REPORT OF THE ADVISORY GROUP
CIVIL JUSTICE REFORM ACT OF 1990
WESTERN DISTRICT OF MISSOURI

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CIVIL JUSTICE REFORM ACT OF 1990

WESTERN DISTRICT OF MISSOURI

I. INTRODUCTION

A. DESCRIPTION OF COURT

1. STRUCTURE OF COURT

The United States District Court for the Western District of Missouri comprises sixty-six counties in the western half of the state. It has six active judicial positions and at present three judicial officers are on senior status. There are four full-time magistrate judges and a fifth magistrate position will be filled in early 1992. There are five divisions of the court with headquarters in Kansas City, Missouri.

The supporting personnel of the court are centered in the clerk's office which is presently composed of fifty-six authorized deputies which include three pro se law clerks and clerical personnel to process the vast number of prisoner cases that are filed in this district.

2. STATUTORY STATUS

The Western District of Missouri has been designated a demonstration district (Section 104 of the Judicial Reform Act of 1990) and as such has been specifically directed to experiment with ways to reduce cost and delay, including alternative dispute resolution procedures.

The Advisory Group is recommending that the court file and implement its Civil Justice Expense and Delay Reduction Plan by December 31, 1991, so that the Western District may be designated an early implementation district.

B. SUMMARY OF FINDINGS

The Advisory Group has concluded that delay is not a substantial problem in the Western District of Missouri. This conclusion was reached by the Group after it completed an assessment of the docket, interviewed judges and court personnel and discussed the issue with attorneys who practice before the Western District and clients who have been involved in litigation in the Western District. While delay is not a substantial problem, the Advisory Group identified 6 areas in which improvement could be made.

(1) There was evidence that dispositive motions are not ruled on quickly enough. This can result in costly litigation preparation that could be avoided if the parties had known the result of their dispositive motions well in advance of trial. Attorneys contribute to this problem by filing dispositive motions on the eve of trial.

(2) Parties do not regularly exchange essential information at an early stage of the litigation. This may impede their ability to competently and fairly evaluate their case which in turn discourages meaningful settlement negotiations until late in the case.

(3) A substantial portion of the docket is made up of prisoner related cases which involve numerous pro se plaintiffs and problems of cost and security.

(4) Social security appeals pose a special problem because they require a level of specialization that the average law clerk does not have.

(5) The sixty day rule (now the six month rule as a result of the Civil Justice Reform Act of 1990) does not always result in clear information about what motions are not being processed quickly.

(6) Even though delay is not a significant factor in the Western District, the Advisory

Group concludes that the cost of litigation might still be excessive. It may be that the litigation process is expensive, no matter how well it is managed.

C. SUMMARY OF RECOMMENDATIONS

(1) Adopt an Early Assessment Program to divert cases from the court system to alternative dispute resolution procedures.

(2) Require a trial date to be set at the first pretrial conference unless circumstances do not permit an early trial setting.

(3) Require the parties to conduct a telephone conference with the judge before filing any discovery motion.

(4) Hire a permanent law clerk, with some medical experience or background, to handle all social security appeals.

(5) Alternatively, adopt a procedure for social security appeals that would by-pass the district court and send the case directly from the administrative tribunal to the court of appeal.

(6) Purchase video equipment to link the federal courthouse in Jefferson City with the Jefferson City Correctional Center.

(7) Amend local rules to require a hearing on a motion for summary judgment within sixty days after the response is filed and if the judge does not rule from the bench, the judge must state by what date the dispositive motion will be ruled. The rule would also establish a uniform format for the motion and would permit the court to specify the period during which motions for summary judgment may be filed.

(8) Amend local rules to provide that post-trial motions are deemed to be overruled if they have not been decided within ninety (90) days after the filing of the motion.

II. ASSESSMENT OF CONDITIONS IN THE DISTRICT

A. CONDITION OF THE DOCKET

1. CURRENT CONDITION OF THE DOCKET

The following chart shows the statistical condition of the docket in the Western District of Missouri between January 1, 1991 and November 30, 1991:

CIVIL CASE STATISTICS

January 1, 1991

through

November 30, 1991

	FILED	CLOSED	PENDING
Contract	265	307	283
Real Property	7	14	10
Land Actions	1	7	3
Personal Injury	190	228	241
Personal Property	20	28	40
Civil Rights	178	191	264
Prisoner Petitions			
Federal	123	119	151
State	907	755	870
Forfeiture/Penalty	42	37	27
Labor	145	133	144
Property Rights	9	10	17

Other	373	423	326
TOTAL	2260	2252	2376

2. TRENDS IN CASE FILINGS

The following summary of the trends in case filings is based on the statistical analysis of the docket of the Western District of Missouri which was conducted by management analyst, David Loupe. The complete statistical analysis is included as Appendix B of this report.

a. Trend in number of cases filed

The Advisory Group studied case filing trends between 1971 and the present. In 1971 there were approximately 450 cases filed per judgeship in the Western District (Filings per judgeship do not include magistrates or senior judges). In 1991 there were approximately 430 cases filed per judgeship. Between 1976 and 1991 the number of criminal case filings remained nearly constant. During this period, the number of civil cases fluctuated from a low of approximately 290 case filings per judgeship to a high in 1986 of approximately 600 case filings per judgeship.

Between 1971 and 1991, the highest number of case filings per judgeship (approximately 790) occurred in 1975, when there was a sharp increase in the number of criminal cases. The lowest number of case filings per judgeship (approximately 300) occurred in 1981 when civil case filings reached the lowest level during the period.

b. Trend in number of cases pending more than two/three years

As of September 30, 1991, 12.5% of all pending cases were over two years old. The greatest percentage of cases pending over two years was prisoner petitions (43.9%), followed by contracts (12.9%) and civil rights (12.5%). This trend was found to be consistent with similar

statistics from 1988, except that there are slightly more two year old civil rights cases today that there were in 1988 and there are fewer two year old social security cases today that there were in 1988.

Between 1971 and 1991, the cases pending more than three years seem to be related to the number of cases which were filed in the previous year. This indicates that in the Western District of Missouri, caseload has an affect on the age of the case. Simply put, if there is an increase in the number of cases filed during one year then the next year there will be a greater number of cases pending for more than three years.

c. Trends in the kind of cases being filed in the Western District of Missouri

(1) Between statistical year 1974 and the present, there has been a sharp decline in the number of antitrust cases filed, from a high of approximately 35 cases in 1976 to a low of 1 case in 1990.

(2) Between 1974 and the present there has been an increase in the number of civil rights cases filed, from a low of approximately 85 in 1974 to a high of approximately 245 in 1990.

(3) Between 1974 and the present there has been a significant fluctuation in the number of contract cases filed but the same number of contract cases were filed in 1991 as were filed in 1974 (approximately 200). The greatest number of contract cases (490) was filed in 1979.

(4) Between 1974 and the present, copyright/trademark and patent cases rose gradually to a peak of 50 filings in 1989 and then sharply declined to approximately 17 cases in 1991. The lowest number of case filings occurred in 1975 when only 6 cases were filed.

(5) Between 1974 and the present, forfeiture and tax cases remained relatively constant starting at approximately 48 filings in 1974 and ending with approximately 60 filings in 1991. There was a sharp increase in the number of these cases in 1982-83.

(6) The number of labor suits filed has steadily climbed from approximately 61 suits in 1974 to approximately 123 cases in 1990.

(7) Prisoner cases started relatively high in 1974 (approximately 900) and then sharply declined to a low (approximately 400) in 1979. The most prisoner suits were filed in 1987 (approximately 1100) and that number has declined slightly since (approximately 1000 cases filed during 1991).

(8) The number of cases involving real property has declined sharply since 1979 when 180 cases were filed. The lowest number of property filings occurred in 1991 (approximately 9).

(9) The highest number of social security appeals were filed in 1984 (approximately 425) and the lowest number were filed in 1974 (approximately 45). In 1991, approximately 150 social security appeals were filed in the Western District.

(10) Tort cases have gradually increased from approximately 145 filings in 1974 to 215 filings in 1991. An aberrational jump occurred in the number of tort filings between 1985 and 1987, reaching a high of 500 cases between 1986 and 1987.

3. TRENDS IN JUDICIAL RESOURCES

The Western District of Missouri currently has six active judicial positions and three judicial officers are on senior status. There are four full-time magistrate judges and a fifth magistrate position will be filled in early 1992. Between 1971 and 1979 there were four active

judicial positions. Two judgeships were added in 1979. Between 1971 and the present the number of magistrates rose from two to five. The court has been fortunate that since 1980 there have been a number of senior judges to assist in the processing of civil and criminal cases.

B. COST AND DELAY

1. Extent of excessive cost and delay in the District

The median time from issue to trial in civil cases is 14 months, compared with the national median of 15 months. Over the last ten years, the average elapsed time for disposition of cases has been cut in half. Only 12.5% of the current cases have been pending more than two years, and the statistical evidence supports the conclusion that an increase in the number of cases pending more than two years correlates with increases in the overall number of case filings. In other words, the only time during the period studied by the committee that it observed excessive delay in the system, occurred when so many cases were filed that the system was simply swamped.

Based on this statistical evidence, the assessment of the docket completed by the Advisory Group, interviews with judges and court personnel and discussions with attorneys who practice before the Western District and clients who have been involved in litigation in the Western District, the Advisory Group has concluded that delay is not a substantial problem in the Western District of Missouri.

The primary reasons for the absence of delay seem to be threefold: (a) local rules, (b) judicial and non-judicial resources, and (c) good management. The court's local rules, standing orders and internal operating procedures provide close judicial supervision of litigation and contribute to the absence of a backlog that is sometimes associated with civil litigation in the

federal courts. Included in Appendix A of this report is a complete set of the Local Rules of the Western District of Missouri. Many of the litigation management principles that are referred to in Section 473 of the Judicial Improvements Act of 1990 are already in place in the Western District of Missouri. The court has also benefited from adequate judicial resources given the number of cases handled in the district. Both active and senior judges maintain significant caseloads and the magistrates are flexible, experienced and dedicated. Non-judicial personnel are well managed and contribute significantly to the absence of delay in the Western District.

While the Group has concluded that excessive delay is not a problem in the Western District, there are areas where even greater efficiency is needed. Furthermore, while there may not be excessive delay in the system, the Group has concluded that here, as elsewhere, the cost of litigation is perceived to be high. The Advisory Group saw no substantial evidence, however, to conclude that the reason that litigation is expensive is because the court system is not functioning at an adequate level. In an effort to better evaluate the costs of litigation, the Advisory Group has developed the Early Assessment Program which is attached to this report as Appendix C. One of the purposes of this experimental program is to see if cases processed by alternative dispute resolution procedures are quicker and less expensive or whether they are neither quicker nor less expensive but nonetheless better meet the needs of the individual litigants.

2. Principal causes of cost and delay

(a) Dispositive motions

Based on its investigation, the Advisory Group concludes that dispositive motions need to be ruled more promptly. Even when these motions are filed months before trial setting, they

may not be ruled on until the time of trial. This means that the parties must incur the cost of complete trial preparation which will be meaningless in those cases where the dispositive motion is granted. This may even occur when the case is set for a bench trial.

In some cases, lawyers contribute to this problem by filing the dispositive motions shortly before trial, thereby limiting the amount of time that the court has to consider the motion. This may mean that the system and the clients incur the cost of substantial discovery and litigating the case when it could have been handled summarily if a timely motion had been filed. Lawyers may also contribute to the problem by filing too many dispositive motions. If the court only grants 5% of all dispositive motions filed, there is a disincentive to take the motions seriously. It is time consuming to sift through 95 motions to find the 5 motions that warrant attention. Dispositive motions take a long time to evaluate even if they are not justified and if they are justified, the opinion must be drafted carefully to satisfy the court of appeals.

The format of motions for summary judgment is particularly problematic in terms of getting a quick ruling. In many cases it is difficult for the court to locate what evidence is available on the question of whether there is a genuine issue of material fact. When in doubt, the court is more likely to deny the motion than to grant it, erring on the side of keeping the case open in the hopes that it will be satisfactorily resolved in some other way. Furthermore, when the motions and suggestions in support are copious and complex, the law clerks may be tempted to put them on the back burner and deal with the simpler, more pressing matters of the day.

(b) Rulings on motions - Sixty Day Rule

Prior to the adoption of the Civil Justice Reform Act of 1990, the district courts were

required to send to their respective circuit courts a quarterly report showing the number of motions which were more than sixty days past due. A motion was deemed to be due if the parties had filed all permissible documents and taken all permissible action relevant to the motion. If the judge or the parties took any action concerning the motion, such as filing additional briefs, asking for a hearing, asking for additional information or sometimes, even inquiring about what was happening with the motion, the motion was no longer "due" and the sixty days would not start running again until the motion became ripe for ruling a second time.

Another quirk of the rule was that it would only require a report about those cases which were sixty days past due at the time of filing the quarterly report. If a case were to become "past due" one day after the report, it would not be picked up unless it was still past due when the next report was issued three months later. Based on this evidence, it would appear that a motion could be pending for many months and never be listed on the sixty day list.

The Advisory Group gathered substantial evidence that the sixty day rule, with all its flaws, did put pressure on the court personnel to dispose of motions before they had to be reported to the Eighth Circuit, once again demonstrating that time deadlines do contribute to moving cases. The Civil Justice Reform Act of 1990, however, substitutes a six month rule for the sixty day rule. Now, the district court judges must report only those motions which are more than six months "past due". This means that if the motion falls due one day after the six month period, it will not be reported until the next sixth month report. The Advisory Group is concerned that this change in the rule will result in motions being ruled on in a less timely manner and will contribute to an increase in cost to the system and the litigants.

(c) Discovery disputes

In the Western District, as elsewhere, discovery makes up a substantial part of the cost of litigation. One of the problems with discovery is that it is sometimes started too late, impeding the ability of the parties to realistically evaluate their case so that meaningful negotiations can occur between the parties. Sometimes, while discovery is commenced early enough, the essential discovery is not focused on at an early stage, and therefore settlement negotiations can still be delayed.

Another problem with discovery is the formality of the process. The time to compose motions and suggestions in support and the time to get them heard by the judge can slow down the case substantially because no one wants to proceed until the discovery dispute is resolved.

According to some sources, there are simply too many discovery motions filed. This might be explained by the increasing pressures of legal malpractice and the larger size of the civil bar which makes lawyers less trusting because they are not personally familiar with opposing counsel and means that lawyers may be less collegial because they may not face the same opponent in the future.

The number of discovery motions filed also has an impact on other aspects of the court system. For example, the law clerks stated that discovery motions have to be ruled on quickly because they often involve a discovery event that has already been scheduled. Discovery motions may therefore be given more attention than the more complex motions, such as summary judgment or the less familiar cases such as social security appeals.

3. How are cost and delay in civil litigation affected by the types of cases filed?

(a) Prisoner cases

The following summary is taken from a report prepared by Dale Doerhoff, a member of the Advisory Committee, Western District of Missouri.

Forty percent of the cases filed in the Western District are civil cases filed by prisoners. On October 1, 1991 there were 453 of these cases pending in the Central Division. Because of the concentration of correctional facilities in central Missouri, more of these prisoner cases are pending in the Central Division of the Western District than any other venue.

Civil cases filed by prisoners absorb substantial resources. One magistrate spends almost full time processing these cases. In support of his work there are law clerks, clerical personnel and the overhead involved in the occupancy of the entire second floor of the Federal Courthouse in Jefferson City. Even so, more prisoner motions are more than sixty days past due than in any other case.

Transportation of parties and witnesses in these civil cases filed by prisoners is a major expense. The Missouri Department of Corrections has performed an analysis of the cost of transporting prisoners and witnesses to court and has determined that it costs between $800 and $1000 per court visit.

The burden of these prisoner cases has increased in recent times because case law makes it more difficult today than it used to be to dismiss in forma pauperis proceedings that the court thinks are frivolous and therefore an abuse of the court's process. The Missouri Department of Corrections has attempted to reduce the number of civil cases filed by prisoners by implementing a certified grievance procedure at the Jefferson City Correctional Center. However, case filings

are now more frequent than before the procedure was implemented.

(b) Social Security Appeals

While the time to disposition in social security appeals is not problematic, the Advisory Group did observe that as of October 31, 1991, more than 50 dispositive motions were past due in social security appeals, second only to civil prisoner cases for the greatest number of past due motions. The group learned during its hearings that this might be caused in part because social security appeals often involve evidence that may be difficult to understand because extensive medical records and medical concepts are common in such cases. Social security cases also have their own rules of procedure that a clerk must be conversant with before the case can be processed. In short, a level of expertise is needed to work on social security appeals that is not often possessed by the average law clerk. Furthermore, because law clerks rarely stay for more than two years and the social security cases are distributed relatively evenly among them, it is difficult to develop the needed expertise to process the cases quickly.

Finally, the Advisory Group questions whether social security appeals at the district court level are even necessary. In these cases the district court is merely reviewing the record that was developed at the administrative tribunal and the litigants are still permitted a second appellate review at the circuit level. This duplication of effort in these cases which are technically difficult may represent unnecessary cost and delay.

4. How have court procedures impacted cost and delay?

(a) Court Rules

Included in appendix A of this report is a complete set of the Local Rules of the Western District of Missouri. These rules appear to have contributed substantially to reduction of cost

and delay in the district. In fact, many of the litigation management principles that are referred to in Section 473 of the Judicial Improvements Act of 1990 are already in place in the Western District of Missouri.

(b) Mandatory Arbitration

(The following is a description of current Local Rule 30. Rule 30 will be suspended in the Western Division of the Western District as of January 1, 1992. In its place will be the new Early Assessment Program which has been approved for implementation in the Western Division. Rule 30 will continue to be operative elsewhere in the Western District)

The Western District of Missouri, as one of the original ten pilot courts for implementation of an arbitration program, began the statutorily required alternative dispute resolution program in late 1985 with the adoption of Local Rule 30. This rule provides for compulsory arbitration in all civil actions where the amount of the damage award could not reasonably exceed $100,000, exclusive of punitive damages. Civil suits filed by prisoners, and administrative appeals are exempted from the rule. In its current form, Rule 30 creates a presumption in all cases that the damage award will be less than $100,000 so that the party wishing to avoid compulsory arbitration must show otherwise. The presumption will not exist if an attorney for the claimant certifies that there is a good faith belief that the amount of the damages will exceed $100,000. Even so, the court can still require the case to go to arbitration if the court concludes that the award will not be more than $100,000.

The arbitration hearing will occur approximately 5 months after the filing of the last original answer. The rule limits the amount of discovery time that is permitted and continuances will not be granted unless discovery has been conducted diligently from the time of filing of the

case.

The arbitration panel is selected at random by the Clerk of the Court. The panel consists of three members but if both parties agree, only one arbitrator need be used. A trial de novo is permitted from the arbitration but the disincentives for doing so are that the party seeking a trial de novo will be required to pay all of the arbitration fees if the judgement at trial is not more favorable than the decision of the arbitrator. The amount of the fees must be posted as bond when the trial de novo is filed. The fees, however, are not substantial. Each arbitrator is permitted to collect seventy-five dollars ($75.00) per arbitration, so the fees could range from seventy-five dollars ($75.00) if one arbitrator is used to a maximum of two hundred twenty-five dollars ($225.00) if three arbitrators are used.

In general, the compulsory arbitration program in the Western District of Missouri is considered a success as evidenced by the fact that 74% of all cases placed in the arbitration program have been disposed of without judicial involvement and only 2% of the cases originally placed in the program have been tried by a judicial officer. Not only has the program been successful in reducing judicial involvement, it has also been successful in promoting extensive involvement from the bar association. Their support for the program is reflected in a study conducted by B. Meierhoefer for the Federal Judicial Conference. Of those attorneys who responded to a questionnaire in that study, 22.2% strongly approved of the program, 58% approved, 12.7% disapproved and 7.1% disapproved strongly. There was not, however, a clear consensus on whether arbitration saved the parties time and reduced costs. Of those attorneys responding to the survey, approximately 63% of them felt that arbitration did save time and reduce cost but approximately 37% of them did not.

