REPORT OF THE ADVISORY GROUP OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

JUNE 15, 1993

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CIVIL JUSTICE REFORM ACT ADVISORY GROUP

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I.

INTRODUCTION

In 1990 the Congress enacted into law the Civil Justice Reform Act.[1] The specific purpose of the Act was to reduce the cost and delay in civil litigation in the United States district courts. The Act envisioned a community effort in assessing and developing a plan to address those concerns of cost and delay. Accordingly, pursuant to Section 478 of the Act, Chief Judge H. Franklin Waters appointed an Advisory Group of nine attorneys and three non-attorneys in January of 1991.

The Act places responsibility upon the Advisory Group to promptly make a "thorough assessment of the state of the court's civil and criminal dockets", as follows:

1. Determine the condition of the civil and criminal dockets;
2. Identify trends in case filings and in the demands being placed on the court's resources;
3. Identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and ways in which litigants and their attorneys approach and conduct litigation; and

[1]Title I of the Judicial Improvements Act of 1990, Pub.L.No. 101-650(1990) codified at 28 U.S.C. Section 471-482.

4. Examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.[2]

The Advisory Group's initial meeting was June, 1991. That meeting, along with subsequent meetings in November, 1991; June, 1992; and October, 1992 was devoted largely to discussions of the condition of the court's docket and the causes, if any, of excessive cost and delay in the Western District. The Advisory Group's efforts and findings were augmented by U.S. courts' statistical reports, locally produced district reports, and through the use of litigant and attorney survey instruments. At the Advisory Group's June, 1992 meeting, several recommendations were presented and voted on. The approved recommendations were then presented to the court's judicial officers at the October, 1992 meeting.

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[2] 28 U.S.C. Section 472(c)(1)

II.

DESCRIPTION OF THE COURT

The United States District Court for the Western District of Arkansas is one of two district courts in the State of Arkansas. The Western District is a generally rural court serving thirty-four counties in the western half of the state. The district is half-moon shaped, extending from the Missouri border on the north to the Louisiana border on the south. The district is bounded on the west by the states of Oklahoma and Texas.

A. DIVISIONS

The district, as provided by 28 U.S.C. 83, is divided into six divisions of court. Fort Smith, the most populous city in western Arkansas, serves as the headquarters location for the court. The remaining divisions are located in El Dorado, Harrison, Texarkana, Fayetteville, and Hot Springs. According to the 1990 census figures the populations for the divisional locations are:

Fort Smith	(72,798)
El Dorado	(23,146)
Harrison	(10,000)
Texarkana	(22,631)
Fayetteville	(45,044)
Hot Springs	(32,462)

The Western District of Arkansas is classified as a medium sized court. The six divisions are comprised of the following counties:

1. Fort Smith Division (headquarters for the district): Crawford, Franklin, Johnson, Logan, Polk, Scott and Sebastian counties;
2. El Dorado Division: Ashley, Bradley, Calhoun, Columbia, Ouachita and Union counties;
3. Harrison Division: Baxter, Boone, Carroll, Marion, Newton and Searcy counties;
4. Texarkana Division: Hempstead, Howard, Lafayette, Little River, Miller, Nevada and Sevier counties;
5. Fayetteville Division: Benton, Madison and Washington counties;
6. Hot Springs Division: Clark, Garland, Hot Spring, Montgomery and Pike counties.

B. JUDGES

At the present time, as authorized by 28 U.S.C. 133, the district has three district judgeships. (At the time of this writing the district has one vacancy.) The district is also authorized two full-time magistrate judges. One position is newly authorized and has not yet been filled by the court. Additionally, the court has three part-time magistrate judges.

Those positions will be abolished upon appointment of the second full-time magistrate judge.

The current complement of judicial officers and duty stations are as follows:

1. Honorable H. Franklin Waters, chief judge - Fayetteville
2. Honorable Jimm Larry Hendren, district judge - Fort Smith
3. Honorable Beverly R. Stites, magistrate judge - Fort Smith

C. GEOGRAPHY AND DEMOGRAPHICS

As stated above, the Western District is generally a rural district. In 1990 the census reported a population of 956,283 in the 34 counties. 46%, or nearly half the population, reside in the Fayetteville and Fort Smith divisions. This is reflected, too, in the caseload filings. For calendar year 1992 nearly 44% of all civil filings in the district occurred in these two divisions.

From 1980 to 1990 the state reported an overall population increase of 3%. This amounted to approximately a 70,000 increase. 50,000 or 70% of that increase occurred in the Western District. Moreover, the Fayetteville division was the primary beneficiary of that growth. From 1980 to 1990 the division increased 18% in population. Much of the growth is due to industrial and manufacturing expansion, and, in particular, growth in the

WESTERN DISTRICT OF ARKANSAS

DIVISIONS - BY COUNTY

El Dorado	Fort Smith	Harrison	Texarkana	Fayetteville
Ashley	Crawford	Baxter	Hempstead	Benton
Bradley	Franklin	Boone	Howard	Madison
Calhoun	Johnson	Carroll	Lafayette	Washington
Columbia	Logan	Marion	Little River	
Ouachita	Polk	Newton	Miller	
Union	Scott	Searcy	Nevada	
	Sebastian		Sevier	**Hot Springs**
				Clark
				Garland
				Hot Spring
				Montgomery
				Pike

III.

ASSESSMENT OF CONDITIONS OF DOCKET

A. CONDITION OF THE DOCKET

In the unpublished version of the September, 1992 "Federal Court Management Statistics" prepared by the Administrative Office of the U.S. Courts, (See Appendix A), the judicial work profile for the Western District of Arkansas for the twelve-month period ending September 30, 1992, shows total actions filed of 1,159. This is a 4.5% increase over Statistical Year 1991.

A comparison of this district's work profile with the national workload profile shows filings per judgeship to be 343 civil and 43 criminal felony, compared with the national average of 355 civil and 54 criminal felony per judgeship. Pending cases show 230 per judgeship in the Western District, compared to 405 nationally.

Weighted filings show 331 actions per judgeship in the Western District, compared to 416 nationally. Terminations show 372 per judgeship in the Western District to 405 nationally.

Trials completed in the Western District show 28 actions per judgeship, as compared to 32 nationally.

In comparing median times for disposition, the statistics truly illustrate the success the Western District of Arkansas has had in managing its civil and criminal docket. Median time for criminal felony, from filing to disposition is 4.2 months. Nationally that figure is 5.9 months. The Western District ranks second in the 8th Circuit and twelfth nationally in that category. Median time for civil, from filing to disposition, also is exceptional; that interval is six (6) months. The Western District ranks first in the 8th Circuit and fourth nationally. Median time for civil from issue to trial is 8 months. Nationally that figure is 15 months. The Western District ranks first in the 8th Circuit and fifth nationally. The final statistic which is truly indicative of the court's effort and commitment is the fact that the district has no pending civil actions over three years old. In fact, the Western District has the singular distinction of being the only district in the federal court system, as of September 30, 1992, to not have a single civil action pending for more than three (3) years.

B. TRENDS IN FILINGS

For the period Statistical Year 1987-1992, (October 1 - September 30) the case filings in the Western District of Arkansas have been fairly consistent. In SY '88, '89, '91 and '92 the numbers are nearly identical. (1120, 1123, 1109 and 1159 respectively.) Statistical Years '87 and '90 showed variances from the norm. From SY '87 to SY '88 the

district experienced an approximate 10% increase in filings, while in SY '90 the district experienced a 15% decrease. One factor which affected the civil filings in the SY '89-90 period was the legislation in 1989 which increased the jurisdictional amount for diversity actions. The threshold increased from $10,000 to $50,000. Traditionally, 40% of the civil actions commenced in the Western District alleged diversity. In SY '90 diversity filings decreased to approximately 29% of the civil caseload. In SY '91 that figure increased to about 34%. In SY '92 the percentage has increased to nearly 40% - rebounding to traditional levels.

C. PRISONER CASES

Over the past five years the Western District of Arkansas has experienced a significant increase in prisoner cases. These actions are primarily habeas corpus matters filed under 28 U.S.C. 2254 and 2255, or civil rights actions filed under 42 U.S.C. 1983. Many of the actions concern county jail conditions; problems of incarceration or facility standards; or questions of representation at trial and issues of sentencing. The percentage of prisoner cases has increased from 10.7% in 1988 to 21.5% in 1992.

Prisoner cases inordinately consume a great deal of judge time. The district's full-time magistrate judge has been able to effectively manage the voluminous pleadings, screen the petitions and motions, and draft recommendations and orders for the court.

This has been aided, too, by the consent of many prisoner petitioners and respondents to the jurisdiction of the magistrate judge.

	Civil Cases	Prisoner Petitions	Percentage of Civil Cases
1992	1,031	222	21.5
1991	1,053	180	17.1
1990	886	184	20.8
1989	1,042	202	19.4
1988	1,009	108	10.7

D. OTHER CIVIL ACTIONS

Generally speaking, with the exception of the increases in the prisoner cases and the decrease and subsequent rise of diversity actions, the civil caseload of the Western District of Arkansas has been relatively constant. During the past five years the percentage of civil cases by category, relative to the total civil filings, has been consistent. For instance, contract filings comprise on average 15% of the district's civil caseload, real property cases average 19%, tort actions average 15%, social security and civil rights average 9% each.

E. CRIMINAL CASELOAD

Over the past several years there has been a significant increase in the number of criminal case filings. In fact, during the five year period from 1987 through 1991 there was over a 75% increase in criminal filings. While historically the Western District of Arkansas' most significant prosecutions have been in the white collar/fraud area, narcotics prosecutions have risen more than any other type of criminal cases. During 1990 there was a 133% increase in drug offenses.

New initiatives that will be forthcoming are increased money laundering/financial investigations involving the IRS, DEA and state drug task forces. These federal investigations will integrate with investigations of emerging crack/cocaine organizations which, for the most part, are initiated on a local basis by state drug task forces.

The Department of Justice has recently initiated a program to deal with drug-related and gun-related felonies. "Project Triggerlock" is aimed at career criminals and criminals who use firearms in the commission of criminal offenses. This program has been a high priority for the Department and U. S. attorneys have been directed to bring state cases into federal courts by using federal laws prohibiting the use of firearms to commit certain crimes. Since its inception in 1992, 16 "Triggerlock" prosecutions have been brought and it is anticipated that its impact will be significant.

Because environmental crimes affect the quality of life and may make victims of us all, it is a priority. With the large number of processing plants and chemical plants located in the district it is anticipated that the number of environmental cases will continue to increase.

Over the past few years federal law enforcement and investigative agencies have expanded their presence in the district. Both the DEA and Secret Service have established offices in the district. This expansion is due, in part, to the population growth of Sebastian, Crawford, Washington, and Benton counties.

To coincide with this expansion and the establishment of another judicial slot, the staff of the U.S. Attorney's Office has doubled since 1985.

It is anticipated that Northwest Arkansas will continue to be a growing sector of the state. With this increase, the law enforcement presence will undoubtedly see an expansion.

