CIVIL JUSTICE REFORM ACT OF 1990

United States District Court for the Southern District of Iowa

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

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I. INTRODUCTION

In 1990, the United States Congress enacted the Civil Justice Reform Act of 1990 ("the Act").[1] The Act requires that the 94 federal district courts implement a "civil justice expense and delay reduction plan." 28 U.S.C. § 471. The purpose of each plan is 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." *Id.*

Section 478 of the Act required the chief judge of each district court to appoint an Advisory Group. The Advisory Group for each district "shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court . . . ." 28 U.S.C. § 478(b). The civil justice expense and delay reduction plan implemented by a district court "shall be developed or selected, . . . after consideration of the recommendations of an advisory group . . . ." 28 U.S.C. § 472(a).

On February 20, 1991, then Chief Judge Harold D. Vietor entered an order appointing the Advisory Group for the United States District Court for the Southern District of Iowa. After extensive review, study and meetings, the Advisory Group issued their report on November 25, 1992. (The Advisory Group Report is contained in Appendix "A" of this plan).

The United States District Court for the Southern District of Iowa hereby adopts this Civil Justice Expense and Delay Reduction Plan pursuant to the requirements of § 471 of the Act. In developing the Plan, the court has considered carefully the Report of the Civil Justice Reform Act Advisory Group for the Southern District of Iowa ("Report") and the recommendations in that report. The court has also considered the principles and guidelines of litigation management and cost and delay reductions set forth in § 473(a) of the Act as well as the litigation management and

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[1] The Civil Justice Reform Act of 1990 is the short title of Title I of the Judicial Improvements Act of 1990, pub. l. no. 101-650 (1990), codified at 28 U.S.C. §§ 471-482.

cost delay reduction techniques contained in § 473(b) of the Act.

II. DESCRIPTION OF THE COURT

The United States District Court for the Southern District of Iowa generally includes the southern half of Iowa. There are forty-seven counties which are grouped into six statutory divisions under 28 U.S.C. § 95(b). Judicial business in three of the divisions has been pretermitted and transferred to the other three divisions as follows:

1. The Central Division consists of twenty-eight counties with the court seat at Des Moines.

2. The Davenport Division consists of ten counties with the court seat at Davenport.

3. The Western Division consists of nine counties with the court seat at Council Bluffs.

The Southern District of Iowa is served by three district court judges, two full-time magistrate judges and two part-time magistrate judges. The district court judges and full-time magistrate judges are located in Des Moines.

III. THE REPORT OF THE ADVISORY GROUP

A. The Assessment of the Docket in the United States District Court for the Southern District of Iowa

The report of the Advisory Group of the United States District Court for the Southern District of Iowa assessed both the "condition of the civil and criminal dockets", pursuant to 28 U.S.C. § 472(c)(1)(A), and analyzed the "trends in case filings and the demands being placed on court resources", pursuant to 28 U.S.C. § 472(c)(1)(B).

Regarding civil filings, the Advisory Group reported:

> Civil case filings have declined significantly after reaching a peak of 2,091 in 1988 (there were approximately 850 asbestos cases filed in June 1988). The civil cases filed by the United States have declined as a percentage of all civil case filings (55 percent in 1986 to 31 percent in 1990) and are nearly one-half in real numbers (461 to 235) for those years, The number of private civil case filings has declined by only 9 percent (840 in 1986 to 764 in 1990).

Report at 2.

Regarding the criminal docket, the Advisory Group reported:

> Criminal case filings have increased significantly as a percentage of all case filings (7 percent in 1986 to 11 percent in 1990). There are more criminal cases going to trial, and the sentencing reform act requires more time for the judges to prepare for sentencings and more time in court for the sentencings.

Report at 5.

Regarding the civil docket, the advisory group concluded that "the figures for the number of terminations, number of trials completed and time from issue to trial of civil cases are equal to or better than the national average." Report at 4.

In conclusion, the Advisory Group concluded "[t]he state of the docket is good and has improved with the addition of the third judge. The transfer of asbestos cases reduced the pending civil caseload by almost one half." Report at 6.

B. Cost and Delay

Regarding cost and delay in civil litigation in the United States District Court for the Southern District of Iowa, the Advisory Group concluded that:

> The Committee has been unable to identify significant or excessive cost and delay beyond the obvious and this finding impacts our recommendations. Costs of depositions, expert witnesses, travel and other particular features have increased, as noted by nearly all. Informal surveys of corporate counsel corroborate the view that discovery is the primary cost issue for business. However, there is no basis to believe the Southern District is higher than elsewhere.
>
> A survey of civil practitioners revealed no perception of unreasonable delays. Those delays that were noted were attributed to non-judicial factors (conduct of counsel, clients, or insurers). Ineffective case management by magistrates and judges was rarely cited and posed only "moderate" delay.

Report at 7.

C. Advisory Group Recommendations

Pursuant to § 472(b)(3), the Advisory Group suggested the following

"recommended measures, rules and programs:"

(1) Prisoner pro se litigation. The Advisory Group observed that the volume of prisoner pro se litigation is substantial, nearly 45 percent of the pending civil cases. The Advisory Group noted that the filing rate of prisoner pro se actions "is approaching 415 per year." Report at 9. The Advisory Group recommended increasing the number of cases tried to magistrate judges with the consent of the parties, adding a second pro se law clerk, and initiating a pilot project for expediting prisoner cases.

(2) Federal "small claims" docket. The Advisory Group recommended further study and implementation by rule of a "fast track" procedure where parties consented to such a process. The Advisory Group noted no major dissatisfaction among the bar with the present length of time between filing and trial.

(3) Alternative Dispute Resolution. The Advisory Group specifically stated that they did not believe "a mandatory, court-sponsored ADR program is needed or desirable at this time." Report at 11. Rather, the Advisory Group suggested that at the time the parties are sent the 120 day scheduling report the parties should be provided with information concerning available ADR procedures. The Advisory Group also recommended that the district court judges and magistrate judges should "actively encourage attorneys during hearings and conferences during the course of litigation to consider the use of ADR and to discuss ADR with their clients." Report at 11. The Advisory Group also recommended a pilot project whereby 20 to 25 percent of cases would be selected, at the discretion of the court, for in-person meetings with counsel and parties to discuss ADR alternatives. Report at 11.

Finally, the Advisory Group recommended that the court should inquire of all parties on the record at final pretrial conferences whether they have discussed ADR with each other and their clients.

(4) Uniform Court Rules. The Advisory Group specifically recommended adoption of the following Local Court Rule:

> Where a claim of privilege or work product protection is asserted in objecting to any interrogatory or document

> demand, the party asserting the privilege shall identify with respect to each communication the nature and basis of the privilege claimed. Upon request, the party shall provide as much of the following information as is not encompassed by the privilege: (A) its type; (B) its general subject matter and purpose; (C) its date; (D) the names of persons making or receiving the communication or a copy thereof or, if the communication was oral, of those present when it was made; (E) their relationship to the author or speaker; (F) any other information needed to determine the applicability of the privilege or protection.

Report at 12.

The Advisory Group did express a preference for attempting to achieve uniformity in local rules between the Northern and Southern Districts of Iowa where possible. Finally, the Advisory Group recommended a joint meeting between the Federal Court Advisory Committees of the Northern and Southern Districts "to discuss and perhaps arrive at uniform [local] rules." Report at 12. This meeting is scheduled for December 1993 as part of the redrafting Local Rules process.

IV. CONSIDERATION OF THE PRINCIPLES, GUIDELINES AND TECHNIQUES OF LITIGATION MANAGEMENT DESCRIBED IN §§ 473(a) AND (b)

In adopting this Civil Justice Expense and Delay Reduction Plan, the United States District Court for the Southern District of Iowa has specifically considered the following principles, guidelines and techniques of litigation management for cost and delay reduction:

(1) Systematic differential treatment of civil cases. § 473(a)(1).

(2) Early and ongoing control of the pretrial process through an involvement of a judicial officer. § 473(a)(2).

(3) Monitoring complex litigation through discovery-case management. § 473(a)(3).

(4) Encouragement of cost effective discovery through voluntary exchange of information. § 473(a)(4).

(5) Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certificate that the moving party has

made a reasonable good faith effort to reach agreement with opposing counsel. § 473(a)(5).

(6) Authorization to refer appropriate cases to alternative dispute resolution programs. § 473(a)(6).

(7) Parties' counsel 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. § 473(b)(1).

(8) Parties to be represented at each pretrial conference by attorney authorized to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters. § 473(b)(2).

(9) All requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by attorney and party making request. § 473(b)(3).

(10) 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. § 473(b)(4).

(11) Requiring presence (or available by telephone) of representatives of the parties with authority to bind them in settlement discussions during any settlement conference. § 473(b)(5).

(12) 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. § 473(b)(6).

The principles, guidelines and techniques numbers 1, 2 and 3, §§ 473(a)(1) & (2) & (3), are already utilized in this district on a case by case basis. The court is awaiting taking any action on principle, guidelines and technique number 4, encouragement of cost effective discovery through voluntary exchange of information, § 473(a)(4), until after a determination of whether proposed Federal Rule of Civil Procedure 26(a)(1) becomes law on December 1, 1993.

Principle, guideline and technique number 5, requiring a certificate in discovery motions, § 473(a)(5), is already incorporated in Local Court Rule 14(e).

Principle, guideline and technique number 6, referral in appropriate cases for alternative dispute resolution is already utilized in this district. Each magistrate judge and each district court judge may consider settlement conferences, usually held by magistrate judges using a mediation model, and summary jury trials, usually conducted by the magistrate judges. Additionally, in appropriate cases, magistrate judges recommend to parties that outside mediation should be utilized by the parties.

The court takes no action on principle, guideline and technique number 7, discovery case management plan, § 473(b)(1), because proposed Federal Rule of Civil Procedure 26(f) would require the parties to meet and prepare a discovery plan.

Principle, guideline and technique number 8, requiring each party represented at each pretrial conference to be represented by an attorney authorized to bind the party regarding all matters identified by the court for discussion at the conference and all reasonably related matters, pursuant to § 473(b)(2), is not adopted by the court. This issue has not been a problem in the United States District Court for the Southern District of Iowa regarding pretrial conferences in general. Concerning final pretrial conferences, Local Court Rule 16(b)(2) already implements this suggestion for final pretrial conferences. Additionally, for settlement conferences, the judges of this district order parties with settlement authority to be personally present.

