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

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REPORT OF THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP OF THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

I. INTRODUCTION

A. Background

In 1990 Congress enacted the Civil Justice Reform Act (CJRA or Act), 28 U.S.C. § 471-482 (See Appendix I for the full text of the Act). The Act requires each U.S. District Court to implement a plan designed "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." Before implementing a "civil justice expense and delay reduction plan", each district court is required to consider the recommendations of an Advisory Group.

The Act directs the Advisory Group to assess the state of the district court's docket, to identify case filing trends and to determine the main reasons for cost and delay in civil litigation considering the unique culture of the court, its litigants and their attorneys. In compliance with the Act, this Report contains the Advisory Group's Recommendations to the Eastern District of Missouri Court for consideration in developing a civil justice expense and delay reduction plan.

B. The Eastern District of Missouri Advisory Group and its Methodology

By an order dated February 27, 1991, Chief Judge Edward L. Filippine appointed the following to be voting members of the Civil

Justice Reform Act Advisory Group: Eugene K. Buckley (chair), Doreen D. Dodson, Richard W. Duesenberg, William G. Guerri, Robert J. Kelley, Alan C. Kohn, Louis J. Leonatti, James E. Reeves, Robert F. Ritter, Barry A. Short, Richard B. Teitelman, Cynthia B. Thompson, Dorothy L. White-Coleman, Harold L. Whitfield, and U.S. Attorney Stephen B. Higgins. Judge Stephen N. Limbaugh, Magistrate Judge David D. Noce and the Clerk of the Court were appointed as ex officio members. In 1992 Susan FitzGibbon was appointed to serve as reporter of the Advisory Committee. Reasons unrelated to the work of the Advisory Group compelled the resignations of Richard W. Duesenberg and Cynthia B. Thompson in mid-1993. Judge Filippine thereafter appointed Blanche Touhill to the Advisory Group. Acting United States Attorney Edward L. Dowd, Jr. also joined the Advisory Group in mid-1993. Appendix II contains a biographical sketch of each of the members of the Advisory Group.

To fulfill the responsibilities set forth in the Act, the Advisory Group met seventeen times as a whole. The Advisory Group created the following subcommittees which also met as needed to accomplish their assigned tasks: the Pretrial and Trial Subcommittee, the Alternative Dispute Resolution Subcommittee, the Implementation Subcommittee, the Survey Committee, and the Court Personnel and Automation Subcommittee.

The Advisory Group conducted individual interviews with each of the district judges and held a group interview with the magistrate judges. The Group considered and analyzed statistics of the civil and criminal dockets. The Group placed advertisements

seeking public comments from litigants and attorneys in the St. Louis Post-Dispatch, the St. Louis Business Journal, the Missouri Lawyers Weekly, the St. Louis Daily Record and the St. Louis Countian, and posted notices seeking public comments in the Clerk's Office as well. (See Appendix III). The Group considered the comments received, and reviewed the CJRA reports of other districts.

In the summer of 1993, the Advisory Group twice met with all of the district and magistrate judges to discuss the Group's preliminary findings and recommendations. At these meetings and throughout the entire process, all of the judges were accessible to and candid and open-minded with the Advisory Group. Members of the Advisory Group appreciate the cooperation and collaboration of the judges.

In October of 1993, the Advisory Committee completed this report.

C. Description of the Court

The Eastern District of Missouri has its headquarters in St. Louis (the Eastern Division) and has divisional offices in Cape Girardeau (the Southeastern Division) and in Hannibal (the Northern Division). Currently, cases are assigned at random to a district judge and a magistrate judge. This pairing of a district judge and a magistrate judge on a case by case basis dictates the magistrate judge to whom the district judge will refer the case for e.g. pretrial management or a report and recommendation on a motion. It

also designates the magistrate judge who will handle the case if the parties consent to trial by a magistrate judge.

The random case assignment and pairing of judges just described applies only in the Eastern Division. The Court assigns all of the Northern Division cases to one district judge and all of the Southeastern Division cases to another district judge. The district judges rotate responsibility for the cases on the Northern Division docket, but this rotation occurs infrequently. For example, Judge Jean C. Hamilton has been responsible for cases on the Northern Division Docket for the last one and one-half years. Judge Stephen N. Limbaugh handles almost all of the cases on the Southeastern Division docket. One of the magistrate judges has his office in Cape Girardeau and is assigned Southeastern Division civil and criminal pretrial.

II. ASSESSMENT OF CONDITIONS IN THE DISTRICT[1]

A. Condition of the Civil and Criminal Dockets

To assess the court's civil and criminal dockets, the Advisory Group reviewed statistical data and considered experiential data including the views of the district and magistrate judges, public comments from litigants and the bar, and the experience of the members of the Advisory Group. The Advisory Group focused on available statistics which describe the court's dockets for the time period from 1987 through 1992 because the judicial resources of the court significantly changed in 1987. From approximately

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[1] The Advisory Group wishes to acknowledge the invaluable assistance of Chief Deputy Clerk James G. Woodward who compiled statistics and other essential data for this report.

1980 to 1987, four senior judges handled a significant number of cases. Since 1987, the senior status judges have handled few cases.

From 1987 through 1989, six district judge positions were authorized for the Eastern District of Missouri. In late 1990, based on the workload of the court, two additional district judgeships were authorized. To date, only six of those eight positions have been filled and in 1992 only five of those positions were filled. TABLE I shows the annual number of full-time equivalent judges from 1987 through 1992.

TABLE I

FULL TIME EQUIVALENT district judges
(Year ending September 30; excludes Senior Status and Magistrate Judges)

1992	1991	1990	1989	1988	1987
4.9	6.3	5.9	6	6	6

TABLE II lists the number of cases (civil and criminal) filed, terminated, and pending each year from 1987 through 1992.

TABLE II

TOTAL CASELOAD-WORKLOAD STATISTICS

Year Ending Sept. 30	Filings	Terminations	Pending
1987	3169	2912	2926
1988	3245	2998	3172
1989	3207	3076	3195
1990	3005	3161	3017
1991	3235	2850	3395
1992	3275	2807	3863

In 1987, nearly 3200 cases were filed. With the exception of 1990 (in which 3005 cases were filed), over 3200 cases were filed each year from 1988 through 1992. Based on the Judicial Conference standard that an individual judge's caseload should not exceed 400 cases, the docket of the Eastern District of Missouri has warranted eight district judges since 1988. The total number of cases terminated decreased in 1991 and 1992, compared with the annual terminations from 1987 through 1990. Since 1987, the number of pending cases has risen at an alarming rate. In 1992, there were 32% more pending cases than there were in 1987.

Taken together, Tables I and II demonstrate that from 1987 through 1991 there were six full-time equivalent district judges but that number fell to five in 1992. At the same time, case filings remained fairly constant, case terminations declined somewhat, and the number of pending cases soared. TABLE III

clearly illustrates the impact of the lack of one full-time equivalent judge in 1992.

TABLE III

FILINGS PER FULL TIME EQUIVALENT JUDGE
(Year ending September 30; civil and criminal cases)

1992	1991	1990	1989	1988	1987
668	513	509	535	541	528

The number of cases filed per full-time equivalent judge rose from a high of 541 in 1988 to 668 in 1992.

Although TABLE II shows that the overall number of cases terminated declined slightly from 1987 through 1992 (with the exception of 1991), TABLE IV shows that the number of cases terminated per full-time equivalent judge steadily rose.

TABLE IV
TERMINATIONS PER FULL TIME EQUIVALENT JUDGE
(Year ending September 30; civil and criminal cases)

1992	1991	1990	1989	1988	1987
573	452	536	513	500	485

In view of the fact that the judges' productivity has increased, the decline in the total number of terminations may be directly attributed to an insufficient number of judges.

The damaging effect of the lack of a full-time equivalent judge in 1992 is clearly reflected in the dramatic increase in the number of pending cases per full-time equivalent judges which rose from a high of 539 in 1991 to 788 in 1992. (TABLE V).

TABLE V

PENDING CASES PER FULL TIME EQUIVALENT JUDGE
(Year ending September 30; civil and criminal cases)

	1992	1991	1990	1989	1988	1987
# cases per FTE	788	539	511	533	529	488
# of FTE Judges	4.9	6.3	5.9	6	6	6

Currently, all but one of the district judges have caseloads in excess of 500 cases. The average caseload of the district judges for the Eastern Division alone was 535 cases per district judge in May, 1993. Table VI lists the average number of pending cases for the nation and for the Eastern District of Missouri, based on the number of authorized judgeships. While precise conclusions cannot be drawn because the national average of pending cases is based on authorized rather than actual judgeships, comparison of these national averages (Table VI) to the actual pending caseload of the judges of the Eastern District of Missouri (Table V) compels the conclusion that this court has been drowning in cases due to an insufficient number of judges.

TABLE VI

Pending Cases
Average Per Authorized Judge
(Year ending September 30)

	1992	1991	1990	1989	1988	1987
National	405	401	475	465	469	463
E.D. Mo.	483	424	503	533	529	488
# Authorized Judges E.D. Mo.	8	8	6	6	6	6

Table VI demonstrates that this court's average pending caseload per authorized judgeship has been and continues to be well above the national average. In fact, the largest discrepancy between the national average and this court's average occurred in 1992, even though that was a year in which this court's average was based on eight authorized judgeships.