The financial litigation unit is an important part of the prosecutorial function. Asset forfeiture and equitable sharing serve to meet many of the needs of the local law enforcement community. Since its inception in March of 1989, the increase in deposits into the asset forfeiture fund has been dramatic. During fiscal year 1992 approximately 30 judicial forfeiture cases were filed and more than $1.1 million was deposited into the fund - in excess of 25 times the amount deposited in fiscal year 1989. In just the first four

months of fiscal year 1993 the appraised value of assets being held by the U.S. Marshals Service in the Western District of Arkansas is in excess of $1.3 million. It is anticipated that the number of cases will continue to increase.

Likewise, the collection of civil and criminal debts owed to the United States in the Western District of Arkansas has steadily risen over the past three fiscal years. In fiscal year 1990 collections were in excess of $1.4 million. That figure doubled in fiscal year 1992 with collections totalling in excess of $2.9 million.

Finally, an assessment of the district's prosecutorial activities must include cases originating under federal regulations or state statutes assimilated under 18 U.S.C. Section 13, which occur within the territorial jurisdiction of the respective U.S. Magistrates. During the five year period from 1987 through 1991, there was a 34.6% increase in case filings and a 66.7% increase in case filings in 1991 alone.

It is anticipated that this increase will continue and with the potential activation of Fort Chaffee as a training center, the increase could be significant.

F. AUTOMATION

The Western District of Arkansas has benefited, maybe as much as any other federal district court, in the opportunities and advantages afforded by automation. Early on, through the efforts of Chief Judge H. Franklin Waters, the district undertook measures to provide personal computers for chambers and for the clerk's office.

Additionally, again through the efforts and talents of the chief judge, local programs were developed to provide case management information for the court. This early commitment has provided a sound foundation for the implementation of ICMS CIVIL (September, 1990) and CRIMINAL (May, 1992), the PACER program- public access to court records, and with other applications, either locally or nationally developed.

In addition to the applications listed above, the district has initiated efforts in developing scanning applications, for use in the court's jury system, and for a data base application which serves as a repository for court opinions and decisions in this district.

It is the district's belief that all these measures, from electronic docketing to scanning technology, provide the court, the Bar, the litigants and the public with an effective and efficient court system.

IV.

THE CJRA PROCESS

A. COST AND DELAY

One of the principal concerns underlying the enactment of the Civil Justice Reform Act was the public's perception that it takes too long to resolve civil cases in the federal courts. The fact is that nationwide, in the statistical year ending September 30, 1990, 10.6% of the civil cases filed took over three years from filing to disposition. (That figure decreased to 7.7% as of September, 1992.) That reality is reflected, too, in the state courts nationwide. This concern for timely disposition is, of course, separate from the companion cost of litigating civil cases. Both issues, however, are central to the assessment of the court's docket, as required by the Civil Justice Reform Act. The statute requires the Advisory Group to "identify the principal causes of cost and delay in civil litigation" in this district.[3]

In an effort to complete the assessment of cost and delay, as required by the Civil Justice Reform Act, the Advisory Group undertook two measures. First, by way of analysis, the Advisory Group completed an examination of the condition of the civil and criminal dockets. Our conclusion, which is based on the assessment of the docket, is

[3] Civil Justice Reform Act, 28 U.S.C. 472 (c)(1)(C)

that the Western District of Arkansas does not have a problem with delay in either the civil or criminal caseload.

Next, and probably the most difficult, is the assessment of cost. In consideration of this the Advisory Group employed two methods. The first was through discussions among the Advisory Group members. The Advisory Group is representative of the Bar of the Western District, geographically, and in practice. Advisory Group members consisted of plaintiffs' attorneys as well as defense bar. Additionally, three non-lawyers served on the Advisory Group. Their occupations were financial, baking, and media (newspaper and radio and television). The consensus was that, overall, cost was not a problem in the Western District. One area of excessive costs identified by members was the hourly rate charged by expert witnesses for preparing for and giving their discovery depositions. An attorney who is taking an opponent's expert witness deposition should have a forum to address the issue of such excess charges by expert witnesses. In an effort to supplement the Advisory Group conclusions a survey instrument was directed to party litigants concerning cost and delay. Although the percentage of responses was statistically low, less than 30%, the results were helpful. (See Appendix B.) 70% of those responding indicated that the cost of litigation was about right in the Western District of Arkansas.

The principal cost problem in the Western District of Arkansas, although not a significant problem, are the costs associated with discovery. The problems include the use and costs of expert witnesses, the amount of discovery, discovery disputes, and the overall costs to the party litigants. This issue of discovery costs has been addressed in the Advisory Group's recommendation found on page 23.

B. IMPACT OF CASE MANAGEMENT PROCEDURES

An important element of assessing "the principal causes of cost and delay" is an examination of the court's case management practices and procedures for processing civil and criminal cases. To accomplish this the Advisory Group employed three survey instruments. The first was directed to attorneys who have a regular civil practice in the Western District, and the second, to attorneys who represent criminal defendants in the Western District. Criminal surveys were mailed to attorneys who appear regularly in this court, either as a result of appointment under the Criminal Justice Act or retention. The final survey instrument was directed to the district's judicial officers and to their respective chambers' staffs.

The results of the surveys were interesting and extremely beneficial to the Advisory Group. (See Appendices C-E.) In particular, there were two subject areas in the civil

survey responses which were of interest. First, there was an overwhelming consensus of those who responded that the level of civil case management in the Western District of Arkansas is either intensive or high. This was not unexpected as the judges of this court utilize clear cut scheduling orders and enforce strictly, yet fairly, a continuance policy. The surprise was, and again by a large majority of the respondents, that the level of case management found in the Western District was generally appropriate. The other subject area response which was of interest to the Advisory Group concerned the adoption of Alternate Dispute Resolution programs (ADR) and the implementation of a differentiated case management program (DCM). Specifically, the civil survey responses and written comments received therein endorsed the establishment of a DCM program. A comment echoed several times concerned the scheduling practices in this district. "Not all cases are alike, but they are treated the same by the court's scheduling process. DCM would save this problem." Or, "The only complaint that I have is that once a case is filed, it doesn't matter whether it is a very complex case or simple case, it appears to follow the same time schedule". As a result of these bar comments, combined with anecdotal experiences of the Advisory Group, a recommendation will be made to establish a limited DCM program in the Western District of Arkansas.

C. MOTION PRACTICES

Another complaint evidenced in the civil survey responses was the dissatisfaction expressed by several attorneys to the length of time that it takes from when a motion is filed until a decision is rendered. Most of the complaints were in reference to dispositive motions. As an example, "a motion for summary judgment was ruled on three days before a week-long trial was to have begun. The motion was filed approximately four (4) months prior to the court date. The untimely ruling cost all parties trial preparation expense (several thousand dollars) that would not have been incurred had the motion received a prompt ruling." There were other similar comments received to the timely ruling of dispositive motions. Accordingly, as a result of these bar comments, combined with anecdotal experiences of the Advisory Group, a recommendation will be made calling for the court to exercise greater sensitivity to the timely ruling of dispositive motions.

V.

RECOMMENDATIONS AND THEIR BASES

In undertaking its responsibilities under the Civil Justice Reform Act the Advisory Group not only focused its attention on the court's statistical history, any filing and

caseload trends, and court practices and procedures, but also took into account the six principles and guidelines of litigation management and cost and delay reduction set forth in Section 473(a) of the Civil Justice Reform Act. The Advisory Group, after considerable discussion and analysis and data gathering, concluded that the Western District of Arkansas is a well-managed court, one of which the bar, the litigants and the general members of the public should be proud. The judges and court staff should all be commended for their leadership and commitment to the principles of caseflow management. Without these attributes it is doubtful whether the Western District would enjoy the successes achieved to date.

The Advisory Group in discharging its responsibilities under the Civil Justice Reform Act is required to "make a thorough assessment of the state of the court's civil and criminal dockets", and in doing so, "examine and identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and ways in which litigants and their attorneys approach and conduct litigation".[4] The Civil Justice Reform Act further requires that the Advisory Group submit a report containing recommended measures, rules and programs, and the basis for those recommendations. These recommendations are to be made in the context of the

[4]Civil Justice Reform Act, 28 U.S.C. 472(c)(1)(C)

particular needs and circumstances of the court, the litigants and counsel. Accordingly, with that context in mind, the Advisory Group makes the following four recommendations.

1. The Western District of Arkansas should establish a Differentiated Case Management Program. The program would be limited to cases which fall into the category of "complex". Complex would be defined as cases having the following characteristics:

    a. numerous and possibly unique legal issues,

    b. extensive discovery,

    c. greater than usual number of expert witnesses, large number of parties and extended trial days.

    Case types may include: antitrust, patent infringement, class actions, malpractice actions, environmental issues, mass torts, securities, tax suits and product liability. The primary component of the program would be the case management conference. The conference would be scheduled within 120 days of the issues being joined, or from the date of the last responsive pleading. The purpose of the conference is two-fold: the conference would bring together, either telephonically or in person, counsel and the court to establish key intervals in the case - extent of discovery, setting of discovery cut-off dates, setting of deadlines for filing motions, and the setting of trial dates. Second, the conference would also serve as a forum for counsel to voluntarily disclose discovery information, including key documents and witness identification. (The proposed amendments to Rule 26 of the Federal Rules of Civil Procedure require mandatory pre-discovery disclosure.)

    The basis for this recommendation is that the Advisory Group received a number of comments from Western District attorneys expressing concern with the scheduling practices of the judges of this court. Members of the bar voiced complaints that the

promptly. Principally, the complaints centered around dispositive motions and particularly motions for summary judgments. It is the consensus of the Advisory Group, based on its own experiences and the comments of attorneys, that the Western District should examine its methods for processing dispositive motions, and employ its best efforts to promptly dispose of those motions. This recommendation applies equally to civil and criminal.

4. The Advisory Group recommends that the Western District of Arkansas not establish mandatory alternative dispute resolution (ADR) programs. The court should, however, identify ADR resources in this district or adjacent districts, and make available, if requested by the parties, adequate time to explore ADR options and other settlement possibilities.

   A minority view is expressed in a letter from member Leroy Autrey dated March 18, 1993 which is attached as Appendix G.

5. In view of the handful of recommendations the Advisory Group recommends that the district court develop its own plan. The plan should specifically address the following issues:

   a. Adoption of a differentiated case management plan for complex cases, with particular attention to scheduling and the case management conference.

   b. Heightened sensitivity by judges to discovery disputes and to the costs associated with the deposing of expert witnesses.

   c. Heightened sensitivity by judges and staff to the prompt handling of dispositive motions. Measures may include internal review and examination of present methods and procedures for processing such motions.