The Meierhoefer study did show that of those cases which were resolved by arbitration in the Western District between December 1985 and November 1986, the median number of months from filing to disposition was nine. The median months from filing to disposition in all civil cases resolved by trial as opposed to arbitration was nineteen. One possible interpretation of these statistics is that compulsory arbitration forces the parties to focus on meaningful settlement discussions at an earlier stage in the dispute resolution process.

(c) Early Trial Date

Some judges in the Western District set cases for trial before rather than after the close of discovery. The theory for doing this is that it provides a clear deadline for litigation preparation. The work of the parties is thereby better focused, and the parties have a greater incentive to start discovery quickly and this means that they are more likely to develop the facts necessary to evaluate their case at an early stage in the litigation so that meaningful settlement negotiations can begin promptly. The Advisory Group conducted a study to compare the disposition time in cases with an early trial setting with the disposition time in cases without an early trial setting. Of the twelve categories of cases examined, five categories showed a significant difference between the early trial setting cases and those where trials were set after the close of discovery. There were marginal differences in four of the twelve categories and only three of the categories yielded no significant difference in disposition time.

(d) Interrelationship between Civil and Criminal Docket

There is some evidence to suggest that setting the calendar a year in advance with alternating two weeks of criminal and three weeks of civil cases has the potential for delay. While adequate attention must be given to the speedy trial guidelines which provides only a forty

day window for trying criminal cases, currently it is unusual for any criminal cases to be tried during the second week of the criminal docket. Further investigation should be done to determine if the second week of that criminal docket could be used to move civil cases.

(e) Discovery Motions

Currently, Local Rule 15(m) requires all parties who wish to file a discovery motion to certify that they have conferred with opposing counsel concerning the discovery dispute before the motion is filed. Some Western District judges have also imposed their own rule that no discovery motions may be filed until the parties first confer with the judges by telephone or in chambers. In most cases, these informal conferences resolve the discovery dispute without further action. The Advisory Group conducted a study to compare the disposition time for cases handled by judges with this rule where discovery disputes were handled informally with cases where formal discovery motions were filed. In five of the twelve categories of cases examined, there was a significant difference in disposition times. In four of the twelve cases, there was a marginally significant difference in disposition time and in three of the twelve categories there was no significant difference in disposition time.

(f) Effect of Judicial Resources on Cost and Delay

(1) <u>District Judges</u>

There are currently sufficient district judges to complete the work of the court in a timely and cost effective manner. This is particularly so because of the number of senior judges who are handling a significant number of cases in the Western District. The only time during the period studied by the Advisory Group that it observed excessive delay in the system was when so many cases were filed that the system was simply swamped. These peaks in case filings,

however, were eventually absorbed by the system and the current number of judges appears to be adequate to handle the current case load.

(2) Magistrate Judges

The magistrates in the Western District have historically handled the pre-trial criminal docket. This means that they do more work on the criminal docket and less work on the civil docket than magistrates in other districts. The criminal cases are alternatingly assigned to each magistrate. The magistrates then fit civil matters around the criminal dockets. Because magistrates are assigned primarily to the criminal docket, they have some difficulty managing their time because the demands of the criminal docket are unpredictable. Consequently, it tends to be their civil work which is bumped. The addition of the new Western District magistrate who is expected to begin work in 1992 should create additional capacity to handle civil cases.

The average magistrate consent case takes approximately three to eight days to try and once a case is ready for trial, it can be tried within two to three months. Currently there are not a significant number of cases that are tried by the magistrates. In those areas in the district where a district court judge is not as readily available, there are more cases tried by consent to the magistrate.

There was a general consensus that settlement conferences should be done early in the process to avoid unnecessary costs, and that the magistrates preferred being assigned to a case at an early stage in the proceeding so that the magistrate would be up to speed when action was necessary. Another proposal would have a magistrate assigned to each case as it is drawn by the district judge thereby encouraging more referrals to the magistrate at an earlier stage in the litigation. A suggestion was made that magistrates could be included with the district judges for

periodic case assignments and parties who did not want a case tried by a magistrate would have to affirmatively opt out.

(3) Court Facilities

The physical space situation in this court and in particular in the western division (Kansas City) has reached a position of tight quarters. With judges taking senior status and replacement judges being appointed, chamber areas have diminished to a point that they will be saturated in two to three years. Also, as other units of the court expand available space is nonexistent. To alleviate this situation funding has been requested for fiscal year 1993 for the purpose of site procurement and design of a new judicial facility in Kansas City. It is anticipated that a new courthouse should be ready for occupancy in late 1996.

Facilities are also a problem in the central division (Jefferson City) because of the large number of prisoner cases that are handled there. The cost of transporting parties and witnesses to testify in these civil cases is a major expense and a major security problem.

(4) Court Staff

Adequate staff appears to be available in the Western District to handle the current case load, except a need was identified for a permanent social security law clerk to develop an expertise in social security cases.

(5) Automation

The Western District of Missouri has taken several opportunities and advanced automation as far as the Administrative Office will allow. There are currently two Unisys 5000/92.5 systems for our court. The software on the first Unisys computer includes:

1) ICMS Civil/Criminal: an on-line civil and criminal docketing and case

management system.

2) PACER: a public access system allowing Chambers, attorneys and other members of the public to view docket sheets via a modem.

3) CFS: the Court Financial System. Allows entry of receipts, vouchers, printing checks, tracking BOCs, fines, recording juror attendance and payment of jurors.

4) Personnel: a system for tracking leave usage, training and other statistics for the personnel department.

5) RMS: the records management system for tracking case files by checking them in and out using bar code technology.

The software included on the second Unisys computer includes:

1) ICMS BANCAP: an on-line bankruptcy docketing and case management system.

2) VCIS: the Voice Case Information System, allowing the public to call the computer to hear information about a particular case.

3) Archive: an on-line bankruptcy system storing information about cases that have been closed and removed from BANCAP.

In addition to the Unisys systems, there are over 140 personal computers (PCs) located in Chambers and the Clerk's Office. These PCs are used for word processing, statistics and spread sheet generation, data communications, small databases and appointment calendars. In addition to these traditional functions many of these PCs are used as terminals for the Court's Unisys computers.

The court is in the process of installing a building-wide network connecting PCs in all Chambers with those in the Clerk's Office. Judges, secretaries, law clerks, courtroom deputies

and much of the clerk's office personnel will have access to electronic mail and scheduling through the network.

There is a high demand for training in the Court. In response to the need, a training room has been installed and a computer training committee has been organized to determine the needs, priorities and content of classes to be taught within the District. Members of this committee develop and teach the courses that are available. A few of the classes currently available are an Introduction to Personal Computers, Introduction to Word Perfect and Introduction to Quattro Pro.

During the next year it is expected that the BANCAP application will be ported to a '486 based computer system. The Unisys computer will then be taken over by the Probation Office to run PACTS and the Judgment and Commitment system.

(g) Better Assessment of Impact of Legislation

The Advisory Group attempted to investigate whether more criminal cases are being tried now than in the past because of federal sentencing guidelines. The group speculated that some attorneys might be more willing to go to trial because they already have an idea of what the sentence will be if they lose. An analysis was done charting the median disposition time from filing to disposition for all criminal cases for statistical years 1971 to 1991. The median processing time for the three years prior to the sentencing guidelines was: 1986, 3.3 months; 1987, 3.8 months; and 1988, 3.6 months. In the three years following the adoption of the federal sentencing guidelines, the median filing to disposition times was: 1989, 5.1 months; 1990, 5.8 months; and 1991 7.1 months. While this might indicate that sentencing guidelines are increasing the amount of time needed to dispose of criminal cases, there is currently not

enough data to support an accurate conclusion.

It was also suggested that in future studies the Advisory Group should look at the number of defendants in each criminal case filed as well as the number of cases. The reason for this is that there has been an increase in the number of multiple defendant cases in the Western District and normally these complex cases would be expected to take more time to dispose of. A further investigation of the interrelationship between the civil and criminal docket should also examine whether there has been an increase in the number of trial settings requested in criminal cases. It is not necessarily the time to disposition in criminal cases that is the important statistic to look at to determine the impact of sentencing guidelines. An increase in the number of trials in criminal cases will more likely have a direct impact on the civil docket than the number of criminal cases filed. A future study should also examine whether criminal cases are taking longer to process because the presentence investigation is now more complex because of the sentencing guidelines.

III. Recommendations

The following section contains the recommendations of the Advisory Group, an explanation as to how the recommendations will reduce cost and delay and how the recommendations include significant contributions to be made by the court, the litigants and the litigant's attorneys.

A. Early Assessment Program

The Advisory Group recommends the adoption of the Early Assessment Program which is incorporated in this report as Appendix C. This program was formally adopted by the Western District by general order on October 31, 1991. The program is slated to begin January

1, 1992 and will extend through December 31, 1994 on an experimental basis. An evaluation of the program will be completed at the end of the experimental period to measure its success or failure.

The Early Assessment Program (Program) is designed to encourage the parties to:

1. confront the facts and issues in their case before engaging in expensive and time consuming procedures.

2. engage in early discussion of the issues.

3. consider the views of the opposing side.

4. consider the projected cost of future proceedings in an effort to settle the case before costs and attorney fees have made settlement more difficult.

5. consider methods other than formal litigation as methods for resolving their disputes.

One third of all civil cases filed in the Western Division, except those categories of cases which are excluded by the rule, will be randomly assigned to the Early Assessment Program. A second third of the civil cases will be permitted to participate in the Early Assessment Program if the Program Administrator selects the case and the parties agree, and the third group constitutes a control group which is exempt from any automatic use of alternative dispute resolution. Participants in cases assigned to the control group may specifically request of the Program Administrator to be included in the Program, or agree to use some form of alternative dispute resolution on their own.

The Early Assessment Program will be managed by a Project Administrator. For those cases automatically assigned to the program, the project administrator will hold an early

assessment meeting within thirty (30) days after completion of responsive pleadings. At this first meeting the administrator will advise the parties and their attorneys of the ADR options available to them for resolution of their dispute. The administrator will also determine if additional discovery is needed and if so the administrator will work with the parties to devise an informal plan for sharing important information and conducting key discovery so that meaningful settlement discussions can occur as quickly as possible. The administrator, at this first meeting, will also help the parties to identify areas of agreement and to explore the possibility of settling the case by mediation. A mediation may be initiated immediately by the administrator if the parties agree or at some later date with the administrator serving as the mediator. If this option is not selected, then the parties are required to select one of the following options (a)non-binding arbitration, (b) outside mediator, (c) early neutral evaluation, (d) settlement conference with a magistrate, (e) binding arbitration, or (f) some other ADR procedure. If the parties are unable to agree on an alternative dispute resolution method then the administrator shall select one.

Notice of involvement in the Early Assessment Program will be provided to attorneys of record as well as the parties. The parties are required to attend any assessment session where there is significant discussion about resolving the case. The purpose of requiring the parties to attend is to give them an opportunity to articulate their position and to hear their opposition's position. Party participation also insures that someone will be present who has the authority to enter into stipulations and to commit to settlement agreements. The program requires that the attorney for the party who attends the EAP sessions shall be the attorney who is primarily responsible for handling the trial. This prevents decisions from being delayed for the reason that someone who is a significant participant in the dispute resolution process is not present.

No communication made in connection with or during any program session may be disclosed or used for any purpose in any pending or future proceedings in the court. The administrator and the alternative dispute resolution neutral shall not discuss matters addressed in the program sessions except that they may communicate to the assigned judge or the court en banc about matters of non-compliance with the program. Likewise, information may be gathered to evaluate the early assessment program but the names of the people responding and any information that could be used to identify specific cases or parties shall not be disclosed. No recording of any kind by any one is permitted at any of the meetings or sessions held pursuant to the program, unless all the parties agree or unless the recording is made under non-binding arbitration.

Most of the alternative dispute resolution techniques available to the parties in the program are traditional procedures which have been tried individually elsewhere. One procedure, early neutral evaluation, is of a more experimental nature. In an early neutral evaluation, an experienced neutral will give his or her evaluation of the facts in the case, the likelihood of liability, and a non-binding estimate as to the value of the case. The early neutral evaluation process is intended to minimize cost, to encourage the informal exchange of information and to give the parties an objective evaluation of their case.

If early neutral evaluation is the selected ADR process, the parties first present the evaluator with the essential information about the case and their respective positions. The parties' written evaluation cannot exceed 10 pages. In their statement, the parties may also identify if there are any legal or factual issues which if resolved early in the dispute process would hasten disposition of the case, may identify the discovery that is most needed to get

parties to the point of meaningful settlement negotiations and may identify the person or persons associated with the opposing party who if present at the early neutral evaluations session will most likely increase the prospects of settlement. After the parties' written statements are filed, the early neutral evaluator will typically conduct a two-hour session at which each side briefly presents the factual and legal basis of their respective positions. The neutral may also during this session help the parties to identify areas of agreement and to explore options for settlement.

Those neutrals who participate in the Early Assessment Program shall be paid by the parties with each side contributing one half of the fees. Fees are set by the neutral but cannot exceed the amount which is contained in the neutral's application to the court requesting participation in the program.

B. Rule 13 Motions

The committee recommends that the court adopt the following amendments to Local Rule 13:

RULE 13. MOTIONS

A. Summary Judgment.

(1) Summary Judgment. The court may without a trial enter summary judgment with respect to a claim, counterclaim, cross-claim, third party claim, or an issue substantially affecting such a claim if a party is entitled thereto as a matter of law because of facts not in substantial controversy. In its order granting summary judgment or by separate opinion, the court shall recite the law and facts on which the judgment is based.

(2) Facts Not In Substantial Controversy. A fact is not in substantial controversy if it is stipulated or admitted by the parties who may be adversely affected thereby or if,

considering the relevant admissible evidence shown to be available for presentation at a trial (or the lack thereof) and the burden of production or persuasion and standards applicable thereto, a party would be entitled at trial to judgment as a matter of law with respect thereto under Rule 50.

(3) **Motion and Proceedings Thereon.** A party may move for summary judgment at any time provided the other parties to be affected thereby have made an appearance in the case and have been afforded a reasonable opportunity to discover relevant evidence pertinent thereto that is not in their possession or under their control. Within 28 days thereafter any other party may serve and file a response thereto.

(a) Without argument, the motion shall (1) describe the claims or issues as to which summary judgment should be granted, specifying the judgment sought; (2) briefly state the principles of law relied upon; and (3) recite in separately numbered paragraphs the specific facts asserted to be without substantial controversy and on the basis of which summary judgment should be granted, citing the particular pages or paragraphs of stipulations, admissions, interrogatory answers, depositions, documents, affidavits, or other materials supporting those assertions.

(b) Without argument, a response shall (1) state the extent, if any, to which the party agrees that summary judgment should be granted, specifying with respect thereto the judgment that should be entered; (2) briefly state the principles of law relied upon; (3) following the numbered paragraphs of the motion and with reference to each numbered paragraph, indicate the extent to which the asserted facts recited in the motion are claimed to be false or in substantial controversy, citing the particular pages or

paragraphs of any stipulations, admissions, interrogatory answers, depositions, documents affidavits, or other materials supporting that contention; and (4) recite in separately numbered paragraphs any additional facts (whether or not asserted to be without substantial controversy) which preclude summary judgment, citing the materials evidencing such facts. To the extent a party fails to timely indicate and demonstrate under clause (3) that an asserted fact is false or in substantial controversy, it shall be deemed to have admitted such fact.

(c) If a motion for summary judgment or response thereto is based to any extent on depositions, answers to interrogatories, documentary evidence, or affidavits that have not been previously filed, the party shall append to its motion or response the pertinent portions of such materials. Only with leave of court may a party moving for summary judgment supplement its supporting materials.

(d) Arguments supporting a party's contentions as to the controlling law or the evidence respecting asserted facts shall be submitted by a separate memorandum at the time the party files its motion summary for judgment or response thereto and at such other times as the court may permit.

(e) Unless already ruled, the motion for summary judgment shall be set for oral argument within sixty (60) days after the response is filed, unless oral argument is waived by agreement of the parties. If there has been no ruling on the motion prior to or at the close of the arguments, the judge shall announce to the parties a date certain by which a ruling shall be made.

4. Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is

not rendered upon the whole case or for all the relief asked and a trial is necessary, the court may make an order specifying facts that are without substantial controversy or the controlling law, including the extent to which liability or the amount of damages or other relief is not an issue for trial, and directing such further proceedings in the action as are just. Upon the trial of the action the facts and law so specified shall be deemed established, and the trial shall be conducted accordingly. An order that does not adjudicate all claims with respect to all parties may be entered as a final judgment to the extent permitted by Rule 13(2).

5. **Matters To Be Considered.** In determining whether an asserted fact is without substantial controversy, the court shall consider stipulations, admissions, and to the extent on file, the following: (a) depositions, answers to interrogatories, and affidavits to the extent such evidence would be admissible if the deponent, person answering the interrogatory, or affiant were testifying at trial, provided however than an affidavit must affirmatively show that the affiant would be competent to testify to the matters stated therein; and (b) documentary evidence to the extent such evidence would, if authenticated and shown to be an accurate copy of original documents, to be admissible at trial in the light of other evidence. A party may rely upon its own pleadings only to the extent of allegations therein that are admitted by other parties. Notwithstanding the foregoing, the court shall not be required to consider evidentiary materials not called to its attention pursuant to paragraphs (a) or (b) of subdivision (3).

6. **When Evidence Unavailable.** Should it appear from the affidavits of a party opposing a motion for summary judgment that the party cannot for good cause shown present materials needed to support that opposition, the court may deny the motion, may permit an offer of proof, may order a continuance or permit affidavits to be obtained or depositions to be taken

or discovery to be had or may make such other order as it just.

7. **Powers of Court.**

(A) The court (1) may specify the period during which motions for summary judgment may be filed with respect to particular claims or issues; (2) may enlarge or shorten the time for responding to motions for summary judgment, after considering the opportunity for discovery and the time reasonably needed to obtain or submit pertinent materials; (3) may on its own initiative direct the parties to show cause within a reasonable period why specified facts should not be treated as without substantial controversy and summary judgment based thereon granted; and (4) may conduct a hearing to consider further arguments, rule on the admissibility of evidence, or receive oral testimony to clarify whether an asserted fact is in substantial controversy.

(B) Should it appear to the satisfaction of the court at any time that any motion, response, memorandum, or supporting materials presented pursuant to this rule are presented in violation of Rule 11, the court shall forthwith order the party presenting such materials to pay to the other parties the amount of the reasonable expenses which the filing of the materials caused the other parties to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

B. All Other Motions. Unless oral argument is ordered by the Court, motions will be ruled upon the written motion, supporting suggestions, opposing suggestions and reply suggestions.

(1) **Suggestion in Support of Motions.** The moving party shall serve and file with the party's motion a brief written statement of the reasons in support of the motion.

(2) **Suggestions in Opposition.** Within twelve days from the time the motion is filed, each party opposing the motion shall serve and file a brief written statement of the reasons in opposition to the motion.

(3) **Reply Suggestions.** Within twelve days from the time the suggestions in opposition are filed, a reply brief may be filed.

(4) **Length of Suggestions.** Suggestions shall be concise. A party's primary authorities shall be emphasized.

(5) **Oral Arguments.** A request for oral arguments shall be clearly stated in the motion or written suggestions.