Turning to the criminal docket, from 1987 through 1992 the number of cases filed annually ranged from a low of 261 in 1991 to a high of 363 in 1987 (TABLE VII).

TABLE VII

CRIMINAL CASE FILINGS
(Year ending June 30; excludes transfers)

Year	1992	1991	1990	1989	1988	1987
# Filed	339	261	263	335	268	363
% of Total Filings	10%	8%	8%	10%	8%	10%

The criminal filings accounted for an average of 9% of the total number of cases filed each year from 1987 through 1992. In light of this, it is particularly noteworthy that criminal trials accounted for an average of 30% of the total number of trials. (TABLE VIII).

TABLE VIII

TRIALS COMPLETED - CIVIL & CRIMINAL
(Year ending June 30)

Type of Trial	1992	1991	1990	1989	1988	1987
Total Trials	254	265	271	291	281	349
Civil Jury Trial	66	80	71	96	96	98
Civil Non-Jury Trial	109	115	120	99	113	128
Criminal Jury Trial	49	52	63	75	56	67
Criminal Non-Jury Trial	30	18	17	21	16	56
Per Full-Time Equivalent Judge	52	42	50	49	47	58
Criminal Trials as % of Total Trials	31.10%	26.42%	29.52%	32.99%	25.62%	35.24%

From 1987 to 1992, on average, 7.5% of the civil cases went to trial, and the number and percentage of civil cases which reached trial decreased slightly. (TABLE IX).

TABLE IX

CIVIL TERMINATIONS BY ACTION TAKEN

(Year ending June 30)

Type of Action	1992	1991	1990	1989	1988	1987
No Court Action	644	714	1054	1116	1290	1564
Court Action Before Pretrial	1585	1713	1495	1355	1112	846
During or After Pretrial	56	50	59	140	107	65
During or After Trial	171	183	196	211	234	220
TOTAL TERMINATIONS	2456	2660	2804	2822	2743	2695
Percent Reaching Trial	7.0%	6.9%	7.0%	7.5%	8.5%	8.2%

A drop in the number and percentage of trials does not represent a decrease in the productivity of the court. Such decreases reflect the fact that more cases have been resolved before trial. Each trial avoided reduces costs and delays. Resolution of cases short of trial frees the judge, the attorneys, the parties, witnesses and jurors to handle other matters.

TABLE IX also shows that the number of civil cases resolved without any court action has steadily and dramatically declined from a high of 1564 in 1987 to a low of 644 in 1992. This obviously means that an increasing number of civil cases requires the attention of the court in order to be resolved.

Finally, TABLE X demonstrates that the time from civil case filing to trial is on the rise. The median time from filing to

trial rose from sixteen months in 1987, 1988 and 1989 to twenty-one months in 1991 and twenty months in 1992.

TABLE X

CIVIL CASES
FILING TO DISPOSITION - TIME INTERVALS
MEDIAN TIME (MONTHS)
(Year ending June 30)

Type of Action	1992	1991	1990	1989	1988	1987
No Court Action	8	10	9	7	7	5
Court Action Before Pretrial	9	10	9	9	9	9
During or After Pretrial	15	23	17	15	12	14
Trial	20	21	18	16	16	16
ALL CASES	10	11	10	9	9	7

Based on experiential data, the Advisory Group also noted that, over the last few years, some rulings on dispositive and non-dispositive motions have not been handled in a timely fashion (some motions have not been resolved within sixty days and some have not been resolved for up to two years.)

B. Trends in Case Filings

Since 1988, the total number of civil and criminal cases filed annually in the Eastern District of Missouri has exceeded 3200 every year except 1990 when only 3005 cases were filed. (See, supra, Table II).

Review of the civil cases filed in the Eastern District of Missouri reveals two major trends. (See Table XI).

TABLE XI

CIVIL FILINGS
(Year ending June 30)

TYPE OF CASES	1992		1991		1990		1989		1988		1987	
Contract	16.54%	474	12.75%	367	15.91%	441	24.94%	741	29.79%	862	30.54%	917
Real Prop.	N/M	22	N/M	25	N/M	19	0.98%	29	N/M	22	1.23%	37
FELA	N/M	1	N/M	3	N/M	3	N/M	2	N/M	2	N/M	2
Marine Personal Inj.	N/M	9	N/M	11	N/M	19	N/M	9	N/M	16	N/M	15
Motor Vehicle Personal Inj.	3.49%	100	3.40%	98	3.43%	95	4.24%	126	4.77%	138	4.73%	142
Other Personal Inj.	7.36%	211	7.92%	228	9.31%	258	8.92%	265	8.88%	257	11.62%	349
Other Tort Actions	2.02%	58	2.33%	67	1.98%	55	3.10%	92	2.76%	80	2.50%	75
Anti Trust	N/M	5	N/M	8	N/M	7	N/M	2	N/M	7	N/M	11
Civil Rights	10.99%	315	7.64%	220	8.30%	230	8.78%	261	9.16%	265	9.12%	274
Prisoner												
28 USC 2255	1.29%	37	2.12%	61	1.08%	30	1.65%	49	1.55%	45	1.17%	35
28 USC 2254	10.86%	311	11.25%	324	11.44%	317	7.94%	236	3.80%	110	5.13%	154
42 USC 1983	25.45%	729	27.16%	782	2.175%	603	16.46%	489	14.31%	414	11.69%	351
28 USC 1651	N/M	3	N/M	5	N/M	12	N/M	15	N/M	6	N/M	4
Forfeitures & Penalties	1.99%	57	2.22%	64	2.56%	71	1.85%	55	1.73%	50	1.73%	52
Copyright/Patent	1.71%	49	1.56%	45	1.52%	42	1.75%	52	1.90%	55	1.20%	36
Labor	9.14%	262	10.11%	291	9.56%	265	7.64%	227	7.05%	204	6.86%	206
Social Security	2.72%	78	4.06%	117	5.19%	144	4.27%	127	6.25%	181	5.46%	164
Tax	N/M	11	N/M	14	N/M	11	N/M	24	1.00%	29	N/M	28
Other	4.64%	133	5.18%	149	5.41%	150	5.72%	170	5.22%	151	5.03%	151
TOTAL CIVIL FILINGS		2865		2879		2772		2971		2894		3003
% OF TOTAL FILINGS		90%		92%		92%		90%	92%			90%

N/M = Not Meaningful (Less Than One Percent)

First, the number of prisoner filings has doubled over the last six years. In 1987 and 1988 prisoner filings in § 2254 and § 1983 cases represented 17.5% of the civil filings. From 1990 through 1992, these prisoner filings accounted for 34% of the docket. These cases now represent the largest number and percentage of cases on the court's docket. One obvious reason for the increase in prisoner filings is the 38% increase in the number of prisoners housed in Missouri from 1987 to 1992. (Table XII).

TABLE XII
MISSOURI DEPARTMENT OF CORRECTIONS
PRISON POPULATION TRENDS
(as of July 1 annually)

1987	1988	1989	1990	1991	1992
11,143	11,922	13,056	14,601	14,788	15,411

% Change 1987-1992:	38%

Second, a sharp decrease in the number of contract and tort cases stands in direct contrast to the increase in prisoner filings. In 1987 and 1988, nearly one-half (47.8%) of the total civil filings were contract and tort cases. From 1990 through 1992, the number of contract and tort cases filed declined significantly and accounted for only 28.8% of the filings, closer to one-quarter of the docket.

Filing trends in three other categories of civil cases are also noteworthy. Filings in non-prisoner civil rights cases reached a high of 315 cases and represented 11% of the civil docket

in 1992, but on average, accounted for 9% of the civil docket from 1987 through 1992. From 1987 through 1992, the number of labor cases filed increased from 206 in 1987 to 262 in 1992 and the percentage of labor cases rose from approximately 7% to 9% of the civil docket. From 1990 through 1992, the number of social security cases filed declined from 144 in 1990 to 78 in 1992, but on average these cases represented 4.7% of the docket from 1987 through 1992.

As previously noted, criminal cases represented from 8% to 10% of the total number of cases filed from 1988 through 1992. Over the last five years, from 1988 through 1992, annual criminal filings ranged from a low of 261 in 1991 to a high of 339 in 1992. (See, supra, Table VII).

C. Judicial Resources

1. District Judges

The six district judges who currently serve on the Eastern District of Missouri Court are: Chief Judge Edward L. Filippine (appointed in August of 1977), Judge Stephen N. Limbaugh (appointed in July of 1983), Judge George F. Gunn (appointed in May of 1985), Judge Jean C. Hamilton (appointed in November of 1990), Judge Donald J. Stohr (appointed in May of 1992), and Judge Carol Jackson (appointed in October of 1992). Judge Filippine became Chief Judge in May of 1990.

From the early 1980's until approximately 1987, four senior status judges handled a significant percentage of the cases on the civil docket. They were: Judge Roy W. Harper, Judge James H.

Meredith, Judge John F. Regan and Judge H. Kenneth Wangelin. Judges Regan and Wangelin died in 1987 and Judge Meredith died in 1988. Until his retirement in May of 1991, Judge Harper continued to handle civil cases.

