured on each policy.

(d) Additional Procedures.

(1) 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.

(2) 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. The parties' introduction of documents and use of witnesses at trial will be governed by the provisions of the pretrial order.

(3) Counterclaims and replies, and third party complaints and answers to third party complaints shall be treated as separate pleadings under this rule. Each party asserting a counterclaim, third party complaint, or reply or answer thereto, shall submit interrogatories as required, respectively, by (b) and (c), above.

(e) Disclosure of Expert Testimony.

(1) Each party shall disclose to every other party any evidence that the party may present at trial under Rules 702, 703, or 705 of the Federal Rules of Evidence. This disclosure shall be in the form of a written report prepared and signed by the witness which includes a complete 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.

(2) 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 (d)(1), within 30 days after the disclo-

sure made by such other party. These disclosures are subject to the duty of supplementation.

5. Timing and Sequence of Discovery

The following local rule regarding timing and sequence of discovery is added to the local rules:

Section 7.08 -- Timing and Sequence of Discovery.

Except with leave of court or upon agreement of the parties, a party may not seek discovery from any source before making the disclosures under Rule 7.07 and may not seek discovery from another party before the date such disclosures have been made by, or are due from, such other party.

6. Standard Definitions Applicable to All Discovery Requests

In response to the Advisory Group's recommendation for uniformity of practice in discovery, the following rule is added to the local rules:

Section 7.09 -- Standard Definitions Applicable to All Discovery Requests

(a) The full text of the definitions and rules of construction set forth in paragraphs (c) and (d) 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 (c).

(b) *Effect of Scope of Discovery.* This Rule is not intended to broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure for the United States District Courts.

(c) *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 (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.

(4) *Identify (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).

(5) *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.

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

(7) *Concerning.* The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

(d) *Rules of Construction.* The following rules of construction apply to all discovery requests:

(1) *All/Each.* The terms "all" and "each" shall be construed as all and each.

(2) *And/Or.* The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

(3) *Number.* The use of the singular form of any word includes the plural and vice versa.

7. Method of Taking and Duration of Depositions

With respect to the videotaping of and limiting the duration of depositions, the following rule is added to the local rules:

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 which, unless the court orders otherwise, shall be borne by the party taking the deposition. 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 or 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, actual examination of the deponent on the record shall be limited to six 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.

8. Confidentiality of Discovery Materials

The following rule regarding confidentiality of discovery materials is added to the local rules:

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 non-public technical, commercial, financial, personal, or business information. Except for documents produced for inspection at the Parties' 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 Parties' 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 in-

spection of confidential documents before they are copied and marked confidential pursuant to this procedure.

2. Portions of depositions of the Parties' present and former officers, directors, employees, agents, experts and representatives taken in this action shall be deemed confidential only if they are designated as such coincident with the testimony of the witness.

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 sub-paragraph 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. All such copies shall be treated as confidential under this Rule. Such Copies shall be made only when in the bona fide judgment of counsel for the Parties it is reasonably necessary for the preparation and trial of the lawsuit. Only counsel for the Parties shall distribute such Copies to any other person, and then only in accordance with sub-paragraph 4 above.

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" with reference to this Rule attached thereto.

(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, or, if the parties so stipulated, may be destroyed.

9. Settlement Conferences

With respect to settlement conferences, the following rule is added to the local rules:

Section 7.12 -- Settlement Conferences

Unless the court orders otherwise, a settlement conference shall be held before a judicial officer in all civil cases within 180 days after commencement of the suit. Each individual party and a management or governmental official of all other parties together with the attorney who will be the principal trial lawyer for such party shall be present in person at the settlement conference and any adjournment of it unless such attendance is excused in advance by the judge or the judge's designee for sufficient cause. If attendance is excused, someone else with authority to negotiate and bind the party shall be present in person. In the event a party is insured, a representative of the insurance carrier with settlement authority shall be available by telephone.

At the settlement conference or any adjournment of it, the judicial officer shall seek to negotiate or mediate a settlement of the case, or any part of it, using such techniques which the judicial officer deems likely to assist in reaching a settlement, including referral to a magistrate judge, a special master, or an appointed lawyer for early neutral evaluation or mediation.

The judicial officer may require the parties to submit at a designated time, before or at the settlement conference, a summary of the facts, claims, itemization of damages, medical reports, estimated litigation costs, settlement demands, or such other matters as may assist the judicial officer in the settlement of the case. Such submissions shall not be submitted to the clerk and shall not become part of the record.

B. Operating Practices and Procedures

1. Expanded Utilization of Magistrate Judges

Dispositive motions in civil cases (other than Social Security review) will not be referred routinely to a magistrate judge for findings and recommendations.