* * * * *

Based on its investigation, the Advisory Group concludes that dispositive motions are not being given sufficient priority. There are three primary reasons for delays in rulings on these dispositive motions. In some cases the dispositive motions are filed shortly before trial making it difficult for the court to process them in a timely manner. The proposed rule permits the court to specify the period during which such motions may be filed. The second reason why there is a delay in ruling on these dispositive motions is that there is not a uniform format which clearly identifies the evidence available to show that there is no genuine issue of material fact. The proposed rule identifies with specificity the contents of a motion for summary judgment and makes it clear that the facts asserted to be without substantial controversy must be stated in separately numbered paragraphs and the parties are required to cite the pages or paragraphs of relevant materials which support their assertions. Likewise, under the rule, the court will state the law and facts on which the judgment is based. The third reason for delay is the failure of

the court to rule quickly on motions for summary judgment. The rule provides that unless the motion has been disposed of, oral arguments shall be held within sixty (60) days after the response is filed and at the close of arguments the judge will announce to the parties a date certain by which a ruling shall be made. If the parties all agree that oral argument is not necessary, the argument can be waived.

C. **Early Trial Setting**

The Advisory Group recommends the adoption of Local Rule 15-G(5) to state as follows:

> (5) Estimate the number of days necessary to try the case, with reasons supporting the estimate. Designate the date for trial of the case.

In addition, Form A of Local Rule 15 (Proposed Scheduling Order) shall be modified as follows:

V.

1. Estimate the number of days necessary to try the case _____. This number of days is necessary because (state reasons why this number of days is necessary for this case):

2. The case should be set for trial on _____.

The justification for this rule change is the substantial evidence showing that in cases where an early trial setting is designated, the case is disposed of more quickly. Hopefully, this will encourage parties to start discovery early and to focus quickly on the most important issues

in the case, so that meaningful settlement negotiations will not be postponed.

D. Early Designation of Expert Witness

The Advisory Group recommends that the court amend Local Rule 15 to require the parties in the scheduling order to designate their expert witnesses by a date certain and that any depositions of expert witnesses shall be completed by a date certain.

The Advisory Group was concerned that if an early trial setting is mandatory, the parties might still delay identifying experts until late in the litigation process. This makes scheduling of expert discovery hectic and makes it difficult for both parties to prepare their experts to respond to the positions taken by their opponent's experts.

E. Discovery Disputes

The Advisory Group recommends the adoption of a rule which requires that no discovery motion shall be filed until the parties conduct a telephone conference with the judge to attempt to resolve the discovery dispute informally. If the discovery dispute cannot be resolved by telephone conference, the parties will be permitted to file motions and supporting documentation. The purpose of this rule is to encourage quick resolution of discovery disputes without the cost of formal written materials and without the delays attendant with the exchange of written motions, hearings, etc. The Advisory Group identified substantial support among attorneys and court personnel for the efficacy of this procedure and the statistical evidence gathered would seem to indicate that quick and informal resolution of discovery disputes moves cases more quickly.

F. Social Security Clerk

The Advisory Group recommends that the Court hire a permanent social security law

clerk with a medical background to process all social security appeals. The evidence gathered by the group suggests that social security appeals require a level of medical expertise that is difficult for the average law clerk to develop during his or her tenure with the court.

G. Elimination of Social Security Appeals From the District Court

The Advisory Group recommends that social security appeals be sent directly from the administrative agency to the circuit court of appeal. The group concludes that much of the work done in the district court is duplicative because the district court is merely reviewing the record that was developed at the administrative level and the litigants are still permitted a second appellate review at the circuit level. A direct appeal to the circuit level would also speed the resolution of social security disputes which involve parties in particular need of a quick and low-cost resolution.

H. Video Equipment

The Advisory Group recommends the purchase of the video equipment necessary to link the federal courthouse in Jefferson City with the Missouri State Penitentiary. The justification for this purchase is that it will permit, when appropriate, parties and witnesses in civil cases filed by prisoners to testify or appear from the Missouri State Penitentiary rather than being transported to the federal courthouse in Jefferson City.

I. Post Trial Motions

The Advisory Group recommends the adoption of a rule to provide that post trial motions are deemed to be overruled if they have not been decided in ninety (90) days after the filing of the motion. This is a rule which has been effectively used in the Missouri state court system to clearly identify the time when motions are deemed to be overruled so that a timely appeal may

be filed. All evidence gathered by the Advisory Group suggests that clear deadlines for litigants and the courts are more likely to reduce delay in the system.

IV How the Recommendations of the Advisory Group Comply with Section 473 of the Civil Justice Reform Act of 1990.

A. Principles of Litigation Management and Cost and Delay Reduction (Section 473(a) Civil Justice Reform Act of 1990)

1. Individualized Case Management.

The Western District of Missouri does not utilize formalized "tracks" for cases at various levels of complexity. It is the opinion of the Advisory Group, however, that the scheduling order and the judicial management of litigation contemplated by Local Rule 15 provides an adequate vehicle for the judge to develop an individualized case management plan at an early stage in the litigation. Furthermore, several other current rules of the court make differentiations based upon the category of case. For example, since 1985 Local Rule 30 has provided for compulsory arbitration in all cases under $100,000 except cases involving appeals from administrative agencies or civil rights cases in which the plaintiff is incarcerated. Rule 15, which requires a scheduling order in civil cases, exempts administrative appeals, prisoner cases where the validity or conditions of confinement are being challenged, and any action challenging the validity of a criminal conviction or sentence. The accelerated docket is another example of differential treatment of civil cases in the Western District. The accelerated docket is currently being used for all cases where a jury trial of less than four days will be needed. The more complex cases which require more than four days are processed individually. Finally, the new Early Assessment Program which is found in Appendix C of this report takes into account the

individualized needs of certain cases by exempting multi-district cases, social security appeals, bankruptcy, and habeas corpus actions, prisoner pro se cases and other pro se cases where motions for appointment of counsel are pending as well as class actions. The Early Assessment Program also provides a mechanism for the program administrator to evaluate each case individually to determine if alternative dispute resolution is appropriate based on the nature of the dispute and the parties involved.

2. Early and Active Judicial Control of the Pre-trial Process

a. Assessing and Planning Progress of the Case

First, current Local Rule 15, provides for significant and early involvement of the judges in the planning and oversight of the litigation process. Second, the Early Assessment Program which has been adopted by the Western District provides for a detailed procedure by which the program administrator at an early state in the litigation assesses the dispute and makes a referral to an alternative dispute resolution procedure. That rule also provides detailed instructions for closely managing the progress of the case through the early assessment process. Third, one of the specific ADR procedures which is authorized under the Early Assessment Program, the early neutral evaluation, is a structured assessment process in which the neutral provides a decision about the factual disputes in the case, questions of liability and amounts of damages.

b. Early and Firm Trial Dates

Proposed Rule 15G(5) will require the parties in their proposed scheduling order to identify when the case will be tried and the reasons why that date has been chosen. This rule permits the attorneys to individually explain why a certain amount of time will be necessary for trial preparation and provides an opportunity for the judge to evaluate this information in setting

a firm trial date.

c. **Reasonable and Timely Discovery.**

Local Rule 15 currently provides for extensive regulation of the discovery process. It requires discovery to commence immediately and does not excuse counsel from complying with court orders or rules concerning discovery merely because motions are pending in the case. The rule also requires the party to identify the date by which all discovery will be completed and to describe the discovery that each party intends to initiate prior to the close of discovery. Local Rule 15 also limits the number of interrogatories which may be filed to 20 unless leave of court is first obtained.

The Advisory Group has recommended the adoption of a new rule which requires that any party involved in a discovery dispute must engage in a telephone conference with the court and opposing counsel to try to resolve the dispute before any discovery motions may be filed. This new rule will better insure compliance with appropriate discovery in a timely fashion. The Early Assessment Program also, contains numerous provisions to assist the parties to focus on the most important matters to be discovered and provides a mechanism for the informal exchange of information.

d. **Motion Deadlines and Dispositions**

Currently Rule 15G provides that the scheduling order shall contain the date by which motions for joining parties, motions to amend pleadings, motions for discovery, and dispositive motions shall be filed. New Rule 13 which has been proposed by the Advisory Group also contains a provision authorizing the court to limit the time in which motions for summary judgments can be filed and requires in certain cases that a hearing be held within sixty (60) days

after the response to the summary judgment motion is made. If the court does not rule on the motion at the end of that hearing, the court must set a date certain by which the motion will be ruled.

The Advisory Group also believes that its proposed rule requiring telephone conferencing in discovery disputes will tend to hasten the resolution of discovery disputes. First, the dispute will come to the attention of the court more quickly because formal motions will not have to first be exchanged. Second, it is expected that most of the discovery disputes will be resolved during the telephone conference so there will be no delay in ruling on the motions in most cases. This second conclusion is based on the statistical studies conducted by the group.

3. Management of Complex Cases

The procedures previously identified in this report apply fully to complex cases. It is the opinion of the Advisory Group that the information developed in the pretrial conference and pre-trial order required by Rule 15 permits the court to adequately assess the case's complexity so as to tailor a management plan consistent with the individual characteristics of the case.

4. Voluntary Exchange of Discovery

The Advisory Group's proposed amendment to Local Rule 15 provides that in the scheduling order the parties are required to designate their expert witness on or before a date certain and that any depositions of expert witnesses shall be completed by a date certain.

It is the Advisory Group's Early Assessment Program that most specifically address the problem of voluntary exchange of discovery information. At the first assessment meeting the administrator determines if additional discovery is needed and then works with the parties to devise a plan for sharing important information and conducting key discovery that will equip

them expeditiously to enter meaningful settlement discussions. The non-binding arbitration described in the Early Assessment Program also provides for mandatory exchange of certain information prior to the arbitration hearing and the early neutral procedure requires a simple written statement not to exceed ten (10) pages which contains the facts and law essential to each parties' case and identifies additional discovery that will be key to future settlement negotiations and which persons will be key to future settlement negotiations.

5. Conservation of Judicial Resources

Current Local Rule 15 requires every discovery motion, unless otherwise ordered, to contain a certification that the counsel for the moving party has conferred or has made a reasonable effort to confer with opposing counsel concerning the dispute. In addition, the Advisory Group has proposed the adoption of a rule which will prohibit any party from filing a discovery motion until they have first participated in a telephone conference with the judge and opposing counsel in an effort to dispose of the discovery dispute informally.

6. Alternative Dispute Resolution Programs

The Early Assessment Program which is attached to this report as Appendix C contains an extensive proposal for the use of ADR programs in the Western District.

B. Voluntary Litigation Techniques (Section 473(b) Civil Justice Reform Act of 1990)

1. Joint Discovery Plan

Local Rule 15G and H already provide for a mandatory joint discovery plan unless otherwise ordered by the court. The Western District's Early Assessment Program also requires the parties to engage in joint discovery planning as part of the first early assessment meeting and later if certain ADR procedures are implemented.

2. Adequate Authority

Current Rule 16 requires that the attorney who will actually handle the trial shall participate in all pre-trial conferences unless excused by the court. The participants in the pre-trial conference shall have authority to agree to uncontroverted facts and to the scope and scheduling of discovery.

3. Early Neutral Evaluation Program.

The Early Assessment Program which is attached to this report as Appendix C provides for the presentation of the legal and factual basis of the case to the program administrator at a non-binding conference conducted early in the litigation. It also includes an early neutral evaluation procedure as one of the ADR options that parties can participate in.

4. Party Participation

The Western District's Early Assessment Program has an extensive provision dealing with the involvement of parties at relevant stages in the dispute resolution process. It provides specifically that the parties themselves shall attend all program sessions unless their attendance has been excused by the program administrator. If the party is not a natural person then someone must attend on behalf of the party who has the authority to enter into stipulations, has reasonable settlement authority and has a sufficient stature in the organization to have direct access to those who make the ultimate decision about settlement. Outside counsel cannot satisfy the requirements of this provision

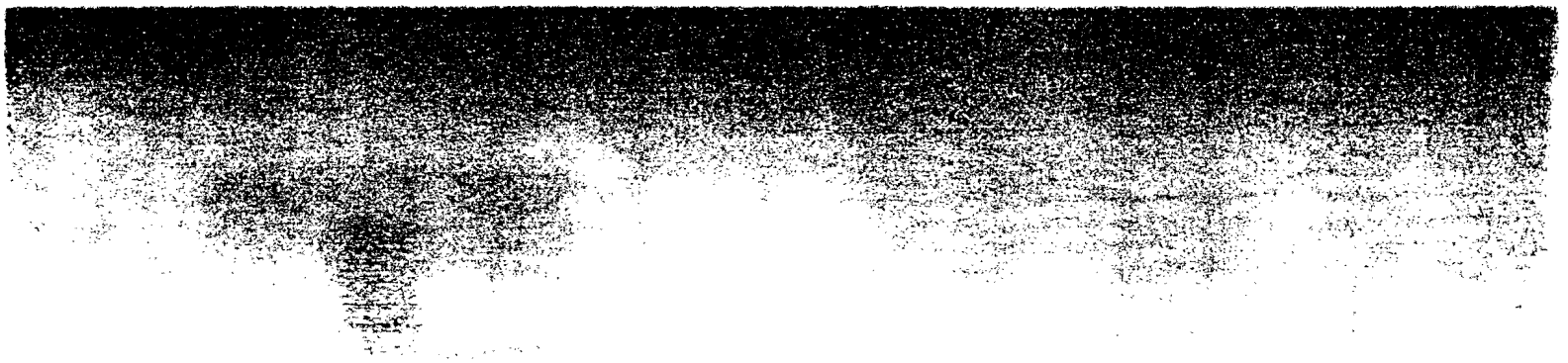
5. Other Recommended Features.

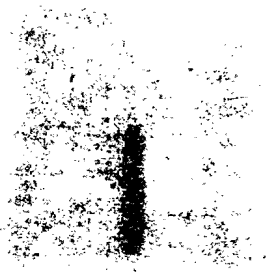
The Advisory Group has no further recommendations at this time other than those formally listed as recommendations in Section III of this report. It is the intention of the

Advisory Group to continue its work after the submission of this report and it may be that the additional recommendations will be forthcoming.

C. Development of a Civil Justice Expense and Delay Reduction Plan

The Advisory Group presents this report and the recommendations contained herein to the judges of the Western District of Missouri for their consideration in formulating a Civil Justice Expense and Delay Reduction Plan.





APPENDIX A

Local Rules

U.S. District Court

Western District of Missouri

RULE 3. FILES AND FILING

A. **Flat Filing.** In order that the files in the Clerk's office may be kept under the system commonly known as "flat filing," all papers presented to the Clerk or judge for filing shall be flat, unfolded and securely fastened at the top.

B. **Non-filing of Discovery Documents.** The following discovery documents:

1. Depositions under Rule 30 and 31, Federal Rules of Civil Procedure;

2. Interrogatories, and answers thereto, under Rule 33, Federal Rules of Civil Procedure;

3. Requests for production or inspection, and responses thereto, under Rule 34, Federal Rules of Civil Procedure;

4. Requests for admissions, and responses thereto, under Rule 36, Federal Rules of Civil Procedure

shall be served upon opposing counsel and parties, but shall not be filed with the Court, except upon order of the Court. However, a certification of service shall be filed and in respect to depositions, the court reporter, when the transcript is completed, shall file a certificate showing the name of the deponent, the date of taking, the name and address of the person having custody of the original transcript, and the charge made for the original.

If relief is sought under any of the Federal Rules of Civil Procedure, copies of only the discovery matters in dispute shall be filed with the Court contemporaneously with any motion filed under said rules.

C. **Withdrawal of Files.** Papers on file in the office of the Clerk may not be removed except pursuant to a subpoena from any Federal or State Court directing their production or on order of the Court.

Whenever papers are withdrawn, the person receiving them shall leave with the Clerk a signed receipt identifying the paper taken and agreeing to return the same in the same condition as received and within the period allotted.

D. **Size of Paper.** All papers filed in connection with any proceeding shall be filed on paper 8½ inches in width and 11 inches in length.

E. **Duplicate Filing.** All papers, except depositions and transcripts, required to be filed with the Court shall be filed in duplicate.

(Former Rule 2 adopted Jan. 16, 1946, effective Feb. 1, 1946; amended Jan. 1, 1958, effective Jan. 1, 1958; Nov. 16, 1962, effective Nov. 16, 1962; Dec. 15, 1965, effective Dec. 15, 1965; Dec. 19, 1977, effective Jan. 1, 1978. Redesignated as current Rule 3 July 20, 1982, effective Jan. 1, 1983; amended March 12, 1986, effective April 1, 1986.)

RULE 4. COURT ROOM DECORUM

A. **Addressing the Court.** Counsel shall stand while addressing the Court, and while examining witnesses unless otherwise permitted by the Court.

B. **Examining a Witness.** Not more than one counsel for each litigant shall be entitled to examine any one witness without permission of the Court.

(Former Rule 18 adopted Jan. 26, 1946, effective Feb. 1, 1946. Redesignated as current Rule 4 July 20, 1982, effective Jan. 1, 1983.)

RULE 5. "FREE PRESS—FAIR TRIAL" DIRECTIVES

A. **Duties of Attorneys.** It is the duty of the attorney or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which an attorney or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

With respect to a grand jury or other pending investigation of any criminal matter, an attorney participating in or associated with the investigation shall refrain from making any extra-judicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, an attorney or law firm associated with the prosecution or defense shall not release or authorize the release

of any extra-judicial statement which a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning.

1. The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the attorney or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, an attorney associated with the prosecution may release any information necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present, but these prohibitions only apply when the release of such information poses a serious and imminent threat of interference with the fair administration of justice;

2. The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

3. The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

4. The identity, testimony, or credibility of prospective witnesses, except that the attorney or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law, and the release of any such information does not pose a serious and imminent threat of interference with the fair administration of justice;

5. The possibility of a plea of guilty to the offense charged or a lesser offense;

6. Any opinion as to the accused's guilt or innocence or as to the merits of the case, when such an opinion would pose a serious and imminent threat of interference with the fair administration of justice.

The foregoing shall not be construed to preclude the attorney or law firm during this period, in the proper discharge of the attorney's or the firm's official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against the accused.

During a trial of any criminal matter, including the period of selection of the jury, no attorney or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication if such communication poses a serious and imminent threat of interfering with the fair administration of justice, except that the attorney or law firm may quote from or refer without comment to public records of the court in the case.

Nothing in this Rule is intended to preclude the formation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearing or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any attorney from replying to charges of misconduct that are publicly made against that attorney.

B. Duties of Court Personnel. No supporting personnel connected in any way with this Court or its operation, including among others, marshals, deputy marshals, court clerks or deputies, bailiffs, secretaries, court reporters and employees or subcontractors retained by the court-appointed official reporters, shall disclose to any person, without specific authorization by the Court, any information to a pending grand jury proceeding or criminal case that is not a part of the public records of the Court. This prohibition applies specifically to divulging information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

C. Special Order in Certain Cases. In a widely publicized or sensational case, the Court, on motion of any party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses which might interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

(Former Rule 24 adopted April 1, 1969, effective April 1, 1969; amended Jan. 22, 1971, effective Jan. 22, 1971. Redesignated as current Rule 5 July 20, 1982, effective Jan. 1, 1983.)

RULE 6. PHOTOGRAPHING; BROADCASTING AND TELEVISING IN COURTROOMS AND ENVIRONS

A. When Photographing and Broadcasting Are Not Permitted. The taking of photographs in any

courtroom or its environs in this district, or radio or television broadcasting (or making of audio or video tapes) in any courtroom or its environs, during the progress of or in connection with judicial proceedings, including proceedings before a United States Magistrate, whether or not court is actually in session, is prohibited except as hereinafter provided, and regardless of whether or not such hearing or proceeding takes place on federal property, in the private office of the chambers of a judge or magistrate or otherwise.

B. When Photographing and Broadcasting Are Permissible. Still or motion pictures, and audio and video tapes, of ceremonies and interviews, including administration of oaths to executive, legislative, and judicial officers, may be made with portable hand-held equipment in the press room and in the executive, legislative, and judicial officers' quarters and chambers located in the courthouse and environs, with leave of the officer in charge thereof; provided that there shall be no simultaneous broadcast or telecast thereof and provided further that the ceremonies and interviews are not connected with any judicial proceedings. "Judicial proceedings," as used herein, shall include all judicial proceedings, whether civil or criminal, and whether pending, on appeal, or terminated.