In May of 1990, then Chief Judge John F. Nangle took senior status. Since taking senior status, he has been assigned by the Judicial Conference to the Southern District of Georgia and therefore has handled relatively few cases in the Eastern District of Missouri. He also chairs the Judicial Panel on Multi-District Litigation. Judge William L. Hungate took senior status in October of 1991, handled few cases during the next year and retired from the court in June of 1992. Judge Clyde S. Cahill took senior status in April of 1992 and continues to handle some cases still pending from his previous assignments as an active district judge.

Two additional district judgeships were authorized in late 1990, raising the full court complement to eight. Only six of the eight district judge positions have been filled to date.

2. Magistrate Judges

The court currently has seven magistrate judges. They are: Judge David D. Noce (who has served continuously since October of 1976), Judge Frederick R. Buckles (appointed in December of 1989), Judge Catherine Perry (appointed in June of 1990), Judge Lewis M. Blanton (appointed in October of 1991), Judge Terry Adelman (appointed in December of 1992), Judge Lawrence O. Davis (appointed in August of 1993), and Judge Mary Ann L. Medler (appointed in August of 1993).

Before her appointment to the District Court, Judge Carol Jackson served as a Magistrate Judge from January of 1986 until September of 1992. In addition, Judge William S. Bahn served as a Magistrate Judge from 1972 through 1989 and was thereafter recalled on December 1 in 1989, 1990, 1991 and 1992. Judge Robert D. Kingsland served as a Magistrate Judge from October of 1982 until his retirement in October of 1991.

The magistrate judges are generally responsible for: all pre-indictment criminal matters, trials of petty offense and full misdemeanors, all felony pretrial matters, reports and recommendations in Social Security cases, all habeas corpus (except death penalty cases), review of In Forma Pauperis matters and consent trials. They may also handle some or all of the pretrial matters in prisoner cases and some or all of the discovery in civil cases.

D. Support Staff and Automation

1. The Clerk of Court and Clerk's Office Staff.

Administrative, management and case processing duties in the district court are performed by the clerk of court and his staff. The clerk's office currently consists of fifty-two full time and three part time employees. Of that number, all but two are assigned to the Eastern Division office in St. Louis. Two full time staff members work in the Southeastern Division office in Cape Girardeau. Due to recent fiscal limitations, staffing levels in the clerk's office are substantially below the work measurement formula devised by the Administrative Office of the U.S. Courts, which would authorize a total of seventy-two employees at full

strength. The Judicial Conference recently has approved funding for just 72% of the staffing formula.

The clerk's office is organized into four principal divisions: pro se law clerks, administrative services, automation and case processing. Departing from the traditional case processing model of assigning one courtroom deputy and one docket clerk to each district judge, case management teams consisting of three or four staff members have been created to provide a full range of courtroom, docketing and case management services to pairings of district and magistrate judges. These units have received cross training in all judicial support functions, which has led to more versatility and a higher degree of professionalism among those assigned to the case processing division.

Duties performed by the pro se law clerk unit include initial review of in forma pauperis applications and screening of prisoner civil rights cases. These lawyers also audit and review claims for attorney fees submitted by counsel appointed for eligible defendants in criminal and petitioners in habeas corpus cases under the Criminal Justice Act.

The automation division manages an aggressive program of computer services designed for the needs of the clerk's office as well as for judges, law clerks, secretaries, and the staffs of the probation and pretrial services departments of the court. An automated case management system for civil cases has been on line since January of 1992; the criminal caseload became automated in August of 1993. Additionally, personal computers assigned to staff

and judges are linked to a local area network for electronic communication throughout the courthouse and to enable users to share software applications as well as a variety of on-line services.

A variety of support services are managed by the administrative services division. The unit staff handles budget and financial functions, including the cashier operation at the public intake counter. Procurement, disbursing and financial reporting also are regular duties assigned to the division.

2. Law Clerks and Secretaries

Each active district judge has a secretary and two law clerks. Senior status judges may retain similar staffing levels, although their law clerk positions sometimes are of a temporary nature. Each magistrate judge has one law clerk and one secretary.

3. Court Reporters

The court has a pool of official court reporters but each court reporter is principally assigned to one of the court's active district judges. The Judicial Conference policy is to maintain a one to one ratio of reporters to judges, so the court currently employs the maximum number of reporters allocated. Reporting services for magistrate judges are provided by electronic recording equipment operated by trained staff from the clerk's office.

III. COST AND DELAY

A. Principal Causes of Cost and Delay

After assessing the civil and criminal dockets, conducting interviews with the district and magistrate judges, and reviewing

comments from the local bar and public, the Advisory Group has concluded that the following factors and practices have significantly interfered with efficient case processing in the Eastern District of Missouri and thus are the main sources of increased cost and delay.

1. Judicial Vacancies and the Volume of Cases Filed

Delay in appointing and confirming district court judges reduced the number of full-time equivalent judges from six to five for the entire year of 1992 and has, in effect, deprived the Eastern District of Missouri of two new district judge positions which were authorized in late 1990. As previously noted, from 1988 through 1992 more than 3,200 cases were filed annually (except for 1990 when 3,005 cases were filed) and this number of case filings warrants eight district judges. The combination of a constant, high volume of case filings and two to three fewer judges than recommended or authorized has resulted in astronomical caseloads for the district judges.

The current caseloads of the district judges range from 465 to 829 cases per judge. The two judges who have over 800 cases are currently assigned to handle the Northern Division docket and Southeastern Division docket respectively. But even excluding all of the cases from the Northern and Southeastern Divisions, the average current caseload per judge for only the Eastern Division is 535 cases per judge.

The sheer volume of these caseloads means that the district judges are extremely busy, if not overwhelmed, with processing

these cases and that they simply lack the time to be any more involved with case management. This also means that judges are often hard pressed to hand down timely rulings on discovery and other motions. How overdue these rulings may be also depends upon the state of the judge's criminal docket.

2. Criminal Docket

When interviewed about the causes of delay in civil cases, most of the judges cited their criminal dockets as a contributing factor. Over the last five years (1988-92), criminal case filings accounted for no more than 10% of the docket, but approximately 30% of the trials each year were criminal trials. Requirements of the Speedy Trial Act effectively dictate that criminal cases take priority over civil cases, thus delaying some civil trials and precluding attention to motions or case management in other civil cases. The Sentencing Guidelines may also contribute to delay in civil matters because the sentencing phase of criminal cases tends to take substantially longer than it did before the Guidelines.

3. Prisoner Filings

The dramatic increase in the number of cases filed by prisoners also contributes to delay in processing civil cases. Aside from the sheer volume of filings, prisoner case files can consume excessive amounts of time because prisoners tend to file many, often redundant, motions. Although the pro se law clerks' review of prisoner civil rights case speeds the resolution of these matters, under the current procedure the pro se clerk's recommendation is first reviewed by a magistrate judge and then sent for a

final review and ruling by the district judge. The magistrate judges noted that prisoner cases currently consume an inordinate amount of their time.

4. Pre-Trial Case Management and Use of Magistrate Judges

Currently, the Eastern District of Missouri has a trial date driven docket. While the technique of setting an early trial date to encourage the parties to settle the case has proved effective in this court in the past, it has not been an efficient way to manage cases in recent years. The requirements of the Speedy Trial Act in criminal cases and the volume of cases filed regularly force the postponement of trials and, in some cases, trials are postponed a number of times. Consequently, the early but unrealistic trial setting fails to prompt settlement because counsel and the litigants assume that the trial may be postponed. Another difficulty is that the attorneys may completely prepare for trial only to have the case postponed. This adds an unnecessary cost to the case because counsel will have to engage in some amount of trial preparation again, and also generally contributes to delay in case resolution because the attorneys could have been working on other cases rather than preparing twice for the same trial.

There is presently a lack of predictability and a lack of uniformity in the practices of the district judges and in the court's utilization of the magistrate judges. For example, when a motion is filed, it is not clear whether it will be handled in the district judge's chambers (by the judge and law clerks only) or

whether it will be referred to a magistrate judge. If a dispositive motion is filed and referred to a magistrate judge, final resolution will require full review and a report and recommendation by the magistrate judge followed by a second, full review of the motion by the district judge. Not only does this practice delay the resolution of motions, but it also requires duplication of judicial efforts.

Finally, in some instances, the demands of the criminal docket and the volume of motions and other work in civil matters delay rulings from the judges on discovery and dispositive motions. Lack of prompt rulings on these motions may bring further work on the case to a halt while counsel and the parties await the result of the motion or may render continued work on the case worthless if, for example, a motion for summary judgment is subsequently granted.

5. Attorney Practices

Abuse of the discovery process significantly contributes to cost and delay in civil litigation. Some of the judges believe that attorneys are routinely filing summary judgment motions even in cases in which it seems clear that the motion will be denied. Conversely, in other cases, for example, in prisoner civil rights cases, it has been noted that summary judgment motions are not filed early enough. Some of the judges also noted that some attorneys fail to make a good faith effort to resolve disputes before filing a motion with the court as required by Local Rule 7C (see Appendix IV) and that they turn this requirement into a "fax war."