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

WESTERN DISTRICT OF ARKANSAS

APPENDICES

APPENDIX A

JUDICIAL WORKLOAD PROFILES

(FOR THE STATISTICAL YEARS ENDING SEPTEMBER 30, 1992
BACK THROUGH 1987)

From unpublished version of September, 1992
Federal Court Management Statistics,
Compiled by the Federal Judicial Center

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

ARKANSAS WESTERN			TWELVE MONTH PERIOD ENDED SEPTEMBER 30						NUMERICAL STANDING WITHIN	
			1992	1991	1990	1989	1988	1987	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings*		1,159	1,109	990	1,123	1,120	1,021		
	Terminations		1,115	1,017	1,197	1,097	1,151	1,066		
	Pending		690	646	549	754	744	775		
	Percent Change In Total Filings Current Year	Over Last Year. . .		4.5					56	4
		Over Earlier Years. . .			17.1	3.2	3.5	13.5	25	2
	Number of Judgeships		3	3	3	3	3	3		
	Vacant Judgeship Months**		10.8	10.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	386	370	330	374	373	340	54	5
		Civil	343	338	298	351	345	316	48	5
		Criminal Felony	43	32	32	23	28	24	59	7
	Pending Cases		230	215	183	251	248	258	85	8
	Weighted Filings**		331	305	287	314	343	335	76	9
	Terminations		372	339	399	366	384	355	56	5
	Trials Completed		28	37	45	35	41	40	58	8
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	4.2	4.0	4.2	4.0	3.6	2.9	12	2
		Civil**	6	6	7	7	9	9	4	1
	From Issue to Trial (Civil Only)		8	7	6	9	9	11	5	1
OTHER	Number (and %) of Civil Cases Over 3 Years Old		0 .0	1 .2	0 .0	1 .1	0 .0	1 .1	1	1
	Average Number of Felony Defendants Filed per Case		1.4	1.3	1.3	1.4	1.4	1.6		
	Jurors	Avg. Present for Jury Selection**	36.84	46.18	41.74	40.71	36.75	35.18	58	6
		Percent Not Selected or Challenged**	43.3	47.5	45.3	43.3	35.8	38.1	84	9

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

1992 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	1030	118	23	216	40	184	43	107	125	7	114	1	52
Criminal*	128	7	11	13	-	9	21	10	5	29	-	4	19

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

*See Page 167.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

ALL DISTRICT COURTS			TWELVE MONTH PERIOD ENDED SEPTEMBER 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT
			1992	1991	1990	1989	1988	1987	
OVERALL WORKLOAD STATISTICS	Filings*		265,612	244,790	251,166	257,259	269,982	265,234	
	Terminations		263,034	250,615	245,014	255,473	266,595	262,605	
	Pending		262,805	260,095	273,301	267,440	269,646	266,006	
	Percent Change In Total Filings Current Year	Over Last Year. . .		8.5					
		Over Earlier Years. . .			5.8	3.2	-1.6	.1	
	Number of Judgeships		649	649	575	575	575	575	
	Vacant Judgeship Months**		1326.5	1227.6	540.1	374.1	485.2	483.4	
ACTIONS PER JUDGESHIP	FILINGS	Total	409	377	437	447	470	461	
		Civil	355	325	381	393	419	411	
		Criminal Felony	54	52	56	54	51	50	
	Pending Cases		405	401	475	465	469	463	
	Weighted Filings**		416	384	452	454	469	454	
	Terminations		405	386	426	444	464	457	
	Trials Completed		32	31	35	35	34	34	
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.9	5.8	5.4	5.2	4.5	4.1	
		Civil**	9	10	9	9	9	9	
	From Issue to Trial (Civil Only)		15	15	14	13	14	14	
OTHER	Number (and %) of Civil Cases Over 3 Years Old		17,249 7.7	21,252 9.4	25,672 10.6	23,137 9.7	21,918 8.9	20,043 8.2	
	Average Number of Felony Defendants Filed per Case		1.6	1.5	1.5	1.5	1.6	1.5	
	Jurors	Avg. Present for Jury Selection**	37.64	37.43	35.60	36.07	32.70	31.14	
		Percent Not Selected or Challenged**	34.1	34.3	33.9	35.4	33.7	32.1	

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

1992 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	230509	8958	16006	48423	7825	9976	16394	33428	38179	5830	24233	502	20755
Criminal*	34277	1883	1467	3782	576	1676	5118	6766	1022	6354	595	1925	3113

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
**See Page 167.

APPENDIX B

LITIGANT SURVEY

RESPONSES TO LITIGANT SURVEY
WESTERN DISTRICT OF ARKANSAS

TOTAL SURVEY FORMS MAILED: 177 (Approximately 50% plaintiffs and 50% defendants)

TOTAL RESPONSES RECEIVED: 50*
*Only 40 actually responded to questions.

SUMMARY OF RESPONSES

1. Were you the plaintiff or defendant in the case noted on the cover letter?

Plaintiff	18
Defendant	22

2. Please indicate the total costs you spent on this case for each of the categories listed below. If you are unable to categorize your costs, please indicate the total cost only.

F. Total Costs

$.0 to $5000	13
$5001 to $10,000	7
$10,001 to $20,000	9
$20,001 to $30,000	3
$30,001 to $40,000	2
Unknown	6

3. Please estimate the amount of money which was at stake in this case.

Under $25,000	7
$25,001 to $100,000	10
$100,001 to $500,000	7
$500,001 to $1,000,000	1
$1,000,000 and up	2
Unknown	7

4. What type of fee arrangement did you have with your attorney?

Hourly rate	20
Contingency	13
Set Fee	1
Other -	
(Monthly retainer)	1

(Reduced Hourly &

RESPONSES TO LITIGANT SURVEY
WESTERN DISTRICT OF ARKANSAS

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Unknown	7

4. What type of fee arrangement did you have with your attorney?

Hourly rate	20
Contingency	13
Set Fee	1
Other -	
(Monthly retainer)	1
(Reduced Hourly & Modest Contingency)	1
(Other)	1

5. Did this arrangement in your opinion result in reasonable fees being paid to your attorney?

Yes	27
No	5
Do Not Know	4

6. Were the costs incurred by you on this matter

Much too high	3
Slightly too high	4
About right	27
Much too low	1

7. If you believe the cost of litigation was too high, what actions should your attorney or the court have taken to reduce the cost of this matter?

COMMENT: "The court could have given me a chance and set this for trial in federal or state court."

COMMENT: "Lower all attorneys' fees. They are too high. Reduce time to bring it to the courtroom."

COMMENT: "The courts should not have granted so many delays. These delays add many hours to a case, thereby increasing costs."

COMMENT: "Continuances should be avoided unless absolutely necessary. Trials should be conducted on a full-day basis, 9 to 5, with minimal time for lunch, etc. Pretrials can cut down on trial time if attended to seriously, rather than perfunctorily, or pro-forma. The Bench should more fully appreciate that attorneys waiting for trial to begin means fees paid for non-productive time. Keep juries deliberating on a regular 9 to 5 basis, and even "overtime" if decision appears near."

8. Was the time that it took to resolve this matter

Much too long	14
Slightly too long	2
About right	20

9. If you believe that it took too long to resolve your case, what actions should your attorney or the court have taken to resolve your case more quickly?

COMMENT: "Start at 8:00 a.m. and go to 5:00 or 6:00 p.m. each day."

COMMENT: "The case should have been dropped immediately. The attorney for the plaintiff should have been fined and reprimanded a lot for his careless procedure."

COMMENT: "Speed up the deposition process."

COMMENT: "If an early court date could have been given to bring them to trial, I wouldn't have lost 22 months' interest on my money."

COMMENT: "Investigated one main source listed in my complaint and questioned that company and individual."

COMMENT: "Arbitration sooner."

COMMENT: "Courts take too long for a court date."

COMMENT: "The other attorney kept changing times for depositions and court dates. Should not have to work around other's schedules. Judge was uninformed and unfair. I hope we never go to court again." (summarized)

COMMENT: "Case was resolved before going to court - many delays prompted parties to come to a mutual agreement before actually going to court."

COMMENT: "Court hours should more fully reflect the normal working day. Trials should be conducted 5 days per week once they begin (let motions be heard by alternate judges.) Jury selection should be conducted with dispatch and efficiency.

10. Was arbitration or mediation used in your case?

No	30
Yes	3

11. Please add any comments or suggestions regarding the time and cost of litigation in the federal courts.

COMMENT: "Limit discovery. Hold your position to move quickly but fairly. Detail the scope of case to "rifle shot" rather than "shotgun" approach."

COMMENT: "The court's initial ruling only addressed the liability of the insurance company to provide defense for us. Question of responsibility for paying claim would be addressed at later date. Judgment was against us and insurance company would not accept responsibility for payment and we were forced to file bankruptcy.

If court had addressed complete question of liability, possibly bankruptcy could have been avoided. (Insurance company did indeed pay the claim.) (Summarized)

COMMENT: "Federal judges have too much power." (Summarized)

COMMENT: "Takes too long to appear in court."

COMMENT: "I was pleased with the speed in which this case was handled. My chief attorney also expressed surprise at how fast it went."

COMMENT: "The absurdity of this claim stands alone. The fact that it was in federal court probably would not have changed the outcome from being anything else in another area of our court system. The American fixation with lawsuits is the primary problem."

APPENDIX C

ATTORNEY SURVEY - CIVIL

Surveys Mailed 400

Responses Received 166

SUMMARY OF RESPONSES TO
ATTORNEY QUESTIONNAIRE RE CIVIL LITIGATION
DISTRICT TOTALS

A. MANAGEMENT OF LITIGATION

1. Case management refers to litigation oversight and supervision by a judge or magistrate judge. This management may include scheduling orders, close monitoring of motion practice, or requiring rapid progress to trial.

   How would you characterize the level of civil case management in this district? Please circle one.

1.	Intensive	62
2.	High	69
3.	Moderate	25
4.	Minimal	1
5.	Low	3
6.	Not Sure	2

2. Do you believe that the level of civil case management in this district is: Please circle one.

1.	Generally appropriate	119
2.	Too intensive	37
3.	Not intensive enough	4

3. In recent years various state and federal courts have begun to employ new methods of case management. Some courts have adopted alternative dispute resolution (ADR) programs and others have implemented differentiated case management (DCM) programs. The ADR family includes mediation, arbitration, early neutral evaluation, case valuation and mini-trials. DCM programs, in contrast, look at cases individually and tailor the management of that case, i.e. the speed and disposition to the type of action and complexity. DCM cases are placed on tracks - expedited track for simple cases, complex track for difficult cases involving multiple parties, type of relief, and other legal complexities. All other cases are assigned to a standard track.

   a. With respect to Early Neutral Evaluation - a confidential nonbinding conference held early in the course of litigation at which parties and their counsel present factual and legal arguments to a neutral evaluator who then identifies the primary issues in dispute, explores settlement possibilities, and helps the parties devise cost effective case planning:

   If Early Neutral Evaluation was an option in the Western District of Arkansas, would you seriously consider requesting that a case be referred to a neutral evaluator for the purpose of exploring settlement and/or devising a discovery schedule.

   Please circle one.

1. Yes, in all cases	15
2. Yes, in appropriate cases	115
3. No	24
4. I'm not sure	9

SAMPLING OF ATTORNEY COMMENTS

ATTORNEY QUESTIONNAIRE RE CIVIL LITIGATION

1. Litigation has become too complex thus making it more time consuming and expensive. Look for ways to simplify. Limit discovery. Example: Court approval required for more than 25 interrogatories, including subparts, etc.