C. Definition of "Environs". "Environs," as used in this rule, shall include the entire United States Courthouse at 811 Grand Avenue, Kansas City, and the entire United States Courthouse at Jefferson City, St. Joseph, Springfield, and Joplin, including but not limited to post offices, offices, and driveways, parking spaces, steps, docks, and entrances to and exits from said buildings. Unless specifically ordered by a district judge in respect to a particular case, the United States Marshal may permit photographers with hand-held equipment in the back driveway parking areas when, in his judgment, there is no security problem involved.

D. Non-Applicability of Rule. This rule shall not apply to legislative hearings, naturalization or other ceremonial proceedings or to recordings made for future use in judicial proceedings by official court reporters or other persons authorized by the presiding judge.

(Former Rule **25** adopted Feb. 19, 1969, effective April 1, 1969; amended July 7, 1971, effective Aug. 1, 1971; Sept. 25, 1972, effective Oct. 1, 1972; May 21, 1973, effective May 21, 1973. Redesignated as current Rule 6 July 20, 1982, effective Jan. 1, 1983.)

RULE 7. FILING OF COMPLAINTS IN SOCIAL SECURITY AND BLACK LUNG CASES

Complaints filed in civil actions pursuant to (1) Section 205(g) of the Social Security Act [42 U.S.C. 405(g)] for the benefits under Titles II, XVI, and XVIII of the Social Security Act, or (2) Part B, Title IV of the Federal Coal Mine Health and Safety Act of 1969, shall be in the form prescribed by the Court and contain, in addition to what is required by Rule 8(a), Federal Rules of Civil Procedure, the following information:

1. The social security number of the worker on whose wage record the application for benefits was filed (who may or may not be the plaintiff) when the action arises out of a claim for retirement, disability, health insurance, black lung, or survivors benefits.

2. The social security number of the plaintiff when the action arises out of a claim for supplemental security income benefits.

The complaint forms to be used in these civil actions are available in the Clerk's office in order to expedite their processing.

(Former Rule 43 adopted Dec. 13, 1976, effective Dec. 13, 1976. Redesignated as current Rule 7 July 20, 1982, effective Jan. 1, 1983.)

RULE 8. RECEIVERSHIPS

In the exercise of the authority vested in the District Courts by Rule 66 of the Federal Rules of Civil Procedure, this rule is promulgated for the administration of estates by receivers or by other similar officers appointed by the Court. In respects other than administration of the estate, any civil action in which the appointment of a receiver or other similar officer is sought, or which is brought by or against such an officer, is governed by the Federal Rules of Civil Procedure and by these rules.

Nothing in this rule is intended to affect or repeal any special provision made by the General or Special Bankruptcy Rules.

A. Inventories. Unless the Court otherwise orders, a receiver or similar officer, as soon as practicable after appointment and not later than 30 days after said person has taken possession of the estate, shall file an inventory of all the property and assets in said person's possession or in the possession of others who hold possession as said person's agent, and, in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by said person but claimed and held by others.

B. Reports. Within three months after the filing of the inventory, and at regular intervals of three months thereafter the receiver or similar officer shall file a report of receipts and expenditures and of acts and transactions undertaken in an official capacity.

C. Compensation of Receivers, Attorneys, and Others. The compensation of receivers or similar

officers, of their counsel, and of all those who may have been appointed by the Court to aid in the administration of the estate shall be ascertained and awarded by the Court in its discretion. Such an allowance shall be made only on such notice to creditors and other persons in interest as the Court may direct. The notice shall state the amount claimed by each applicant.

D. **Administration of Estates.** In all other respects the receiver or similar officer shall administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the Court.

(Former Rule 17 adopted Jan. 26, 1946, effective Feb. 1, 1946. Redesignated as current Rule 8 July 20, 1982, effective Jan. 1, 1983.)

RULE 9. FILING FEES

A. **Suit by Poor Person.** (Request to proceed in forma pauperis.)

1. An individual may request leave to commence a civil action without being required to prepay fees or costs by filing with the complaint an affidavit requesting leave to proceed in forma pauperis. The affidavit should be in the form provided by the court. Alternatively the affidavit must contain the same information called for by the court approved form.

2. The Court or Clerk of Court shall review the affidavit together with any other information filed with the Court that is relevant to plaintiff's ability to prepay filing fees and costs. If the applicant is confined in a municipal, state or federal institution, the Clerk of Court may request a copy of the applicant's inmate account if it is not filed with the affidavit. Also, the defendant may be given an opportunity to show cause why plaintiff should not be granted leave to proceed in forma pauperis.

3. The Court or Clerk of Court shall determine whether the applicant is capable of paying the initial filing fee. A payment will not be required if to do so will cause the plaintiff to give up the basic necessities of life. If the applicant is incarcerated, and if the applicant's average monthly income or the balance in the inmate account is $400.00, the applicant shall be deemed capable of paying the complete filing fee unless some good reason is shown to the contrary. In calculating the average monthly income, the Court or Clerk of Court shall exclude gifts of $5.00 or less, unless the applicant has received a sufficient number of such gifts that it is reasonable to include them in the applicant's average income. If the Court or Clerk of Court concludes the applicant is capable of paying the initial filing fee, the Court may require the fee to be paid before the case proceeds or may grant the applicant leave to pay the filing fee in not more than six (6) consecutive monthly installments. If the Court or Clerk of Court concludes that monthly installments are appropriate, the case shall be filed provisionally, but shall not be stayed pending payment of the remainder of the filing fee. However, if a party does not pay the filing fee, the complaint may be dismissed by the Court for that reason. The Court may grant a person leave to proceed in forma pauperis after they have paid the filing fee.

4. If the Court or Clerk of Court concludes that the applicant is not capable of paying the full filing fee, the Court may, except in cases filed under 28 U.S.C. Sections 2254 and 2255, require the payment of a partial filing fee. The fee required should not cause the applicant to give up the basic necessities of life. If the applicant is confined in an institution which provides the basic necessities of life, a partial filing fee of thirty percent (30%) of the applicant's average monthly income for the six (6) months immediately preceding the filing of the complaint may be imposed. In calculating the average monthly income, the Court or Clerk of Court shall exclude gifts of $5.00 or less unless the applicant has received a sufficient number of such gifts that it is reasonable to include them in the applicant's average income. A partial filing fee of less than $5.00 shall not be imposed. When the Court orders payment of a partial filing fee, immediate payment of the full amount may be required, or monthly installments over a period of not to exceed six (6) consecutive months may be allowed. If a partial filing fee is to be paid over a number of consecutive months, the case shall be filed provisionally, and shall not be stayed pending payment of the partial filing fees. The applicant will be granted leave to proceed in forma pauperis; however, the failure of a party to make a required payment will justify dismissal of the lawsuit.

5. If a filing fee is imposed on a person who has requested leave to proceed in forma pauperis, the applicant will be allowed twenty (20) days after being notified of the fee to file written objections to the fee, to correct the information that may have been considered in setting the fee, or to demonstrate special circumstances justifying the payment of a lower fee. The Court will review promptly the objections and rule on the application for leave to proceed in forma pauperis.

6. In forma pauperis status may be reviewed and rescinded by the Court at any time. Some grounds for review and recision would be if the party becomes capable of paying the complete filing fee or if the Court determines the case is frivolous, or if the Court determines that the applicant has willfully misstated information in the application for leave to proceed in forma pauperis.

7. An application for in forma pauperis status shall constitute consent by the applicant and counsel that a portion of any recovery, as directed by the Court, shall be paid to the Clerk, who will pay therefrom all unpaid fees of counsel and costs taxed against the plaintiff.

(Former Rule 9 adopted Jan. 26, 1946, effective Feb. 1, 1946; amended Jan. 1, 1958, effective Jan. 1, 1958. Redesignated as current Rule 9 July 20, 1982, effective Jan. 1, 1983; amended Aug. 19, 1986; amended and effective Dec. 12, 1986; Feb. 21, 1989.)

RULE 10. FILING BY ATTORNEYS OF A NOTICE IN EACH CIVIL CASE

Any attorney filing a pleading in a civil action asserting a claim for relief, or an amended pleading in a civil action asserting a new claim for relief, shall complete and file a notice with the district court Clerk in the form currently prescribed by the Administrative Office of the United States Courts and available in the Office of the Clerk.

(Former Rule 35 adopted Feb. 24, 1973, effective April 24, 1973; amended Jan. 2, 1975, effective Jan. 20, 1975. Redesignated as current Rule 10 July 20, 1982, effective Jan. 1, 1983.)

RULE 11. DEPOSITIONS

A. Public Inspection. Except as otherwise provided by law or court order, any deposition when filed in the Clerk's office shall be deemed to be a public record and shall be available for public inspection to the same extent as any other paper in the case file.

B. Examining a Witness. Except as provided by law, ordered by the Court, or pursuant to an agreement of the parties, not more than one counsel for each litigant shall be entitled to examine any one witness during depositions.

(Former Rule 15 adopted Jan. 16, 1946, effective Feb. 1, 1946. Redesignated as current Rule 11 July 20, 1982, effective Jan. 1, 1983.)

RULE 12. COURT REPORTER'S TRANSCRIPTS

When any official Court Reporter has completed the preparation of any transcript of any proceeding in this Court, the Court Reporter shall file in the office of the Clerk a certified copy thereof, as required by Section 753(b), Title 20, United States Code. The Clerk shall place the transcript with the file of other papers relating to the proceeding, and shall make it available for public use in the same manner and to the same extent as any other paper in the case file. The transcript may be used in accordance with applicable statutes and Rules of Court for the preparation or perfection of appeals; but when such use requires the release of the transcript, or portions thereof, from the Clerk's office, and it is so used, the party or attorney requesting its use (unless proceeding *in forma pauperis*) shall pay to the Reporter a fee therefor at the rate fixed by the Judicial Conference of the United States for the portions of the transcript desired for use in the preparation or perfection of an appeal. The Clerk shall not release such file copy of the transcript until the Clerk has received evidence in the form of a receipt from the Reporter, or otherwise, that the Reporter has been paid for such transcript, or portions thereof, so released.

(Former Rule 19 adopted Jan. 1, 1958, effective Jan. 1, 1958. Redesignated as current Rule 12 July 20, 1982, effective Jan. 1, 1983.)

RULE 13. MOTIONS

A. Motions. Unless oral argument is ordered by the Court, motions will be ruled upon the written motion, supporting suggestions, opposing suggestions and reply suggestions.

B. Suggestions in Support of Motions. The moving party shall serve and file with the party's motion a brief written statement of the reasons in support of the motion.

C. Suggestions in Opposition. Within twelve days from the time the motion is filed, each party opposing the motion shall serve and file a brief written statement of the reasons in opposition to the motion.

D. Reply Suggestions. Within twelve days from the time the suggestions in opposition are filed, a reply brief may be filed.

E. Length of Suggestions. Suggestions shall be concise. A party's primary authorities shall be emphasized.

F. Oral Arguments. A request for oral arguments shall be separately stated at the conclusion of the motion or written suggestions.

(Former Rule 10 adopted Jan. 26, 1946, effective Feb. 1, 1946; amended Jan. 1, 1958, effective Jan. 1, 1958. Redesignated as current Rule 13 July 20, 1982, effective Jan. 1, 1983; amended and effective Dec. 12, 1986.)

RULE 14. JURY

A. Demand for Jury Trial. In all cases where a demand for a jury trial is made, the demand shall be separately stated at the conclusion of the appropriate pleading, or may be made in a separate document endorsed "Demand for Jury Trial".

B. Challenge to Jury Panel. In civil cases each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purpose of making challenges, or the Court may allow additional peremptory challenges and permit them to be

exercised separately or jointly. Any party authorized to make a request for additional peremptory challenges to the array or panel of jurors called in such cases shall make such request, in writing, at least thirty days before the date of trial setting. Such request shall be filed with the Clerk of the Court, who shall immediately notify the judge of the Court before whom the cause is set for trial, that the Court might act upon the request and, if granted arrange for adding to the panel the additional jurors necessary to provide for the peremptory challenges allowed.

A failure by any party to make such request in writing and within the time herein specified shall be deemed a waiver of the right to request additional peremptory challenges.

C. **Six Member Juries.** Unless otherwise specially ordered by the court in a designated civil action or consolidated actions, juries shall consist of six members in all civil cases, including but not limited to complex cases.

(Former Rule 9 adopted Jan. 26, 1946, effective Feb. 1, 1946; amended Jan. 1, 1958, effective Jan. 1, 1958; July 1, 1960, effective July 1, 1960; June 13, 1969, effective June 13, 1969. Redesignated as current Rule 14 July 20, 1982, effective Jan. 1, 1983.)

RULE 15. CIVIL CASES—SCHEDULING ORDER—DISCOVERY

A. General Principles. Unless otherwise ordered, this Local Rule is applicable to all civil cases pending in this district, except for the cases exempted by Local Rule 15B. Counsel are responsible for completing pretrial discovery in the shortest time reasonably possible with the least expense and without the necessity of judicial intervention.

Rule 16(b), Federal Rules of Civil Procedure, requires that a scheduling order shall be entered in every case, except those specifically exempted, limiting the time (1) to join other parties and to amend the pleadings; (2) to file and hear motions; and (3) to complete discovery. A scheduling order must be entered within 120 days after filing of the complaint unless service is accomplished at a time which makes entry of a scheduling order within 120 days unrealistic. Counsel should have the initial responsibility for suggesting reasonable dates for the scheduling order.

Upon completion of discovery, post discovery pretrial procedures will be scheduled (Local Rule 17) and the case will be set for trial on the next joint civil jury trial docket (Local Rule 18) or will be given a special trial setting. Post discovery pretrial procedures and the trial setting will be coordinated whenever possible.

B. Actions Exempt From These Procedures. The following categories of actions are exempted from compliance with these procedures unless otherwise directed by the Court:

(1) Any action commenced by a plaintiff without an attorney unless an attorney enters an appearance for plaintiff within 120 days after the complaint is filed.

(2) Any action filed by or on behalf of a convicted prisoner, a pretrial detainee, or any other person confined in a municipal, state, or federal institution challenging the validity or the conditions of confinement.

(3) Any action challenging the validity of a criminal conviction or sentence.

(4) Any action coming to this court on the record from another court or an administrative agency, e.g., bankruptcy and social security appeals.

C. Discovery Shall Commence Immediately. Discovery should commence at the earliest time permitted by the Federal Rules of Civil Procedure. Counsel who fail to investigate their cases and who fail to commence discovery at the earliest possible time may have difficulty in participating intelligently in fashioning the scheduling order required by Rule 16(b), Federal Rules of Civil Procedure.

D. Filing of Motions Does Not Automatically Stay Discovery. Absent an order of the Court to the contrary, the filing of a motion, including a discovery motion, a motion for summary judgment, or a motion to dismiss, does not excuse counsel from complying with this rule and any scheduling order entered in the case.

E. Plaintiff's Counsel Shall Take Lead in Preparation of Proposed Scheduling Order. After consultation with all counsel, counsel for plaintiff is responsible for preparing a draft of the proposed scheduling order contemplated by this rule. The draft prepared by plaintiff's counsel shall be presented to counsel for all other parties for additions and modifications. Counsel should fully and openly communicate with each other so that a joint proposed scheduling order is submitted. If all counsel do not agree on a proposed scheduling order, separate proposed scheduling orders should not be filed. Disagreements concerning a proposed scheduling order, if unresolved by the good faith efforts of counsel, should be stated in the proposed scheduling order.

F. Sanctions for Failing to Cooperate in Preparing a Proposed Scheduling Order. The failure of a party or a party's counsel to participate in good faith in the framing of the proposed scheduling order contemplated by this rule and Rule 16(b) may result in the imposition of appropriate sanctions. See Rules 16(f) and 37(g), Federal Rules of Civil Procedure.

G. **Content of the Proposed Scheduling Order.** Within 100 days after the complaint is filed, the parties shall file a proposed scheduling order which shall:

(1) Propose a date limiting joinder of parties;

(2) Propose a date limiting the filing of motions to amend the pleadings (It is suggested that counsel consider in most cases a date approximately 180 days after the filing of the complaint.);

(3) Propose a date limiting the filing and hearing of motions (It is suggested that counsel in most cases consider proposing that (a) all discovery motions be filed on or before the date proposed for the completion of discovery; and (b) subject to the provisions of Rule 12(h)(2), Federal Rules of Civil Procedure, all dispositive motions be filed within 30 days after the date proposed for the completion of discovery.);

(4) Propose a plan for the completion of all pretrial discovery, including the date by which all pretrial discovery shall be completed. (Counsel should not propose a date for the completion of discovery which is known to be without any reasonable basis.) See Rules 15H and I.

H. Plan for Completion of Discovery. The proposed plan for completing all discovery authorized by the Federal Rules of Civil Procedure shall include (1) the date by which all discovery will be completed, (2) the facts, such as the complexity of the issues, which counsel considered in arriving at the proposed deadline for the completion of all discovery; (3) the status of all pretrial discovery initiated to date; and (4) a description of all pretrial discovery each party intends to initiate prior to the close of discovery. The information furnished pursuant to (2), (3), and (4) should be sufficiently detailed to inform the Court why the period of time proposed for completing discovery is believed necessary. The specificity of the information furnished pursuant to (2) and (4) must increase in direct relation to the extent to which the deadline for completion of discovery exceeds 180 days after the complaint is filed. In other words, the longer the time proposed for discovery, the greater detail counsel must furnish in support of the request. Consideration should be given to proposing dates prior to the close of all discovery for the completion of specific phases of discovery. Counsel should keep in mind the general principles governing discovery set forth in the Federal Rules of Civil Procedure and Local Rule 15A. (See Form A, Section IV.)

I. Preliminary Plan for Completion of Discovery. The Court recognizes that in some cases it may be impossible for the parties to prepare a realistic plan for the completion of discovery within 100 days after the complaint is filed. If the parties believe that it is impossible to propose a date for completion of discovery which has a reasonable basis, the parties should consider proposing a preliminary plan for the completion of discovery which will conform to Local Rule 15H rather than proposing a date for completion of all discovery, except a date should be proposed by which a plan will be filed fully complying with Local Rule 15H. Counsel proposing a preliminary plan must explain in detail why a deadline for completion of all discovery cannot be proposed. Only in extraordinary situations and upon a showing of good cause will a preliminary plan be approved.

J. Discovery Conference. If requested prior to or at the time a proposed scheduling order is filed, or if ordered by the Court on its own motion after reviewing a proposed scheduling order, a discovery conference pursuant to Rule 26(f), Federal Rules of Civil Procedure, will be held before entering a scheduling order.

K. Interrogatories. No party shall serve on any other party more than twenty (20) interrogatories in the aggregate without leave of Court or consent of opposing counsel. Subparagraphs of any interrogatory shall relate directly to the subject matter of the interrogatory and shall not exceed two in number. After compliance with Local Rule 15M, any party desiring to serve additional interrogatories shall file a written motion setting forth the proposed additional interrogatories and the reasons establishing good cause for the additional interrogatories. Any number of additional interrogatories may be filed and served if attached thereto is the written consent of counsel for the party to which the interrogatories are directed.

L. The Form of Answers and Responses to Certain Discovery Requests. The party answering interrogatories, or responding to requests to admit, produce, or inspect shall set forth each question or request immediately before the answer or response.

M. Discovery Motions. Unless otherwise ordered, the Court will not entertain any discovery motion unless counsel for the moving party has conferred, or has made reasonable effort to confer, with opposing counsel concerning the matter prior to the filing of the motion. Counsel for the moving party shall certify compliance with this rule in any discovery motion. See *Crown Center Redevelopment Corp. v. Westinghouse Electric*, 82 F.R.D. 108 (W.D.Mo.1979).