B. Impact of New Legislation

The judges report that the Sentencing Guidelines are a cause of cost and delay in the Eastern District of Missouri.

Section V will explain the Advisory Group's recommendation that the Eastern District of Missouri opt out of proposed Federal Rule of Civil Procedure 26(a)(1) (See Appendix V).

IV. ADOPTION OF THE COURT'S PLAN OR A MODEL PLAN

In the view of the Advisory Group's assessment of the court's docket, and its consideration of the particular needs and circumstances of the district and magistrate judges, the attorneys who practice before this court and the litigants, the Advisory Group strongly recommends that the judges of the district court adopt their own Civil Justice Expense and Delay Reduction Plan based upon the following Recommendations, rather than adopting some or all of the model plan developed by the Administrative Office. The Advisory Group believes that a plan fashioned by the Court will better suit the needs of the judges, attorneys and litigants of the Eastern District of Missouri and will thus stand a better chance of reducing expense and delay than a model plan.

V. RECOMMENDATIONS OF THE ADVISORY GROUP

Recommendation 1

Assign all civil cases randomly to district and magistrate judges.

Rationale: Assignment of civil cases to magistrate judges as well as district judges will serve a number of purposes. First, over time it will reduce the number of civil cases carried by each

district judge.[2] This should generally help speed the resolution of cases. Reducing the caseloads of the district judges, by assigning civil cases to magistrate judges as well, will also free some time for the district judges to engage seriously in pretrial case management (see Recommendation 2).

This measure will also contribute to uniform and efficient use of the magistrate judges. District and magistrate judges will take complete responsibility for their civil caseloads. Thus, the district judges will no longer refer pretrial civil case work to magistrate judges. Civil case processing will be more predictable because attorneys (and litigants) will know that all motions, problems etc. will be handled in the chambers of the district or magistrate judge assigned to the case. This practice also will avoid the problem of having two judicial officers reviewing and ruling on motions, as has been the case with e.g. motions for summary judgment or social security matters in which the magistrate judge writes a report and recommendation for the district judge.

The district judges have always permitted and encouraged the magistrate judges to have significant responsibility in handling civil cases, including presiding at trials. Adoption of this

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[2] If, for example, each magistrate judge had a civil caseload of 175 cases, this would enable each district judge to have a civil caseload of 350 cases. The district judges will remain solely responsible for felony criminal trials. The magistrate judges will retain responsibility for misdemeanors and petty offenses, which they have by current practice, and the majority of criminal pretrial matters will remain the responsibility of the magistrate judges. The magistrate judges will no longer be responsible for civil pretrial matters by referral. Thus, implementation of this Recommendation will positively affect the docket of the district and magistrate judges.

recommendation will further demonstrate the district judges' complete confidence in the ability of all of the magistrate judges to handle civil cases in a just and competent manner.

While adoption of this recommendation will represent a dramatic change in how cases are handled in the Eastern District, it must be noted that the success of this procedure depends completely upon the cooperation of the bar and of litigants. The Advisory Group believes that, in conjunction with the recommendation for differentiated case management, this practice offers the potential to improve civil case processing significantly <u>if</u> attorneys and litigants will seriously consider consenting to assignment of the case to a magistrate judge. If, however, attorneys and litigants resist this change, then there will be no decrease in the caseload of the district judges and it is unlikely that they will have sufficient time to work with the parties to manage cases more efficiently.

<u>Implementation</u>: In practice, this recommendation will work as follows. All civil cases filed, including social security (see Recommendation 7) and prisoner cases except for death penalty habeas corpus cases, will be randomly and equally divided among the district and magistrate judges. Case assignment will also be based upon the track (see Recommendation 2) to which a case is assigned to ensure, to the extent possible, that all of the judges have balanced and relatively even caseloads.

If a case is assigned to a district judge, the Clerk's Office will so notify the litigants. The Clerk's Office will also remind the parties that they may consent to trial by a magistrate judge.

If a case is initially assigned to a magistrate judge, the file will be kept in the Clerk's Office until all parties consent to having the magistrate judge handle the case. If issues requiring the attention of the court arise before such consent is obtained, a district judge will serve as a "Duty Judge" on a rotating basis with the other judges to resolve these problems. The Clerk's Office will notify the attorneys that the case has been assigned to a named magistrate judge. All parties will be required to return to the Clerk's Office, a signed form either consenting or refusing to consent to trial by the magistrate judge. The deadline for submission of this form will be twenty (20) days after the entry of appearance of the last defendant. These forms will remain in the case file only if all parties consent to trial by the magistrate judge. If one party does not consent, then all of the forms will be removed from the file and destroyed, and the case will be reassigned to a district judge. This procedure is designed to assure attorneys and litigants that no prejudice could conceivably result from a decision not to consent to trial by the magistrate judge assigned to the case. In order to evaluate the workings and success of this recommendation, the Clerk's Office will maintain an anonymous statistical record of the number and type of cases in which consent to assignment to a magistrate judge was not obtained.

The Advisory Group wishes to emphasize that even if the parties initially do not agree to trial by magistrate judge, they may subsequently agree and consent to it. In that case, however, the parties will not know in advance which magistrate judge will be assigned to the case.

The Advisory Group further recommends that this practice be implemented on January 1, 1994 on an experimental basis for two years, that appropriate statistics be maintained, and that an independent evaluation of its success be conducted.

Recommendation 2

Adopt a Civil Case Management System which includes the following features:

A. The Court should opt out of proposed Federal Rule of Civil Procedure 26(a)(1).

B. Differentiated Case Management in all cases and Alternative Dispute Resolution in appropriate cases.

C. Attorneys for the parties jointly establish a scheduling order for the conduct of pretrial discovery and disclosure.

D. In all cases on the standard or complex tracks, an early scheduling conference with the judge assigned to the case to set the schedule for pretrial disclosure and discovery, and to set a more realistic and firm trial date.

E. Additional pretrial conferences with the judge assigned to the case to resolve outstanding matters.

F. A requirement that the moving party advise the court in writing of any motion which has not been decided within 60 days of submission.

Rationale: The Advisory Group believes that various factors, including but not limited to the volume of cases, the criminal docket, the sentencing guidelines, have combined to make the trial date-driven docket inefficient and, in some cases, counterproductive. Reliance on setting a trial date to motivate the attorneys and litigants to settle or to prepare the case for trial focusses attention on a distant resolution of the matter rather than on the earlier stages of case processing. As previously noted, trial settings are often anything but realistic or firm, and postponement of trials may increase cost and delay because attorneys must prepare for trial more than once.

Consequently, the Advisory Group recommends that the court shift its attention to more effective case management. Effective case management will require additional involvement from the court, and additional involvement and cooperation from attorneys and litigants.

After much discussion and consideration, the Advisory Group decided to recommend strongly that the Court opt out of the mandatory discovery and disclosure provisions of proposed Federal Rule of Civil Procedure 26(a)(1) because such discovery and disclosure might not be appropriate in every case. Recommendation 2 rests on the Advisory Group's conclusion that the amount of discovery and disclosure should be decided by the parties and the

Court on a case-by-case basis through the use of an effective scheduling order and appropriate pre-trial conferences, rather than a mandatory discovery rule applicable to all cases.

The Advisory Group is not alone in its opposition to blanket implementation of proposed Federal Rule of Civil Procedure 26(a)(1). The American Bar Association, the Department of Justice and at least three Supreme Court Justices oppose the implementation of Rule 26(a)(1). "The proposed pre-discovery disclosure process has been criticized on many grounds. Opponents call it ambiguous, unworkable, in conflict with other civil justice reform initiatives now under way, inconsistent with the adversary system, harmful to the attorney-client relationship and likely to derogate the work-product doctrine. Many predict that instead of reducing discovery problems and excesses, the proposed disclosure process is more likely to exacerbate current problems while creating new ones."[3]

This Recommendation contemplates that initial assignment of cases to an expedited, standard or complex track will establish certain expectations for the progress of the case such as approximate times for completion of discovery and trial. At the same time, the attorneys, who know the case best, will jointly prepare a proposed scheduling order specifically tailored to the case. Among other things, this order will address pretrial discovery and disclosure, and may provide the attorneys an opportunity and a

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[3] For a discussion of these criticisms, see Cortese and Blaner, "A Change in the Rules Draws Fire," National Law Journal vol. 16 no. 7 p. 25-26, October 18, 1993 from which this quotation is drawn.

specific means to avoid wasteful and abusive discovery disputes. It is noteworthy that this recommendation generally provides the attorneys the opportunity to control the course of pretrial procedures so long as they act reasonably and in good faith. If they do not, the Court may order the attorneys to comply with proposed Rule 26(a)(1) discovery and disclosure requirements.

The initial scheduling conference will afford the attorneys the opportunity to resolve any disputes over the contents of the scheduling order, and to inform the judge about the case. At this conference, the judge may determine that the case is appropriate for referral either to early neutral evaluation or mediation. (See Recommendation 4). The judge will be able to set a realistic and firm trial date based upon the "track" of the case, the discovery cut-off dates in the scheduling order, and the general state of the docket.

This Recommendation contemplates additional pretrial conferences to resolve outstanding disputes and the availability of a settlement conference at any point up to the time of trial.