2. In a recent case, a motion for summary judgment was ruled on three days before a week-long trial was to have begun. The motion was filed approximately 4 months prior to the court date. The untimely ruling cost all parties trial preparation expense (several thousand dollars) that would not have been incurred had the motion received a prompt ruling. Clients paid the tab - were extremely upset.

3. Some cases are too complex to adequately prepare for trial within six months of filing. Six months is simply not enough time to adequately prepare all cases for trial. This is especially true for the defense which often has not received any information on case until after complaint has been served.

4. Judge Waters is doing a good job. LEAVE HIM ALONE.

5. Some form of differentiated case management would be helpful in the preparation of case for trial.

   Settlement mediation almost always, in my experience, results in a settlement or a narrowing of the issues if a trial is held. In the Eastern District of Oklahoma, U. S. Magistrates are appointed as settlement judges at the request of either party. This system seems to work extremely well and especially helps the clients, who are <u>required</u> to attend the settlement conference, focus on the weaknesses and strengths of the parties' positions.

   Not all cases are alike, but they are treated the same by the court's scheduling process. Differentiated case management would save this problem.

6. Cost and expense are the single most concern to our clients.

   Discovery expense is much too costly.

   Expert witness fees need court supervision. No limits.

   Settlement conferences should be re-established by the district judges.

7. There is way too much paperwork; and summary judgment motions - even those filed long before trial time - take too long to be decided. Plaintiffs have had experts travel to Fort Smith, only to find their case poured out. Defendants suffer inconvenience, too, when this occurs, but their inconvenience is mollified by (a) victory, and (b) the fact that defendants typically ask their experts to "come later." But, paperwork. Why have "Pretrial Information Sheets" when pre-trial conferences are not scheduled? What are "trial briefs?" No one seems to know. The federal courts are becoming "rulebound" in the same way people became "musclebound" and the result is the same: loss of flexibility.

8. Scheduling orders should reflect the reality of case management. I only complain about the identification of experts by both sides at the same date. It should be staggered so that defendant may have the opportunity to evaluate plaintiff's experts and their area to select his or her own experts. It eliminates having to seek court approval for the naming of an additional expert.

9. In general, my experiences in the Western District have been very positive. However, I have encountered experiences concerning scheduling orders which are oppressive. There seems to be an attitude that a scheduling order cannot be varied under any circumstances. I don't often ask for a change, but I do feel there are some circumstances in which variances should be allowed. Judges sometimes seem to take such requests as challenges to their authority, rather than simple changes or unforseen developments.

10. Although it probably forces attorneys to prepare and focus, compliance with the pretrial information sheet, exhibit and witness lists, proposed findings, etc., makes preparation more expensive and should not be required in every case. All things considered, I think the judges in this district do an excellent job and allow the attorneys to try their cases without too much control or interference. Although cases do come to trial quickly, I prefer that to alternative of waiting for more than one year in state court.

11. Cases should be set for certain date. The current trial docket causes too much uncertainty as to trial date and increases expenses. Cases should be set on certain date upon motion of either party by agreement and consideration should be given to previous commitments by attorneys and parties in other courts.

    Interrogatories should be standardized for each type case and limited in number.

    Attorney work product privilege should be clarified by rule.

12. There are cases that involve witnesses from out-of-town that need to be set on a day certain. It is not possible in some cases to get a case ready for trial with only 24 hours' notice that a case has moved to the #1 position. I understand that several cases must be set for the entire week, but inquiries should be made (and concern shown) for the logistical problems that arise when a case is moved from #4 to #1 in a rapid fashion.

13. In the Western District of Arkansas the trial date is prompt and there is a clear date for depositions, motions and pleadings. The state courts have a problem with organization.

14. The federal court in the Western District of Arkansas is better managed at this time than it ever has been during my career. The only complaint that I have is that once a case is filed, it doesn't matter whether it is a very complex case or a simple case, it appears to follow the same time schedule. In simple cases it is easy to be prepared and have discovery completed by the time the matter is scheduled for trial. However, in complex cases it is difficult to have the case ready, and it appears difficult to obtain the necessary time and continuances in order to have the matter properly prepared in time for the court schedule.

APPENDIX D

ATTORNEY SURVEY - CRIMINAL

Mailed _100_

Responses _36_

SUMMARY OF RESPONSES TO
ATTORNEY QUESTIONNAIRE RE CRIMINAL CASES
WESTERN DISTRICT OF ARKANSAS

A. Attorney Profile

1. How many years have you been engaged in the practice of law?

   _10_ years

2. What percentage of your practice has been devoted to federal district court litigation during the past five years (or during the time you have been in practice, if less than five years?)

   _15_ % of my practice has been devoted to federal district court litigation

3. Of the amount of your practice devoted to federal district court litigation during the past five years:

   _54_ % has involved criminal cases

   ___ % has involved civil federal question cases

   ___ % has involved civil diversity cases

   ___ % has involved other federal cases

   The above totals should total 100 percent.

B. Management of Litigation

5. "Case management" refers to litigation oversight and supervision by a judge or magistrate judge. This management can take such forms as scheduling orders, close monitoring of motions practice, or requiring rapid progress to trial.

   How would you characterize the level of criminal case management in this district? Please circle one.

   (1) Intensive **16**

   (2) High **13**

   (3) Moderate **5**

   (4) Low

   (5) Minimal

   (6) None

   (7) I'm not sure **4**

6. Listed below are several case management actions. For each listed action, please circle one number to indicate whether or not the federal judges in this district generally take such action in criminal cases.

	Is Taken	Isn't Taken	Not Sure	Not Applicable
a. Hold pretrial activities to a firm schedule	23	1	3	1
b. Hold timely evidentiary hearings	22	1	3	2
c. Set and enforce deadlines for providing allowable discovery	24	0	3	1

d.	Narrow issues through conferences or other methods	14	7	6	1
e.	Rule promptly on pretrial motions	24	1	4	0
f.	Allow sufficient time for appeals from rulings of magistrates	16	0	10	2
g.	Do not require written opposi-tions to pretrial motions without a request from the court	1	5	21	1
h.	Set an early <u>trial</u> date	24	0	4	1
i.	Hold parties to initial <u>trial</u> date	23	3	6	0
j.	Set an early <u>sentencing</u> date	22	1	5	0
k.	Adhere to an early <u>sentencing</u> date	27	0	2	0
l.	Exert firm control over trial	25	0	2	2
m.	Other (please specify)	2	0	0	0

6(a) Comment: The time for filing pre-trial motions is extremely limited and really (in some cases) does not allow sufficient investigation time to know what matters are disputed so that appropriate motions may be filed.

7. Are there case management techniques that you believe the federal judges in this district should use in criminal cases that they are not now using?

(1) Yes. **2**

(2) No. **28**

If you answered "yes" to this question, please enter the letter or letters of each technique that you believe should be employed in this district from the listing of these techniques in question 6 or write out the name of the technique.

Comment: I would like to see more pretrial conferences.

8. Are there case management techniques that the federal judges in this district are now using in criminal cases that you believe they should not use?

(1) Yes. **2**

Comment: Too much deference to probation/pre-sentence officers.

(2) No. **27**

If you answered "yes" to this question, please enter the letter or letters of each technique that you believe should not be employed in this district from the listing of these techniques in question 6 or write out the name of the technique.

C. Timeliness of Disposition

9. Please consider the time that generally elapses from commencement of a criminal case (from indictment or information) to verdict or entry of plea in this district compared with what it might be under ideal circumstances in which the court, all counsel, and all parties act reasonably and expeditiously, and there are no obstacles such as a backlog of cases in the court. Then circle one of the following answers.

(1) The time from commencement to verdict or plea is generally reasonable. **26**

(2) The time from commencement to verdict or plea is generally too long. **0**

(3) The time from commencement to verdict or plea is generally too short. **4**

(4) I can't say. **2**

10. If you have found delay to be a problem in criminal cases in this district, please make any suggestions for reducing delay here, on the back of this page, or on a separate sheet.

D. Federal Legislation

11. The advisory Group is required by statute to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts." Please use this space, the back of this page, or a separate sheet to provide the Advisory Group with your thoughts on this subject. In your response, please consider the impact on litigation in this district of recent legislative action and inaction such as recent expansion and changes in federal criminal law and procedure, recent legislation such as RICO and ERISA, and congressional failures to provide specific federal statutes of limitations or fill judicial vacancies.

    Comment: As the Government's role in criminal cases is ideally to find only the truth, it appears as if full discovery from the Government would substantially decrease the amount of time necessary to spend in investigating issues in criminal cases. Legislation aimed at this type of discovery would (l) expedite the criminal process, (2) ensure that criminal defendants were not the victims of surprise at trial; and (3) save the Government money by reducing attorney's fees in court appointed cases.

    Comment: In my opinion, the courts are doing an excellent job in moving the cases. I believe the guidelines and lack of parole eligibility will eventually result in extreme overcrowding of the federal penitentiaries.

12. If you answered that the time from verdict or plea to sentencing is generally too long, describe what effect, if any, you believe the Sentencing Guidelines had on the delay.

13. Do you believe that the enactment of the Sentencing Guidelines has affected the costs of litigating a criminal case in the federal courts? If so, how has the Sentencing Guidelines affected costs in your practice?

Comments:
It has certainly affected costs if costs include attorney's fees. The amount of time that I spend preparing for a sentencing hearing includes the pre-sentence report, a conference with a probation officer, statutory research, research of case law or disputed issues, and potentially appeal of matters related to sentencing guidelines. However, the guidelines, I feel, are wonderful. They (for the most part) assure that a criminal defendant can go to trial without fear that he will receive a more serious sentence just for trying his case.

If anything, it has only marginally increased costs by requiring counsel to familiarize themselves with the guidelines and expending time in the compilation of the sentencing report. I personally favor the guidelines except for the inability of a trial judge to place a defendant on probation in certain cases. Such a restriction on the trial judge's discretion is untenable, in my unlearned opinion.

Not costs, but sentencing "fairness."

I certainly believe that the enactment of the sentencing guidelines have and continue to affect the costs of litigating a criminal case in the federal courts, and have and continue to affect costs in my practice, as well as my colleagues'. The guidelines have, for the most part, taken away most needed discretion of the circuit judge. Denial of bench discretion forces a prudent trial attorney to take each federal criminal case to trial instead of negotiating a plea agreement. Before the guidelines became procedural law, an attorney would consider a plea agreement instead of actually litigating so that the trial court would not discovery unfavorable attorney-client privileged criminal demeanor of the client. With the guidelines implemented, client demeanor is moot. In short, the attorney and client are aware that there is nothing to lose and all to gain by trying the case to a jury, and if the attorney pleas the matter, he subjects himself to professional, and possibly, disciplinary liability. As a result, criminal matters will proceed to trial which necessitates increased costs to prepare for and litigate - by the defense attorneys as well as the United States attorney. Most importantly, the precious time and operational costs of our district courts are taken in increased criminal litigation. For the interests of justice, the sentencing guidelines must be repealed.

Yes. As much time is required in sentencing phase as for a trial. Also, sentences are now appealed which those almost never happened before the guidelines.

The guidelines increased costs. Most cases I have had since the guidelines became effective could have been disposed of without trial. Now, the U. S. Attorney's hands are tied, that is, no plea bargaining and this results in more trials.