Principle, guideline and technique number 9, requiring all extensions for deadlines for completion of discovery or postponement of trial to be signed by an attorney and party making request, pursuant to § 473(b)(3), after consideration, is rejected as being unnecessary and unreasonably burdensome.

Principle, guideline and technique number 10, 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, pursuant to § 473(b)(4), after consideration, is rejected as being unnecessary due to the size of the district's caseload, integration of ADR discussions in discovery and motion hearings and time restraints on magistrate judges.

Principle, guideline and technique number 11, requiring presence of representative parties with authority to bind them in settlement discussions during any

settlement conference, pursuant to § 473(b)(5), is already the practice in this district and magistrate judges require this in their standard order relating to settlement conferences.

V. ADOPTION AND IMPLEMENTATION

The court adopts and implements the following:

(1) In response to the increase in criminal case filings, the criminal docket of the United States District Court for the Southern District of Iowa will be automated as soon as practicable on a scale similar to the automation of the civil docket.[2]

(2) Full-time magistrate judges are encouraged to pursue further study and training in alternate dispute resolution techniques.

(3) To the fullest extent permissible under 28 U.S.C. § 636(c), the district court judges and the magistrate judges will continue to advise the parties that they may consent to proceed before United States magistrate judges, particularly in § 1983 prisoner litigation.

(4) The magistrate judges shall continue implementing and evaluating a pilot project for expediting prisoner litigation.

(5) The magistrate judges are directed, by January 1, 1994, to propose a pilot project for selection of cases for in-person meetings with counsel and parties to discuss ADR alternatives, similar to the Early Neutral Evaluation Program used in the Northern District of California.

(6) The Advisory Group recommended modifying the local rules to add a local rule providing for procedures where a party asserts privilege or work product in objection to discovery requests. This suggestion has been incorporated into proposed Federal Rule of Civil Procedure 26(b)(5) which will become effective December 1, 1993 unless changed by Congress. If proposed Rule 26(b)(5) is not adopted, we will consider the Advisory Group recommendation.

(7) That the Local Rules of the United States District Court for the Northern

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[2] This process commenced September 7, 1993 and will be fully implemented by January 1, 1994.

and Southern Districts of Iowa be revised. As part of this revision, concerns relating to cost and delay in civil litigation should be reflected in the proposed revisions and modifications of the local court rules. Furthermore, the committee of Magistrate Judge Mark W. Bennett and Chief Magistrate Judge of the United States District Court for the Northern District of Iowa John A. Jarvey, along with the Federal Practice Committees of each district, shall make recommendations to the district court judges of both districts by January 1, 1994 concerning proposed revisions and modifications to the local court rules.

A. Annual Assessment and the Future Role of the Advisory Group

Section 475 of the Act requires the district court to conduct an annual assessment of "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 costs and delay in civil litigation and to improve the litigation management practices of the court." Section 475 of the Act further requires that the district court, when performing such assessment, "consult with an advisory group appointed in accordance with section 478 of this title."

The Advisory Group will meet on an annual basis, or more often if necessary, to assist the court in the annual assessment of the docket as well as evaluating the effectiveness of the remedial measures being implemented and to recommend additional changes and modifications.

Dated October 22, 1993.

Charles R. Wolle, Chief Judge
U.S. District Court for the S.D. of Iowa

Harold D. Vietor, District Court Judge
U.S. District Court for the S.D. of Iowa

Ronald E. Longstaff, District Court Judge
U.S. District Court for the S.D. of Iowa

CIVIL JUSTICE REFORM ACT
ADVISORY GROUP REPORT

This is the report of the Southern District of Iowa Civil Justice Reform Act Advisory Group. Under the Act, the Advisory Group is charged: (1) to identify the sources of unnecessary costs and delay and, if any, (2) to propose responses. The work of the Advisory Group is ongoing. As is evident from the Report, the Advisory Group is satisfied that the Southern District of Iowa is operating efficiently and the results of both the docket assessment and the survey of practitioners confirm this belief.

Because of the long history of close association with the Northern District of Iowa, including uniform local rules, the high number of attorneys and parties who appear in both districts, and our committee's perceived need to avoid what some appear to have called "judicial balkanization," the Committee has also specifically considered and commented upon each of the recommendations of the Northern District Committee. Whatever Plan is eventually adopted, the Committee recommends uniform application and implementation in both the districts of Iowa. For ease of review, we have followed a format for presentation similar to that used by the Northern District.

I. DESCRIPTION OF THE COURT

A. Number and location of divisions; number of district judgeships authorized by 28 U.S.C. § 133; number of magistrate judgeships authorized by the Judicial Conference.

The United States District Court for the Southern District of Iowa substantially includes the southern half of Iowa. There are forty-six counties which are grouped into six statutory divisions under 28 U.S.C. § 95(b). Judicial business in three of the divisions has been pretermitted and transferred to the other three divisions as follows:

1. The Central Division consists of twenty-eight counties with the court seat at Des Moines.
2. The Davenport Division consists of nine counties with the court seat at Davenport.
3. The Western Division consists of nine counties with the court seat at Council Bluffs.

A third district court judge was authorized under Title II of the Judicial Improvements Act of 1990 and Judge R. E. Longstaff has assumed those duties. The district is also authorized two full-time (the second position was effective in January 1990) and two part-time magistrate judges.

B. Special statutory status, if any

The Southern District of Iowa will not serve as a pilot court or an early implementation district.

II. ASSESSMENT OF CONDITIONS IN THE DISTRICT

A. Condition of the Docket

1. What is the "condition of the civil and criminal dockets" (28 U.S.C. § 472(c)(1)(A))?

2. What have been the "trends in case filings and in the demands being placed on court resources" (28 U.S.C. § 472(c)(1)(B))?

Civil case filings have declined significantly after reaching a peak of 2,091 in 1988 (there were approximately 850 asbestos cases filed in June 1988) to 1,180 in 1989, 999 in 1990, and 528 for the first six months of 1991. The civil cases filed by the United States have declined as a percentage of all civil case filings (55 percent in 1986 to 31 percent in 1990) and are nearly one-half in real numbers (461 to 235) for those years. The number of private civil case filings has declined by only 9 percent (840 in 1986 to 764 in 1990).

The types of cases filed have not changed with the exception of the asbestos cases in 1988. Regarding U.S. civil filings, 78 percent (1986) to 82 percent (1987) are attributable to three areas: contract, real property, and social security. That share has remained fairly constant, except for 1989 when, there was a large increase in the number of forfeiture proceedings emanating from an expanded criminal docket in that year. Forfeiture proceedings amounted to 11 percent of the civil docket in 1989. Civil rights cases filed by prisoners have consistently been over 300 each year and have maintained a stable percentage of private civil filings (340 or 40 percent in 1986 and 361 or 47 percent in 1990). The relationship of habeas corpus to prisoner civil rights filings has also remained stable at 1 to 6. With the exception of 1988 (a ten fold

increase due to asbestos cases), tort cases have also remained stable at 12 percent to 16 percent of the total civil filings.

Terminations of civil cases exceeded filings for 1989-1991. Filings exceeded terminations in 1986, 1987 and 1988. This was affected by the vacant judgeship for 15 months in 1986 and 1987. If the asbestos cases filed in 1988 are not considered, terminations would outnumber the filings in that year, also. The number of terminations per judgeship is higher than the national average. The following statistics give some indication of the productivity of the judges and the state of the current docket. The first table shows the ratio of pending cases to terminated cases and is believed to be a good estimate of the true average duration of a court's cases (in years).

Ratio of Pending Cases to Terminations

YEAR	FILINGS	PENDING	TERMINATIONS	RATIO
1985	1449	1474	1381	1.07
1986	1301	1495	1280	1.17
1987	1467	1788	1174	1.52
1988	2091	2404	1471	1.63
1989	1177	2322	1259	1.84
1990	994	2262	1010	2.24

The following statistics show the number of case terminations per judgeship (based on 2.5 judges) and the number of terminations per judge:

Case Terminations Per Judgeship

1. July-December 1989 = 251.2 (41.9 per month)
2. January-December 1990 = 457.6 (38.1 per month)
3. January-June 1991 = 277.6 (46.3 per month)

Case Terminations by Judge

1. **Judge Vietor**
   July-December 1989 - 217 (36.2 per month)
   January-December 1990 = 379 (31.6 per month)
   January-June 1991 = 239 (39.8 per month)

2. **Judge Wolle**
   July-December 1989 = 202 (33.7 per month)
   January-December 1990 = 363 (30.3 per month)
   January-June 1991 = 224 (37.3 per month)

3. **Judge O'Brien**
   July-December 1989 = 124 (20.7 per month)
   January-December 1990 = 209 (17.4 per month)
   January-June 1991 = 123 (20.5 per month)

4. **Judge Stuart**
   July-December 1989 = 19
   January-December 1990 = 35
   January-June 1991 = 12

5. **Judge Longstaff** (cases shown are referred with the consent of the parties under 28 U.S.C. § 636(C)(1)
   July-December 1989 = 20
   January-December 1990 = 35
   January-June 1991 = 25

6. **Judge Bremer** (cases shown are referred with the consent of the parties under 28 U.S.C. § 636(C)(1)
   January-December 1990 = 6
   January-June 1991 = 8

The figures for the number of terminations, number of trials completed and time from issue to trial of civil cases are equal to or better than the national average.

The number of cases in excess of three years old and the percentage of the court's docket in excess of three years old decreased in the 14-month period studied. Only in certain limited classes of cases did the cases increase in real numbers. The class of greatest numbers (prisoner civil rights and habeas) showed a 16 percent decrease in cases three years old or more.

CRIMINAL DOCKET

Criminal case filings have increased significantly as a percentage of all case filings (7 percent in 1986 to 11 percent in 1990). There are more criminal cases going to trial, and the sentencing reform act requires more time for the judges to prepare for sentencings and more time in court for the sentencings.

Criminal cases that Went to Trial

1986.....	21 Trials
1987.....	19 Trials
1988.....	21 Trials
1989.....	32 Trials
1990.....	26 Trials
1991 (7 months).....	14 Trials

The Committee has reviewed the Advisory Committee reports of other Districts and like the Northern District of Iowa, much of the delay in the civil docket is attributed to the growth of the criminal docket and the statutory and constitutional requirements which give precedence to it. This committee observed a similar pattern in the Southern District but the magnitude of its effect has yet to be felt.