To address the problems of overdue rulings on motions, the moving party will be required to notify the judge of any motion which has not been decided in sixty days of submission.

Implementation: By local rule, the Court should opt out of the mandatory discovery and disclosure requirements of proposed Federal Rule of Civil Procedure 26(a)(1) thereby retaining the ability to decide the appropriate amount of disclosure and discovery on a case by case basis.

Attorneys will be required to file an "Information Sheet" when filing the case or the initial pleading. (See Appendix VI). The information thus furnished will help the court assign the case to an appropriate track for differentiated case management.

When a case is filed, an experienced deputy clerk of the court will screen it using criteria provided by the court, assign it to one of three tracks, and consider whether the matter may be appropriate for early neutral evaluation and/or mediation. The clerk will then assign the case to a district or a magistrate judge and so notify the attorneys. (See Recommendation 1). The clerk will randomly assign cases to the judges, but will balance the caseloads so that the judges have roughly equal numbers of cases on the different tracks.

The three tracks to which cases will be assigned are: expedited, standard or complex. The following factors will generally determine the track to which a case is assigned.

I. Expedited cases - Disposition is expected to occur in less than 12 months from the date the complaint is filed.

1. There are few parties, few disputed issues, and relatively low monetary sums.

2. Discovery and disclosure will be simple with probably no more than 2-3 depositions and 10-15 interrogatories per party.

3. Discovery cut-off will be 3-6 months after initial pre-trial conference.

4. Case types will generally include: simple contracts, torts, etc., prisoner petitions (see Recommendation 3), social security, habeas corpus, forfeiture/penalty, and enforcement of judgments.

II. Standard cases - Disposition is expected to occur 12-18 months after the date the complaint is filed.

1. There may be multiple parties, a number of disputed factual and legal issues, and the amount in dispute may be substantial.

2. Discovery and disclosure may be extensive with probably 4-8 depositions and 30 interrogatories per party.

3. Discovery cut-off will be 9-15 months after initial pre-trial conference.

4. Case types will generally include: other contract, other torts, real property, truth in lending, non-prisoner civil rights, deportation, federal tax suits, labor and employment, copyright/trademark, and bankruptcy appeals.

III. Complex cases - Disposition is expected to occur 18-24 months after the date the complaint is filed.

1. There may be numerous parties and numerous and complicated factual and legal issues.

2. Discovery and disclosure will be extensive with probably 15 or more depositions and 50 or more interrogatories per party.

3. Discovery cut-off will be 15-21 months after the date the complaint is filed.

4. Case types will generally include: antitrust, securities, patents, toxic/environmental/asbestos tort, and other civil cases meeting complex criteria.

Cases assigned to the expedited track will follow a standard written pre-trial schedule and no routine pre-trial conference will occur. If the screening clerk recommends either early neutral evaluation or mediation for the case, and the assigned judge agrees that ADR may be appropriate, the case may be referred to early neutral evaluation or mediation.

With two exceptions, cases on the standard and complex tracks will follow an identical course. The first exception is that the initial scheduling conference between the judge and the attorneys will be conducted by telephone in standard cases and in person, in chambers in complex cases. The second difference occurs during the scheduling conference. In cases on the complex track, the judge may postpone setting a trial date to a time when the attorneys can predict with more accuracy when the case can be ready for trial.

The procedure to be followed in all standard and complex cases begins with notice to the attorneys from the court of the date of the scheduling conference. Within thirty days after all defendants have entered their appearances, the attorneys will meet to draft a joint scheduling order which will be submitted, along with any unresolved scheduling questions, to the court ten days later. During this time, the judge reviews the case and, if necessary,

retracks it. Fifty days after all defendants have entered their appearances, the judge holds the scheduling conference (again, by telephone in standard cases and in person in complex cases). At the scheduling conference or within the next ten days, the judge enters a scheduling order which includes: dates for disclosure of information deemed appropriate by the court; appropriate limits on the number of written interrogatories and depositions; a date for the filing of dispositive motions; dates for additional pre-trial conferences to resolve outstanding matters between the parties including determination of all outstanding motions submitted in accordance with Local Rule 7 (see Appendix IV); a procedure for scheduling a telephone conference or an additional pre-trial conference with the judge to resolve any pending matters; and a realistic and firm trial date. As previously noted, in some cases the court may deem it appropriate to order the parties to comply with proposed Federal Rule of Civil Procedure 26(a)(1) and may make this part of the scheduling order.

At the scheduling conference or later in the process, the judge may refer the case to early neutral evaluation or to mediation. To encourage serious participation in the settlement effort, discovery may be stayed for thirty days in cases referred to early neutral evaluation or mediation.

After the scheduling conference, the judge assigned to the case will decide all dispositive motions and will handle all non-dispositive matters. The Advisory Group recommends that informal matters not be held in person as is the current practice, and that

instead requests for informal rulings will either be approved solely upon the paper request, or the judge will hold a telephone conference. The judge will be available by telephone (or in person) to decide discovery matters. The judge may hold additional pre-trial conferences to resolve outstanding matters. The judge should impose appropriate sanctions, if necessary.

Finally, the moving party shall be required to notify the judge of any motion not decided within sixty days of submission. The moving party shall use a form supplied by the Clerk's office for this purpose. The Advisory Group recommends that this form state, "As required by Local Rule __, I hereby notify the court that the above referenced motion has been pending for 60 days without a ruling."

The Advisory Group recommends that this practice be implemented on January 1, 1994. In order to accurately assess the impact of the recommended changes on the efficiency and cost of litigation in the Eastern District, and to make necessary modifications, the Advisory Group strongly recommends statistical follow-up and evaluation of the differentiated case management system and the alternative dispute resolution plan every six months for two years. Attorney and judge surveys should be used.

Recommendation 3

•Assign Prisoner Civil Rights cases directly to a district judge after a pro se clerk reviews them.

•Consider some form of Alternative Dispute Resolution for Prisoner Civil Rights cases.

Under the current practice of the court, a pro se law clerk reviews most of the prisoner civil rights cases, performs a frivolity review per 28 USC § 1915(d), submits a recommendation that the court dismiss the case if it is frivolous, and makes a recommendation whether the court should grant the request to file in forma pauperis. The pro se clerk sends the recommendation to a magistrate judge who reviews it and then sends it to a district judge who ultimately rules on the matter. Because review of the matter by a magistrate judge is time consuming and redundant, the Advisory Group recommends that the pro se clerks submit their recommendations directly to a district judge. Non-frivolous prisoner civil rights cases shall then be assigned to a district judge or a magistrate judge pursuant to Recommendation 1.

The Advisory Group also believes that some forms of alternative dispute resolution, including mediation or arbitration, could be successful in these cases. This belief stems from the perception that many of these cases could be resolved short of trial if the parties had confidence and would cooperate in the alternative process. After some research, the Advisory Group concluded that prisoner grievance programs established pursuant to 28 U.S.C. § 1997e have not been successful in resolving these cases. Accord-

ingly, the Advisory Group recommends that the Court work with the State Attorney General and propose consideration of ADR conducted by a neutral third party to resolve these cases.

Recommendation 4

Early Neutral Evaluation and Mediation

In order to settle cases which would otherwise go to trial and to promote earlier settlement in other cases, the Advisory Group recommends that the Court refer appropriate cases to Early Neutral Evaluation (ENE) or Mediation.

In arriving at its recommendation, the Advisory Group considered a number of other alternative dispute resolution (ADR) court-annexed programs, including settlement conferences, arbitration, mini-trials, summary jury trials and settlement weeks.

The Advisory Group concluded that an ADR program for the Eastern District of Missouri should have these characteristics:

1. Uncomplicated
2. Inexpensive
3 Minimal staffing
4. Unobtrusive
5. Non-binding

The ADR programs which appear to have most of the foregoing characteristics are ENE and Mediation. An ENE program is designed to give the parties and their lawyers an early independent, expert opinion on the value of their case, which could lead to a prompt settlement. Mediation is likely to be more productive if it is

conducted later in the judicial process after there has been some discovery.

I. Criteria - The Advisory Group was unanimous in recommending the Court establish a set of criteria for determining whether or not a particular case is appropriate for ENE or Mediation. The Advisory Group suggests the following criteria:

A. Cases Excluded

1. Prisoner civil rights[4]
2. Habeas corpus
3. Pro Se
4. Bankruptcy
5. Social Security
6. Administrative agency appeals
7. Forfeiture
8. Student loan default
9. Tax (IRS enforcement)
10. Class actions
11. Cases assigned to a multi-district tribunal

B. Factors Favoring Exclusion

1. Equitable relief is sought (favors exclusion from ENE but not from Mediation)
2. Public policy issues exist
3. Authoritative legal ruling needed

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[4] The Advisory Group recommends that prisoner civil rights cases be excluded from the ADR proposed in this Recommendation, but believes that these cases may benefit from some form(s) of ADR (see Recommendation 3).