N. Extension of Deadlines Fixed in Scheduling Order. A deadline established by a scheduling order will be extended only upon a good cause finding by the Court. In the absence of disabling circumstances, the deadline for completion of all discovery will not be extended unless there has been active discovery. Delayed discovery will not justify an extension of discovery deadlines. A motion to ex-

tend any deadline in a scheduling order must demonstrate a specific need for the requested extension, and should be accompanied by a detailed proposed amendment to the previously entered scheduling order. The date for completion of discovery will be extended only if the remaining discovery is specifically described and scheduled, e.g., the names of each remaining deponent and the date, time and place of each remaining deposition.

(Adopted July 20, 1982, effective Jan. 1, 1983. Amended Jan. 12, 1984, effective Jan. 16, 1984.)

FORM A. PROPOSED SCHEDULING ORDER

[CAPTION]

PROPOSED SCHEDULING ORDER

Directions

Before commencing work on a proposed scheduling order, counsel are urged to read Rule 16(b), Federal Rules of Civil Procedure, and Local Rule 15.

Counsel for each party should participate in good faith in attempting to reach an agreed upon proposed scheduling order.

If agreement is impossible, separate proposed scheduling orders should not be filed. Any disputes concerning a proposed scheduling order must be set forth in the proposed scheduling order.

Sections I, II, III, and IV must be completed and submitted on or before the 100th day after the complaint was filed.

I.

Any motion to join additional parties will be filed on or before _____.

This date is proposed because (state reasons why this date is appropriate for this case):

II.

Any motion to amend the pleadings will be filed on or before _____.

This date is proposed because (state reasons why this date is appropriate for this case):

III.

All other motions will be filed on or before _____ ____. (It may be advisable to propose different dates for different types of motions. See Local Rule 15G(3).)

This date (dates) is (are) proposed because (state reasons why this date (these dates) is (are) appropriate for this case):

IV.

[READ LOCAL RULES 15H AND 15I BEFORE COMPLETING]

1. All pretrial discovery authorized by the Federal Rules of Civil Procedure will be completed on or before _____.

2. The following facts were considered by counsel in arriving at the date proposed in paragraph 1 above:

3. The following discovery has already been initiated and its current status is:

4. On or before the date proposed in paragraph 1 above, each party intends to initiate and complete the discovery listed below the name of each party. (Note: It is not sufficient to state only "depositions" without stating who a party plans to depose. Additional depositions may be scheduled before the close of discovery if new witnesses are disclosed.)

_____	_____
_____	_____
_____	_____
Attorney(s) for Plaintiff(s)	Attorney(s) for Defendant(s)

FORM B. NOTICE OF PRETRIAL PROCEDURES PURSUANT TO LOCAL RULE 15

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
MISSOURI WESTERN DIVISION

_____	)	
Plaintiff,	)	
v.	)	No. _____
_____	)	
Defendant.	)	

NOTICE OF PRETRIAL PROCEDURES PURSUANT TO LOCAL RULE 15

Local Rule 15 establishes procedures for complying with Rule 16(b), Federal Rules of Civil Proce-

dure. Counsel should study Local Rule 15 before attempting to process cases in this Court. A copy of Local Rule 15 may be obtained from the Clerk's office or may be found in all editions of the Missouri Rules of Court published by West Publishing Company for 1985 and thereafter.

Pursuant to Local Rule 15, it is hereby ORDERED that:

1. Discovery shall commence immediately.

2. A proposed scheduling order shall be filed on or before _____. A copy of Form A attached to Local Rule 15 is attached for the convenience of counsel. Careful and immediate attention should be given to the directions in this Form to ensure complete and timely compliance with Rule 16(b) and Local Rule 15.

3. Plaintiff's counsel must take the lead in the preparation of a proposed scheduling order. The failure of a party or its counsel to participate in good faith in the framing of a scheduling order may result in the imposition of sanctions. Local Rule 15F and Rules 16(f) and 37(g), Federal Rules of Civil Procedure.

4. Counsel are reminded that:

(a) The filing of motions does not postpone discovery automatically (Rule 15D);

(b) Extensions of discovery deadlines are governed by Rule 15N;

(c) The number and form of interrogatories are governed by Rule 15K;

(d) The form of answers to certain discovery requests is provided in Rule 15L;

(e) All discovery motions must be accompanied by the certificate provided in Rule 15M.

R.F. Connor
Clerk of the Court

By _____
Deputy Clerk

Form C. Reminder of Due Date for Rule 15 Proposed Scheduling Order

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
MISSOURI WESTERN DIVISION

_____	)	
Plaintiff,	)	
v.	)	No. _____
_____	)	
Defendant.	)	

REMINDER OF DUE DATE FOR RULE 15
PROPOSED SCHEDULING ORDER

Counsel are reminded that the parties are required to file their proposed Local Rule 15 scheduling order on or before _____, 198___.

Please review the Notice of Pretrial Procedures pursuant to Local Rule 15 previously mailed to you and make certain that a proposed scheduling order complying with Local Rule 15 is filed timely. See Form A attached to Local Rule 15 for guidance on the form of the proposed scheduling order.

By order of the Court en banc
R.F. Connor, Clerk of the Court

By _____
Deputy Clerk

Form D. Order Requiring Certification of Completion of Delivery

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
MISSOURI WESTERN DIVISION

_____	)	
Plaintiff,	)	
v.	)	No. _____
_____	)	
Defendant.	)	

ORDER REQUIRING CERTIFICATION OF
COMPLETION OF DISCOVERY

The files and records in the above-entitled cause show that _____, 198___, was the date established by a scheduling order for the completion of all discovery in this case.

Within ten days from the date of this notice, counsel for each party shall file and serve on all counsel a certificate that all discovery has been completed and that this case is ready for further processing under Local Rules 16, 17, and 18.

IT IS SO ORDERED.

By order of the Court en banc
R.F. Connor, Clerk of the Court

By _____
Deputy Clerk

(Adopted July 20, 1982, eff. Jan. 1, 1983. Amended Jan. 12, 1984, effective Jan. 16, 1984.)

RULE 16. PRETRIAL CONFERENCES

All pretrial conferences will be held as ordered by the Court. Reasonable notice of the time and place thereof will be given to counsel.

Counsel may request the Court to hold a pretrial conference. A pretrial conference may be initiated by order of the Court.

The attorney who will actually handle the trial shall participate in all pretrial conferences unless excused by the Court. Trial counsel are required to have authority to agree to uncontroverted facts and to the scope and scheduling of future discovery.

(Adopted July 20, 1982, effective Jan. 1, 1983.)

RULE 17. POST DISCOVERY PRETRIAL FILINGS

Upon completion of discovery, or before if deemed appropriate, the Court will establish dates for various post discovery pretrial filings such as lists of witnesses and exhibits, stipulations of uncontroverted facts, proposed voir dire questions where appropriate, and trial briefs.

(Adopted July 20, 1982, effective Jan. 1, 1983.)

RULE 18. TRIAL SETTINGS

Whenever possible, trial settings will be closely coordinated with the completion of post discovery pretrial procedures pursuant to Rule 17. In addition to trial settings in each division, a minimum of two joint civil jury trial dockets will be scheduled, one in April and one in October, each year in the Western Division of the Western District of Missouri.

(Adopted July 20, 1982, effective Jan. 1, 1983.)

RULE 19. ORDERS; FINDINGS; AND JUDGMENTS

A. Orders Grantable by the Clerk. The Clerk of this Court is authorized to grant, sign, and enter the following orders without further direction by the Court, but any order so entered may be suspended, altered, or rescinded by the Court for cause shown.

1. Orders on consent extending once for ten days the time within which to plead or otherwise defend or to make any motion (except a motion for a new trial) if the time originally prescribed to plead, defend, or move has not expired.

2. Orders on consent of client and former counsel for the substitution of attorneys.

3. Orders on consent satisfying a judgment or an order for the payment of money, annulling bonds, and exonerating sureties

4. Any other of the orders referred to in Rule 77(c) of the Federal Rules of Civil Procedure which do not require allowance or order of the Court.

B. Entry of Judgments and Orders.

1. In all cases the notation of judgments and orders in the civil docket by the Clerk will be made at the earliest practicable time. The notation of judgments will not be delayed pending taxation of costs but a blank space may be left in the form of judgment for insertion of costs by the Clerk after they have been taxed, or there may be inserted in the judgment a clause reserving jurisdiction to tax and apportion the costs by subsequent order.

2. Orders under subdivision (A) of this Rule will be noted in the civil docket immediately after the Clerk has signed them. The Clerk may require any party obtaining a judgment or order which does not require approval as to form by the judge to supply him with a draft thereof.

3. No judgment or order except orders grantable of course by the Clerk under subdivision (A) of this Rule and judgments which the Clerk is authorized by the Federal Rules of Civil Procedure to enter without direction of the Court will be noted in the civil docket until the Clerk has received from the Court a specific direction to enter it. Unless the Court's direction be given to the Clerk in open court and noted in the minutes, it should be evidenced by the signature or initials of the judge on the form of judgment or order.

4. Every order and judgment shall be filed in the Clerk's office, and, if the Clerk so requests, a copy must also be delivered to the Clerk for insertion in the civil order book.

C. Settlement of Judgments and Orders by the Court.

1. Within five days after the announcement of the decision of the Court awarding any judgment or order which requires settlement and approval as to form by the judge, the prevailing party shall if so directed by the Court, prepare a draft of the order or judgment embodying the Court's decision and serve a copy thereof upon each party who has appeared in the action and mail or deliver a copy to the Clerk. Any party thus receiving the proposed draft of judgment or order shall within two days thereafter serve upon the prevailing party and mail or deliver to the Clerk a statement of said party's approval or disapproval as to the form of the draft and, in the latter instance, a statement of said party's objections and the reasons therefor and a draft of the order or judgment which said party proposes as a substitute for the transmitted draft. At the expiration of 15 days after the announcement of the decision, the Clerk will submit to the judge for such further proceedings as are necessary

in the circumstances all drafts and accompanying papers which the Clerk has received.

2. No judgment need be signed by the judge, but an initialed approval on the draft of judgment will be sufficient evidence of direction to enter it and authorization to the Clerk to note the judgment forthwith in the civil docket.

(Former Rule 6 adopted Feb. 1, 1946, effective Feb. 1, 1946; amended Jan. 1, 1958, effective Jan. 1, 1958. Redesignated as current Rule 19 July 20, 1982, effective Jan. 1, 1983.)

RULE 20. EXHIBITS

A. Custody. All exhibits, including models and diagrams, introduced in evidence upon the hearing of any cause or motion shall, after being marked for identification, be delivered to the Court Clerk who shall retain custody of the exhibits until otherwise ordered by the judge.

(Former Rule 5 adopted Jan. 26, 1946, effective Feb. 1, 1946. Redesignated as current Rule 20 July 20, 1982, effective Jan. 1, 1983.)

RULE 21. BAIL AND SURETIES

A. **Bail.** When a person is arrested in this district for the commission of a criminal offense, said person may be admitted to bail as provided in Rule 46, Federal Rules of Criminal Procedure, and Sections 3141, 3146, 3148, and 3149, Title 18, United States Code.

B. **Justification of Sureties.** Any individual, corporation, partnership, or association offered as a surety and required to "justify," pursuant to Rule 46(d), Federal Rules of Criminal Procedure, must do so before a United States Magistrate appointed by this Court, unless otherwise ordered by a judge of this Court. If a judge of this Court or a United States Magistrate is not readily available, the Clerk of the Court may take such justification and admit a defendant to bail in accordance with the order of the judicial officer issued pursuant to Section 3146(c), Title 18, United States Code.

C. **Qualifications for Individual Sureties.** An individual shall not be "justified" and accepted as a surety on bond or undertaking in any criminal or civil action or proceeding in this Court unless said individual possesses the following qualifications:

1. The surety must be a reputable person, at least twenty-one (21) years of age, and a bona fide resident of the State of Missouri;

2. The surety shall not have been convicted of any felony under the laws of the United States or of any state;

3. The surety shall not be an attorney-at-law, a peace officer, marshal or deputy marshal, a constable or deputy constable, sheriff or deputy sheriff;

4. The surety shall not be the Clerk, a deputy clerk, other officer or employee of this Court;

5. The surety shall not be an elected or appointed official or employee of the United States, or any state or any political subdivision thereof;

6. The surety must be the owner of real estate or personal property having a reasonable market value, in excess of all encumbrances thereon, exemptions, and all other liabilities, at least equal to the amount specified in the bond which the surety proposes to execute. To qualify upon the basis of real estate owned, an individual must be the sole, legal, and equitable owner thereof in fee simple and at record, and shall file in connection with the surety's "justification" a certificate of a title company authorized to do business in the state of Missouri as to ownership and encumbrances and an appraisal made by a real estate appraiser who is a member of the Society of Real Estate Appraisers or the American Institute of Real Estate Appraisers in respect to the real estate proffered as security. If there are several sureties, the aggregate market value of real estate or personal property owned by them, in excess of encumbrances, exceptions, and all other liabilities, must be at least equal to the amount specified in the bond.

D. **Disqualification of Sureties.** If any surety (individual, corporation, partnership, or association), or any agent, representative, servant, or employee thereof, conducts himself in the surety's business respecting the writing of bail, surety, or bonds of any type or character, so as to forfeit the confidence of this Court, or cause any judge or magistrate of this Court to lose confidence in the business integrity or moral manner by which the surety carries out the surety's business or undertakings, the Court en banc or any judge or magistrate of this Court expressing any such loss of confidence may enter an order directing that such surety, or any agent, representative, or employee thereof, be precluded from proffering bail, surety, or any other bonds to this Court. Provided, however, when a magistrate issues an order precluding a surety, or any agent, representative, or employee thereof, from proffering bail, surety, or any other bond to this Court,the magistrate shall set forth findings of fact and conclusions of law in the order. The magistrate shall file such order with the Clerk of the Court and forthwith mail or cause a copy of the order to be mailed to the surety. Any surety may, within ten (10) days after being served with a copy of such order of the magistrate, file a written specific objection to the order. The Court en banc or a judge of this Court, when so designated by the Court en banc, shall make a de novo determination of the order of the magistrate precluding a surety or any

agent, representative, or employee thereof, from proffering bail, surety, or other bonds to this Court to which a timely specific objection is filed. The Court en banc, or the district judge designated to make the de novo determination may accept, reject, or modify, in whole or in part, the order issued by the magistrate or recommit the matter to the magistrate with instructions.

The "moral manner" by which a surety, or an agent, representative, or employee thereof, shall be measured is whether or not, in the opinion of the Court en banc of this Court or any judge or magistrate of the Court, the method of the conduct of the business of the surety will subject the court to calumny in any manner.

(Former Rule 21 adopted Oct. 26, 1960, effective Nov. 1, 1960; amended Nov. 5, 1971, effective Nov. 5 1971, March 19, 1974, effective March 27, 1974; May 31, 1977, effective May 31, 1977. Current Rule 21 adopted July 20, 1982, effective Jan. 1, 1983.)

RULE 22. DUTIES AND POWERS OF FULL-TIME AND PART-TIME UNITED STATES MAGISTRATES

This Rule describes and defines the general, specific, and additional duties of full-time and part-time United States Magistrates in the Western District of Missouri.

A. Duties Under Section 28 U.S.C. Sec. 636(a).

1. Each full-time United States Magistrate and each part-time United States Magistrate, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby authorized to exercise all powers and perform all duties now or hereafter prescribed by Section 636(a), Title 28, United States Code, and shall:

a. Exercise all the powers and duties conferred or imposed upon United States Magistrates and formerly conferred or imposed upon United States Commissioners by law and the Federal Rules of Criminal Procedure;

b. Administer oaths and affirmations, impose conditions of release under Section 3146, Title 18, United States Code, and take acknowledgements, affidavits, and depositions; and

c. Conduct extradition proceedings in accordance with Section 3184, Title 18, United States Code.

B. Disposition of Misdemeanor Cases (18 U.S.C. Sec. 3401). Each full-time United States Magistrate and each part-time United States Magistrate, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to:

1. Try persons accused of, and sentence persons convicted of misdemeanors committed within or transferred to this district in accordance with Section 3401, Title 18, United States Code;

2. Direct the probation service of the Court to conduct a presentence investigation in any misdemeanor case; and

3. Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

C. Determination of Non-Dispositive Pretrial Matters [28 U.S.C. Sec. 636(b)(1)(A)]. Each full-time United States Magistrate and each part-time United States Magistrate, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to hear and determine any procedural or discovery motion or other pretrial matter in a civil or criminal case, other than the motions which are specified in Section D, infra, of this Rule.

D. Recommendations Regarding Case Dispositive Motions [28 U.S.C. Sec. 636(b)(1)(B)].

1. Each full-time United States Magistrate and each part-time United States Magistrate, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to conduct any necessary evidentiary hearing or other proceedings and submit to a judge of the Court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions in civil and criminal cases:

a. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
b. Motions for judgments on the pleadings;
c. Motions for summary judgment;
d. Motions to dismiss or permit the maintenance of a class action;
e. Motions to dismiss for failure to state a claim upon which relief may be granted;
f. Motions to involuntarily dismiss an action;
g. Motions for review of default judgments;
h. Motions to dismiss or quash an indictment or information made by a defendant; and
i. Motions to suppress evidence in a criminal case.

2. A magistrate may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this section of the Rule.

E. Processing Prisoner Cases Under 28 U.S.C. Sections 2254 and 2255. Each full-time United States Magistrate and each part-time United States Magistrate, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered

to perform any and all of the duties imposed upon a judge by the rules governing proceedings in the United States District Courts under Sections 2254 and 2255, Title 28, United States Code. In so doing, under an order of reference made pursuant to Title 28, United States Code, Section 636(b)(1)(B), a magistrate may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge.

F. Processing Prisoner Cases Under 28 U.S.C. Section 2241. Each full-time United States Magistrate and each part-time United States Magistrate, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to perform any and all duties imposed upon a judge by Section 2241, et seq., Title 28, United States Code. In so doing, under an order of reference made pursuant to Title 28, United States Code, Section 636(b)(1)(B), a magistrate may issue any preliminary orders and conduct any necessary evidentiary hearing or appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendation for disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge.

G. Processing Prisoner Cases Under 42 U.S.C. Section 1983. Each full-time United States Magistrate and each part-time United States Magistrate, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered, under an order of reference made pursuant to Title 28, United States Code, Section 636(b)(1)(B), a magistrate may issue any preliminary orders and conduct any necessary evidentiary hearing or appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendation for disposition of petitions filed by prisoners challenging their conditions of confinement. Any order disposing of the petition may only be made by a judge.

H. Special Master Reference. Each full-time United States Magistrate and each part-time United States Magistrate, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to serve as special master in appropriate civil cases in accordance with Section 636(b)(2), Title 28, United States Code, and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, a magistrate may be designated by a judge to serve as a special master in any case, notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

I. Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties [28 U.S.C. Sec. 636(c)]. Upon the consent of the parties, each full-time United States Magistrate unless otherwise limited or prohibited by a special or general order of the Court en banc, is hereby designated, authorized, and empowered to conduct any and all proceedings in any civil case which is filed in or transferred to this district, including the conduct of a jury or non-jury trial, and may order the entrance of a final judgment in accordance with Section 636(c), Title 28, United States Code. In the course of conducting such proceedings upon consent of the parties, a magistrate may hear and determine any and all pretrial and posttrial motions which are filed by the parties, including case-dispositive motions.

J. Process Applications or Petitions for Enforcement of Internal Revenue Service Summons. Each full-time United States Magistrate and each part-time United States Magistrate, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to process and hear applications or petitions for enforcement of summonses issued pursuant to Sections 6420(e)(2), 6421(f)(2), 6424(d), and 7602, Title 26, United States Code, in accordance with the provisions of Section 7604, Title 26, United States Code. In so doing, under an order of reference made pursuant to Title 28, United States Code, Section 636(b)(1)(A), a magistrate may issue an order to show cause and any other preliminary orders and conduct any necessary evidentiary hearing or appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendation for disposition of the application or petition by the judge. Any order disposing of the petition may only be made by a judge.