Many Advisory Committees express the belief that the growth of the criminal docket and the court time necessary to respond is primarily the result of a national commitment to federalization of prosecutions (e.g., drugs), and legislative attention to those prosecutions (e.g., sentencing guidelines). In addition, congress has enacted expansions of federal jurisdiction in the civil area. [See Report of the Federal Courts Study Committee (1990).]

These events are largely if not entirely beyond the control or even influence of the district court. In the event the condition of the civil docket should worsen, this Committee should be prepared to make further recommendations in response.

CONCLUSION

The state of the docket is good and will undoubtedly improve with the addition of the third judge. The transfer of asbestos cases has reduced the pending civil caseload by almost one half.

FILINGS OF CIVIL AND CRIMINAL CASES

	CIVIL CASES									CRIMINAL CASES			TOTAL CASES		
	FILINGS	(U.S.)	(PRIVATE)	TERMINATIONS	(U.S.)	(PRIVATE)	PENDING	(U.S.)	(PRIVATE)	FILINGS	TERMINATIONS	PENDING	FILINGS	TERMINATIONS	PENDING
1986	1,301	461	840	1,276	440	836	1,499	427	1,072	100	101	46	1,401	1,377	1,545
1987	1,468	565	903	1,173	411	762	1,790	579	1,211	67	80	34	1,535	1,253	1,824
1988	2,091	387	1,704	1,469	627	842	2,410	338	2,207	119	88	64	2,210	1,557	2,474
1989	1,177	321	856	1,259	363	896	2,322	296	2,206	101	111	51	1,278	1,370	2,373
1990	999	235	764	1,010	256	754	2,262	264	1,998	129	109	67	1,128	1,119	2,329
1991 (6 mos)	528			634			2,145			61	50	62	589	684	2,207

CIVIL CASES COMMENCED BY NATURE OF SUIT -- PRIVATE CASES

	CONTRACT	REAL PROPERTY	FELA	MARINE PERSONAL INJURY	MOTOR VEHICLE PERSONAL INJURY	OTHER PERSONAL INJURY	OTHER TORT ACTIONS	ANTITRUST	CIVIL RIGHTS	COMMERCE	PRISONER PETITIONS HABEAS CORPUS	PRISONER PETITIONS CIVIL RIGHTS	COPYRIGHT PATENT TRADEMARK	LABOR SUITS	ALL OTHER
1986	106	8	36	--	32	87	15	1	113	2	51	289	16	30	54
1987	157	15	24	1	28	84	28	2	86	6	38	325	27	28	54
1988	137	17	41	--	35	944	15	1	71	1	45	268	17	29	83
1989	94	13	23	--	16	70	14	2	63	--	48	399	17	33	61
1990	94	6	11	1	27	78	5	2	74	--	49	312	13	32	60

CIVIL CASES COMMENCED BY NATURE OF SUIT -- UNITED STATES CASES

	CONTRACT	LAND CONDEMNATION	OTHER REAL PROPERTY	TORT ACTIONS	ANTITRUST	CIVIL RIGHTS	PRISONER PETITIONS MOTIONS TO VACATE SENTENCE	PRISONER PETITIONS HABEAS CORPUS	PRISONER PETITIONS CIVIL RIGHTS	FORFEITURES AND PENALTIES	LABOR SUITS	SOCIAL SECURITY	TAX SUITS	ALL OTHER
1986	189	2	71	23	--	9	7	1	1	7	11	99	9	32
1987	187	2	121	20	--	7	13	--	2	13	8	153	4	35
1988	142	2	76	11	--	3	10	3	6	7	3	96	4	25
1989	68	--	33	6	1	7	17	3	--	33	4	100	20	29
1990	31	--	49	7	--	3	7	1	2	20	4	76	11	24

	CIVIL CASES PENDING JUNE 30, 1989	CIVIL CASES OVER THREE YEARS OLD JUNE 1989	CIVIL CASES ASSIGNED JULY 1989 THROUGH JUNE 30, 1990	CIVIL CASES TERMINATED JULY 1989 THROUGH JUNE 30, 1990	CIVIL CASES PENDING JUNE 30, 1990	CIVIL CASES OVER THREE YEARS OLD JUNE 30, 1990	CIVIL CASES ASSIGNED JULY 1990 THROUGH JUNE 30, 1991	CIVIL CASES TERMINATED JULY 1990 THROUGH JUNE 30, 1991	CIVIL CASES PENDING JUNE 30, 1991	CIVIL CASES OVER THREE YEARS OLD JUNE 30, 1991
DGE DONALD O'BRIEN	406	28	250	246	409	58	217	219	406	57
DGE W. C. STUART	46	6	32	33	46	9	7	34	18	6
DGE HAROLD VIETOR	473	20	425	439	458	30	415	478	392	26
DGE CHARLES WOLLE	1343	24	373	419	1298	56	423	446	1282	889
DGE R. E. LONGSTAFF	36	2	32	45	25	5	48	35	37	4
UDGE CELESTE BREMER			9	3	6		18	12	10	1

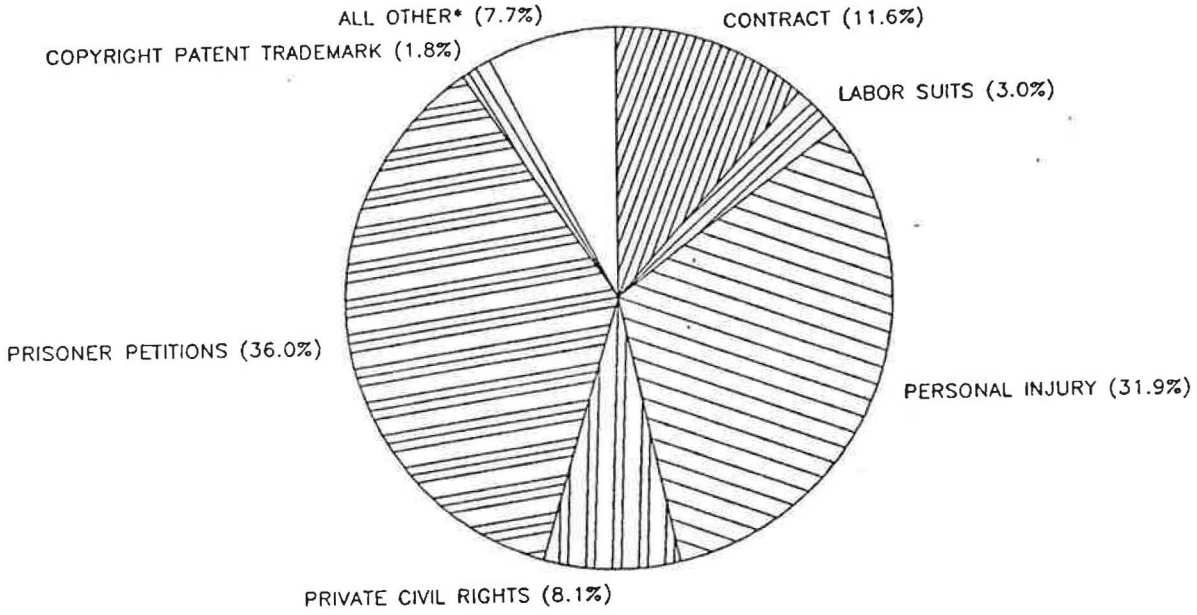
PPOINTED FULL TIME MAGISITRATE JUDGE JANUARY 1990.

THREE YEAR OLD CASES

	PRISONER CASES		OTHER												OTHER				
	CIVIL RIGHTS	HABEAS CORPUS	CIVIL RIGHTS	CONTRACT	SECURITIES	ANTITRUST	PRODUCT LIABILITY	REAL PROPERTY	FORFEITURE	EMPLOYMENT DISCRIMINATION	INSURANCE	LABOR LAW	ASBESTOS	FELA	STATUTORY ACTS	PATENT TRADEMARK	BANKING	FRAUD	PERSONAL INJURY
SEPTEMBER 30, 1991	35	3	8	3	1		1	3	3	3	16	2	3	18	5	2	1		3
JULY 1, 1991	34	3	8	6	2	1	5	3	3	2	20	2	878	1	4				9
JULY 1, 1990	42	7	3	12	3	1	4	1	2	7	10	1	29		5		4	2	6