In order to encourage consent to jurisdiction by a magistrate judge, a statement in boldface type will be added to the form for consent to jurisdiction by a magistrate judge providing as follows:

IF THE PARTIES CONSENT TO TRIAL BY THE MAGISTRATE JUDGE, THE PARTIES WILL BE ASSURED A FIRM TRIAL DATE (WITHIN TWELVE MONTHS IF THE PARTIES WISH).

2. Sentencing Guidelines

The court urges that the U.S. Probation Officer meet with counsel prior to the sentencing hearing in an attempt to resolve Sentencing Guideline disputes.

3. Rulings on Motions

All motions, except in cases raising significant matters of first impression involving matters of significant development of the law likely to be applicable to other matters or matters of public importance, should be decided either by (1) oral decision in open court with a brief explanation of the court's reasoning and the application of law to the issues raised together with a minute order or judgment, or (2) a brief written decision explaining the court's reasoning and application of law to the issues raised together with a minute order or judgment. Judges and magistrate judges should render oral decisions on motions.

4. Time Limits for Trying Cases

Judges and magistrate judges are encouraged to establish reasonable time limits for the trial of cases.

5. Control of Criminal Docket

Magistrate judges are responsible for individualized case management in all criminal cases, including conducting status conferences. At the status conference, among other things, the magistrate judge should review all anticipated motions and set a realistic and firm trial date, based upon the status of the case and the available trial dates obtained from the judge to whom the case is assigned.

Magistrate judges are encouraged to rule orally on criminal, nondispositive pretrial motions.

Final pretrial conferences in criminal cases will be conducted by the judge scheduled approximately ten days before trial.

The court will conduct a study to determine the feasibility of establishing a Federal Public Defender program in the district.

6. Use of Senior Judges from Other Districts

The district will seek to utilize senior judges from other districts to handle large criminal cases with numerous defendants, or, in the alternative, the civil trials which have been displaced by large criminal cases.

7. Scheduling Conferences

A routine item at the Rule 16 scheduling conference shall be the scheduling of a settlement conference to be conducted in accordance with proposed Local Rule 7.12.

8. Additional Magistrate Judges

As a pilot project to implement the essential elements of this plan and to ascertain the effect of the plan upon reduction of delays and costs of civil litigation in this district, the district will seek two additional magistrate judges to perform the substantially expanded duties of magistrate judges, including participation in civil case settlement conferences, conducting all status con-

ferences in, and otherwise being responsible for the individualized case management of all criminal cases, and increased responsibility for civil litigation matters to which the parties are being encouraged to consent.

C. Effective Dates

This plan is effective on March 1, 1992, in the following manner with respect to amendments of the local rules and operating practices and procedures:

1. Local Rules 7.03, 7.06, and 7.08 shall apply to all cases filed on or after the effective date of this plan.

2. Local Rules 6.07, 7.06, 7.09, 7.10, and 7.11 shall apply to all cases filed on or after the effective date of this plan and to all pending cases in which the event that is the subject of the rule has not occurred as of the effective date of this plan.

3. Local Rule 7.12 shall apply to all cases filed after the effective date of this plan and to such other pending cases as the court may direct.

4. Operating Practices and Procedures 1 through 6 shall apply to all pending cases and cases filed after the effective date of this plan.

5. Operating Practice and Procedure 7 shall apply to all cases filed on or after the effective date of this plan and to all such other pending cases in which a scheduling conference has not been held as of the effective date of this plan.

D. Duration of the Plan

1. Pending further action by this court, this plan will be in effect for three years from the effective date of the plan. The court may revise the plan as it sees fit, subject to statutory requirements, and will provide due notice of any such revisions.

2. Pursuant to 28 U.S.C. §§ 472(d) and 474, the court hereby 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.

Executed this _____ day of December, 1991.

BY THE COURT:

_____
TERENCE T. EVANS
CHIEF JUDGE

_____
THOMAS J. CURRAN
UNITED STATES DISTRICT JUDGE

_____
J.P. STADTMUELLER
UNITED STATES DISTRICT JUDGE

_____
MYRON L. GORDON
SENIOR U.S. DISTRICT JUDGE

_____
JOHN W. REYNOLDS
SENIOR U.S. DISTRICT JUDGE

_____
ROBERT W. WARREN
SENIOR U.S. DISTRICT JUDGE

APPENDIX I

DISCUSSION OF EARLY NEUTRAL EVALUATION AND MEDIATION

A. EARLY NEUTRAL EVALUATION

The case management technique which attorneys surveyed most frequently (60.4%) identified as a method which would reduce fees and delays in litigation was a process leading to the early definition and resolution of issues. The Advisory Group has recommended early neutral evaluation as the mechanism by which that need can best be met. The broad purpose of early neutral evaluation is to make the case development and the settlement process more efficient. It is to be distinguished from mediation, a process where settlement is a major goal. The early neutral evaluator identifies the main issues in dispute, explores the possibilities of settlement, and assesses the merits of the respective claims. If the parties agree and the evaluator is willing, a follow-up meeting or meetings can be scheduled to continue that process. Early neutral evaluation offers an opportunity to clarify case issues and it affords a cost-effective way to learn about an opponent's case. A principal advantage of early neutral evaluation is that parties can communicate directly with each other.

A program of early neutral evaluation has been in place in the Northern District of California since 1985. The Advisory Group is impressed by the fact that program analysis surveys report that over 77% of the attorneys and over 85% of the parties participating in the program report that it frequently enabled them to identify key issues in the case and that well over half of all participants (58% of the attorneys and 67% of the parties) agree that the process improved the prospects for settlement. D. Levine, *Northern District of California Adopts Early Neutral Evaluation to Expedite Dispute Resolution*, 72 JUDICATURE 235, 236 (Dec.-Jan. 1989). The Advisory Group is particularly impressed by, and commends to the judges of our district, the observation that nearly 80% of the lawyers involved and 74% of their clients, reported a "high level of satisfaction" with the early neutral evaluation program in the Northern District of California. *Id.*

In early neutral evaluation, a neutral evaluator is selected by the parties or designated by the court. The evaluator should be a respected attorney with particular experience with the type of case involved. The evaluator holds a brief, confidential, and non-binding session early in the litigation to hear both sides of the case. It is the belief of the Advisory Group that such a session should occur after preliminary discovery has been completed but before the parties have undertaken significant and expensive, and perhaps avoidable, secondary discovery. The Advisory Group has in mind the admonition of members of the Milwaukee Bar Association who, during the public hearing, warned against interfering with or limiting discovery to the extent that parties were prohibited from learning the basic facts of their case and their opponent's case before being introduced to mechanisms to resolve the dispute short of trial. The Advisory Group thinks that the admonition is sound and believes that any alternative dispute resolution technique will be most successful if the parties first have been able to learn something of their case and their opponent's case.

The Advisory Group vigorously recommends this program, because it is convinced that many matters in litigation, particularly commercial disputes and non-physical injury tort cases, can be resolved short of litigation or the issues in litigation significantly reduced, if informed parties are provided an opportunity to listen directly and informally to the position of the opponent and to have their respective positions assessed and evaluated by a skilled and experienced evaluator. On this latter point, it appears imperative that the evaluators be selected with care. It is suggested that the court seek out talented attorneys to serve as evaluators and that those selected receive appropriate and tangible forms of recognition. We recommend that such evaluators be compensated at whatever hourly rate they normally charge for their services as attorneys.

Proposed Local Rule 7.12, as set forth in Appendix H, would effectuate this recommendation.

B. MEDIATION

Section 473(a)(6) of the Civil Justice Reform Act contemplates that the recommendation of this Advisory Group may include a recommendation that the court refer appropriate cases to an alternative dispute resolution program that the court may make available, including mediation. The Advisory Group interprets this provision as enabling the Eastern District of Wis-

consin to create a mediation program to which parties may be compulsorily referred by the court. The Advisory Group recommends such a program.

In making this recommendation, the Advisory Group is conscious of the important distinction between mediation and neutral adjudication. The group proposes a program involving mediators who have no power to impose a solution upon the parties and whose sole function is to help the disputants resolve their matter consensually. We are aware of numerous occasions in which skilled neutrals have been able to mediate apparently intractable disputes and believe the process is a valuable one which should be explored within this district. Within the past five years, eight federal districts have instituted mediation programs: the Southern District of California, the District of Connecticut, the District of the District of Columbia, the Middle District of Florida, the District of Kansas, the Eastern District of Pennsylvania, and the Eastern and Western Districts of Washington. The Advisory Group understands that each of these programs offers litigants trained lawyer-mediators to help them resolve disputes consensually and confidentially.

The Advisory Group considers it an essential element of a mediation program that the parties attend each mediation session, because mediation involves debate and negotiation between the parties themselves, not just between their attorneys. The Advisory Group believes that the court has the authority to compel such attendance under the Civil Justice Reform Act.

Proposed Local Rule 7.12, as set forth in Appendix H, would effectuate this recommendation.