Yes, since plea negotiations are no longer effective, our attitude has been that we might as well try the case. The defendant will be sentenced approximately the same whether found guilty or pleads guilty.

Yes, costs are greatly reduced if there is to be a plea - which is all I have done. But I can see where the guidelines may force more cases to trial if the government is being difficult because a defendant has nothing to lose.

No. The guidelines are fair and promote expedient resolution of the cases.

In my opinion, there isn't much to be gained by settling a criminal case out of court now that the guidelines are in effect; so I try all of my federal criminal cases, which increases costs, since I am generally appointed.

I do not have an extensive criminal practice, especially not in the last 5 years. However, I believe that sentencing guidelines has probably reduced the amount of time required for an attorney to adequately prepare his/her case. As a result, I believe that costs of litigating a criminal case in federal court should likewise reflect a reduction.

The guidelines take away any real initiative to plea. Therefor, we try some cases that should be pled because there is no cost to defendant.

APPENDIX E

JUDICIAL OFFICER SURVEYS

ANSWERS OF CHIEF JUDGE H. FRANKLIN WATERS

ADVISORY GROUP ON CIVIL JUSTICE REFORM ACT
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

QUESTIONS FOR JUDGES AND STAFFS (CIVIL & CRIMINAL CASES)

A. General Comments

1. Is there a problem with delay of civil cases in this district:

   a. in all cases?

   b. in certain types of cases? **It is my belief that there is not a problem with undue delay of civil cases in this district. I think that cases are moved about as fast as they can be, consistent with giving attorneys for the parties a fair opportunity to prepare the cases for trial.**

2. If you believe there is a problem with delay in this district, what can be done to decrease delay: **Not applicable.**

3. What are the biggest difficulties that you encounter in attempting to move the civil docket? **Discovery disputes between counsel, particularly where out of state or out of area lawyers are involved. Usually, however, after a few unnecessary disputes have arisen, the court, in most cases is able to get the matter under control by advising counsel as to what it expects.**

4. What is the most effective tool that you have used to expedite the civil docket? **Set cases for trial as soon after the issues are joined as is practicable, again consistent with the interest of the parties in properly preparing for trial and, then, ruling expeditiously and with definiteness on any pretrial motions filed.**

5. Is there a problem with excessive litigation cost in this district?

   a. in all cases? **No.**

   b. in certain types of cases? **Yes.**

6. If you believe there is a problem with excessive litigation costs in this district, what can be done to decrease those costs:

   a. by the judges? **Speedy trials and expeditious and definite rulings on pretrial motions. Additionally, where the court sees that unnecessary legal work is performed or fees or otherwise "padded" the court should take every possible action to discourage it.**

b. by the magistrate judges? **Same.**

c. by counsel? **Counsel should amicably wherever possible and in as friendly a manner as possible prepare cases for trial with a minimum of "quibbling". Good counsel should know what is necessary to properly prepare a case for trial and should go about doing that with a minimum of motions and other pleadings. The court sometimes gets the impression that counsel no longer talk with each other except through pleadings filed with the court, particularly where out-of-state or out of the area counsel are involved.**

7. Is there any problem with the quality or preparation of the attorneys who practice before you? **Of course - in some cases.**

8. Would the appointment of counsel for *pro se* litigants decrease delays in *pre se* cases? **Not in most cases in my court.**

9. How would you characterize the level of judicial case management that you employ?

   a. Intensive
   b. High
   c. Moderate
   d. Low
   e. Minimal
   f. None
   g. I'm not sure

   Answer: I am not sure what that means. If it means whether I attempt to take over the case and dictate how it is prepared for trial, my "management" is minimal, except where forced by counsel to act otherwise. However, I believe that the management tools that we employ already outlined above, serve the purpose of insuring that the cases are prepared for trial and either settled or tried in the minimum time reasonable and with reasonable attorney's fees and other costs being incurred.

10. Is the level of case management that you employ in the pretrial stages different than it is during trial?

    Answer: I don't know what this means. The tools described above result in approximately nine out of every ten cases filed being settled or otherwise disposed of prior to trial, then, we try those cases left during the number of trial days necessary, usually running from 8:30 a.m. until at least 5:00 p.m., with only reasonable recesses. During the trial we "manage" the case as we believe necessary to ensure a "fair" but speedy resolution.

11. Have you found Rule 11 of the Federal Rules of Civil Procedure to be a useful judicial management tool?

Answer: Yes. I believe that Rule 11 is a very valuable tool. Simply because it is "in the books" causes lawyers to think twice before filing frivolous lawsuits or maintaining frivolous positions in lawsuits after they have been filed.

12. Is there any manner in which the magistrate judges can be used more effectively in this district?

    a. Could magistrate judges be used more extensively to hold settlement conferences in civil cases?

    Answer: I don't think so. It has been my belief and practice during the last ten years not to become or to allow magistrates to become involved to a great degree in settlement conferences. It is my belief that it is the province of lawyers and their clients to settle cases if they desire them to be settled. Our job is to move cases toward a certain and early resolution and try those that the parties want tried. I recognize that others disagree, and they may be right.

    b. If the law permitted, should cases be routinely assigned to magistrate judges, as well as district judges, upon filing?

    Answer: I am not sure how I feel about this. I do believe that magistrates, who draw 92% of a district judges salary, should have authority to accomplish more in behalf of the court, so I agree that legislation expanding their authority and jurisdiction would probably be justified.

13. Are there ways in which the clerk's office could more effectively help to reduce litigation cost and delay?

    a. Could computers be used more effectively in managing the court's docket? **No.**

    b. Is there additional information (such as computerized reports) that the clerk's office could provide to help you more effectively manage your docket? **No.**

14. The Advisory Group is to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts."

    Are there specific examples of congressional action or inaction, with respect to legislation or filling judicial vacancies that have impacted upon the civil or criminal docket of this district?

    Answer: I sometimes have a great deal of doubt about whether certain disputes between citizens should have been "federal cases" by Congress. That is their "job". As to whether "government" has in my view expeditiously filled judicial vacancies, see my attached letter to C. Boyden Gray, dated

November 26, 1991, and one from Senator Biden to me dated January 26, 1992.

15. What other suggestions do you have for addressing costs and delays in civil litigation? **None.**

B. Civil Case Processing

16. Time Limits

a. Do you or your clerks monitor service of process? **Yes.**

b. What is your practice regarding extensions of time to respond to:

(1) the complaint?

Answer: I do not routinely accept agreement between counsel as to delays in filing answers. However, I attempt to act reasonably upon requests, granting them when I believe that good cause is shown.

(2) motions? **Same answer.**

c. What procedures have you found most effective in enforcing time limits?

Answer: Not granting motions where I do not believe there is good reason for the request, then doing whatever is "next" where time limits are not met. What is "next" depends, of course, upon what the untimely response or failure to respond relates to.

17. Pretrial Conference

a. What is your practice concerning scheduling conferences?

(1) Do you hold scheduling conferences? **No, but a schedule is provided to counsel by notice or order immediately after an appearance is entered.**

(2) Describe the format of these conferences. **See attached examples of orders entered by the court and provided to counsel upon appearance in a case.**

(3) Are certain types of cases exempt from these conferences? **The same scheduling orders are used in all cases, but, depending on the case, may be modified upon a showing of good cause.**

(4) Do you find scheduling conferences to be effective? **No.**

(5) How often do attorneys comply with the dates set at the initial scheduling conference? **I suspect in a great majority of my cases.**

(6) Do you use a scheduling order? **See attached.**

b. Do you hold other pretrial conferences?

(1) Other than scheduling conferences, how many pretrial conferences do you typically hold in a given case?

Other than on the morning of the trial, only where some particular motion or other pleading or issue raised by the court necessitates a pretrial conference.

(2) When in a case are these conferences held? **See above.**

(3) Describe the format of these conferences. **See above.**

(4) Are certain types of cases exempt from these conferences? **No.**

(5) Do you find these pretrial conferences to be effective? **Yes.**

c. Do you use law clerks or magistrate judges to conduct scheduling or other pretrial conferences? **No.**

d. Do you encourage counsel to request a pretrial conference if they believe one would help expedite pretrial proceedings? **No.**

18. <u>Final Pretrial Conferences and Orders</u>

a. Describe your procedures concerning final pretrial conferences. **See above.**

b. Do you use a form final pretrial order? **See above.**

c. Do you require the parties to attend the final pretrial conference? **No.**

d. Do you use the final pretrial conference to explore settlement possibilities with the parties? **Yes - but only to determine whether the parties have explored and exhausted settlement possibilities.**

e. Do you use magistrate judges:

(1) to hold final pretrial conferences? **No.**

(2) to help prepare the final pretrial order? **No.**
(3) to explore settlement possibilities with the parties. **No.**

19. Discovery Procedures

a. Do you set discovery cut-off dates? **Yes.**

b. How often do attorneys comply with initial discovery cut-off dates? **Although I have not made a specific study of this, it is my belief that attorneys comply in by far a majority of my cases.**

c. Do you use a form discovery scheduling order? **Yes - See attached.**

d. Describe any procedures you use to attempt to control the volume and scope of civil discovery. **I believe that speedy trials help control the volume and scope of civil discovery. Other than that, I rule on discovery motions which are filed. See the memorandum that we supply counsel in cases where discovery motions are filed.**

e. Do you hold Rule 26(g) discovery conference? **I do not know what Rule 26(g) discovery conferences are, even after rereading this provision of the rules, so I suppose I do not hold them. If it is intended that this provision of the questionnaire inquire as to the use of the conference provided for by Rule 26(f), I also do not hold those, but instead, expect counsel to complete discovery as expeditiously and as inexpensively as possible with minimum intervention and participation by the court. I believe that it "works" in this district.**

f. Do you encourage counsel to request a Rule 26(g) conference if one would help expedite discovery? **No.**

g. How do you use magistrate judges in the discovery process? **I personally do not use a magistrate except in unusual circumstances, but when additional magistrate help becomes available in the fall of this year, I intend to consider utilizing magistrates in the discovery process.**

h. In what percent of your cases, if any, does discovery needlessly contribute to litigation delay? **I attempt not to let needless discovery disputes contribute to litigation delay and believe that I am successful in most cases.**

i. In what percent of your cases, if any, does discovery needlessly contribute to litigation expense? **I would "guess" about 25%.**

j. Are there particular types of cases in which discovery disputes disproportionately occur? **Yes - mostly where out of state or out of district lawyers appear in the case. I have sometimes said, only partially facetiously, that the number of discovery disputes and the attendant unnecessary increase in litigation costs is directly proportional to the size of town in which the lawyers practice.**

k. If discovery needlessly contributes to litigation delay or expense, what should be done about it? **I don't know.**

l. Should the court consider specific discovery restrictions such as a limitation on the number of depositions without leave of court or form interrogatories for certain types of cases? **I am personally opposed to this and do not believe that it will serve a worthwhile purpose. I recognize, however, that amendments to the rules of procedure which will apparently go into effect will attempt this solution.**

m. Should the court monitor discovery by requiring counsel to report on the status of discovery by hearings, telephone conferences or letter reports? **No.**

20. Motion Practice

a. Describe, generally, your internal policies for handling motions.