4. Complex legal issues predominate over factual issues
5. Non-parties will be affected
6. Imbalance of power deters negotiations
7. Public sanction needed
8. Politically sensitive/high profile cases
9. Cases involving esoteric subject matters for which neutrals are hard to find

C. Factors Favoring Inclusion

1. Continuing ongoing relationship between parties
2. Previous settlement negotiations indicate a possibility of settlement
3. Third party insight would be helpful, e.g., because attorneys are inexperienced or parties have entrenched unrealistic views
4. Parties may need relief beyond the court's power; more than money is at issue; creative solutions are needed
5. A therapeutic process is needed
6. The mediation process is appropriate to settle the case, e.g., a private process would be preferable or judge cannot assist because bench trial, etc.
7. Poor communications between parties
8. Multiple plaintiffs or defendants

9. Ability of parties to sustain litigation expense

10. "Thickness of file"

11. Lengthy trial - two (2) weeks or more

12. Age of case -- delays in progress of case after filing

13. Special concerns for privacy and confidentiality

D. General Considerations

1. Expressed desires of the parties

2. Reputation of the attorneys for interest in settlement or lack thereof

3. Interrelatedness of other pending or planned litigation

4. Existence of patterns of settlement on a national, regional or local basis

II. Selection - Based on criteria established by the Court, the Clerk's office will recommend that a case may be appropriate for ENE or Mediation. The judge assigned to the case will then make the ultimate decision to refer the case to ENE or Mediation.

III. Timing and Discovery - Ideally, ENE should be held within thirty days of referral to ENE. Mediation should be held later in the judicial process following some discovery.

It is expected that an ENE conference will usually take one-half day, and that a mediation conference will take from one-half to one full day to complete. To encourage serious participation in

ENE or mediation, the judge may order the suspension of discovery for thirty days or for a time period deemed appropriate to the case by the judge.

IV. Mandatory Participation - Non-Binding Process - When the judge assigned to the case makes a referral to ENE or Mediation, the parties and attorneys are required to attend unless otherwise ordered by the court. Client participation in the ENE or Mediation process should be strongly encouraged. Although attendance is mandatory, both ENE and mediation are voluntary processes in which the third party neutral has no authority to bind the parties.

V. Neutrals - Neutrals who serve as evaluators or mediators shall be members of the Missouri Bar who shall participate on a pro bono basis. After consultation with the other judges in this district, the chief judge of the Eastern District of Missouri will choose a Blue Ribbon ADR panel of 50 attorneys to serve as neutrals in ENE and mediation processes. It is suggested that the Chief judge solicit recommendations for panel members from the presidents of local bar associations. Each of the members of the ADR panel will agree to serve as the neutral in two cases per year for three years and to participate in an ADR training program provided by the court.

The judge making a referral to ENE or mediation shall select the neutral from the ADR panel.

VI. Confidentiality - The ENE and Mediation processes shall be confidential. Settlement discussions shall not be reported to the Court or be admissible at trial. After two years of experience

with this ADR program have elapsed, the Advisory Group should reconsider this confidentiality provision and whether some report to the court by the neutral may be appropriate.

Nothing in this Recommendation shall prevent a judge from encouraging and engaging in subsequent settlement negotiations between the parties.

Recommendation 5

Remove Review of Social Security cases from the District Court

Social Security cases present appeals from the Administrative Tribunal which are first reviewed by the District Court and then may be reviewed by the Circuit Court. The Advisory Group believes that the layer of District Court review is duplicative of the Circuit Court's efforts and it necessarily contributes to delay in the final resolution of these cases. Accordingly, the Advisory Group recommends enactment of legislation to provide for appeals directly from the administrative tribunal to the circuit court.

Recommendation 6

Social Security Law Clerk

If Recommendation 5 is not adopted, a social security law clerk should be employed to evaluate all the social security cases and to draft the proposed findings and orders which would then be reviewed and ruled upon by a district or magistrate judge. This law clerk's function would be similar to that of the pro se law clerks. The social security law clerk should have some expertise or experience in handling these complex matters. The attention of

a particular person with expertise and experience should speed the processing of these cases.

The Advisory Group notes that implementation of this recommendation is currently impossible, due to a judicial administrative mandate requiring a reduction in the number of employees in the Clerk's office.

Recommendation 7

Assign Social Security cases in accordance with Recommendation 1.

Social security cases should be randomly assigned to district and magistrate judges as described in Recommendation 1. In other words, the Advisory Group believes that the proposal that the District Court share civil case assignments with the magistrate judges will not produce the desired effects of manageable dockets for all the judges and consistent employment of magistrate judges, if the district judges continue to refer social security cases to magistrate judges for reports and recommendations. In addition, such referrals demand duplication of judicial efforts.

The U.S. Attorney has advised the Advisory Group that the government will consent to having a magistrate judge handle any social security case assigned to a magistrate judge.

Recommendation 8

Authorize an additional law clerk for each magistrate judge.

Each magistrate judge currently has one law clerk. The Advisory Group believes that either the present or the proposed workload of the magistrate judges warrants the authorization of an

additional law clerk to each magistrate judge. Again, the Advisory Group is aware that under the current budget, implementation of this proposal is not possible.

Recommendation 9

Law Days

The Advisory Group recommends that monthly "law days", which are authorized by Federal Rule of Civil Procedure 78, should be held on an experimental basis by all the district and magistrate judges. Any non-dispositive motion which remained undecided after 60 days could be set on the next law day by the moving party after appropriate notice to the judge and opposing counsel. The Group recommends that the judge rule from the bench or by the end of that day. The attorneys would be responsible to write for the record any oral ruling for review by the judge.

Recommendation 10

Settlement Week

Settlement Week is an alternative dispute resolution process incorporating mediation-style techniques to encourage voluntary resolution of law suits during an intensive period set aside by the court to direct attention exclusively to this purpose. After a year of the new Magistrate Assignment System, Differentiated Case Management System and ADR assignments, and evaluation of their status, the Advisory Group should revisit the idea of a Settlement Week and consider recommending implementation on an experimental basis.

VI. COMPLIANCE WITH SECTION 473 OF THE CIVIL JUSTICE REFORM ACT

In Recommendation 2, the Advisory Group has considered and recommended:

- systematic differential treatment of cases (§ 473(a)(1);
- early and ongoing control of the pretrial process by a judicial officer who will hold a pretrial conference in standard and complex cases and enter a scheduling order (§473(a)(2)(A) and § 473(a)(3)) which sets an early, firm trial date (within eighteen months in standard cases and within twenty-four months in complex cases (§ 473(a)(2)(B)), limits the extent of discovery and sets dates for completion of discovery (§ 473(a)(2)(C) and 473(a)(3)(C)), and sets deadlines for filing motions and a framework for their disposition including notice to the court of outstanding motions and imposition of sanctions if necessary (§ 473(a)(2)(D) and § 473(a)(3)(D)).
- an opportunity for the judge to explore the issues, and the appropriateness of staged resolution or bifurcation of issues (§ 473(a)(3)(B))
- an opportunity for voluntary exchange of information and cooperative discovery in requiring the attorneys to prepare a joint scheduling order (§ 473(a)(4) and § 473(b)(1)).

Under current Local Rule 7(c), attorneys have a duty to make a good faith effort to resolve discovery problems before presenting them to the court and the Advisory Group endorses the continuation

of this requirement (§ 473(a)(5)). The Group also endorses a requirement that each party be represented at pretrial conferences by an attorney authorized to bind that party as to specified and related issues (§473(b)(2)).

The Advisory Group considered the ADR methods of arbitration, mediation, mini-trials and summary jury trials (§ 473(a)(6)) and has recommended the referral of appropriate cases to mediation or to early neutral evaluation (§ 473(a)(3)(A) and § 473(b)(4)). The Advisory Group also recommended that attorneys and clients be required to attend the mediation or early neutral evaluation conference (§ 473(b)(5)).

Finally, the Advisory Group considered and rejected "the 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" (§ 473(b)(3)) as an unnecessary imposition on clients which could also become a cause of delay.

APPENDIX I

Civil Justice Reform Act

JUDICIAL IMPROVEMENTS ACT OF 1990

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

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

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

SEC. 102. FINDINGS.

The Congress makes the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 474. Review of district court action

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

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

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

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

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

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

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

"§ 475. Periodic district court assessment

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

"§ 476. Enhancement of judicial information dissemination

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

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

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

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

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

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

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

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

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

"§ 478. Advisory groups

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 480. Training programs

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

"§ 481. Automated case information

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

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

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

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

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

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

"§ 482. Definitions

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

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

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

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

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

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

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

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

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

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

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

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

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

SEC. 104. DEMONSTRATION PROGRAM.

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

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

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

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

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

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

SEC. 105. PILOT PROGRAM.

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

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

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

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

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

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

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

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

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

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

SEC. 106. AUTHORIZATION.

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

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

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

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

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

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

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

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

APPENDIX II

Civil Justice Reform Act Group Biographies

Eugene K. Buckley is a partner in Evans & Dixon, St. Louis, engaged in the trial of civil lawsuits. A Fellow of the American College of Trial Lawyers, he served as co-chair of the Federal Practice Committee, Eastern District of Missouri, from 1983 through 1992.

Doreen D. Dodson is a partner in The Stolar Partnership law firm, St. Louis, Missouri. She received her A.B. from Duke University and her J.D. in 1974 from St. Louis University School of Law. Ms. Dodson was president of The Missouri Bar in 1990-91.