K. Other Duties. Each full-time United States Magistrate and each part-time United States Magistrate, unless otherwise limited or prohibited by a special or general order of the Court en banc, are hereby designated, authorized, and empowered to:

1. Exercise general supervision of civil and criminal calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases before the judges;

2. Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;

3. Conduct arraignments in criminal cases not triable by the magistrate and take not guilty pleas in such cases;

4. Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Proce-

dure and issue orders for the issuance of warrants of arrest and summonses;

5. Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;

6. Conduct voir dire and select petit juries for the Court;

7. Accept petit jury verdicts in civil and admiralty cases in the absence of a judge;

8. Conduct necessary proceedings leading to the potential revocation of probation;

9. Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or orders necessary to obtain the presence of parties, witnesses, or evidence needed for court proceedings;

10. Approve sureties, both corporate and individual, to proffer bail, surety, and other bonds to the Court and make orders that previously approved sureties be precluded from proffering bail, surety, and other bonds to the court because of conduct of such nature to cause a loss of confidence in the personal or business integrity of the surety and order the exoneration or forfeiture of bonds;

11. Conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971, in accordance with Section 148(d), Title 46, United States Code;

12. Conduct examination of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;

13. Conduct proceedings for initial commitment of narcotic addicts under Title III of the Narcotic Addict Rehabilitation Act;

14. Perform the functions specified in 18 U.S.C. Sections 4107, 4108, and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;

15. Audit Criminal Justice Act forms submitted by appointed counsel for payment of expert, investigative, or other services or for payment of counselling services and expenses and make a written recommendation to the judge to whom the case is assigned in respect to the amount to be approved for payment;

16. Discharge indigent prisoners or persons imprisoned for non-payment of a fine and/or costs, pursuant to Section 3569, Title 18, United States Code;

17. Institute prosecutions against persons for violation of Section 1990, Title 42, United States Code, and Sections 5506 to 5516 and 5518 to 5532 of the Revised Statutes, pursuant to Section 1987, Title 42, United States Code;

18. Order presentence investigations, with the consent of defendant, to be commenced in respect to defendants who have not been convicted but have signified an intention to enter a plea of guilty or nolo contendere;

19. Issue orders authorizing the installation and use of devices, such as traps and traces, which are used to determine from which telephone number a telephone call originated, and pen registers, which are used to register telephone numbers dialed or pulsed from a particular telephone; and issue orders directing a communications common carrier, as that term is defined in Section 153(h), Title 47, United States Code, including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces, and pen registers;

20. Issue statutory administrative inspection or search warrants on determination of probable cause;

21. Issue search warrants for searches and seizures which are not within the purview of Rule 41 of the Federal Rules of Criminal Procedure;

22. Issue warrants of arrest for persons who have been determined, pursuant to Section 3149, Title 18, United States Code, to be material witnesses;

23. Preside over naturalization ceremonies and administer the oath required by Section 1448(a), Title 8, United States Code, and submit a written list of persons who took the oath to a district judge;

24. Settle or certify the nonpayment of seamen's wages in accordance with the provisions of Sections 603 and 604, Title 46, United States Code; and enforce the award or arbitration or decree of any consul, vice consul, or commercial agent of any foreign nation in differences between the captain and the crew of a vessel belonging to the nation whose interests are committed to his charge, in accordance with the provisions of Section 258(a), Title 22, United States Code;

25. Serve as a member of the district's Speedy Trial Act Planning Group and assist the Court en banc in drafting and promulgating local rules and procedures; and

26. Perform any other additional duty as is not inconsistent with the Constitution and the laws of the United States.

L. Assignment of Matters to Magistrates.

1. *Criminal Cases.*

a. Misdemeanor Cases Filed in the Western, St. Joseph, and Central Divisions. All misdemeanor cases filed in the Western, St. Joseph, and Central Divisions of the Court, shall be assigned by the Clerk of Court, upon the filing of an

information, complaint, violation notice, return of an indictment, to the chief magistrate, who shall proceed in accordance with the provisions of Section 3401, Title 18, United States Code, and the Rules of Procedure for the Trial of Misdemeanors Before United States Magistrates. The chief magistrate may reassign a case to another magistrate for processing in accordance with the provisions of Section 3401, Title 18, United States Code, and the Rules of Procedure for the Trial of Misdemeanors Before United States Magistrates.

b. Misdemeanor Cases Filed in the Southern and Southwestern Divisions. All misdemeanor cases filed in the Southern and Southwestern Divisions of the Court shall be assigned by the Clerk of Court, upon the filing of an information, complaint, violation notice, return of an indictment or upon the transfer to this district under Rule 20 or Rule 21 of the Federal Rules of Criminal Procedure of an indictment, or information charging a misdemeanor, to the magistrate stationed at Springfield, Missouri, who shall proceed in accordance with the provisions of Section 3401, Title 18, United States Code, and Rules of Procedure for Trial of Misdemeanors Before United States Magistrates.

c. Felony Cases Filed in the Western, St. Joseph and Central Divisions. Upon the return of an indictment or the filing of an information in the Western, St. Joseph, and Central Divisions of the Court, all felony cases shall be assigned by the Clerk of the Court to the chief magistrate for the conduct of an arraignment and acceptance of pleas of not guilty, an omnibus hearing, and such pretrial conferences as are necessary. The chief magistrate may reassign a case to another magistrate for the conduct of an arraignment, an omnibus hearing, and such pretrial conferences as are necessary.

d. Felony Cases Filed in the Southern and Southwestern Divisions. Upon the return of an indictment or the filing of an information in the Southern and Southwestern Divisions of the Court, all felony cases shall be assigned by the Clerk of the Court to the magistrate stationed at Springfield, Missouri for the conduct of an arraignment and acceptance of pleas of not guilty, an omnibus hearing, and such pretrial conferences as are necessary. The chief magistrate may reassign a case to another magistrate for the conduct of an arraignment, an omnibus hearing, and such pretrial conferences as are necessary.

2. *Civil Cases.*

a. Applications or Petitions for Enforcement of Internal Revenue Service Summonses Filed in the Western, St. Joseph, and Central Divisions. All applications or petitions for the enforcement of Internal Revenue Service summonses filed in the Western, St. Joseph and Central Divisions of the Court shall be assigned by the Clerk of Court, upon the filing of the application or petition, to the chief magistrate for processing and handling in accordance with Section J of this Rule. The chief magistrate may reassign the application or petition to another magistrate for processing and handling.

b. Applications or Petitions for Enforcement of Internal Revenue Service Summonses Filed in the Southern and Southwestern Divisions. All applications or petitions for the enforcement of Internal Revenue Service summonses filed in the Southern and Southwestern Divisions of the Court shall be assigned by the Clerk of Court, upon the filing of the application or petition, to the magistrate stationed in Springfield, Missouri for processing and handling in accordance with Section J of this Rule.

c. Motions for Examination of Judgment Debtors Filed in the Western, St. Joseph, and Central Divisions. All motions for examination of judgment debtors filed in the Western, St. Joseph, and Central Divisions of the Court shall be assigned by the Clerk of Court, upon the filing of the motion, to the chief magistrate for the purpose of presiding over the examination. The chief magistrate may reassign the motion to another magistrate to conduct the examination.

d. Motions for Examination of Judgment Debtors Filed in the Southern and Southwestern Divisions. All motions for examination of judgment debtors filed in the Southern and Southwestern Divisions of the Court shall be assigned by the Clerk of Court, upon the filing of the motion, to the magistrate stationed in Springfield, Missouri for the purposes of presiding over the examination.

3. *General.* Nothing in this Section shall preclude the Court, or a judge thereof, from reserving any proceeding for conduct by a judge, rather than by a magistrate. The Court en banc, moreover, may, by order, modify the method of assigning proceedings to a magistrate as changing conditions may warrant.

M. Procedures Before a Magistrate.

1. *General.* In performing duties for the Court a magistrate shall conform to all applicable provisions of federal statutes and rules, to the general procedural rules of this Court, and to the requirements specified in any order of reference from a judge.

2. *Special Provisions for the Disposition of Civil Cases by a Magistrate on Consent of the Parties in Accordance with Section 636(c), Title 28, United States Code.*

a. Notice. The Clerk of Court shall notify the parties in all civil cases that they may consent to have a magistrate conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or the plaintiff's representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served. Additional notices may be furnished to the parties at later stages of the proceedings and may be included with pretrial notices and instructions.

b. Execution of Consent. The Clerk shall not accept a consent form unless it has been signed by all the parties in a case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the Clerk of Court. No consent form will be made available, nor will its contents be made known to any judge or magistrate, unless all parties have consented to the reference to a magistrate. No magistrate, judge, or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate. This Rule, however, shall not preclude a judge or magistrate from informing the parties that they may have the option of referring a case to a magistrate.

c. Reference. After the consent form has been executed and filed, the Clerk shall transmit it to the judge to whom the case is assigned for approval and referral of the case to a magistrate. Once the case has been assigned to a magistrate, the magistrate shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk of Court to enter final judgment in the same manner as if a judge had presided.

N. **Review and Appeal.**

1. *Appeal of Non-Dispositive Matters [28 U.S.C. Sec. 636(b)(1)(A).]* Any party may appeal from a magistrate's order determining a motion or matter under Section C of this Rule, *supra*, within 10 days after issuance of the magistrate's order, unless a different time is prescribed by the magistrate or a judge. Such party shall file with the Clerk of Court, and serve on the magistrate and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. A judge of the Court shall consider the appeal and shall set aside any portion of the magistrate's order found to be clearly erroneous or contrary to law. The judge may also reconsider *sua sponte* any matter determined by a magistrate under this Rule.

2. *Review of Case-Dispositive Motions, Internal Revenue Service Enforcement Cases, and Prisoner Litigation [28 U.S.C. Section 636(b)(1)(B).]* Any party may object to a magistrate's proposed findings, recommendations, or report under Sections D, E, F, and G of this Rule, *supra*, within ten (10) days after being served a copy thereof. Such party shall file with the Clerk of Court, and serve on the magistrate and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations, or report to which objections are made and the basis for such objections. Upon a showing of excusable neglect or good cause, the district judge or magistrate may extend the time for making objections for an additional twenty (20) days. A party may respond to another party's objections within ten (10) days after being served with a copy thereof. The district judge to whom the case is assigned shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The district judge, however, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the magistrate, making his own determination on the basis of that record. The district judge may also receive further evidence, recall witnesses, or recommit the matter to the magistrate with instructions. A waiver of the right to appeal will result as to any issue which has been determined by the magistrate and which has not been presented to the district judge by timely written objections.

3. *Special Master Reports [28 U.S.C. Section 636(b)(2).]* Any party may seek a review of, or action on, a special master's report filed by a magistrate in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

4. *Appeals From Judgments in Misdemeanor Cases (18 U.S.C. Section 3402).* A defendant may appeal a judgment of conviction by a magistrate after trial in a misdemeanor case by filing a notice of appeal within ten (10) days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the district court to the court of appeals.

5. *Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties [28 U.S.C. Section 636(c).]*

a. Appeal to the Court of Appeals. Upon the entry of judgment in any civil case disposed of by a magistrate on consent of the parties under authority of Section 636(c), Title 28, United States Code, and Section I of this rule, *supra*, an aggrieved party shall appeal directly to the United States Court of Appeals for the Eighth Circuit in

the same manner as an appeal from any other judgment of this Court.

b. Appeal to a District Judge. In accordance with Section 636(c)(4), Title 28, United States Code, the parties may consent to appeal any judgment in a civil case disposed of by a magistrate to a judge of this Court, rather than directly to the court of appeals. Appeals in such cases shall be considered on the record in the same manner as on an appeal from a judgment of the district court to a court of appeals and shall be taken in accordance with the times, methods, and procedures prescribed by Rules 74, 75, and 76 of the Federal Rules of Civil Procedure.

O. Territorial Assignments and Administrative Provisions.

1. The full-time United States Magistrate having official station at Kansas City, Missouri, who is senior in years of service as a United States Magistrate, is designated as the Chief United States Magistrate for the Western District of Missouri.

2. Under the supervision of the Chief Judge of this district, the chief magistrate, with the assistance of the Clerk of Court, shall be responsible for the assignment of actions, duties, and responsibilities to magistrates as now or hereafter authorized by law and by local rule or order of the Court en banc.

3. Under the supervision of the Chief Judge of this district, the chief magistrate, with the assistance of the Clerk of Court, shall be responsible for the assignment and reassignment of civil, admiralty, and criminal actions and proceedings to magistrates.

4. In case of doubt about any administrative action, the chief magistrate shall secure directions from the Chief Judge of the district, or if the Chief Judge is unavailable, from the senior regular active judge who is available.

5. Ordinarily a part-time magistrate with an official station in a division shall perform the general duties and powers of a part-time magistrate in proceedings to be performed in the division in which the magistrate's official station is located unless otherwise specially ordered by the Chief United States Magistrate, the Court en banc, or a judge of this Court. The order of a judge shall prevail over the order of any magistrate in case of conflict; provided, however, a jointly appointed part-time magistrate for the Western and Eastern Districts of Missouri, with an official station at Fort Leonard Wood, Missouri, may perform such duties in or arising from actions or omissions occurring only within the territorial jurisdiction specified in the order appointing said part-time magistrate or as may be expanded by any subsequent joint supplemental order or orders of the United States District Court for the Western and Eastern Districts of Missouri.

6. Ordinarily the full-time magistrate with official station at Springfield, Missouri, shall perform all duties to be performed in the Southern and Southwestern Divisions of the district or in connection with actions and proceedings arising therein.

7. Ordinarily the full-time magistrates with official station at Kansas City, Missouri, shall perform all duties to be performed in the Western, Central, and St. Joseph Divisions of the district or in connection with actions and proceedings arising therein.

8. Any full-time magistrate may perform any duty or exercise any power granted, conferred, or imposed by this Rule in any division of this district or in any action or proceeding arising herein.

9. In the absence of exceptional circumstances requiring a temporary emergency assignment, the assignment by a district judge of duties and functions to a magistrate shall be approved by the Court en banc as a part of a system of assignment or by special order.

(Former Rule 26 adopted Feb. 12, 1971, effective May 3, 1971; amended Mar. 13, 1972, effective Mar. 13, 1972; May 29, 1973, effective May 29, 1973; Aug. 13, 1973, effective Aug. 13, 1973; July 19, 1974, effective July 19, 1974; May 12, 1980, effective May 12, 1980; Aug. 18, 1980, effective Aug. 18, 1980. Redesignated as current Rule 22 July 20, 1982, effective Jan. 1, 1983; amended and effective March 3, 1983; Jan. 9, 1987.)

RULE 23. ESTABLISHING PANEL OF EXPERTS AND PROCEDURES FOR DETERMINATION OF MENTAL COMPETENCY

A. **Purpose of Rule.** The purpose of this rule is to establish a panel of experts and to prescribe the procedure to be followed in connection with examinations ordered pursuant to Section 4244 of Title 18, United States Code, and any other examination that may be ordered pursuant to other laws.

Section 4244 provides that upon (a) motion of the United States Attorney; (b) motion on behalf of the accused; or (c) upon the court's own motion "the court shall cause the accused, whether or not previously admitted to bail, to be examined as to mental condition by at least one qualified psychiatrist, who shall report to the court."

B. **Establishment of Panel of Experts.** The Court shall examine and qualify a panel of competent psychiatrists. A list of the psychiatrists so qualified shall be on file with the Clerk and with the Chief Probation Officer of this Court. The Court may also examine and qualify and add to such list other competent experts in mental diseases who may, from time to time be designated to serve with

and assist a particular psychiatrist in connection with a particular examination.

C. Procedure in Connection with Order of Examination. When the Court orders an examination pursuant to this local rule, such order shall authorize the Chief Probation Officer to make proper arrangements with a psychiatrist designated by the Court from the approved panel for such examination; should the accused be in custody, this standing order authorizes the United States Marshal to deliver the accused to the office of the psychiatrist designated by the Court, and to return the accused to the place of confinement after said examination.

The Chief Probation Officer shall be responsible for the preparation of a social history of the accused for use by the psychiatrist. Any statements made by the accused in connection with that social history and the social history itself shall be considered within the protection of that portion of Section 4244 that provides that "no statement made by the accused in the course of any examination into his sanity or mental competency provided for by this section, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding." Nor shall any portion of said social history "be introduced in evidence on [the] issue [raised by] ... a plea of insanity as a defense to the crime charged ... nor otherwise be brought to the notice of the jury."

D. Duties of Psychiatrist and Report Required in Connection with Section 4244 Examination. Section 4244 requires that the court ultimately make judicial determination of the question of whether the accused "may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense." That question does not involve either a medical or legal determination of the entirely different question of whether the accused was or was not mentally competent to have committed the offense with which the accused is charged.

Section 4244 also provides that the court shall hold a hearing at which evidence as to the mental condition of the accused may be submitted only "if the report of the psychiatrist indicates a state of present insanity or ... mental incompetency of a degree that the accused is presently ... unable to understand the proceedings against him or to assist in his own defense."

In recognition of the importance of the report of the psychiatrist, in recognition of the sometimes difficult medical and legal questions that arise in connection with the examination made pursuant to Section 4244, and in order to provide the necessary flexibility of procedure to deal adequately with such problems, the report of the psychiatrist shall be in one of the following forms:

1. The report may state the opinion of the psychiatrist that the accused is—or is not—"presently so mentally incompetent as to be unable to understand rationally the proceedings against him or properly and rationally assist in his own defense."

Such a report shall include not only that precise finding and opinion but shall also state the medical and other data upon which such finding and opinion is based. The social history and other supporting data shall be attached to the report.

2. In a particular case, the particular psychiatrist may desire to have the accused examined by another member of the panel or to have tests made by one of the qualified experts in mental diseases who are not psychiatrists. In such a case, the psychiatrist will submit a preliminary report to the Court stating such fact and the reasons in support of the psychiatrist's judgment. In that event the Court may make an additional appointment or make such other order as may be indicated by the particular factual situation.

3. In still other cases, either before or after the appointment of additional experts, the particular psychiatrist may determine that the portion of Section 4244 which provides that "for the purpose of the examination the court may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the Court" should be utilized in order that a particular accused may be observed over a longer period of time than is feasible under the procedure established by this local rule. If such be the case, then in that event, the report of the psychiatrist shall so state and the court shall then determine whether it will designate a suitable hospital or other facility as contemplated by Section 4244, or commit to the custody of the Attorney General for that purpose.

The Court may, in connection with any Section 4244 examination, have other conditions to supplement the procedure established by this local rule as may be required in a particular case.

E. Duties of Psychiatrists and Report Required in Connection With Examinations Ordered to Proceed Under Laws Other Than Section 4244. If an examination is ordered pursuant to some provision of law other than Section 4244, the order of the Court shall set forth the duties of the psychiatrist and the form of report desired by the Court in each particular case. Special orders, for example, will be drafted should any member of the approved panel be designated or selected by the Court or by a prisoner in connection with a proceeding held pursuant to Section 4247 of Title 18, United States Code

F. **Fees for Psychiatrist.** The cost of an examination to evaluate competency to stand trial is chargeable to the Department of Justice appropriations. The United States Attorney shall submit statements of fees in amounts established by the Court on Department of Justice form 25–B for all examinations ordered under Section 4244 pursuant to this local rule. In all cases other than Section 4244 examination, the Court shall make a special order concerning fees as may be indicated.

(Former Rule 23 adopted July 31, 1963, effective Aug. 8, 1963. Redesignated as current Rule 23 July 20, 1982, effective Jan. 1, 1983.)

RULE 24. DIRECTIVES AND PROCEDURES IN REGARD TO SPECIAL GRAND JURIES (CHAPTER 216, TITLE 18, UNITED STATES CODE)

A. **Purpose of Rule.** The purpose of this rule is to establish directives and procedures calculated to insure compliance with all provisions of Chapter 216, Title 18, United States Code, and to avoid the dissemination of any information concerning or contained in any report submitted by a special grand jury impaneled under that Chapter until and unless such report has been ordered accepted by the Court and ordered filed as a public record in accordance with the provisions of that Chapter.