(1) Do your policies differ in civil and criminal cases? **Not substantially - as motions are filed, we "tickle" them for the date on which responses are due. When responses are received or the time to respond has expired, my law clerks prepare for me a "ripe list" and they and I then, as quickly as possible, work on these motions and rulings in respect to them are issued by me.**

(2) Are opposing parties routinely required to file written oppositions to all motions? **Local Rule 20 requires that all motions be accompanied by a statement in support. The rule gives the other side eleven days to respond if they care to. The court does not require responses and whether there is one or not, the motions and the disposition of them are handled as described in the immediately preceding subparagraph.**

(3) What is your practice regarding oral argument (including whether you require a specific request for oral argument and your criteria for granting oral argument)? **I do not require or, in fact,**

permit oral argument except in very unusual cases or where testimony is necessary.

(4) What is your practice with respect to oral rulings on motions?

(a) How often do you rule from the bench? **Other than during trial, only in those exceptionally rare cases where oral arguments are permitted.**

(b) Describe the procedures that you employ and the types of cases in which you rule from the bench. **See above.**

(5) Do you monitor the filing of motions, responses and briefs? **See above.**

(6) Do you require attorneys to file proposed orders:

(a) routinely; **No.**
(b) in specific cases; **Yes.**
(c) never.

(7) In ruling on motions, do certain types of motions receive a priority? **Yes - we give priority to motions filed in cases where trial is imminent and where early disposition is advisable to avoid delaying trial.**

(8) What are your policies for the publication of opinions? **We publish only those opinions that we believe might add something to the body of law available on a particular subject.**

(b) What is your opinion about a separate motion docket and motion day? **I think that it is an unnecessary waste of time and a needless multiplication of attorney's fees and other expenses.**

(c) Do you conduct motion or other hearings by telephone conference call? **Frequently.**

(d) In what percent of your cases, if any, does a delay in filing motions needlessly prolong a case? **In few cases, as we try not to allow it.**

(e) In what percent of your cases, if any, does a delay in filing motions needlessly increase litigation expense? **Very few, if any, cases.**

(f) In what percent of your cases, if any, does a delay in ruling on motions needlessly prolong a case? **We hope and believe that this occurs in a minimal number of cases. (I hope less than 1%).**

(g) In what percent of your cases, if any, does a delay in ruling on motions needlessly increase litigation expense? **Same as above.**

(h) Are there procedures, such as a requirement of a statement of disputed issues of fact, that could assist you in ruling on motions? **Not other than is already provided by the rules.**

(i) Could pre-motion conferences be effectively used to reduce litigation costs and delays in this district? **No - in my view this would have exactly the opposite effect.**

(j) Would restrictions of the parties to letter briefs in discovery disputes reduce litigation costs and delay in this district? **Might very possibly do so. I regularly accept and sometimes encourage that counsel present their views in respect to issues by letter rather than by formal brief, and this court frequently rules by letter opinion.**

21. Trials

a. Describe the manner in which you set trial dates (*e.g.*, date certain set by court, trailing calendar, consultation with counsel about date). **See the notices and scheduling orders attached.**

b. When a civil case is ready for trial, how long does it take you to reach that case for trial? **Not long.**

c. Under what circumstances do you bifurcate trials or otherwise structure the sequence of trial evidence? **When I believe that it may ultimately decrease trial time and expense and is "fair".**

C. Alternative Dispute Resolution

Many state and federal courts have begun to employ various ADR techniques in an effort to manage growing caseloads. Techniques include mediation, arbitration, evaluation by a third-party neutral, settlement conferences, summary jury trial, or judicial mini-trial.

22. What is your opinion as to the effectiveness of various ADR techniques, and would you consider using ADR in

appropriate cases? **I simply don't know. I am not, at least as a knee jerk reaction, opposed to ADR, but before I could answer this question with a meaningful answer, I would need to know which of the "various ADR techniques" you are asking about.**

D. Differentiated Case Management

In addition to ADR techniques, many courts, particularly state courts, have begun to employ the concept of Differentiated Case Management. DCM is a case management system by which judges and staffs employ multiple tracks to accommodate the managerial requirements of different case types. Tracks may be for expedited, standard or complex cases. Based on an assessment by the court and the parties, cases are assigned to a particular processing track. Simple cases to expedited, typical cases to standard, and complicated matters to the complex track. Scheduling orders would reflect different time frames for each case, depending on the track.

23. What is your opinion of Differentiated Case Management? **I think we do this on a case by case basis by watching the case develop and by, hopefully, having some knowledge about what is required. I am not sure that I agree that a "formal" procedure is necessary or warranted, however.**

    Would you be in favor of establishing a multiple track method for managing civil cases in the Western District. Why or why not? **I believe that we are now, in effect, doing that and I do not believe that a more formal practice would be helpful. I recognize that this statement is not made totally absent of any bias, but I believe cases are terminated in this district about as expeditiously and efficiently as they can be consistent with the interest of the parties and the public in general.**

E. Criminal Cases

24. Does the criminal docket impact upon the civil docket? **Of course the mere fact that there are criminal cases to be handled impacts upon the civil docket, however, we do not believe that the type or number of criminal cases in this district has substantially delayed the disposition of civil cases.**

25. Are there certain types of cases that the United States Attorney should not bring in this court? **That is up to him.**

26. What can be done by the United States Attorney to expedite the handling of criminal cases? **I believe that criminal cases are also handled about as expeditiously as**

ADVISORY GROUP ON CIVIL JUSTICE REFORM ACT

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

QUESTIONS FOR JUDGES AND STAFFS (CIVIL AND CRIMINAL CASES)

ANSWERS OF DISTRICT JUDGE MORRIS S. ARNOLD

A. General Comments

1. Is there a problem with delay of civil cases in this district:

   a. in all cases? **No.**

   b. in certain types of cases? **Pro Se cases frequently take too long to get to trial.**

2. If you believe there is a problem with delay in this district, what can be done to decrease delay:

   a. by the judges? **Appoint lawyers to pro se cases(?)**

   b. by the magistrate judges? **Supervise pro se discovery more closely.**

   c. by counsel? **Not take so many depositions.**

   d. by the parties?

3. What are the biggest difficulties that you encounter in attempting to move the civil docket?

   Keeping the trial date firm.

4. What is the most effective tool that you have used to expedite the civil docket?

   Set a trial date and stick to it.

5. Is there a problem with excessive litigation cost in this district?

   a. in all cases? **No.**

   b. in certain types of cases? **A few cases involve excessive litigation costs, but I know of no particular type, unless it is securities fraud cases.**

6. If you believe there is a problem with excessive litigation costs in this district, what can be done to decrease those costs:

   a. by the judges?

   b. by the magistrate judges?

   c. by counsel? **Cut down on discovery.**

   d. by the parties? **Cut down on discovery.**

7. Is there any problem with the quality or preparation of the attorneys who practice before you?

   No; almost never.

8. Would the appointment of counsel for pro se litigants decrease delays in pro se cases? **Yes.**

9. How would you characterize the level of judicial case management that you employ?

   a. Intensive

   b. High

   c. Moderate

   (d.) Low

   e. Minimal

   f. None

   g. I'm not sure

10. Is the level of case management that you employ in the pretrial stages different than it is during trial?

    Yes.

11. Have you found Rule 11 of the Federal Rules of Civil Procedure to be a useful judicial management tool? **No.**

12. Is there any manner in which the magistrate judges can be used more effectively in this district?

    a. Could magistrate judges be used more extensively to hold settlement conferences in civil cases?
    Yes.

    b. If the law permitted, should cases be routinely assigned to magistrate judges, as well as district judges, upon filing?

    I don't understand the question exactly.

13. Are there ways in which the clerk's office could more effectively help to reduce litigation cost and delay?

    a. Could computers be used more effectively in managing the court's docket? **No.**

    b. Is there additional information (such as computerized reports) that the clerk's office could provide to help you more effectively manage your docket?
    No. Just need the case list and statistics earlier in the month.

14. The Advisory Group is to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts."

    Are there specific examples of congressional action or inaction, with respect to legislation or filling judicial vacancies that have impacted upon the civil or criminal docket of this district?

    Speedy Trial Act and Sentencing Guidelines.

15. What other suggestions do yo have for addressing costs and delays in civil litigation?

    None.

B. <u>Civil Case Processing</u>

16. <u>Time Limits</u>

    a. Do you or your clerks monitor service of process?
    Yes.

b. What is your practice regarding extensions of time to respond to:

(1) the complaint? **Grant routinely if made within the limitations period and opponent does not object.**

(2) motions? **Same.**

c. What procedures have you found most effective in enforcing time limits?

17. <u>Pretrial Conferences</u>

a. What is your practice concerning scheduling conferences?

(1) Do you hold scheduling conferences? **No.**

(2) Describe the format of these conferences.

(3) Are certain types of cases exempt from these conferences?

(4) Do you find scheduling conferences to be effective?

(5) How often do attorneys comply with the dates set at the initial scheduling conference?

(6) Do you use a scheduling order? (Obtain a sample copy.) **Yes. See attached.**

b. Do you hold other pretrial conferences?

(1) Other than scheduling conferences, how many pretrial conferences do you typically hold in a given case? **None until the day of trial.**

(2) When in a case are these conferences held?

(3) Describe the format of these conferences.

d. Describe any procedures you use to attempt to control the volume and scope of civil discovery.

e. Do you hold Rule 26(g) discovery conferences?

No.

f. Do you encourage counsel to request a Rule 26(g) conference if one would help expedite discovery?

No.

g. How do you use magistrate judges in the discovery process?

I refer all discovery motions to the magistrate.

h. In what percent of your cases, if any, does discovery needlessly contribute to litigation delay?

10% (?)

i. In what percent of your cases, if any, does discovery needlessly contribute to litigation expense?

10% (?)

j. Are there particular types of cases in which discovery disputes disproportionately occur?

k. If discovery needlessly contributes to litigation delay or expense, what should be done about it?

Limit interrogatories and depositions.

l. Should the court consider specific discovery restrictions such as a limitation on the number of depositions without leave of court or form interrogatories for certain types of cases?

Yes.

m. Should the court monitor discovery by requiring counsel to report on the status of discovery by hearings, telephone conferences or letter reports?
No.

20. Motion Practice

a. Describe, generally, your internal policies for handling motions.

(1) Do your policies differ in civil and criminal cases? **No.**

(2) Are opposing parties routinely required to file written oppositions to all motions?

They are <u>requested</u> to.

(3) What is your practice regarding oral argument (including whether you require a specific request for oral argument and your criteria for granting oral argument)?
Do not usually have oral argument.

(4) What is your practice with respect to oral rulings on motions?

(a) How often do you rule from the bench?
Don't have oral motions.
(b) Describe the procedures that you employ and the types of cases in which you rule from the bench.

(5) Do you monitor the filing of motions, responses and briefs?

I don't know what "monitor" means.

(6) Do you require attorneys to file proposed orders:

(a) routinely; **Yes.**

(b) in specific cases;

(c) never.