Edward L. Dowd, Jr., is the United States Attorney for the Eastern District of Missouri. His interim appointment took effect on September 12, 1993. Previously, Mr. Dowd served as an Assistant United States Attorney from 1979 through 1984. After working for a year as Chief of the Narcotics Section of the U.S. Attorney's Office, he served as Regional Director of the South Central Region of the President's Organized Crime Drug Enforcement Task Force. Mr. Dowd then spent nine years in private practice at Dowd & Dowd, P.C.

Susan A. FitzGibbon is an Associate Professor of Law at St. Louis University School of Law where she teaches Contracts, Alternative Dispute Resolution and Public Employment Law, and serves as the Assistant Director of the Center for Employment Law. Prior to joining the law faculty, she served as a law clerk to Judge Myron H. Bright and to Judge Richard S. Arnold of the U.S. Court of Appeals for the Eighth Circuit and practiced in the area of commercial litigation.

William G. Guerri is a partner in the law firm of Thompson & Mitchell. He served for several years as head of the firm's litigation department and he is the firm's representative in alternative dispute resolution matters. Mr. Guerri received his A.B. degree from Central Methodist College in 1943 and his law degree from Columbia University School of Law in 1946. He is a member of the American Bar Association.

Stephen B. Higgins is a partner at Thompson & Mitchell, St. Louis, Missouri, where his practice focuses on complex business and commercial matters, white collar and regulatory investigations, environmental litigation and the establishment of programs to ensure compliance with state and federal laws and regulations. Previously, Higgins served as United States Attorney for the Eastern District of Missouri from 1990 through 1993. While in office, Higgins created the Eastern Missouri Environmental Crimes Task Force, coordinating the environmental enforcement efforts of federal, state and local agencies, which was the first of its kind in the nation. Higgins received his B.A. from Yale University and his J.D. from St. Louis University School of Law and was a decorated Vietnam veteran and award-winning investigative newspaper reporter before entering law practice.

Robert J. Kelley is the President of the St. Louis Labor Council AFL-CIO.

Alan C. Kohn is a partner in the law firm of Kohn, Shands, Elbert, Gianoulakis and Giljum. He practices in the area of business and general civil litigation and appellate work. Mr. Kohn is a fellow of the American College of Trial Lawyers and an Advocate of the American Board of Trial Advocates. He is also a member of the American Law Institute and is listed in the 1993-1994 edition of the Best Lawyers in America in Business Litigation. He is a member of the Federal Practice Committee of the Eastern District of Missouri. Mr. Kohn received his A.B. degree in 1953 and his LL.B. degree in 1955 both from Washington University. He served as law clerk to Justice Charles E. Whittaker, Supreme Court of the United States, 1957-1958.

Louis J. Leonatti joined the law firm of Seigfreid, Runge, Leonatti, Pohlmeyer & Seigfreid in Mexico, Missouri in 1974. He became a shareholder and Director in 1977. His practice focuses primarily on civil and trial matters, hospital and municipal law. He received his A.B. degree in 1971 and J.D. in 1973 from the University of Missouri-Columbia. He served on the Federal Practice Committee of the U.S. District Court for the Eastern District of Missouri, 1983-1989, he is a member of the Missouri Task Force on Evidence.

The Honorable Stephen N. Limbaugh was appointed United States District Judge for the Eastern and Western Districts of Missouri in 1983. He received his B.A. from Southeast Missouri State University and received his J.D. from the University of Missouri. He is a Fellow of the American College of Probate Counsel and the American Bar Foundation, and is a member of the American Judicature Society.

The Honorable David D. Noce has served as the Chief United States Magistrate Judge for the U.S. District Court for the Eastern District of Missouri since 1989. He became a United States Magistrate in 1976. He received his A.B. degree from St. Louis University and his J.D. degree from the University of Missouri-Columbia in 1969. He was a law clerk for two judges of the federal District Court in St. Louis and he served as an assistant United States Attorney.

James E. Reeves is a senior partner in the law firm of Ward & Reeves in Caruthersville, Missouri. He received his LL.B. degree in 1951 from the University of Missouri. He served as Interim U.S. Attorney for the Eastern District of Missouri in 1969 and 1973. He received the Missouri Bar Foundation Lon Hocker Trial Lawyer Award in 1962 and the Missouri Bar Foundation Spurgeon Smithson Award in 1980. He is Fellow of the American College of Trial Lawyers and of the American College of Probate Counsel.

Robert F. Ritter is a Senior Partner in the law firm of Gray & Ritter, P.C. in St. Louis. He is a 1968 graduate of St. Louis University School of Law. He is a member of the Missouri Supreme Court Committee on Civil Jury Instructions (MAI). He is a Past President of the Lawyers Association of St. Louis and past member of the Missouri Bar Board of Governors and Executive Committee, Bar Association of Metropolitan St. Louis. He is a recipient of the Lon O. Hocker Trial Lawyer Award. He is a Fellow of the American College of Trial Lawyers, the International Society of Barristers, and the International Academy of Trial Lawyers. He is an Advocate of the American Board of Trial Advocates.

Barry Short is a partner of the St. Louis law firm of Lewis, Rice & Fingersh. He is a graduate of DePauw University and the University of Missouri School of Law. He is a former United States Attorney for the Eastern District of Missouri and a Fellow of the American College of Trial Lawyers. Mr. Short has extensive experience in business/commercial matters, as well as in product liability, toxic torts, antitrust, RICO and white collar crime trials.

Robert D. St. Vrain has served as the Clerk of Court for the U.S. District Court for the Eastern District of Missouri since 1991. He received his A.B. degree and his J.D. degree from St. Louis University. He previously served as the Clerk of the Missouri Court of Appeals, Eastern District, from 1976 to 1979 and served as Clerk of the U.S. Court of Appeals for the Eighth Circuit from 1980 to 1991.

Richard B. Teitelman is the Executive Director of Legal Services of Eastern Missouri, Inc. He is a member of The Missouri Bar Board of Governors, the Editorial Board for the Journal of The Missouri Bar, and the Supreme Court Advisory Committee. He serves as president of the St. Louis Bar Foundation. He is a lifetime member of the American Judicature Society, the National Legal Aid & Defender Association, the Urban League of Metropolitan St. Louis, and is a member of the Missouri Association for Social Welfare.

Blanche M. Touhill is Chancellor and Professor of History and Education at the University of Missouri-St. Louis. Dr. Touhill joined UM-St. Louis as an assistant professor in 1965 and became a full professor in 1983. In addition to her teaching duties, she has served as Associate Dean of Faculties, Vice Chancellor for Academic Affairs, Interim Chancellor and she was named Chancellor in April 1991.

Dorothy L. White-Coleman is a partner in the law firm of Peoples, Hale and Coleman. Her practice focuses primarily on business and commercial litigation, tort litigation and municipal finance. Previously she served as staff law clerk to Judge Floyd R. Gibson of the U.S. Court of Appeals for the Eighth Circuit and as an associate with Husch, Eppenberger, Donohue, Cornfeld and Jenkins. She received her law degree from St. Louis University Law School in 1982. Ms. White-Coleman currently serves as a Missouri Bar Association Delegate to the ABA, and as a member of the Board of Directors of Downtown St. Louis, Inc. and the St. Louis City Private Industry Council. She is past president of the Mound City Bar Association.

Harold L. Whitfield is a senior partner in the St. Louis law firm of Whitfield, Montgomery and Staples. His practice focuses primarily on affirmative action, civil defense and municipal government law. He received his law degree in 1966 from Washington University. He currently serves as City Attorney for Pine Lawn, legal counsel for Meacham Park Fire Protection District and is a Municipal Court Judge for the City of Kirkwood. He is a lifetime member of the NAACP, and is a member of the Judicial Council of the African Methodist Episcopal Church, and the American Steel and Can Industries Panel of Arbitrators.

APPENDIX III

Public Advertisement

Notice Seeking Public Comments on Experience in Federal Litigation

Attention: Persons Who Are or Have Been Involved in a Federal Lawsuit in the Eastern District of Missouri.

In 1990 Congress passed the Civil Justice Reform Act which requires each U.S. Federal District to establish an Advisory Group to make recommendations to the court for reducing excessive costs and delays in civil cases.

The Civil Justice Reform Act Advisory Group of the U.S. District Court for the Eastern District of Missouri seeks comments about the experience of litigants and attorneys involved in lawsuits in that court. The Advisory Group is particularly interested in comments on the conduct of pre-trial activity (including discovery) and the trial, and on the timeliness and the cost of litigation. The Advisory Group welcomes suggestions for reduction of the cost and time expended on litigation. The group is also interested in knowing whether, in light of the experience, parties would consider or prefer an alternative way to resolve future disputes outside of court (such as, by mediation or arbitration).

The Advisory Group requests that all comments include: (1) whether you were (or were representing) the plaintiff or the defendant; (2) whether you won or lost the case; (3) the year the case was concluded; (4) the general nature of the case (e.g. "commercial or contract disputes"; "labor or employment matter"; "personal injury;" etc.)

Your comments will be shared with members of the group but your identity will be kept confidential if you so request. Anonymous submissions will be accepted but of necessity given less weight than those identifying the sender.