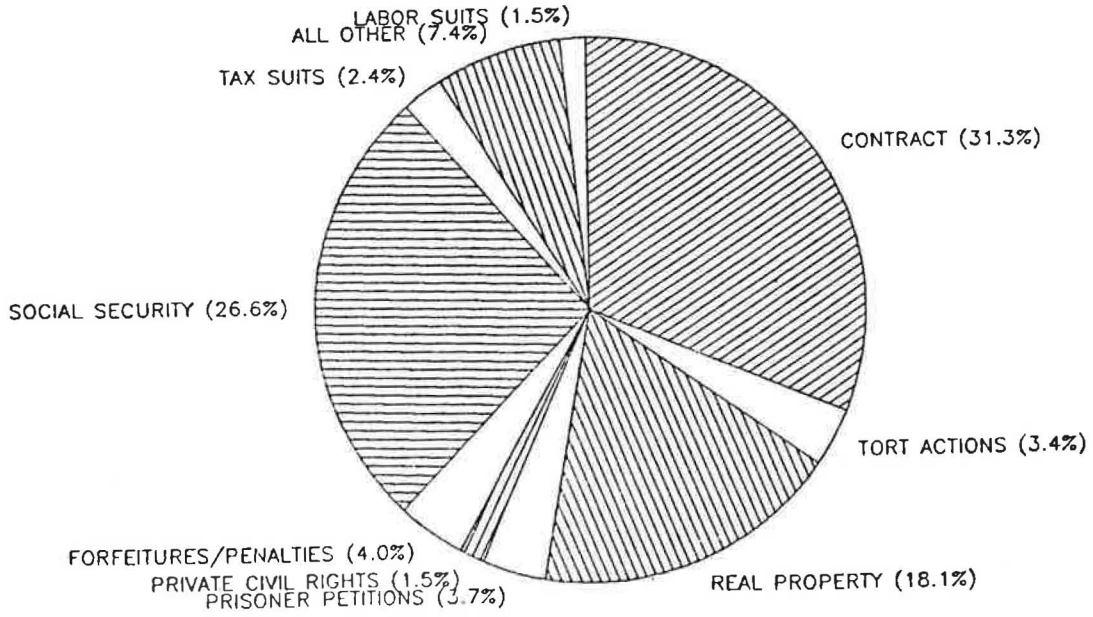
CASES COMMENCED BY NATURE OF SUIT

PRIVATE CIVIL CASES FILED 1986–1990

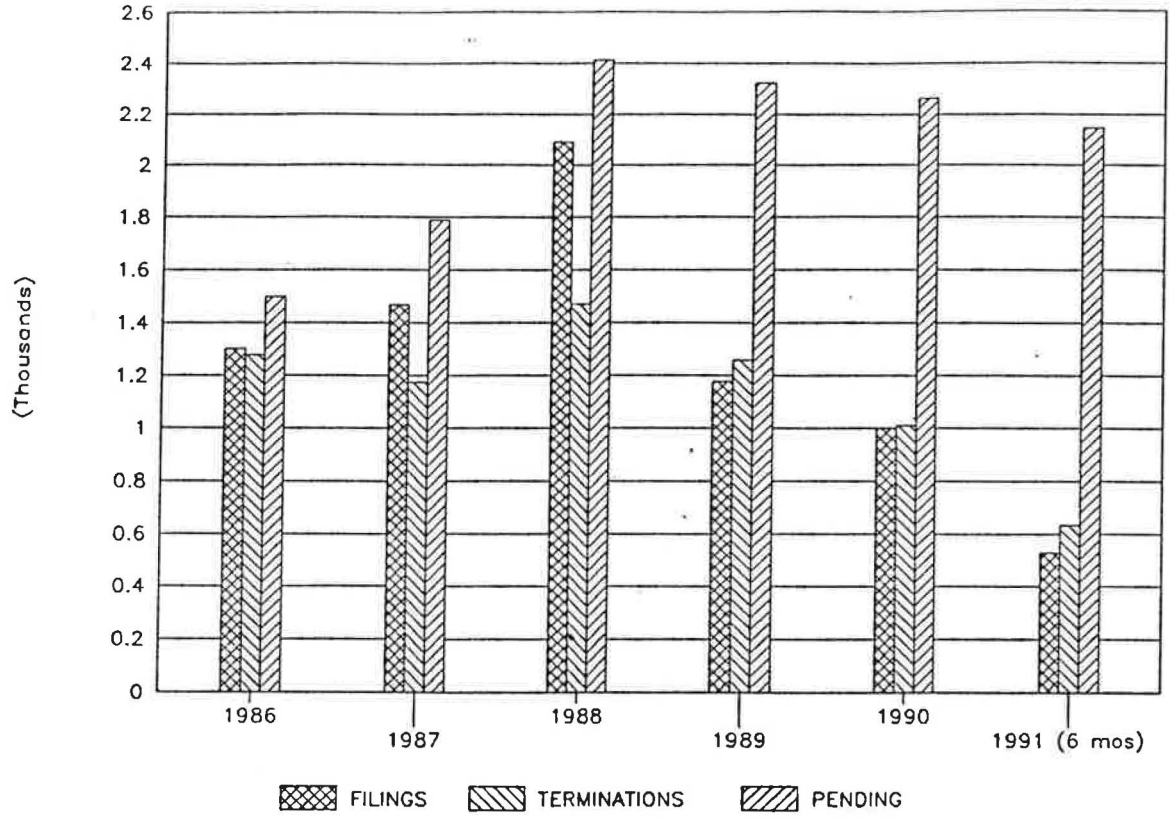


CASES COMMENCED BY NATURE OF SUIT

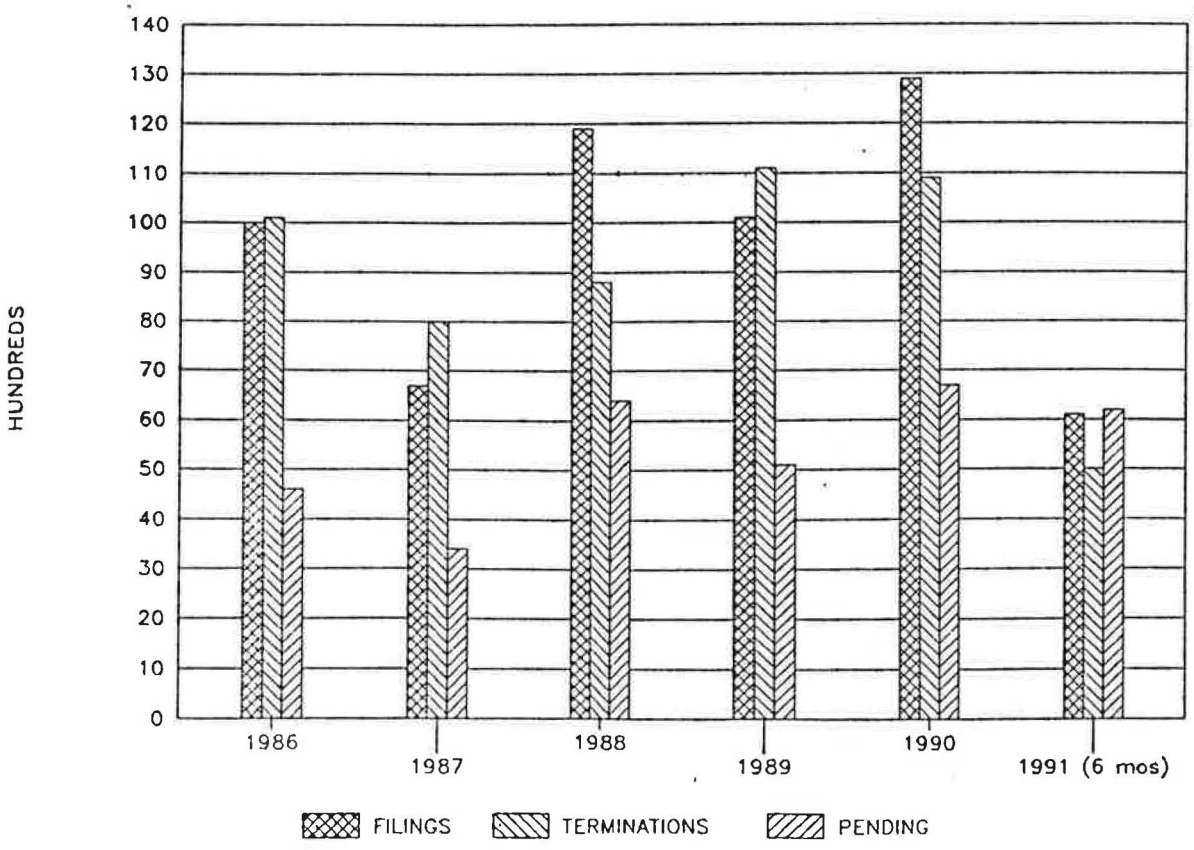
U. S. CIVIL CASES FILED 1986–1990



CIVIL CASES

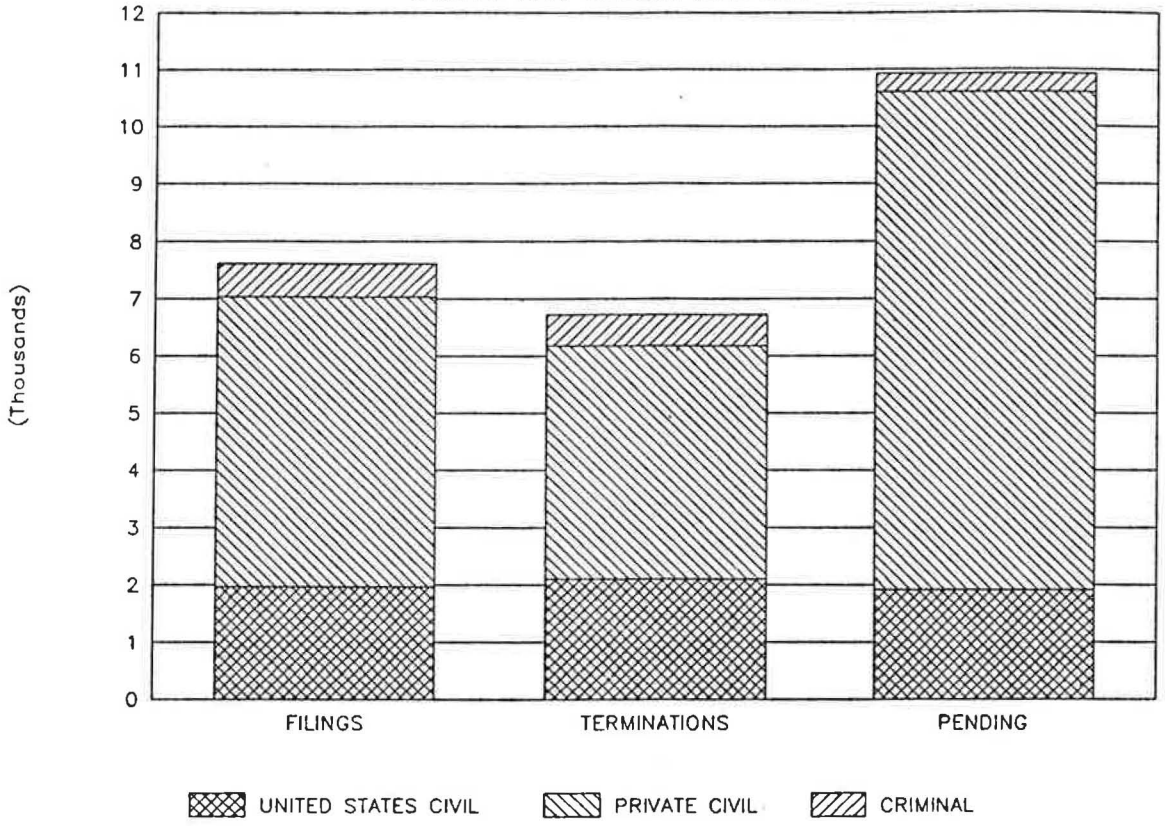


CRIMINAL CASES



CRIMINAL AND CIVIL CASES

JANUARY 1986 THROUGH JUNE 1991



B. Cost and Delay

1. **Is there excessive cost and delay in civil litigation in this district? What is the supporting evidence for the Group's finding?**

The Committee has been unable to identify significant or excessive cost and delay beyond the obvious and this finding impacts our recommendations. Costs of depositions, expert witnesses, travel and other particular features have increased, as noted by nearly all. Informal surveys of corporate counsel corroborate the view that discovery is the primary cost issue for business. However, there is no basis to believe the Southern District is no higher than elsewhere.