(7) In ruling on motions, do certain types of motions receive a priority?

No.
(8) What are your policies for the publication of opinions?

Only ones that raise novel or important questions of law.

b. What is your opinion about a separate motion docket and motion day?
O.K. with me; but it would waste a lot of time.

c. Do you conduct motion or other hearings by telephone conference call? **Sometimes.**

d. In what percent of your cases, if any, does a delay in filing motions needlessly prolong a case?
10%

e. In what percent of your cases, if any, does a delay in filing motions needlessly increase litigation expense?
10%

f. In what percent of your cases, if any, does a delay in ruling on motions needlessly prolong a case?
?

g. In what percent of your cases, if any, does a delay in ruling on motions needlessly increase litigation expense?
?

h. Are there procedures, such as a requirement of a statement of disputed issues of fact, that could assist you in ruling on motions?

I use this.

i. Could pre-motion conferences be effectively used to reduce litigation costs and delays in this district?
No.

j. Would restrictions of the parties to letter briefs in discovery disputes reduce litigations costs and delay in this district?
No.

21. Trials

a. Describe the manner in which you set trial dates (e.g., date certain set by court, trailing calendar, consultation with counsel about date).

We set a date soon after answer.

b. When a civil case is ready for trial, how long does it take you to reach that case for trial?
Very quickly.

c. Under what circumstances do you bifurcate trials or otherwise structure the sequence of trial evidence?
Almost never. Always do it in asbestos cases.

C. <u>Alternative Dispute Resolution</u>

Many state and federal courts have begun to employ various ADR techniques in an effort to manage growing caseloads. Techniques include mediation, arbitration, evaluation by a third-party neutral, settlement conferences, summary jury trial, or judicial mini-trial.

22. What is your opinion as to the effectiveness of various ADR techniques, and would you consider using ADR in appropriate cases?
I have no experience with this. I am generally opposed to it.

D. <u>Differentiated Case Management</u>

In addition to ADR techniques, many courts, particularly state courts, have begun to employ the concept of Differentiated Case Management. DCM is a case management system by which judges and staffs employ multiple tracks to accommodate the managerial requirements of different case types. Tracks may be for expedited, standard or complex cases. Based on an assessment by the court and the parties, cases are assigned to a particular processing track. Simple cases to expedited, typical cases to standard, and complicated matters to the complex track. Scheduling orders would reflect different time frames for each case, depending on the track.

23. What is your opinion of Differentiated Case Management?

Not necessary.

Would you be in favor of establishing a multiple track method for managing civil cases in the Western District. Why or why not?

No. Too complicated.

E. <u>Criminal Cases</u>

24. Does the criminal docket impact upon the civil docket?

Sometimes.

25. Are there certain types of cases that the United States Attorney should not bring in this court?

Felon in possession of a firearm - can't get conviction!

26. What can be done by the United States Attorney to expedite the handling of criminal cases?

Nothing.

27. What can be done by the criminal defense bar to expedite the handling of criminal cases?

Nothing.

28. Do counsel regularly follow the pretrial deadlines set by the court in criminal cases?

Yes.

29. Are there disputes within criminal cases (such as questions concerning discovery) that the attorneys should be encouraged or required to resolve among themselves without resort to the court?

No.

30. Should the pretrial aspects of criminal cases be expedited?

No.

31. Could pretrial hearings in criminal cases be expedited by, for instance, not routinely requiring an opposition from the United States to all motions, curtailing the number of hearings on pretrial motions, or holding pre-motion conferences?

No.

ANSWERS OF MAGISTRATE JUDGE BEVERLY R. STITES

ADVISORY GROUP ON CIVIL JUSTICE REFORM ACT

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

QUESTIONS FOR JUDGES AND STAFFS (CIVIL AND CRIMINAL CASES)

A. General Comments

1. **Is there a problem with delay of civil cases in this district:**

a. **in all cases?** No.

b. **in certain types of cases?** Cases involving pro se litigants are more troublesome than others and appear to take longer. There is not a serious problem with delay, however, considering out statistics.

2. **If you believe there is a problem with delay in this district, what can be done to decrease delay:**

a. **by the judges?** -

b. **by the magistrate judges?** Streamline existing procedures for handling pro se cases referred to magistrate.

c. **by counsel?** -

d. **by the parties?** -

3. **What are the biggest difficulties that you encounter in attempting to move the civil docket?** Cases involving pro se litigants are more time-consuming and rarely settle.

4. **What is the most effective tool that you have used to expedite the civil docket?** Pending case and motion lists; ruling from the bench in non-jury cases.

5. **Is there a problem with excessive litigation cost in this district?**

a. **in all cases?** No.

b. **in certain types of cases?** Some attorneys, particular out-of-district, engage in petty or protracted discovery disputes but this does not occur often and does not depend on the type of case.

6. If you believe there is a problem with excessive litigation costs in this district, what can be done to decrease those costs:

a. by the judges? -

b. by the magistrate judges? Streamline procedures for handling pro se cases.

c. by counsel? -

d. by the parties? -

7. Is there any problem with the quality or preparation of the attorneys who practice before you? Yes, but attorneys are generally qualified and prepared.

8. Would the appointment of counsel for <u>pro se</u> litigants decrease delays in <u>pro se</u> cases? In some cases. I assume this refers to those cases that survive summary dismissal. I have observed that appointment of counsel promotes settlements but delays hearings/trials.

9. How would you characterize the level of judicial case management that you employ?

a. Intensive

b. <u>High</u>

c. Moderate

d. Low

e. Minimal

f. None

g. I'm not sure

10. Is the level of case management that you employ in the pretrial stages different than it is during trial? No.

11. Have you found Rule 11 of the Federal Rules of Civil Procedure to be a useful judicial management tool? Yes. The rules is effective in cases involving vexatious, malicious litigation by pro se litigants and it is a deterrent to attorney misconduct.

12. Is there any manner in which the magistrate judges can be used more effectively in this district?

a. Could magistrate judges be used more extensively to hold settlement conferences in civil cases? No. This district's speedy and firm trial settings and comprehensive scheduling orders adequately promote settlements.

b. If the law permitted, should cases be routinely assigned to magistrate judges, as well as district judges, upon filing? Prisoners and social security cases are now routinely assigned to the magistrate per standing referral orders.

13. Are there ways in which the clerk's office could more effectively help to reduce litigation cost and delay?

a. Could computers be used more effectively in managing the court's docket? No. The pending case lists and reports now generated are adequate.

b. Is there additional information (such as computerized reports) that the clerk's office could provide to help you more effectively manage your docket? Same as above.

14. The Advisory Group is to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts."

Are there specific examples of congressional action or inaction, with respect to legislation or filling judicial vacancies that have impacted upon the civil or criminal docket of this district? -

15. What other suggestions do yo have for addressing costs and delays in civil litigation? -

B. Civil Case Processing

16. Time Limits

a. Do you or your clerks monitor service of process? The Clerk's Office monitors service of process, files a clerk's "entry of default" under Rule 55(a) of the Fed. R. Civ. P. when appropriate and sends information to parties concerning default judgment under Rule 55(b).

b. What is your practice regarding extensions of time to respond to:

(1) the complaint? Rarely granted. Attorneys know this and rarely ask.

(2) motions? Same as above.

c. What procedures have you found most effective in enforcing time limits? Refusal to grant continuances or extensions of time, willingness to grant default judgments under Fed. R. Civ. P. 55, and granting the relief requested in motions when no timely response per Local Rule 20(f).

17. Pretrial Conferences

a. What is your practice concerning scheduling conferences?

(1) Do you hold scheduling conferences? No, but adherence to scheduling orders is required.

(2) Describe the format of these conferences.

(3) Are certain types of cases exempt from these conferences? -

(4) Do you find scheduling conferences to be effective? -

(5) How often do attorneys comply with the dates set at the initial scheduling conference? -

(6) Do you use a scheduling order? (Obtain a sample copy.) Yes.

b. Do you hold other pretrial conferences?

(1) Other than scheduling conferences, how many pretrial conferences do you typically hold in a given case? One final pretrial conference is held by the magistrate judge in district court cases involving pro se litigants.

(2) When in a case are these conferences held? Thirty days prior to trial.

(3) Describe the format of these conferences. A hearing on the record is conducted with the parties and counsel present. Points of discussion include trial witnesses and exhibits, a review of the claims, and the prospects for settlement.

(4) Are certain types of cases exempt from these conferences? Cases are limited to those in (1) above.

(5) Do you find these pretrial conferences to be effective? Yes.

c. Do you use law clerks or magistrate judges to conduct scheduling or other pretrial conferences?

Yes. One order is used for trial, motion and discovery scheduling.

d. Do you encourage counsel to request a pretrial conference if they believe on would help expedite pretrial proceedings? No, although requests are made on occasion.

18. Final Pretrial Conferences and Orders

a. Describe your procedures concerning final pretrial conferences. Final pretrial conferences are conducted by the magistrate in cases involving pro se litigants. See 17b(1).

b. Do you use a form final pretrial order? (Obtain a sample copy.) No, but a final report is submitted by the magistrate.

c. Do you require the parties to attend the final pretrial conference? Yes, as a general rule.

d. Do you use the final pretrial conference to explore settlement possibilities with the parties? Yes.

e. Do you use magistrate judges:

(1) to hold final pretrial conferences? Yes.

(2) to help prepare the final pretrial order? No.

(3) to explore settlement possibilities with the parties? Yes.

19. Discovery Procedures

a. Do you set discovery cut-off dates? Yes, in scheduling orders.

b. How often do attorneys comply with initial discovery cut-off dates? There are no "initial" cut-off dates, only a final date thirty days prior to trial. Almost all attorneys comply with the dates.

c. Do you use a form discovery scheduling order? (Obtain a sample copy.) Yes. One order is used for trial, motion, and discovery scheduling.

d. **Describe any procedures you use to attempt to control the volume and scope of civil discovery.** None, other than rule on motions complaining of volume and scope.

e. **Do you hold Rule 26(g) discovery conferences?** Rule 26(f) conferences are kept to a minimum. Primarily, we rule base on the substance of the motions and responses. If a conference is needed, it is usually by telephone.

f. **Do you encourage counsel to request a Rule 26(g) conference if one would help expedite discovery?** No.

g. **How do you use magistrate judges in the discovery process?** By referral of disputed discovery matters.

h. **In what percent of your cases, if any, does discovery needlessly contribute to litigation delay?** Cases are rarely delayed because of discovery matters, and the percentage would be quite small.

i. **In what percent of your cases, if any, does discovery needlessly contribute to litigation expense?** Approximately ten percent.

j. **Are there particular types of cases in which discovery disputes disproportionately occur?** No particular types of cases, but cases involving out-of-district attorneys are sometimes more troublesome.

k. **If discovery needlessly contributes to litigation delay or expense, what should be done about it?** Sanctions and costs assessed when necessary.

l. **Should the court consider specific discovery restrictions such as a limitation on the number of depositions without leave of court or form interrogatories for certain types of cases?** No. Sinc our attorneys are for the most part not abusive of the discovery process, this could result in more court intervention than is now required.

m. **Should the court monitor discovery by requiring counsel to report on the status of discovery by hearings, telephone conferences or letter reports?** Absolutely not. This would be a waste of time and resources.