Please submit your comments by July 15, 1993 to:

CJRA Advisory Group
c/o U.S. District Court for the
Eastern District of Missouri
1114 Market Street
St. Louis, Missouri 63101

APPENDIX IV

Local Rule 7 of the U.S. District Court

of the Eastern District of Missouri

RULE 7. MOTIONS

(A) Oral Argument or Testimony.

Motions in general shall be forthwith submitted and determined upon motion papers and briefs hereinafter referred to, without oral argument, as soon after filing and submission of briefs as time of the Court permits. The Court may in its discretion order oral argument on any motion.

(1) If the motion requires the presentation of oral testimony in support thereof or in opposition thereto, the party intending to present such testimony shall serve and file with the motion or brief a statement of such intention, and a hearing shall be held on such motion.

(2) All motions which are to be presented on testimony or oral argument which have been on file at least five (5) days, except as provided in Rule 56(c) of the Federal Rules of Civil Procedure, shall be heard by the Court upon notice to the parties.

(3) In civil cases in the Northern and Southeastern Divisions, motions which are to be presented on testimony or oral argument may be referred to a United States Magistrate pursuant to 28 U.S.C. §636(b), as amended.

(B) Briefs, When Filed.

(1) The moving party shall serve and file with its motion a brief written statement of the reasons in support of the motion, and a list of citations of any authorities on which the party relies. If the motion requires a consideration of facts not appearing of record, the party shall also serve and file originals or copies of all photographs or documentary evidence the party intends to present in support of the motion, in addition to the affidavits required or permitted by the Federal Rules of Civil Procedure.

(2) Except with respect to a motion for summary judgment under Rule 56, Federal Rules of Civil Procedure, each party opposing a motion shall serve and file, within five (5) days after being served with the motion, any written brief containing any relevant argument and citations to authorities on which the party relies. If any motion requires consideration of facts not already appearing in the record, the party shall serve and file with its brief copies of all documentary evidence, affidavits, or photographs required or permitted by the Federal Rules of Civil Procedure. A party opposing a motion for summary judgment under Federal Rule of Civil Procedure 56 shall serve and

file any written brief or memorandum of law and any appropriate extra-pleading materials within twenty (20) days after being served with the motion.

(3) Within five (5) days after being served with the brief for the party opposing the motion, the moving party may, at that party's option, serve and file a reply brief. Additional briefs may be filed by either party only upon order of Court.

(C) Motions Relating to Discovery.

With respect to all motions relating to discovery proceedings pursuant to Rules 26 through 37, inclusive, of the Federal Rules of Civil Procedure, the Court shall not, except for good cause, hear or consider any such motion unless counsel for the movant shall first advise the Court in writing that said counsel has conferred with the opposing counsel in good faith or has made reasonable efforts to do so, but that after sincere efforts to resolve differences have been made counsel are unable to reach an accord. This written statement shall recite, in addition to the foregoing, the date, time and manner of such conference, and the names of the individuals participating therein or shall state with specificity the efforts made to confer with opposing counsel with respect to any such motion.

(D) Extension of Time.

For good cause shown the Court may extend the time for the doing of any act required by this Rule.

(E) Motions in Criminal Proceedings in the Southeastern and Northern Divisions.

All motions filed in criminal proceedings in the Southeastern and Northern Divisions of the District shall, unless otherwise ordered by the Court, be heard in the Eastern Division under the provisions of this Rule.

(F) Motions to Transfer or Consolidate.

In the Eastern Division, parties desiring to move for the transfer and consolidation of related cases pending in the several courtrooms of such Division, shall do so by filing such motion in the case bearing the lowest file number, and the same to be considered by the Judge sitting in the courtroom where such lowest numbered case is pending, and to which courtroom the other related case shall be transferred if such motion is granted.

(G) Motions for Summary Judgment in Social Security and Black Lung Disability Cases.

In all cases involving Social Security and black lung disability benefits, the plaintiff shall, unless otherwise ordered by the Court, serve and file a motion for summary judgment with supporting memorandum within thirty (30) days after service and filing of Secretary of the Department of Health and Human Services' answer and the administrative transcript. The Secretary's response shall be served and filed within thirty (30) days thereafter.

An extension of time to file any motion herein, if required by the Federal Rules of Civil Procedure to be filed earlier, is granted by this Rule.

(H) Time for Filing Civil Action Motions for Summary Judgment or to Dismiss.

Unless good cause is shown, civil action motions for summary judgment or to dismiss may not be filed later than forty-five (45) prior to the trial date, except that any party asserting a claim may dismiss it at any time in accordance with the Federal Rules of Civil Procedure.

(I) Procedure for Motions Concerning Depositions.

The Court shall not, except for good cause, consider any pretrial motion relating to depositions, including but not limited to motions to quash or modify a deposition subpoena or for a protective order, unless counsel for the movant shall first file a certificate of compliance with subsection (C) of this Rule and, before the deposition date, either present the motion to the Court during informal matters or advise the Court in writing that the deposition is postponed pending the Court's ruling. Counsel for the movant shall notify opposing counsel of the movant's intention to appear before the Court during informal matters.

(Amended September 13, 1989.)

APPENDIX V

Proposed Amended Federal Rule

of Civil Procedure 26(a)1)

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures; Methods to Discover Additional Matter.

(1) Initial Disclosures. Except to the extent otherwise stipulated or directed by order or local rule, a party shall, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Unless otherwise stipulated or directed by the court, these disclosures shall be made at or within 10 days after the meeting of the parties under subdivision (f). A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

APPENDIX VI

Information Sheet and Differentiated

Case Management Sheet

Information Sheet

Effective _____, the Court adopted a case management plan designed to facilitate the disposition of civil cases pending in this district. Its success depends on the cooperation of the litigants and their attorneys. To that end and for the purpose of early case assessment by the Court, each plaintiff must furnish the following information at the time suit is filed. Each defendant must furnish the same information at the time such defendant files an initial pleading. None of the information can be used as evidence in trial or for other litigation purposes. The sole purpose for requesting the information is so that the court may better assess the case's complexity and its appropriate pretrial treatment.

1. State the number of fact witnesses you presently expect to use at trial: _____

2. State the number of expert witnesses you presently expect to use at trial:_____
_____

3. Describe, by number, category and location all documents:
(a) you expect to need produced by the other party or parties:
_____
_____

(b) you expect your client needs to produce: _____
_____

(c) you expect need to be produced by non-parties: _____
_____

4. State the number of interrogatories you presently expect to submit: _____

5. State the number of depositions you presently expect to take: _____

6. State your best current estimate of the amount of damages claimed and how those damages are computed, if presently known:
_____
_____
_____
_____

7. State the amount of insurance coverage, if any, applicable to any judgment which may be entered: _____
_____
_____

8. State your estimate of the amount of time that will be needed for discovery (i.e., the elapsed time from the filing of the complaint to date of trial): _____

9. State your estimate of the number of days required to try the case: _____

10. State your opinion as to whether the case will need:

☐ extensive ☐ moderate ☐ minimal

court supervision during its pre-trial phase.

11. State your opinion as to whether the case is appropriate for:

☐ expedited ☐ standard ☐ complex

tracking (see Differentiated Case Management Sheet for tracking definitions).

12. State any facts about the case which you think may be helpful concerning the case's complexity or its appropriate pretrial treatment: _____

_____

_____

_____

13. State whether you believe the case may be appropriate for:

☐ Mediation ☐ Arbitration ☐ Mini-trial

☐ Early settlement discussions ☐ Early Neutral Evaluation

☐ Special Master for Discovery and Scheduling ☐ None of the foregoing and state your reasons for this opinion

Differentiated Case Management Sheet

The following factors will generally determine the track to which a case is assigned.

I. Expedited cases - Disposition is expected to occur in less than 12 months from the date the complaint is filed.

1. There are few parties, few disputed issues, and relatively low monetary sums.

2. Discovery and disclosure will be simple with probably no more than 2-3 depositions and 10-15 interrogatories per party.

3. Discovery cut-off will be 3-6 months after initial pre-trial conference.

4. Case types will generally include: simple contracts, torts, etc., prisoner petitions (see Recommendation 3), social security, habeas corpus, forfeiture/penalty, and enforcement of judgments.

II. Standard cases - Disposition is expected to occur 12-18 months after the date the complaint is filed.

1. There may be multiple parties, a number of disputed factual and legal issues, and the amount in dispute may be substantial.

2. Discovery and disclosure may be extensive with probably 4-8 depositions and 30 interrogatories per party.

3. Discovery cut-off will be 9-15 months after initial pre-trial conference.

4. Case types will generally include: other contract, other torts, real property, truth in lending, non-prisoner civil rights, deportation, federal tax suits, labor and employment, copyright/trademark, and bankruptcy appeals.

III. Complex cases - Disposition is expected to occur 18-24 months after the date the complaint is filed.

1. There may be numerous parties and numerous and complicated factual and legal issues.

2. Discovery and disclosure will be extensive with probably 15 or more depositions and 50 or more interrogatories per party.

3. Discovery cut-off will be 15-21 months after the date the complaint is filed.

4. Case types will generally include: antitrust, securities, patents, toxic/environmental/asbestos tort, and other civil cases meeting complex criteria.