A survey of civil practitioners revealed no perception of unreasonable delays. Those delays that were noted were attributed to non-judicial factors (conduct of counsel, clients, or insurers). Ineffective case management by magistrates and judges was rarely cited and posed only "moderate" delay. (Survey Result Summary attached.)

A survey of attorneys who have handled cases against the government (1989-1991) confirmed this observation.

- By a majority of 2 to 1, respondents indicate they have not encountered unreasonable delays. Discovery practices, motions, and conduct of counsel were commonly cited as a source of delays while the court's pre-trial procedures generally were looked upon favorably.
- Respondents generally supported, or at least were willing to try, various measures designed to improve the efficiency of the court. Respondents generally opposed mandatory arbitration while supporting voluntary ADR techniques.

2. **If there is a problem with cost and delay, what are its "principal causes" (28 U.S.C. § 472(c)(1)(C))?**

a. The "squeeze" of the criminal docket, and time necessary in response.

b. Conduct of opposing counsel, clients or insurers.

c. Unnecessary discovery.

d. Prolonged discovery disputes.

e. The volume of the docket in particular classes of cases (prisoner pro se).

f. Similar to other Committee observations, "the passage of legislation which increases the workload of the federal court without commensurate increase in judicial resources results in additional delays in civil litigation."

III. RECOMMENDATIONS AND THEIR BASIS

A. State the "recommended measures, rules and programs" (28 U.S.C. § 472(b)(3)), such as recommended local rules, dispute resolution programs, or other measures, and for each explain how it relates to an identified condition and how it would help the court reduce excessive cost and delay.

Mandated by the observation that delay in the Southern District is not unreasonable, the Committee has few specific recommendations, which are targeted to areas of immediate concern.

1. Prisoner Pro Se Litigation

Of the cases that are filed approximately 50 percent are dismissed at the initial review stage as frivolous. Of the cases that survive initial review, it is estimated that one-third result in prisoners obtaining appointed counsel where the Eighth Circuit criteria for appointed counsel is satisfied. The Iowa State Bar Association has obtained a grant from IOLTA which for the last several years as allowed the appointment of private attorneys who are paid around $600.00 per case. There are 60-70 of these cases from the Southern District per year.

The grant does not allow appointment for all cases that need counsel. The Southern District has enacted a plan for representation of indigent plaintiffs as of March, 1992, to assess members of the Federal Bar $50.00 if they do not want to take appointed cases. This source of funding should replace the IOLTA grant as of the Spring of 1994 and should provide for continued funding for a program similar to the present Bar Association grant.

Before a pro se petition can get filed, it has to be screened, by the pro se law clerk. Perhaps 40 percent of the pro se filings are dismissed as frivolous. Because of the sheer volume of filings, initial reviews can now take as much as three months to be processed. Apparently the Administrative Office of the court system has proposed that each federal court have one pro se clerk for every 209 pro se filings, contrasted with the present ratio of one clerk per 300 filings. The rate in the Southern District is approaching 415 per year.

Another source of delay in the existing pro se prisoner litigation results from a practice of referring prisoner cases to Magistrates for evidentiary hearings that often take place in Fort Madison. When cases are referred to Magistrates for reports and recommendations there is obviously an extra appeal stage imposed on all parties. The alternative is to get the parties to consent more often with an early firm trial date as an inducement.

a. Add a second pro se clerk.

b. Induce consents to trials before Magistrates, rather than reports and recommendations.

c. Initiate a pilot project implementing an expedited docket for prisoner cases, the components of which might include:

The defendants shall retain 40 days within which to file their answer. If plaintiff is pro se, at the time of the answer and in addition, the defendants will file a Preliminary Status Report which shall include:

- the nature of the plaintiff's claim;
- the nature of the defense;
- a description of documents which defendants will deliver to plaintiff voluntarily;
- a description of the discovery which defendants believe will be necessary prior to trial;
- a tentative list of witnesses necessary for trial;

- a statement whether the case based upon the information provided is suitable for submission to the expedited process.

If plaintiff is represented by counsel, counsel for plaintiffs and defendants will discuss by telephone within 10 days of the filing of the answer, and submit a report of that conference and discussion within 10 days thereafter as to each of the items identified above. If the criteria for expedited processes are met, discovery, trial briefs, and pretrial motions would be prohibited. Trial would be limited to two hours or less to be held at Fort Madison before the Magistrate Judge. Trial would be set no less than 60 and no more than 90 days after answer.

2. Federal "Small Claims" Docket

The suggested title does not denigrate the value of the claims to the parties but refers to pre-trial resources that, like the prisoner pro se cases, could be saved by consensually fast-tracking certain cases. The Committee recommends further study and implementation by rule for those cases wherein consent to such a process could be requested. If results from the prisoner docket justify continued or increased use, and expansion of the program appears to be of some benefit in this class of cases, legislative recommendations will be considered as part of the continuing work of this committee.

3. Alternative Dispute Resolution

The Northern District committed in a formal way to the concept. The Committee recommends the Court's involvement should be limited to providing ADR availability, encouraging and facilitating its use.

Alternative dispute resolution (ADR) is a term which encompasses a number of different processes used to resolve litigation other than the traditional court or jury trial. Some such processes are handled by the court (settlement conferences, summary jury trials) while others take place outside the traditional system (mediation, arbitration). The committee believes that greater awareness of the various forms of ADR by the court, the attorneys and the parties, will lead to greater use of ADR. In turn, it is believed that an increased

use of ADR will result in getting cases settled earlier and more cost effectively to the litigants and/or taxpayers. It is recognized that not all cases are appropriate for ADR. Furthermore, the committee does not feel a mandatory, court-sponsored ADR program is needed or desirable at this time. In order to increase the awareness and voluntary use of ADR, the committee makes the following recommendations.

1. At the time the parties are sent the 120 Day Report, they should also be sent information on the different ADR procedures available, including the cost involved in each. [Either our committee or one of the other bar committees which are studying ADR could prepare this.] This information sheet should inform the parties that the court encourages them to utilize ADR and to discuss the benefits of doing so with their clients. Mandating this discussion by requiring clients to sign scheduling orders or requiring attorney's certification was discussed but is not recommended by the committee.

2. The court should, on cases it deems appropriate, actively encourage attorneys during hearings and conferences during the course of the litigation to consider the use of ADR and to discuss ADR with their clients. Mandatory in-person status conferences to discuss discovery and ADR availability were discussed but are not recommended. The demand on already premium magistrate-judge time as well as the indirect costs of substantial travel time for clients and court militates against adoption. Telephone conferences in the alternative were discounted as not as effective in achieving the desired results. The committee recommends a Pilot Project be implemented where 20-25 percent of cases would be selected, at the discretion of the court, for in-person meetings with counsel and parties to discuss ADR alternatives. This committee, as part of its ongoing responsibilities, would assist in compilation and review of data, to determine the efficacy and effect on the docket.

3. At the final pretrial conferences, the court should inquire of all parties on the record whether they have discussed ADR with each other and with their clients.

4. The cost of any ADR process should be the responsibility of the parties.

4. UNIFORM COURT RULES (NORTHERN AND SOUTHERN DISTRICTS)

Historically the Northern and Southern District have attempted to achieve uniformity in practice, to the extent possible, through Local Rules. The committee believes this is a laudable goal which should continue to be pursued, for the convenience of the court, and counsel and parties who practice in both districts.

The committee reviewed each of the recommendations for rule changes of the Northern District Advisory Committee contained in its December 30, 1991, report. This committee recommends adoption of only No. 8:

> The court should adopt a local rule governing the identification of documents withheld by any party on a claim of privilege:
>
> Where a claim of privilege or work product protection is asserted in objecting to any interrogatory or document demand, the party asserting the privilege shall identify with respect to each communication the nature and basis of the privilege claimed. Upon request, the party shall provide as much of the following information as is not encompassed by the privilege: (A) its type; (B) its general subject matter and purpose; (C) its date; (D) the names of persons making or receiving the communication or a copy thereof or, if the communication was oral, of those present when it was made; (E) their relationship to the author or speaker; and (F) any other information needed to determine the applicability of the privilege or protection.

Our singular recommendation is not a negative comment on the substance of the Northern District recommendations. The comments and observations are obviously the result of a great deal of thought and energy. This committee does not differ with the wisdom or the need for some of the procedures noted but only with the necessity for a Local Rule to achieve the desired result. This Committee believes many of the recommended actions are already within the discretion of the magistrate-judges or the district court judges.

The committee recommends a joint meeting be held by the committees for both the Northern and Southern districts and the courts to discuss and perhaps arrive at uniform rules. This committee believes a joint meeting to be consistent with present responsibilities and our on-going responsibilities.

The recommendations made here, while not extensive, are consistent with the perceived need in the Southern District. Additional time and resource commitments will be required of the court and attorneys in

implementation of the Pilot Projects, but the results in reduced costs and delays may be significant, justifying expansion of the Projects.

As the docket analyses indicate, the district is fortunate to have avoided many of the more egregious examples of delay. This committee believes after review, that this is attributable to prior utilization of many docket control mechanisms by the courts of this district, both formally and informally.

The Southern District already, and has for some time, involved judicial officers in identification of complex cases, early management of pre-trial processes, encouragement of non-judicial resolution of discovery disputes, and judicial involvement with the parties in settlement discussions. In this report, the committee has recommended greater use of ADR be encouraged but not mandated. Early neutral evaluation was not included. The committee believes that mandating such a program is not presently necessary and would not reduce delays but instead potentially increase costs. Implementation of pilot projects will facilitate planful change, only after data collected suggest effective procedures.

Respectfully submitted,

CIVIL JUSTICE REFORM ACT - ADVISORY GROUP
SDIA ATTORNEY SURVEY RESULTS

Background Information

1. For how many years have you been practicing law? 17 Years.

2. What percentage (estimated of your practice (of time spent) is devoted to civil litigation? 80 %

3. During the past three years, what percentage (estimated) of your civil litigation practice was in the SDIA? 28 %

4. During the past three years, what percentage (estimated) of your civil litigation practice was in the NDIA? 5 %

5. During the past three years, what percentage (estimated) of your civil litigation practice was in State District Courts? 45 %

6. How many practicing lawyers are there in your firm or organization? 182 Note: without State attorneys average is 29.

7. What percentage (estimated) of your civil litigation practice consists of representing plaintiffs? 47 %

8. What percentage (estimated) of your civil litigation practice consists of representing defendants? 48 %

The following questions pertain to your civil litigation experience in the SDIA during the past three years.