B. **Release of Information Concerning Special Grand Jury Reports.** No member of a special grand jury and no other person who may have information concerning any special grand jury report shall reveal any information concerning the contents of a special grand jury report, which in every instance shall be submitted to the Court, until and unless such report has been accepted and ordered filed by the Court as a public record in accordance with Chapter 216, Title 18, United States Code. It is determined that the release of any information concerning the contents of a special grand jury report before such time presents a reasonable likelihood that the release of such information could interfere with fair trials in pending or future cases and would otherwise prejudice the proper administration of justice.

The provisions of Local Rule 5 of this Court are fully applicable to the release of any information by lawyers and other employees of the federal, state, city or county employees participating in or associated with any investigation being made by a special grand jury. Such persons are expressly prohibited by this Rule from making any public judicial or extra-judicial statement concerning the contents of any special grand jury report until and unless such report is ordered accepted and ordered filed as a public record in accordance with the provisions of Chapter 216, Title 18, United States Code. Then the statement is limited to the contents of the report approved by the Court for filing.

C. **Procedures Concerning Submission of Special Grand Jury Reports.** Should a special grand jury, upon completion of its original term, desire to submit a report authorized by Section 3333, Title 18, United States Code, it shall submit such a report by the filing of an appropriate motion in accordance with the following procedures:

1. The proceeding shall be entitled "In the Matter of a Report Submitted by Special Grand Jury Impaneled on [INSERT DATE]_____."

2. The special grand jury's motion submitting its report shall allege that its report is submitted upon the completion of its original term, that such report has the concurrence of a majority of its members, and that, in its judgment, such report is based upon facts revealed in the course of an investigation authorized by subsection (a) of Section 3332 and is supported by the preponderance of the evidence.

3. The special grand jury shall place its submitted report in a sealed envelope marked "Exhibit A" and labeled "Report Submitted by Special Grand Jury" and place in another sealed envelope marked "Exhibit B" and labeled "Supporting Data", in which shall be included the facts revealed in the course of its investigation which it believes support its report by the preponderance of the evidence as required by Section 3333(b)(1). The supporting data may consist of a transcript of proceedings before the special grand jury and exhibits presented to the special grand jury.

4. The special grand jury's motion shall pray for an appropriate order either (a) accepting and filing such report as a public record; or (b) if the report is one submitted pursuant to Section 3333(a)(1), that further proceedings be directed in accordance with law.

5. The Clerk shall immediately transmit the special grand jury's motion and the exhibits attached thereto to the Court for further appropriate proceedings, according to law. No person shall reveal the contents of Exhibit A or Exhibit B directly or indirectly without express authority of court order.

6. The Court will, after direction of proper proceedings and appropriate consideration according to law, enter its order as to whether the report submitted by the special grand jury should or should not be accepted and ordered filed as a public record.

D. **Sanctions for Violations of this Rule.** Any violation of this rule by any person shall be punished by appropriate contempt proceedings pursuant to Rule 42 of the Rules of Criminal Procedure.

(Former Rule 30 adopted Nov. 17, 1971, effective Nov. 17, 1971. Redesignated as current Rule 24 July 20, 1982, effective Jan. 1, 1983.)

RULE 25. PETITIONS FOR HABEAS CORPUS AND MOTIONS PURSUANT TO 28 U.S.C. SECTION 2255 (ATTACKING A SENTENCE IMPOSED BY THIS COURT) BY PERSONS IN CUSTODY

A. General. In the absence of exceptional circumstances, petitions for a writ of *habeas corpus* pursuant to 28 U.S.C. Section 2254 and 28 U.S.C. Section 2241 and motions filed pursuant to 28 U.S.C. Section 2255 (attacking a sentence imposed by this Court), by persons in custody, shall be in writing, signed and verified. Such petitions and motions shall be on forms available on request from the Clerk's office.

B. Mandatory Information. The following information shall be supplied by every petitioner:

1. Petitioner's full name and prison number (if any);

2. The name of the respondent (petitioner's custodian);

3. The place of petitioner's destination;

4. The name and location of the court which imposed sentence;

5. The indictment number(s) (if known) upon which, and the offense(s)for which, sentence was imposed:

6. The date upon which sentence was imposed and the terms of the sentence;

7. Whether a finding of guilty was made after a plea of (1) guilty, (2) not guilty, or (3) nolo contendere;

8. In the case of a petitioner who was found to be guilty following a plea of not guilty, whether the finding was made (1) by a jury or (2) by a judge without a jury.

9. Whether or not petitioner appealed from the judgment of conviction or from the imposition of sentence, and, if so, the name of each court to which the petitioner appealed, the results of such appeals, the date of such results, and (if known), citations of any written opinions or orders entered therein:

10. Whether petitioner was represented by an attorney at any time during the course of petitioner's arraignment and plea, trial (if any), sentencing, and appeal (if any), or preparation, presentation or consideration of any petitions, motions or applications which the petitioner filed with respect to this conviction; if so, the name and address of such attorney(s) and the proceedings at which petitioner was so represented; and

11. If petitioner seeks leave to proceed *in forma pauperis*, whether the affidavit attached to the form has been completed.

C. Additional Information (Petitioner in State Custody). The following additional information shall be supplied by a petitioner in state custody seeking a writ of *habeas corpus* pursuant to 28 U.S.C. Section 2254 or 28 U.S.C. Section 2241:

1. If petitioner did not appeal from the judgment of conviction or the imposition of sentence, the reasons why said petitioner did not do so;

2. In concise form, the grounds upon which petitioner bases the allegation that the petitioner is being held in custody unlawfully, the facts which support each of these grounds, and whether any such grounds have been previously presented to any court, state or federal, by way of any petition, motion or application; if so, which grounds have been previously presented and in what proceedings; and

3. Whether petitioner has filed in any court, state or federal, previous petitions, applications, or motions with respect to this conviction; if so, the name and location of each court, the specific nature of the proceedings therein, the disposition thereof, the date of each such disposition and (if known), citations of any written opinions or orders entered therein.

D. Additional Information (Petitioner in Federal Custody). The following additional information shall be supplied by a petitioner in federal custody who is seeking a writ of *habeas corpus*, pursuant to 28 U.S.C. Section 2241:

1. Whether petitioner has filed in any court, state or federal, previous petitions for *habeas corpus*, motions (pursuant to 28 U.S.C. Section 2255) to vacate sentence, or any other petitions, motions or applications with respect to this conviction; if so, the name and location of any and all such courts, the specific nature of the proceedings therein, the disposition thereof, the date of each such disposition, and (if known) citations of any written opinions or orders entered therein;

2. In concise form the grounds upon which petitioner bases the allegation that petitioner is being held in custody unlawfully, the facts which support each of these grounds, and whether any such grounds have been previously presented to any federal court by way of petition for writ of *habeas corpus*, motion pursuant to 28 U.S.C. Section 2255, or any other petition, motion or application; if so, which grounds have been previously presented and in what proceedings; and

3. If a previous motion pursuant to 28 U.S.C. Section 2255 was not filed, or if such a motion was filed and denied, the reasons why petitioner s remedy by way of such motion is inadequate or ineffective to test the legality of his detention.

E. Additional Information—Petitioner Seeking Relief Under 28 U.S.C. Section 2255. The

following additional information shall be supplied by a petitioner in federal custody who is seeking relief by motion pursuant to 28 U.S.C. Section 2255:

1. The name of the judge who imposed sentence;

2. In concise form, the grounds upon which petitioner bases the allegation that the sentence which was imposed upon petitioner is invalid, the facts which support each of these grounds, whether any such grounds have been presented to any federal court on a previous petition for writ of *habeas corpus*, motion pursuant to 28 U.S.C. Section 2255, or any other petition, motion or application, and, if so, which grounds have been previously presented and in which proceedings; and

3. Whether petitioner has filed in any court petitions for *habeas corpus*, motions pursuant to 28 U.S.C. Section 2255, or any other petitions, motions or applications with respect to this conviction; if so, the name and location of each such court, the specific nature of the proceedings therein, the disposition thereof, the date of each such disposition and (if known), citations of any written opinion or orders entered therein.

F. In Forma Pauperis Affidavit. Where a petition or motion is taken *in forma pauperis*, petitioner shall complete the *in forma pauperis* affidavit attached to the back of the form and shall set forth information which establishes that said petitioner will be unable to pay the fees and costs of the *habeas corpus* or 28 U.S.C. Section 2255 proceeding.

G. Submission of Petitions and Motions to Clerk of Court. Petitions and motions shall be addressed to the Clerk of the District Court for the Western District of Missouri. Petitioners shall send to the Clerk an original and one copy of the completed petition or motion form. A petition or motion addressed to an individual judge shall be directed to the Clerk of the Court for assignment pursuant to the rules of this Court, provided that motions under 28 U.S.C. Section 2255 shall, if possible, be assigned to the sentencing judge.

1. In the event a petition or motion does not substantially comply with the aforementioned requirements of form and content, the Clerk of the Court shall provisionally file the petition or motion and notify the prisoner of the defects giving the prisoner a reasonable time to correct said defects and resubmit the petition or motion.

H. Other Motions Submissible by Persons in Federal Custody. Whenever a prisoner in federal custody wishes to make any of the motions referred to below, the said individual shall use the forms provided by the Court or the Clerk thereof.

1. Motions by a defendant committed under 4244, 4246, or both, Title 18 U.S.C., to (a) obtain a speedy trial, (b) set aside the order of commitment on the ground that it was erroneously entered, (c) appoint counsel or direct previously appointed counsel to advise movant, (d) obtain an order of the committing court to return movant to its jurisdiction for a hearing on all motions filed and undetermined, or (e) obtain an early hearing on movant's competency. *Arco v. Ciccone* (W.D.Mo.) 252 F.Supp. 347, affirmed (C.A.8) 359 F.2d 796.

2. Motion for a speedy trial or dismissal of the charges against the prisoner under the rule of *Smith v. Hooey*, 393 U.S. 374, 89 S.Ct. 575, 21 L.Ed.2d 607, in a state trial court.

3. Motion to dismiss charges against prisoner under the rule of *Smith v. Hooey, supra*, in a state trial court.

4. Petition for mandamus in a state appellate court to compel action on motion for speedy trial or dismissal in state trial court.

I. Filing of Traverse. A traverse of the response to an order to show cause shall be filed by the petitioner or movant within seven (7) days after service of or notice of the filing of the response, unless the time for filing the traverse is extended by a judge or a United States Magistrate. In the absence of a timely traverse, all facts well pleaded in the response to the order to show cause shall be deemed admitted by the petitioner or movant, unless for good cause shown an extension of time for filing the traverse is obtained and the traverse is filed within the extended time.

J. Duty of U.S. Attorney. Upon the filing of a motion pursuant to 28 U.S.C. 2255, a petition for writ of *habeas corpus*, a petition under the civil rights statutes or a petition for injunctive relief, it shall become the duty and responsibility of the United States Attorney or other counsel representing the United States of America in each instance where the United States (or its agent, servant or employee) is a party, to obtain whatever order of court may be appropriate and necessary to secure the appearance of any movant, petitioner, or other person (including but not limited to a material witness), who is in state or federal custody, at all proceedings where said person's appearance is necessary.

K. Duty of Counsel Representing State of Missouri. Upon the filing of a petition for writ of *habeas corpus*, a petition under the civil rights statutes or a petition for injunctive relief, it shall become the duty and responsibility of the Attorney General of the State of Missouri or other counsel representing the State of Missouri, in each instance where the State of Missouri (or its agent, servant or employee) is a party, to obtain whatever order of court may be appropriate and necessary to secure the appearance of any petitioner or other person (including but not limited to a material witness),

who is in state or federal custody, at all proceedings where their appearance is necessary.

(Former Rule 22 adopted July 31, 1963, effective Aug. 1, 1963; amended Feb. 4, 1970, effective Feb. 4, 1970; Sept. 8, 1971, effective Sept. 8, 1971; Oct. 1, 1971, effective Oct. 1, 1971; Sept. 28, 1972, effective Sept. 28, 1972; Feb. 24, 1973, effective April 24, 1973. Redesignated as current Rule 25 July 20, 1982, effective Jan. 1, 1983.)

RULE 26. REPORT BY PERSONS ADMITTED TO BAIL

Any person admitted to bail shall report to the Office of the United States Marshal immediately prior to any court proceeding which said person is required to attend.

(Former Rule 31 adopted June 7, 1972, effective June 7, 1972. Redesignated as current Rule 26 July 20, 1982, effective Jan. 1, 1983.)

RULE 27. INTERVIEWING; SEARCHING; OR USING OF PERSONS WHO ARE UNDER ARREST; IN CUSTODY; OR ON BAIL PENDING TRIAL; SENTENCING; OR APPEAL; OR ON PROBATION OR PAROLE; BY COUNSEL; OFFICERS; AGENTS; OR EMPLOYEES OF THE UNITED STATES

A. **General.** No counsel, officer, agent, or employee of the United States shall request, cause, or attempt to cause any person or persons (1) on probation, under supervision of the probation office of this Court, (2) on parole under the supervision of the probation office of this Court, or (3) on bail pending trial, sentence, or appeal under an order of a judge or magistrate of this Court or the Court of Appeals, to violate any condition of bail, probation, or parole, including, but not limited to, use of such a person under circumstances that violate one or more of the conditions of bail, probation, or parole, provided that an informal or formal *ex parte* request may be made to the judge or magistrate having jurisdiction, for modification of such condition or conditions for lawful purposes.

B. **Submission of Request for Modification of Conditions of Bail, Probation, or Parole.** Any request for modification of one or more condition of bail, probation, or parole may be submitted informally or formally, confidentially *ex parte*, to the magistrate or judge having jurisdiction or to the appropriate probation officer in case of parole, stating the exceptional facts which justify such a request. In an emergency, any judge or magistrate of this Court may grant such a request.

C. **Granting of Request for Modification of Conditions of Bail, Probation, or Parole.** If possible, prior to granting any request under paragraph 'B' hereof, the judge or magistrate shall, if time permits, consult with the Chief Probation Officer or the probation officer assigned to supervision of the person, before granting such a request, and shall by sealed order modify the conditions of bail, probation or supervision of parole by the probation office of this district as the circumstances shall require.

D. **Procedures Not Prohibited by Rule.** Provided however, that, in respect to persons under arrest, in custody, on bail pending trial, sentencing or appeal, on probation, or parole, this rule shall not be construed to prohibit:

1. On the initiative of the person or counsel, an officer, agent, or employee of the United States interviewing the person, "debriefing" the person, questioning the person, or taking a voluntary statement from the person concerning intelligence or information on any subject relating to, or unrelated to, the offense or offenses of which the person was convicted, or the alleged offense or offenses on which the bail releasee is awaiting trial, sentencing, or appeal;

2. Making searches and seizures, determined by counsel, an officer, agent, or employee of the United States to be lawful, including, but not limited to, searches or seizures from the person or persons, subject to later determination by the Court of lawfulness thereof;

3. Appearances and testimony by the person in any lawful discovery or investigative proceedings as a witness, formally or informally, including, but not limited to, appearance or appearances as a witness before a grand jury.

E. **To Whom Applicable.** This local rule shall apply to persons who are on probation, parole, or released on bail or in one or more of such circumstances concurrently, provided (1) that the supervision of the probation or parole is being conducted by the probation office of this Court, or provided (2) that the order fixing the conditions of bail has been entered (a) by a district judge or magistrate of this district or (b) by the Court of Appeals or a judge thereof in an appeal from a judgment in one or more criminal actions entered in this district.

(Former Rule 38 adopted Nov. 15, 1974, effective Nov. 15, 1974; amended July 11, 1975, effective July 11, 1975. Redesignated as current Rule 27 July 20, 1982, effective Jan. 1, 1983.)

RULE 28. EXPUNGING THE RECORD

Upon the filing of an order directing the record of a defendant be expunged in accordance with Section 404, Title II, Public Law 91, 84 Stat. 1264, Section 844, Title 21, U.S.C.A., and future amendment thereof and supplements thereto, the Clerk of the district court shall obliterate the name of the individual from all indexes and withdraw the docket

sheets and the file containing the papers of the criminal action from the court records.

The Clerk shall also notify the Administrative Office of the United States Courts, the court reporter, the Chief Probation Officer and the United States Magistrate having custody of the record of the order, instructing each of them to make similar obliterations and withdrawals and delivery of the papers from their files to the Clerk of this Court.

All the papers shall thereupon be expunged by being placed in the sealed records of the court to be opened only upon order of court. If the sealed records are opened, they shall be resealed by order of court. All such sealed papers shall be physically destroyed after ten years.

In appropriate cases, the Clerk shall timely initiate and submit to the judge to whom the case was last assigned, or his successor, an order in the following form:

STYLE OF CASE) CASE NO. _____

ORDER EXPUNGING THE RECORD

On motion by defendant _____ for an order of court expunging from the official records all recordation of arrest, indictment or information, trial finding of guilty and dismissal and discharge, the court finds that the defendant _____ pursuant to the provisions of the Controlled Dangerous Substances Act, Section 404, Title II, Public Law 91-513, 84 Stat. 1264, Section 844, Title 21, U.S.C.A., is entitled to relief. It is therefore hereby

ORDERED that, in accordance with Section 404, Title II, Public Law 91-513, 84 Stat. 1264, Section 844, Title 21, U.S.C.A., the records of defendant _____ be expunged from the official records of this court, and the Clerk of the Court is hereby further

ORDERED to obliterate the name of the defendant from all indexes and to withdraw the docket sheets and the file containing the papers of this criminal action from the court records, and shall then notify the Administrative Office of the United States Courts, the court reporter or reporters reporting the proceedings therein, the Chief Probation Officer and the magistrate or magistrates acting therein of the order, instructing them to make a similar obliteration and withdrawal of the papers in the above criminal action and to deliver all the papers and records therein to the Clerk of this Court. It is further

ORDERED that all the papers and records mentioned above shall thereupon be expunged by being placed in the sealed records of the court to be opened only upon order of court; and if the sealed records are opened they shall be resealed by order of court; and all such sealed papers shall be physically destroyed after ten years.

_____
(Judge) (Magistrate), United States District Court

Kansas City, Missouri

Dated:

(Former Rule 32 adopted Sept. 26, 1972, effective Sept. 26, 1972; amended Feb. 24, 1973, effective April 24, 1973. Redesignated as current Rule 28 July 20, 1982, effective Jan. 1, 1983.)

RULE 29. PAYMENT OF FIXED SUM IN LIEU OF APPEARANCE IN SUITABLE TYPES OF MISDEMEANOR CASES

This Rule is adopted pursuant to Rule 4, Rules of Procedure for the Trial of Misdemeanors Before United States Magistrates, to promote the more efficient administration of justice and improve the effectiveness of court administration.

A person who is charged with the commission of one of the hereinafter specified misdemeanors, whether chargeable under an applicable federal statute or regulation or an applicable state statute or regulation by virtue of the Assimilative Crimes Act (18 U.S.C. § 13) may, prior to or at the time fixed for appearance, pay a fixed sum to the Clerk of the Court in lieu of personal appearance before a magistrate or district judge. Upon receipt by the Clerk of payment of a fixed sum in lieu of appearance, the proceeding shall be terminated. The payment of a fixed sum in lieu of appearance in accordance with the provisions of this Rule shall signify that the person charged with the misdemeanor offense (a) does not contest the charge, (b) does not request a trial before a magistrate or a district judge, (c) agrees that the payment shall be the equivalent of a plea of guilty, and (d) agrees that the amount so paid shall be forfeited to the United States of America.