20. Motion Practice

a. Describe, generally, your internal policies for handling motions.

(1) Do your policies differ in civil and criminal cases? No.

(2) Are opposing parties routinely required to file written oppositions to all motions? No, but under Local Rule 20(f), the relief requested in a motion may be granted if no timely response is filed.

(3) What is your practice regarding oral argument (including whether you require a specific request for oral argument and your criteria for granting oral argument)? Except in rare case involving complex legal arguments or public policy, etc., oral argument is not permitted.

(4) What is your practice with respect to oral rulings on motions?

(a) How often do you rule from the bench? Rarely if ever, since hearings are not conducted.

(b) Describe the procedures that you employ and the types of cases in which you rule from the bench. -

(5) Do you monitor the filing of motions, responses and briefs? Yes. Motions are placed on a suspense list and reviewed when "ripe" whether or not a response has been filed.

(6) Do you require attorneys to file proposed orders:

(a) routinely;

(b) in specific cases;

(c) never.

(7) In ruling on motions, do certain types of motions receive a priority? Naturally, motions for prelim. inj. and TRO's receive priority. Otherwise, all motions are basically treated the same.

(8) What are your policies for the publication of opinions? -

b. **What is your opinion about a separate motion docket and motion day?** Favorable as to a motion docket or a suspense list of pending motions, although there is no need to make it complicated. Unfavorable as to motion day--in-court time is not needed if adequate pending motion lists are generated.

c. **Do you conduct motion or other hearings by telephone conference call?** Yes.

d. **In what percent of your cases, if any, does a delay in filing motions needlessly prolong a case?** None, as this is not grounds for a continuance.

e. **In what percent of your cases, if any, does a delay in filing motions needlessly increase litigation expense?** Approximately five percent.

f. **In what percent of your cases, if any, does a delay in ruling on motions needlessly prolong a case?** -

g. **In what percent of your cases, if any, does a delay in ruling on motions needlessly increase litigation expense?** -

h. **Are there procedures, such as a requirement of a statement of disputed issues of fact, that could assist you in ruling on motions?** We now require a statement of facts for summary judgment motions bur requiring such for all motions would be a waste. Other procedures are unnecessary.

i. **Could pre-motion conferences be effectively used to reduce litigation costs and delays in this district?** No. Little would be gained and the conferences would increase litigation costs.

j. **Would restrictions of the parties to letter briefs in discovery disputes reduce litigations costs and delay in this district?** No. The briefs should still be filed of record and a copy served on opposing counsel.

21. **Trials**

a. **Describe the manner in which you set trial dates (*e.g.*, date certain set by court, trailing calendar, consultation with counsel about date).** District court cases are first scheduled for a certain week, then shortly before trial given a date certain. (Magistrate's cases are given a date certain.)

b. **When a civil case is ready for trial, how long does it take you to reach that case for trial?** -

c. **Under what circumstances do you bifurcate trials or otherwise structure the sequence of trial evidence?** At times, the liability and damages portions of a trial are separated when the damages issues are complex and/or time-consuming.

C. Alternative Dispute Resolution

Many state and federal courts have begun to employ various ADR techniques in an effort to manage growing caseloads. Techniques include mediation, arbitration, evaluation by a third-party neutral, settlement conferences, summary jury trial, or judicial mini-trial.

22. What is your opinion as to the effectiveness of various ADR techniques, and would you consider using ADR in appropriate cases? Unfavorable, other than settlement conferences in certain cases. The most effective way to manage cases is to issue a scheduling order with a realistic and firm trial setting and rule timely on motions.

D. Differentiated Case Management

In addition to ADR techniques, many courts, particularly state courts, have begun to employ the concept of Differentiated Case Management. DCM is a case management system by which judges and staffs employ multiple tracks to accommodate the managerial requirements of different case types. Tracks may be for expedited, standard or complex cases. Based on an assessment by the court and the parties, cases are assigned to a particular processing track. Simple cases to expedited, typical cases to standard, and complicated matters to the complex track. Scheduling orders would reflect different time frames for each case, depending on the track.

23. What is your opinion of Differentiated Case Management? Unfavorable for a medium-size court as this one. Trying to fit cases onto separate tracks would result in wasted judicial resources. It is more efficient to treat all cases alike and let the attorneys or litigants advise the court of the exceptional cases requiring longer or shorter tracking periods.

Would you be in favor of establishing a multiple track method for managing civil cases in the Western District. Why or why not? No, for the above reasons.

E. Criminal Cases

24. Does the criminal docket impact upon the civil docket? Civil cases are rarely continued to accommodate criminal trial settings.

25. Are there certain types of cases that the United States Attorney should not bring in this court? No.

* I have no knowledge of district court criminal cases. There are a few disputes in my misdemeanor cases.

26. What can be done by the United States Attorney to expedite the handling of criminal cases? –

27. What can be done by the criminal defense bar to expedite the handling of criminal cases? _

28. Do counsel regularly follow the pretrial deadlines set by the court in criminal cases? _

29. Are there disputes within criminal cases (such as questions concerning discovery) that the attorneys should be encouraged or required to resolve among themselves without resort to the court? –

30. Should the pretrial aspects of criminal cases be expedited? –

31. Could pretrial hearings in criminal cases be expedited by, for instance, not routinely requiring an opposition from the United States to all motions, curtailing the number of hearings on pretrial motions, or holding pre-motion conferences? –

APPENDIX F

CIVIL JUSTICE REFORM ACT OF 1990

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

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

SEC. 102. FINDINGS.

The Congress makes the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"471. Requirement for a district court civil justice expense and delay reduction plan.
"472. Development and implementation of a civil justice expense and delay reduction plan.
"473. Content of civil justice expense and delay reduction plans.
"474. Review of district court action.
"475. Periodic district court assessment.
"476. Enhancement of judicial information dissemination.
"477. Model civil justice expense and delay reduction plan.
"478. Advisory groups.
"479. Information on litigation management and cost and delay reduction.
"480. Training programs.
"481. Automated case information.
"482. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

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

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

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

"§ 474. Review of district court action

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

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

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

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

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

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

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

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial information dissemination

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

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

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

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

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

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

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

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

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

"§ 478. Advisory groups

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 480. Training programs

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

"§ 481. Automated case information

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

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

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

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

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

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

"§ 482. Definitions

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

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

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

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

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

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

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

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

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

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

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

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

SEC. 104. DEMONSTRATION PROGRAM.

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

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

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

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

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

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

SEC. 105. PILOT PROGRAM.

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

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

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

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

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

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

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

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

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

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

SEC. 106. AUTHORIZATION.

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

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

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

APPENDIX G

LETTER OF DISSENT REGARDING ALTERNATE DISPUTE RESOLUTION

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Re: Draft Report of the Advisory Group, USDC, Western District of Arkansas, appointed under the Civil Justice Reform Act of 1990

Dear Bob:

I have read the draft report of the Advisory Group dated March 1, 1993. In my opinion, the report is exceptionally well-drafted and correctly reflects the recommendations made by the majority of the Advisory Group. Further, I am in agreement with all of the recommendations made by the majority of the Advisory Group except for the accurately-stated recommendation number 4 on page 24 regarding mandatory alternate dispute resolution programs (ADR). In addition, I believe that the report should include the suggestion which I made in my letter of July 10, 1992, new local rules for the U. S. District Courts for the Eastern and Western Districts of Arkansas.

In regard to the drafting of new local rules, I was not aware at the time of the writing of my letter of July 10, 1992, that all U. S. Courts are under a mandate to number local rules to correspond to the F.R.C.P. Rule dealing with the same subject matter. Sooner or later this mandate will be enforced. In my opinion, it makes a great deal of sense to do it this way, just as it has been done in the new rules of the U. S. Court of Appeals for the Eighth Circuit.

In my opinion, our Court, the U. S. District Court for the Western District of Arkansas, is one of, if not the most,

efficient, economical, and effective of any U. S. District Court in the United States. A major portion of the credit for this must be attributed to our judges, our clerk, and their efficient staffs. Also, considerable credit must be given to the high quality of the lawyers who practice in the federal courts in the Western District of Arkansas. Recognizing this fact does not, in my mind, justify the position which the majority of the committee has taken on ADR. My arguments for a different position are summarized as follows:

(1) As a symbolic gesture, if not a needed change, I believe that we should recognize that Congress and the majority of the citizens of the United States are quite concerned that the system does not make efficient use of the scarce resources of (a) judicial time and (b) federal funds allocated to the U. S. Court system. Today's newspaper reports the fact that the United States Judicial Conference has recommended that there be no cost of living increases for judges and has made other symbolic gestures toward placating the severe criticisms from Congress that too much money is being spent by the federal court system. I am convinced that the majority of Congress and the majority of U. S. citizens believe that ADR will result in a more efficient use of these two (2) scarce resources.

(2) Symbolic or not, many studies show that ADR can, when properly used, result in considerable savings of the scarce resources of (a) judicial time and (b) federal funds allocated to the court system. In addition, ADR can result in substantial savings to some litigants for lawyer's fees, discovery costs, and expert witness fees. We are sophisticated enough to know that ADR is no cure-all and that used improperly it can merely prolong and make litigation more expensive.

(3) Traditionally, there has been a hostility by the courts to ADR, and for us to make the recommendation that the Western District of Arkansas <u>not</u> establish mandatory alternate dispute resolution programs will appear to Congress and to the general citizenry as a reflection of this "outdated" view of the courts regarding ADR.

(4) In my opinion, the Advisory Group should recommend that the U. S. District judges mandate ADR on an ad hoc basis, with the parties to pay the cost of the mediator or arbitrator, as the case may be. It has been my experience and the experience of a number of other lawyers involved in employment discrimination cases that a very competent, knowledgeable, and mediator-trained lawyer can save the courts and the clients a great deal of time and money by getting into the picture before the lawyers and the litigants

have spent a great deal of time and money preparing for trial. It is also my opinion that unless the mediator is of the caliber that I stated, mediation will probably not be very effective and could be a waste of time and money for the litigants.

(5) In regard to arbitration, I would not recommend that the U. S. Courts mandate arbitration which carries some penalty for the refusal of a party to go along with the opinion of the arbitrator. On the other hand, I believe that substantial savings of the scarce resources of (a) judicial time and (b) federal funds allocated to the U. S. Courts, as well as the parties' litigation expenses, if, in selected cases, non-binding arbitration is mandated but without any penalty for the failure of a party to abide by the opinion of the arbitrator and with the opinion of the arbitrator to be strictly confidential to the parties and their attorneys if not accepted by all parties.

Sincerely yours,

LeRoy Autrey

LRA:lsm

cc: Curtis Shipley
W. W. Bassett, Jr.
Charles R. Ledbetter
William S. Arnold
Bob Compton
Honorable H. Franklin Waters (faxed)
Christopher R. Johnson (faxed)
R. Keith Arman
J. Michael Fitzhugh
Ross Pendergraft
Bobby L. Odom
Frank Lee Coffman, Sr.
Douglas O. Smith, Jr.
Honorable Jimm Hendren