8.5 Have you encountered unreasonable delays? 9 Yes 13 No

If yes, how much have each of the following contributed to these delays?

	None	Slightly	Moderately	Substantially
Tactics of opposing counsel	1	1	4	3
Conduct of clients	2	4	—	2
Conduct of insurers	5	—	1	2
Personal or office practice inefficiencies	4	4	1	—
Judicial inefficiencies	1	3	5	—
Rules of Practice	5	4	—	—

9. Have you found such litigation to be unnecessarily costly?
9 Yes 13 No Explain:

- No, not yet, but I can see the potential for it.

- A lengthy time it takes to bring a case to trial in the SDIA seems to increase the cost of litigation.

- Need a discovery referee (magis) to promote quick dispute resolution in discovery; Defendants do not make good faith effort to respond to discovery requirement of counsel making a good faith effort to resolve results in a paper game; court isn't much help.

- Defendants make litigation as costly for plaintiffs as possible; Corp defendants interpose frivolous objections resulting delay and paper games.

- Failure to respond to discovery requests - stonewalling.

- Too much needless discovery; trial delays; courts resistance to follow rules.

- Unnecessary motions; Excessive depositions.

- Depositions and expert fees are the most significant items.

- Cost of experts, number of lawyers involved.

- Much is products liability in character. This normally necessitates experts, their depositions and tests, etc.

If yes, how much have each of the following contributed to the unnecessary costs? Explain:

- Disputes over discovery would be the largest potential contributor.

- Clients (corp & large orgs.) do not divulge information to counsel or counsel knows but objects in all manner of obstructionist objections.

- Defendants case run by a corporate counsel; don't tell local counsel truth or tell them to object without making good faith effort to comply with FRCP's.

- A useless motion practice; or unnecessary discovery (fishing expeditions) cause high costs; the courts failure to enforce rules requires duplication of efforts.

	None	Slightly	Moderately	Substantially
Conduct of counsel	1	—	3	4
Conduct of clients	3	2	1	2

Conduct of insurers	2	1	1	3
Personal or office practice inefficiencies	2	5	—	—
Judicial inefficiencies	3	3	2	—

Explain:

- (Conduct of insurers above - unknown). Don't know extent of delay from unnecessary motions is from insurance carriers or defense counsel.

10. To what extent have tactics of counsel contributed to unreasonable delays or unnecessary costs?

5 None 8 Slight 6 Moderate 3 Substantial

If you selected moderate or substantial please indicate the extent to which each of the following tactics of counsel contributed to your assessment.

	Substantially	Moderately	Slightly	None
Unnecessary use of Interrogatories	1	3	3	2
Too many interrogatories	—	2	4	2
Too many depositions	2	2	3	2
Too many deposition questions	5	1	2	1
Overbroad document requests	1	2	2	2
Overbroad responses to document production requests	2	—	5	2
Unavailability of witness or counsel	1	4	2	2
Raising frivolous objections	2	4	2	—
Failure to attempt in good faith to resolve issues without court intervention	2	2	4	—
Unwarranted sanctions motions	1	1	2	4
Lack of professional courtesy	3	—	5	—

Failure to follow existing rules and tactics	3	—	1	2
Other	2	—	—	—
Other	2	—	—	—
Other				

Explain:

- Other: No good faith effort disclose.
- Other: No loyalty to court.
- Other: No good faith effort.
- Other: No loyalty to court.
- Every time counsel create non-substantive issues through trial techniques or personality problems costs increase.

11. To what extent has ineffective case management by magistrate judges contributed to unnecessary delays or unreasonable costs?

15 None 2 Slight 3 Moderate — Substantial

If you selected moderate or substantial, please select the appropriate response to the following court activities:

Number of status conferences

— Far too many
— Somewhat too many
4 Reasonable number
2 Somewhat too few
1 Far too few

Pre-motion conferences

— Far too many
— Somewhat too many
4 Reasonable number
— Somewhat too few
— Far too few

Deadlines

1 Far too restrictive
1 Somewhat too restrictive
2 Reasonable
1 Somewhat permissive
— Far to permissive

Extension of deadlines

— Far too restrictive
1 Somewhat too restrictive
3 Reasonable
1 Somewhat permissive
— Far to permissive

Please indicate the extent to which each of the following possible instances of ineffective case management by magistrate judges contributed to your assessment:

	Substantially	Moderately	Slightly	None
Delays in entering scheduling orders	—	—	—	7
Excessive time periods provided for in scheduling orders	—	—	1	6
Failure to resolve discovery disputes promptly	3	1	—	2
Failure to resolve other motions promptly	—	1	3	2
Scheduling too many motions on different cases concurrently	—	—	2	3
Failure to tailor discovery to needs of the case	2	—	2	2
Failure by magistrate judge to initiate settlement discussions	—	—	4	1
Inadequate supervision of settlement discussions	—	—	3	2
Inadequate judicial preparation for conferences or proceedings	—	1	2	2
Failure to enforce scheduling order	1	—	2	2
Other	—	—	—	—
Other	—	—	—	—

12. To what extent has ineffective case management by judges contributed to unnecessary delays or unreasonable costs?

2 None 4 Slight 3 Moderate — Substantial

11.

If you selected moderate or substantial, please select the appropriate response for the following court activities:

Number of status conferences

— Far too many
— Somewhat too many
3 Reasonable number
— Somewhat too few
— Far too few

Pre-motion conferences

— Far too many
1 Somewhat too many
2 Reasonable number
— Somewhat too few
— Far too few

Deadlines

— Far too restrictive
— Somewhat too restrictive
3 Reasonable
— Somewhat permissive
— Far to permissive

Extension of deadlines

— Far too restrictive
2 Somewhat too restrictive
1 Reasonable
— Somewhat permissive
— Far to permissive

Please indicate the extent to which each of the following possible instances of ineffective case management by judges contributed to your assessment:

	Substantially	Moderately	Slightly	None
Failure to enforce scheduling order	1	—	1	3
Delays in entering scheduling orders	—	—	1	4
Excessive time periods provided for in scheduling orders	—	—	2	3
Failure to resolve discovery disputes promptly	2	2	—	1
Failure to resolve other motions promptly	1	2	—	2
Scheduling too many motions on different cases concurrently	—	—	1	4
Failure to tailor discovery to needs of the case	2	—	1	1
failure by judge to initiate settlement discussions	—	3	—	1

Inadequate supervision of settlement discussions	—	3	—	1
Inadequate judicial preparation for conferences or proceedings	—	1	—	6
Failure by judge to assign reasonably prompt trial dates	2	3	1	1
Failure of judge to meet assigned trial dates	—	2	—	5
Failure by judge to give sufficient advance notice of trial	—	3	—	4
Other	—	—	—	—
Other	—	—	—	—
Other	—	—	—	—

The following questions describe solutions which have been implemented in other districts or are under active consideration to address concerns regarding unnecessary delays and unreasonable costs in federal civil litigation. With respect to each proposed solution, please indicate your opinion as to its effectiveness in expediting civil litigation or reducing its costs.

- This part of the form is not very informative because it doesn't provide space for negative feelings. I do have negative feelings about some of these proposals.

	Substantial effect	Moderate effect	Slight effect	No effect at all	No opin
13. Shorter time limits for completing the various states of litigation	4	5	9	3	1
14. Requiring counsel to attempt to resolve issues before court intervention	2	6	7	5	1
15. Requiring mandatory prefiling of mediations	3	3	7	6	3

16. Permitting pre-motion conferences with the court on any motion at the request of the any party	4	4	7	4	2
17. Requiring pre-motion conferences with the court for the following categories of motions:					
Dispositive motions (dismissal, summary judgment)	1	8	6	5	2
Discovery motions	7	5	2	3	1
Other motions	1	7	5	4	2

- Too complex and time consuming (#17)

18. Permitting the filing of procedural, non-dispositive motions (for example, motions to amend and motions to add parties) by letter rather than formal motion and brief	4	8	9	—	—
19. Providing a 15 page limitation for memoranda of law, except for good cause shown	3	7	8	4	—

- Make it 2 cent pages.

20. Requiring mandatory arbitration of all disputes in which the amount in controversy is less than:					
$100,000	6	4	4	4	4
$200,000	2	5	5	5	4
$1,000,000	2	3	5	7	4

- Absolutely opposed to #20.

- But at sacrifice of rights (as to #20).

21. Providing court-annexed mediation upon mutual consent of parties for some or all issues in dispute	4	6	8	2	2
22. Making available attorneys who are experts in the subject matters in dispute to evaluate claims and defenses and to assist parties in settlement negotiations ("early neutral evaluation")	3	6	7	5	-
23. Requiring attendance of parties and/or their insurers at court settlement conferences	4	13	4	1	-
24. Requiring Rule 11 sanctions motions to be separately filed and not appended to another motion	1	3	4	8	5
25. Increased availability of telephone conferences with the court	6	10	5	1	-
26. Requiring automatic disclosure of the following information shortly after founder of issue:					
The identity of witnesses reasonable likely to have information which bears significantly upon claims, defenses or damages	3	10	5	2	-
General description of documents relied upon in preparing pleadings or contemplated to be used in support of the parties' allegations or calculation of damages	4	9	4	1	-
Existence and contents of insurance agreements	4	2	4	4	5

27. Requiring automatic disclosure prior to the final pre-trial conference of the qualifications, the opinions and the basis for those opinions of experts intended to be called as trial witnesses	6	9	6	1	-

- Should be retained experts vrs. treating doctors.

28. Conditioning grants by the court of broader discovery upon the shifting of costs in instances where the burden of responding to such requests appears to be out of proportion to the amounts or issues in dispute	7	9	2	4	-

- Absolutely opposed to #28.

29. Defining the scope of permissible discovery by balancing the burden or expenses of the discovery against its likely benefit	6	8	2	5	1

- Opposed.

30. Assessing the costs of discovery motions on the losing party	5	3	6	7	1

- Opposed.

31. Providing less time for completion of discovery	1	5	6	3	-

32. Requiring discovery relating to particular issues (e.g., venue, class certification) or a specified stage of the case (e.g. liability) to be completed before permitting discovery respecting other issues or another stage (e.g., damages, experts)	3	6	5	7	1

33. Limiting the number of interrogatories presumptively permitted	2	5	6	8	—
34. Limiting the type of interrogatories (e.g., identification, contention) presumptively permitted at various states of discovery	3	4	6	8	—
35. Limiting the number of depositions presumptively permitted	3	8	7	4	—
36. Limiting the length of depositions presumptively permitted	4	7	6	5	—

	Substantially Improved	Moderately Improved	Remained Unchanged	Moderately Worsened	Substantially Worsened
37. During the past three years, the costs and time it takes to litigate civil actions has:	—	—	13	13	1

38. During the past three years, how many months (on average) has it taken from the time your civil cases were ready for trial to the time that trial actually commenced? 14 months (or (NA) 6 if not applicable)

39. [Optional] If delay is a problem in the SDIA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

- I have not had a problem with delay.

- Legalize some drugs; expand drug treatment and drug education; drastically reduce the time and money spent on drug prosecutions; also appoint more federal judges; I also practice in the District of New Mexico, which has good rules on the page limit of briefs; the E.D. VA has an expedited docket-management system which seems to work well.

- Magistrate be available for telephone conferences (status/discovery) more often; plaintiffs generally need court's intervention to get defendants to comply with discovery rules in good faith timely fashion; sanctions imposed for objections which

are interposed for delay and avoid discovery (see Dowell v. Hobart, SDIA).

- The court should have mandatory status conferences 60-90 days; initial conference would cover first interrogatories and requests; court would rule - get things moving - and avoid the "gamesmanship" most defendants play; sanctions imposed for frivolous objections or failure to attend/make good faith effort; require corporate counsel or representative to be present.

- I am opposed to the limitations in 20 and 28-36. This questionnaire does not ask about opposition. It appears screwed in that regard; the delay in our trial was because Judge Wolle had all of the asbestos cases interfering with the rescheduling of a trial date; Don't change a system which is not broken by putting impossible deadlines on litigants or taking away the right to trial by jury.

- I do not feel delay is a problem, but I'm sure all of our clients do. We need to consider all of the above to dispose of litigation in various stages, to cut the costs of litigation and get speedier justice.

- Nothing really additional. Would emphasize that limiting interrogatory scope and deposition number and scope would really help in my opinion. Also, the judges should rule quicker and more definitively on dispositive or partially dispositive motions. Getting firmer and earlier noticed trial dates would really help, but I know that's difficult. Arbitration/mediation is <u>not</u> the answer. Generally, SDIA is doing a real good job.

- More judges.

40. [Optional] If costs associated with civil litigation in the SDIA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

- I have not had a problem with unreasonably high costs.

- Discovery management conference within 90 days of answer/define scope of initial discovery and order parties to answer initial interrogatories and requests (no objections or general objections); then, regular status conferences every 60 days to keep case moving and resolve disputes without constant letters/calls between counsel; Discovery has turned to gamesmanship with letters between counsel; plaintiff asks about one thing and answer (by letter) comes about something else; objections to basic requests for information are

commonplace; then counsel must expend 60-90 days exchange proposals while local defense counsel checks with client/corporate counsel.

- The court must take active part in managing discovery to keep case moving; periodic conferences would serve both sides and resolve impediments/unresponsive answers; expert issues and keep both sides focused on ultimate goal - to settle or try the dispute; defendant who knows it cannot hide information and drag the dispute out will settle sooner than one who knows continued expense and delay will "soften up" plaintiff and counsel!

- Costs are high, but no unreasonably so; Telephonic/video depositions may help in some cases, but should be optional; Justice is too important to ration because it costs too much or because it involves juries; We must protect the jury system at all costs and we must protect the right to obtain information -- fully.

- Increased use of sanctions for meritless positions and tactics; Increased use of partial summary judgments on law issues; Imposition of attorneys fees on losing parties where the case was without merit or nexatiously conducted.

- This is not limited to SDIA but to all civil cases where experts are used. There needs to be a limitation on the number of experts and "psuedo-experts" should be restricted. In addition, strict enforcement of limiting the expert to his/her written opinions provided before trial would shorten the deposition and reduce costs.

- While I'm not requesting shorter trial and discovery scheduling, I believe a shorter track to trial, with less discovery, with pre-filing review and mandatory mediation with penalties for failure to reasonably settle would go a long ways toward effecting a better judicial process for our clients. We spend too much time seeking a method to achieve a goal compatible to our needs and too little toward achieving justice. Maybe I've become too cynical!

- Same as 39 above ("Nothing really additional . . ."). Would only add the arbitration/mediation would only increase costs in my opinion.

41. The type of case(s) I used as the data base for my response is:

- Commercial litigation.

- Highly varied.

- Contract, tax.

- Civil.
- Patent, trademark and copyright.
- Environmental and employment cases.
- Large civil tax refund cases.
- Large civil actions brought by the U.S. under CERCLA.
- Personal injury/commercial litigation.
- Personal injury, commercial litigation.
- Business tort.
- Complex corporate litigation.
- Personal injury, products, employment.
- Product liability, first party bad faith, fraud and misrepresentation.
- Complex civil litigation.
- Civil, personal injury on premises of defendant.
- Personal injury, business litigation.
- Savings and loan litigation.
- Products liability.

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CIVIL JUSTICE REFORM ACT - ADVISORY GROUP
SDIA ATTORNEY SURVEY RESULTS

Background Information

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The following questions pertain to your civil litigation experience in the SDIA during the past three years.

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If yes, how much have each of the following contributed to these delays?

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Conduct of clients	2	4	–	2
Conduct of insurers	5	–	1	2
Personal or office practice inefficiencies	4	4	1	–
Judicial inefficiencies	1	3	5	–
Rules of Practice	5	4	–	–

9. Have you found such litigation to be unnecessarily costly?
9 Yes 13 No Explain:

- No, not yet, but I can see the potential for it.

- A lengthy time it takes to bring a case to trial in the SDIA seems to increase the cost of litigation.

- Need a discovery referee (magis) to promote quick dispute resolution in discovery; Defendants do not make good faith effort to respond to discovery requirement of counsel making a good faith effort to resolve results in a paper game; court isn't much help.

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- Failure to respond to discovery requests - stonewalling.

- Too much needless discovery; trial delays; courts resistance to follow rules.

- Unnecessary motions; Excessive depositions.

- Depositions and expert fees are the most significant items.

- Cost of experts, number of lawyers involved.

- Much is products liability in character. This normally necessitates experts, their depositions and tests, etc.

If yes, how much have each of the following contributed to the unnecessary costs? Explain:

- Disputes over discovery would be the largest potential contributor.

- Clients (corp & large orgs.) do not divulge information to counsel or counsel knows but objects in all manner of obstructionist objections.

- Defendants case run by a corporate counsel; don't tell local counsel truth or tell them to object without making good faith effort to comply with FRCP's.

- A useless motion practice; or unnecessary discovery (fishing expeditions) cause high costs; the courts failure to enforce rules requires duplication of efforts.

	None	Slightly	Moderately	Substantially
Conduct of counsel	1	—	3	4
Conduct of clients	3	2	1	2

Conduct of insurers	2	1	1	3
Personal or office practice inefficiencies	2	5	—	—
Judicial inefficiencies	3	3	2	—

Explain:

- (Conduct of insurers above - unknown). Don't know extent of delay from unnecessary motions is from insurance carriers or defense counsel.

10. To what extent have tactics of counsel contributed to unreasonable delays or unnecessary costs?

5 None 8 Slight 6 Moderate 3 Substantial

If you selected moderate or substantial please indicate the extent to which each of the following tactics of counsel contributed to your assessment.

	Substantially	Moderately	Slightly	None
Unnecessary use of Interrogatories	1	3	3	2
Too many interrogatories	—	2	4	2
Too many depositions	2	2	3	2
Too many deposition questions	5	1	2	1
Overbroad document requests	1	2	2	2
Overbroad responses to document production requests	2	—	5	2
Unavailability of witness or counsel	1	4	2	2
Raising frivolous objections	2	4	2	—
Failure to attempt in good faith to resolve issues without court intervention	2	2	4	—
Unwarranted sanctions motions	1	1	2	4
Lack of professional courtesy	3	—	5	—

Failure to follow existing rules and tactics	3	—	1	2
Other	2	—	—	—
Other	2	—	—	—
Other				

Explain:

- Other: No good faith effort disclose.
- Other: No loyalty to court.
- Other: No good faith effort.
- Other: No loyalty to court.
- Every time counsel create non-substantive issues through trial techniques or personality problems costs increase.

11. To what extent has ineffective case management by magistrate judges contributed to unnecessary delays or unreasonable costs?

15 None 2 Slight 3 Moderate — Substantial

If you selected moderate or substantial, please select the appropriate response to the following court activities:

Number of status conferences

— Far too many
— Somewhat too many
4 Reasonable number
2 Somewhat too few
1 Far too few

Pre-motion conferences

— Far too many
— Somewhat too many
4 Reasonable number
— Somewhat too few
— Far too few

Deadlines

1 Far too restrictive
1 Somewhat too restrictive
2 Reasonable
1 Somewhat permissive
— Far to permissive

Extension of deadlines

— Far too restrictive
1 Somewhat too restrictive
3 Reasonable
1 Somewhat permissive
— Far to permissive

Please indicate the extent to which each of the following possible instances of ineffective case management by magistrate judges contributed to your assessment:

	Substantially	Moderately	Slightly	None
Delays in entering scheduling orders	—	—	—	7
Excessive time periods provided for in scheduling orders	—	—	1	6
Failure to resolve discovery disputes promptly	3	1	—	2
Failure to resolve other motions promptly	—	1	3	2
Scheduling too many motions on different cases concurrently	—	—	2	3
Failure to tailor discovery to needs of the case	2	—	2	2
Failure by magistrate judge to initiate settlement discussions	—	—	4	1
Inadequate supervision of settlement discussions	—	—	3	2
Inadequate judicial preparation for conferences or proceedings	—	1	2	2
Failure to enforce scheduling order	1	—	2	2
Other	—	—	—	—
Other	—	—	—	—

12. To what extent has ineffective case management by judges contributed to unnecessary delays or unreasonable costs?

2 None 4 Slight 3 Moderate — Substantial

If you selected moderate or substantial, please select the appropriate response for the following court activities:

Number of status conferences

— Far too many
— Somewhat too many
3 Reasonable number
— Somewhat too few
— Far too few

Pre-motion conferences

— Far too many
1 Somewhat too many
2 Reasonable number
— Somewhat too few
— Far too few

Deadlines

— Far too restrictive
— Somewhat too restrictive
3 Reasonable
— Somewhat permissive
— Far to permissive

Extension of deadlines

— Far too restrictive
2 Somewhat too restrictive
1 Reasonable
— Somewhat permissive
— Far to permissive

Please indicate the extent to which each of the following possible instances of ineffective case management by judges contributed to your assessment:

	Substantially	Moderately	Slightly	None
Failure to enforce scheduling order	1	—	1	3
Delays in entering scheduling orders	—	—	1	4
Excessive time periods provided for in scheduling orders	—	—	2	3
Failure to resolve discovery disputes promptly	2	2	—	1
Failure to resolve other motions promptly	1	2	—	2
Scheduling too many motions on different cases concurrently	—	—	1	4
Failure to tailor discovery to needs of the case	2	—	1	1
failure by judge to initiate settlement discussions	—	3	—	1

Inadequate supervision of settlement discussions	—	3	—	1
Inadequate judicial preparation for conferences or proceedings	—	1	—	6
Failure by judge to assign reasonably prompt trial dates	2	3	1	1
Failure of judge to meet assigned trial dates	—	2	—	5
Failure by judge to give sufficient advance notice of trial	—	3	—	4
Other	—	—	—	—
Other	—	—	—	—
Other	—	—	—	—

The following questions describe solutions which have been implemented in other districts or are under active consideration to address concerns regarding unnecessary delays and unreasonable costs in federal civil litigation. With respect to each proposed solution, please indicate your opinion as to its effectiveness in expediting civil litigation or reducing its costs.

- This part of the form is not very informative because it doesn't provide space for negative feelings. I do have negative feelings about some of these proposals.

	Substantial effect	Moderate effect	Slight effect	No effect at all	No opin
13. Shorter time limits for completing the various states of litigation	4	5	9	3	1
14. Requiring counsel to attempt to resolve issues before court intervention	2	6	7	5	1
15. Requiring mandatory prefiling of mediations	3	3	7	6	3

16. Permitting pre-motion conferences with the court on any motion at the request of the any party	4	4	7	4	2
17. Requiring pre-motion conferences with the court for the following categories of motions:					
Dispositive motions (dismissal, summary judgment)	1	8	6	5	2
Discovery motions	7	5	2	3	1
Other motions	1	7	5	4	2

- Too complex and time consuming (#17)

18. Permitting the filing of procedural, non-dispositive motions (for example, motions to amend and motions to add parties) by letter rather than formal motion and brief	4	8	9	—	—
19. Providing a 15 page limitation for memoranda of law, except for good cause shown	3	7	8	4	—

- Make it 2 cent pages.

20. Requiring mandatory arbitration of all disputes in which the amount in controversy is less than:					
$100,000	6	4	4	4	4
$200,000	2	5	5	5	4
$1,000,000	2	3	5	7	4

- Absolutely opposed to #20.

- But at sacrifice of rights (as to #20).

21. Providing court-annexed mediation upon mutual consent of parties for some or all issues in dispute	4	6	8	2	2
22. Making available attorneys who are experts in the subject matters in dispute to evaluate claims and defenses and to assist parties in settlement negotiations ("early neutral evaluation")	3	6	7	5	-
23. Requiring attendance of parties and/or their insurers at court settlement conferences	4	13	4	1	-
24. Requiring Rule 11 sanctions motions to be separately filed and not appended to another motion	1	3	4	8	5
25. Increased availability of telephone conferences with the court	6	10	5	1	-
26. Requiring automatic disclosure of the following information shortly after founder of issue:					
The identity of witnesses reasonable likely to have information which bears significantly upon claims, defenses or damages	3	10	5	2	-
General description of documents relied upon in preparing pleadings or contemplated to be used in support of the parties' allegations or calculation of damages	4	9	4	1	-
Existence and contents of insurance agreements	4	2	4	4	5

27. Requiring automatic disclosure prior to the final pre-trial conference of the qualifications, the opinions and the basis for those opinions of experts intended to be called as trial witnesses	6	9	6	1	—

- Should be retained experts vrs. treating doctors.

28. Conditioning grants by the court of broader discovery upon the shifting of costs in instances where the burden of responding to such requests appears to be out of proportion to the amounts or issues in dispute	7	9	2	4	—

- Absolutely opposed to #28.

29. Defining the scope of permissible discovery by balancing the burden or expenses of the discovery against its likely benefit	6	8	2	5	1

- Opposed.

30. Assessing the costs of discovery motions on the losing party	5	3	6	7	1

- Opposed.

31. Providing less time for completion of discovery	1	5	6	3	—
32. Requiring discovery relating to particular issues (e.g., venue, class certification) or a specified stage of the case (e.g. liability) to be completed before permitting discovery respecting other issues or another stage (e.g., damages, experts)	3	6	5	7	1

	Substantially Improved	Moderately Improved	Remained Unchanged	Moderately Worsened	Substantially Worsened
33. Limiting the number of interrogatories presumptively permitted	2	5	6	8	—
34. Limiting the type of interrogatories (e.g., identification, contention) presumptively permitted at various states of discovery	3	4	6	8	—
35. Limiting the number of depositions presumptively permitted	3	8	7	4	—
36. Limiting the length of depositions presumptively permitted	4	7	6	5	—

	Substantially Improved	Moderately Improved	Remained Unchanged	Moderately Worsened	Substantially Worsened
37. During the past three years, the costs and time it takes to litigate civil actions has:	—	—	13	13	1

38. During the past three years, how many months (on average) has it taken from the time your civil cases were ready for trial to the time that trial actually commenced? 14 months (or (NA) 6 if not applicable)

39. [Optional] If delay is a problem in the SDIA for disposing of civil cases, what additional suggestions or comments do you have for reducing those delays.

- I have not had a problem with delay.

- Legalize some drugs; expand drug treatment and drug education; drastically reduce the time and money spent on drug prosecutions; also appoint more federal judges; I also practice in the District of New Mexico, which has good rules on the page limit of briefs; the E.D. VA has an expedited docket-management system which seems to work well.

- Magistrate be available for telephone conferences (status/discovery) more often; plaintiffs generally need court's intervention to get defendants to comply with discovery rules in good faith timely fashion; sanctions imposed for objections which

are interposed for delay and avoid discovery (see Dowell v. Hobart, SDIA).

- The court should have mandatory status conferences 60-90 days; initial conference would cover first interrogatories and requests; court would rule - get things moving - and avoid the "gamesmanship" most defendants play; sanctions imposed for frivolous objections or failure to attend/make good faith effort; require corporate counsel or representative to be present.

- I am opposed to the limitations in 20 and 28-36. This questionnaire does not ask about opposition. It appears screwed in that regard; the delay in our trial was because Judge Wolle had all of the asbestos cases interfering with the rescheduling of a trial date; Don't change a system which is not broken by putting impossible deadlines on litigants or taking away the right to trial by jury.

- I do not feel delay is a problem, but I'm sure all of our clients do. We need to consider all of the above to dispose of litigation in various stages, to cut the costs of litigation and get speedier justice.

- Nothing really additional. Would emphasize that limiting interrogatory scope and deposition number and scope would really help in my opinion. Also, the judges should rule quicker and more definitively on dispositive or partially dispositive motions. Getting firmer and earlier noticed trial dates would really help, but I know that's difficult. Arbitration/mediation is <u>not</u> the answer. Generally, SDIA is doing a real good job.

- More judges.

40. [Optional] If costs associated with civil litigation in the SDIA are unreasonably high, what additional suggestions or comments do you have for reducing those costs?

- I have not had a problem with unreasonably high costs.

- Discovery management conference within 90 days of answer/define scope of initial discovery and order parties to answer initial interrogatories and requests (no objections or general objections); then, regular status conferences every 60 days to keep case moving and resolve disputes without constant letters/calls between counsel; Discovery has turned to gamesmanship with letters between counsel; plaintiff asks about one thing and answer (by letter) comes about something else; objections to basic requests for information are

commonplace; then counsel must expend 60-90 days exchange proposals while local defense counsel checks with client/corporate counsel.

- The court must take active part in managing discovery to keep case moving; periodic conferences would serve both sides and resolve impediments/unresponsive answers; expert issues and keep both sides focused on ultimate goal - to settle or try the dispute; defendant who knows it cannot hide information and drag the dispute out will settle sooner than one who knows continued expense and delay will "soften up" plaintiff and counsel!

- Costs are high, but no unreasonably so; Telephonic/video depositions may help in some cases, but should be optional; Justice is too important to ration because it costs too much or because it involves juries; We must protect the jury system at all costs and we must protect the right to obtain information -- fully.

- Increased use of sanctions for meritless positions and tactics; Increased use of partial summary judgments on law issues; Imposition of attorneys fees on losing parties where the case was without merit or nexatiously conducted.

- This is not limited to SDIA but to all civil cases where experts are used. There needs to be a limitation on the number of experts and "psuedo-experts" should be restricted. In addition, strict enforcement of limiting the expert to his/her written opinions provided before trial would shorten the deposition and reduce costs.

- While I'm not requesting shorter trial and discovery scheduling, I believe a shorter track to trial, with less discovery, with pre-filing review and mandatory mediation with penalties for failure to reasonably settle would go a long ways toward effecting a better judicial process for our clients. We spend too much time seeking a method to achieve a goal compatible to our needs and too little toward achieving justice. Maybe I've become too cynical!

- Same as 39 above ("Nothing really additional . . ."). Would only add the arbitration/mediation would only increase costs in my opinion.

41. The type of case(s) I used as the data base for my response is:

- Commercial litigation.

- Highly varied.

- Contract, tax.

- Civil.
- Patent, trademark and copyright.
- Environmental and employment cases.
- Large civil tax refund cases.
- Large civil actions brought by the U.S. under CERCLA.
- Personal injury/commercial litigation.
- Personal injury, commercial litigation.
- Business tort.
- Complex corporate litigation.
- Personal injury, products, employment.
- Product liability, first party bad faith, fraud and misrepresentation.
- Complex civil litigation.
- Civil, personal injury on premises of defendant.
- Personal injury, business litigation.
- Savings and loan litigation.
- Products liability.

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