The misdemeanor offenses for which a fixed sum may be paid in lieu of personal appearance before a magistrate or district judge and the sum to be paid are set forth in the following schedules and subsequent amendments thereof which are incorporated herein by reference and made a part hereof as if fully set out:

1. Schedule "A" entitled "Schedule of Cash Payments That May Be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Secretary of the Interior to Regulate the Occupancy and Use of National Parks, Reservations, and Monuments."

2. Schedule "B" entitled "Schedule of Cash Payments That May Be Made in Lieu of Appearance for

Violation of Regulations Promulgated by the Secretary of Agriculture to Regulate the Occupancy and Use of National Forests, and for Violation of Statutes Relating to National Forests."

3. Schedule "C" entitled "Schedule of Cash Payments That May Be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Administrator of General Services to Regulate the Occupancy and Use of Public Buildings and Ground."

4. Schedule "D" entitled "Schedule of Cash Payments That May Be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Secretary of the Interior to Regulate Hunting and Fishing and the Occupancy and Use of Wildlife Refuge Areas, and for Violation of Statutes Relating to Fish and Wildlife.

5. Schedule "E" entitled "Schedule of Cash Payments That May Be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Secretary of the Army to Regulate the Occupancy and Use of Water Resource Development Projects."

6. Schedule "F" entitled "Schedule of Cash Payments That May Be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Administrator of Veterans' Affairs to Regulate the Occupancy and Use of Property, Buildings, and Facilities Under the Charge and Control of the Veterans Administration."

7. Schedule "G" entitled "Schedule of Cash Payments That May Be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Postmaster General to Regulate the Occupancy and Use of Real Property Under the Charge and Control of the Postal Service."

8. Schedule "H" entitled "Schedule of Cash Payments That May Be Made in Lieu of Appearance for Violation of Statutes or Regulations Regulating Registration and Operation of Motor Vehicles, Hunting, Trapping, and Fishing on Military Installations."

9. Schedule "I" entitled "Schedule of Cash Payments That May Be Made in Lieu of Appearance for Violation of Regulations Promulgated by the Secretary of the Interior to Protect, Manage, and Control Wild, Free-Roaming Horses and Burros and Maintain a Natural Ecological Balance on Lands Administered Through the Bureau of Land Management."

Whenever any alleged violation (a) is not shown on the schedules hereto, or (b) involves the operation of a motor vehicle which was involved in a collision, or (c) is for operating a motor vehicle while under the influence of an intoxicating liquor, narcotic, or controlled substance, or (d) is for leaving the scene of a motor vehicle accident, or (e) is for operating a motor vehicle while operator's or chauffeur's license is under suspension or has been revoked, or (f) is for operating a motor vehicle without being licensed to drive, or (g) is for exceeding the speed limit except on a military installation, by more than 15 miles per hour when operating a motor vehicle, or (h) is for exceeding the speed limit, on a military installation, by more than 20 miles per hour when operating a motor vehicle, or (i) is for a second moving traffic violation occurring within the preceding 12 month period when operating a motor vehicle, the payment of a fixed sum in lieu of appearance and personal appearance before a magistrate or district judge is required of the person charged with such a violation. Further, if in the opinion of the enforcement officer or agent, the circumstances surrounding an alleged violation are so aggravated that payment of the specified fixed sum may not be adequate punishment for the offense or if the offense is one for which a mandatory appearance is required, the officer or agent is not by this Rule prohibited from arresting the alleged offender and taking said offender immediately before a magistrate, or requiring the person, upon written notice, to appear before a magistrate or district judge.

The adoption of the form of violation notice and other forms to be utilized in the implementation of this Rule and the establishment of the procedures to be followed in issuing, filing, and processing violation notices will be by order or orders entered by the United States District Court en banc for the Western District of Missouri.

The words "charge," "offense," and "violation" as used herein shall mean the violation set forth on the face of the violation notice.

When a mandatory appearance is required, the person charged shall appear in the United States District Court for the Western District of Missouri before the designated magistrate or district judge.

Any schedule incorporated herein and made part hereof may be amended or supplemented by an order entered by the United States District Court en banc for the Western District of Missouri, substituting a page bearing a new number or numbers and the effective date.

The schedules incorporated herein and made a part hereof shall not be printed or published as a part of the Rules of the United States District Court for the Western District of Missouri, but copies of such schedules shall be maintained for examination by the public during regular business hours upon request (a) in the Office of the Clerk of the Court in Kansas City, Joplin, Springfield, Jefferson City, and St. Joseph, (b) in the Office of each United States Magistrate serving in this district, and (c) in the principal office in this District of each governmental agency referred to in any such schedules.

(Former Rule 100 adopted April 9, 1973, effective May 15, 1973; amended Feb. 15, 1974, effective Feb. 15, 1974. Redesignated as current Rule 101 Feb. 13, 1974, effective Feb. 15, 1974. Redesignated as current Rule 29 July 20, 1982, effective Jan. 1, 1983; amended April 24, 1986, effective May 1, 1986.)

RULE 30. ARBITRATION

A. Certification of Arbitrators.

1. An individual may be certified to serve as an arbitrator if: (a) he/she has been in the active practice of law for at least ten years; (b) he/she is presently a member of the bar of this Court; and (c) the Court en banc determines that he/she is suited to perform the duties of an arbitrator.

2. Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 18 U.S.C. Section 453 before serving as an arbitrator.

3. A list of all persons certified as arbitrators shall be maintained in the Clerk's Office.

B. Compensation and Expenses of Arbitrators.

1. Each arbitrator shall be compensated $75 for each day spent in hearing a case. The fees shall be paid by or pursuant to the order of the Director of the Administrative Office of the United States Courts upon the arbitrator's submission of the appropriate form. Arbitrators shall receive no other compensation. Reasonable expenses incurred by arbitrators in the performance of their duties shall be reimbursed.

C. Civil Cases Designated for Compulsory Non-Binding Arbitration.

1. The Clerk of the Court shall designate and process for compulsory arbitration all civil actions where money damages only are being sought, where the amount of the damage award that could reasonably be expected if the claiming party prevails would not exceed $100,000, exclusive of punitive damages, interest and costs, and where federal jurisdiction is present; provided, however, that cases heard on appeal from the ruling of an administrative agency, and civil rights cases in which the plaintiff is incarcerated, are excepted from such designation and processing.

2. For the sole purpose of determining whether a case will be designated for compulsory arbitration, the amount of the money damage award that could reasonably be expected if the claiming party prevails shall be presumed in all cases to be less than $100,000, exclusive of punitive damages, interest and costs, unless counsel of record for the plaintiff at the time of filing the complaint or counsel of record for defendant at the time of filing an answer containing a counterclaim certifies that counsel, based on a reasonable assessment of available information, has a good faith belief that the claiming party, if successful, will be awarded damages in excess of $100,000, exclusive of punitive damages, interest and costs. The Court may disregard this certification and designate the case for arbitration if the Court is satisfied that recoverable damages, exclusive of punitive damages, interest and costs, could not reasonably be expected to exceed $100,000.

D. Voluntary Arbitration.

1. The parties to any civil case may consent to arbitration in accordance with these rules even though the case does not meet the criteria set forth in Section C.

E. Referral to Arbitration.

1. The arbitration hearing shall be held approximately five months after the filing of the last original answer. After all original answers have been filed, the Clerk shall send a notice to counsel setting forth the date and time for the arbitration hearing. The notice shall also advise counsel that the arbitration hearing may be held earlier if the Clerk receives a request within 30 days from the date of the notice. The notice shall also advise counsel that they have 120 days to complete discovery unless the judge to whom the case has been assigned orders a shorter or longer period for discovery. A request to extend discovery must be filed no later than twenty days before the expiration of the 120 day discovery period. No extension of discovery will be granted unless the applicant has pursued discovery diligently during the initial 100 days of the discovery period and shows good cause for the requested extension. In the event leave is granted to add an additional party or parties after the notice of hearing has been sent, application to change the date for the arbitration hearing may be made to the Court.

2. Approximately 30 days before the date of the arbitration hearing, an order will be entered confirming the date and time of the arbitration hearing and assigning the case to a specific arbitration panel (hereinafter referred to as the "Order Assigning the Case"). In the event that a party has filed a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment, the arbitration hearing shall be postponed until the Court has ruled on the motion; provided, however, that the filing of such a motion on or after the date of entry of the Order Assigning the Case shall not stay the hearing unless the Court so orders.

3. Continuance of the arbitration hearing will be granted only upon a showing of exceptional need. Continuances interfere with one part of the arbitration program, i.e., prompt disposition of disputes. A request for continuance of the arbitration hearing should be directed to the Court and filed with the Clerk of the Court no later than five working days before the date of the hearing. If the basis for the request for continuance arises within five working days of the date of the hearing, the request shall be filed with the Clerk of the Court at the earliest possible time and the request shall contain a statement of the reasons why the request could not be

filed prior to five working days before the date of the hearing. A request for continuance of the arbitration hearing that is based on the need for additional discovery shall not be granted unless the Court has extended the deadline for discovery beyond the scheduled date of the arbitration hearing. Settlement negotiations shall not be a reason for continuing an arbitration hearing.

F. The Arbitration Panel.

1. Unless the parties agree to arbitration before a single arbitrator, the arbitration hearing shall be held before a panel of three arbitrators, one of whom shall be designated as chairperson. The arbitration panel shall be chosen at random by the Clerk of the Court from among the lawyers who have been certified as arbitrators.

2. Upon entry of the Order Assigning the Case, the clerk shall send to each arbitrator a copy of all the pleadings that define the issues, a copy of the Order Assigning the Case and a copy of the guidelines for arbitrators.

3. A person assigned as an arbitrator to a case is subject to disqualification for bias or prejudice as provided in 28 U.S.C. Section 144. If any party desires to disqualify an arbitrator under 28 U.S.C. Section 144, a motion shall be filed with the Court not more than ten days after the date of the Order Assigning the Case.

4. Any person assigned as an arbitrator to a case shall disqualify him/herself if required to do so by 28 U.S.C. Section 455.

G. Pre-Hearing Filings.

1. A list of all exhibits a party intends to offer, a list of all witnesses a party intends to call, and a list of all depositions or portions of depositions a party intends to use, shall be served on each party at least ten days prior to the hearing. A copy of each written exhibit, marked for identification, and a copy of all affidavits a party intends to use must be delivered to each party by the same date. Any exhibit which is not easily or economically copied shall be made available for inspection at any reasonable time.

2. Formal proof of authenticity or foundation for any exhibit listed in accordance with paragraph G.1 shall not be required unless the proponent has been notified in writing at least five days prior to the hearing of the precise objection to authenticity or foundation.

3. The arbitrators may refuse to receive an exhibit or to permit the testimony of a witness if a party has failed to comply with paragraph G.1 or paragraph G.2 in connection with that exhibit or witness.

4. Each party shall deliver to the arbitrators, and file with the Clerk, at least five days prior to the hearing a written statement which sets forth *briefly* the following:

a. A summary of the claims made;
b. The critical fact issues; and
c. Contested legal issues, with citations of the party's primary authority.

H. Arbitration Hearing.

1. The arbitration hearing shall take place at the time and place designated in the Order Assigning the Case; provided, however, that upon reasonable notice to the parties the arbitrators may change the hour or place of the hearing. The arbitrators may continue the hearing to a date within 30 days of the hearing date specified in the Order Assigning the Case. The Clerk must be notified immediately of any continuance.

2. If the parties settle the case prior to the arbitration hearing, the Clerk and all members of the arbitration panel assigned to the case should be advised promptly. Failure to notify the Clerk of the Court promptly of a settlement may result in the imposition of monetary sanctions.

3. The arbitration hearing may proceed without a party who fails to appear at the hearing if the arbitrators conclude that the party was properly notified.

4. Rule 45, Federal Rules of Civil Procedure, shall govern the issuance of subpoenas for attendance of witnesses and for the production of documentary evidence. Testimony at an arbitration hearing shall be under oath or affirmation administered by the chairperson of the panel.

5. The Court contemplates that ordinarily each party's presentation of the arbitration hearing will require no more than two and one-half hours. The presentation of testimony shall be kept to a minimum. Each party's presentation to the arbitrators should be primarily through the statements and arguments of counsel. If the parties believe that more than one day will be necessary for the presentation of all parties' positions, they shall file, not later than the date scheduled for the close of discovery, a written estimate of the time required for the presentation of all parties' positions, stating the factual basis for the estimate.

6. A party may record the arbitration hearing in any non-disruptive manner. The cost of the recording shall be paid by the party making the recording.

I. Arbitration Award and Judgment.

1. A written arbitration award shall be filed with the Court and served upon each party promptly after the hearing is concluded. The arbitration award shall be entered as the judgment of the Court unless a party requests a trial *de novo* pursuant to paragraph J.1. A judgment so entered shall have

the same force and effect as a judgment of the Court in any other civil action, except that it may not be appealed. In a case involving multiple claims or parties, any part of an arbitration award for which a party does not request a trial *de novo* pursuant to paragraph J.1 shall become part of the final judgment in the case with the same force and effect as a judgment of the Court in a civil action, except that it shall not be subject to appeal.

J. Trial De Novo.

1. Within 30 days after the arbitration award is entered on the docket, any party may demand a trial *de novo* in the district court on any or all of the issues presented at the arbitration hearing. If one party requests a trial *de novo* on less than all issues of the case, any other party or parties may, within five (5) days after the date the original demand for trial *de novo* is filed, request a trial *de novo* on all other issues. Written notification of any demand for a trial *de novo* shall be served by the party demanding a trial *de novo* upon each counsel of record and upon any party not represented by counsel. Withdrawal of a demand for a trial *de novo* shall reinstate the arbitrator's award, unless within ten days thereafter any other party requests a trial *de novo*.

2. Any party demanding a trial *de novo* shall, unless permitted to proceed *in forma pauperis*, deposit with the Clerk of the Court an amount equal to the arbitration fees paid to the arbitrators as provided in Section B. The sum thus deposited shall be returned to the depositing party in the event that party obtains a final judgment, exclusive of punitive damages, interest and costs, more favorable than the arbitration award. In the event the party demanding a trial *de novo* does not obtain a more favorable result in the trial *de novo*, the sum so deposited shall be paid to the Treasury of the United States.

3. At the trial *de novo*, any right to trial by jury shall be recognized.

4. At the trial *de novo* no reference shall be made to any testimony before the arbitrators, to the arbitration proceeding, or to the arbitration award. However, in order to protect the integrity of the oath administered to witnesses at the arbitration hearing, a party may use the previous testimony of a witness before the arbitrators for the purpose of impeaching that witness at the trial *de novo*, with the permission of the trial judge.

K. Post Arbitration Discovery.

1. After entry of the arbitration award, no formal discovery (Rules 26 through 36 inclusive, Federal Rules of Civil Procedure) shall be conducted unless the Court has approved a scheduling order providing for post-arbitration discovery. If any party desires to conduct formal discovery after the arbitration award, that party shall file within 20 days after the trial *de novo* is requested (1) a motion requesting post-arbitration discovery; and (2) a proposed scheduling order complying with Local Rules 15E, 15G, and 15H and *containing the specificity required by Rule 15N.* The party or parties requesting post-arbitration discovery shall take the lead in preparing the proposed scheduling order.

L. Sanctions.

1. If a party fails to participate in the arbitration process in a meaningful fashion, the Court may impose appropriate sanctions, including but not limited to an entry of judgment by the Court upon the arbitrators' award.

(Adopted and effective Nov. 29, 1985; amended and effective Jan. 9, 1987; Feb. 4, 1988; May 10, 1989.)

RULE 31. PARTICIPATION BY FORMER LAW CLERKS IN CASES PENDING BEFORE THE JUDGE OR MAGISTRATE WHO PREVIOUSLY EMPLOYED THEM

A. Cases Pending During Tenure as a Law Clerk. No attorney who has been employed as a law clerk to a judge or magistrate of this Court shall appear or perform any work in any case which was pending before that judge or magistrate during the tenure of the attorney as a law clerk. A violation of this rule may result in the disqualification of the attorney and his or her employer in the case. The employer of a former law clerk shall implement appropriate procedures to assure that the attorney does not appear in or work on any case which was pending before the judge or magistrate during his or her tenure as a law clerk.

B. Newly-Filed Cases. For two years after a law clerk leaves the employment of a judge of the Court, the former law clerk should not work on any newly filed case that is assigned to the judge. If a complaint that the law clerk has prepared or has assisted in preparing is assigned at the time of filing to the judge, the law firm shall promptly call that fact to the attention of the judge and the judge shall recuse. If the law clerk participated in any way in the preparation of the defense of the case before it was assigned to the judge, the law firm shall promptly call that fact to the attention of the judge and the judge shall recuse. In the event that the law clerk begins work on a newly filed case after the case has been assigned to the judge, the law firm shall promptly call that fact to the attention of the judge and the law clerk and the employing firm, if any, shall be disqualified from further participation in the case.

(Adopted June 6, 1986.)

RULE 32. SANCTIONS FOR LATE NOTIFICATION OF SETTLEMENT

Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual jury trial, then, except for good cause shown, jury costs, including Marshal fees, mileage, and per diem, may be assessed equally against the parties and their counsel, or otherwise assessed by the Court, unless the Clerk of the Court is notified before twelve noon of the last business day preceding the time when the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend. Likewise, when any civil action is settled at trial in advance of the verdict, then, except for good cause shown, jury costs, including Marshal fees, mileage and per diem, may be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court.

(Adopted Jan. 9, 1987, effective March 15, 1987.)

RULE 33. PRACTICE BY STUDENT INTERN ENROLLED IN APPROVED LAW SCHOOL CLINICAL PROGRAM

Any eligible law student acting under a supervising attorney shall be allowed to make an appearance and participate in proceedings in this Court pursuant to these rules.

A. Eligibility. To be eligible to appear and participate a law student must:

1. be a student in good standing in a law school approved by the American Bar Association;

2. have completed legal studies amounting to three (3) semesters or the equivalent if the law school is on some other basis than a semester basis;

3. be enrolled in a faculty-supervised clinical program of a law school which meets the requirements of subdivision (F);

4. file with the Clerk of the Court:

a. a certificate by the dean of the law school that the student is of good moral character and possesses the above requirements and is qualified to serve as a legal intern. The certificate shall be in a form prescribed by the Court;

b. a certificate in a form prescribed by the Court that the student has read and agreed to abide by the rules of the Court, and all applicable codes of professional responsibility and other relevant federal practice rules;

c. a notice of appearance in each case in which the student is participating or appearing as a law student intern. The notice shall be in the form prescribed by the Court in Appendix A hereto attached and shall be signed by the supervising attorney, the student intern, and the client or an authorized representative of the client, and

5. be introduced to the Court in which the student is appearing by an attorney admitted to practice in this Court.

B. Restrictions. No law student admitted under these rules shall:

1. request or receive any compensation or remuneration of any kind from the client, but this restriction does not prevent the supervising attorney or his or her law firm, a law school, a public defender or any agency of the government from paying compensation to the law student nor prevent any firm or agency from making such charges for its services as it may otherwise properly require;

2. appear in court without the presence of the supervising attorney; or

3. file any documents or papers with the Court that the student has prepared which have not been read, approved, and signed by the supervising attorney and co-signed by the student.

C. Notice. Any supervising attorney intending to use a law student pursuant to this rule in any contested matter shall notify the Court of such intention at least seventy-two (72) hours before the matter is scheduled to commence. If the Court should conclude that, for reasons sufficient to the Court, the participation by the student attorney would be inappropriate, the Court shall so advise the supervising attorney and the said appearance shall not be made.

D. Termination. The student's participation may be terminated by a judge of this Court or by the dean of the law school at any time without notice or hearing and without a showing of cause. Notice of the termination may be filed with the Clerk of Court.

E. Supervising Attorney. Any person acting as a supervising attorney under this rule must be admitted to practice in this Court and shall:

1. be approved by the law school faculty members who are in charge of the law school clinical program;

2. assume personal professional responsibility for the conduct of the student being supervised;

3. co-sign all pleadings, papers and documents prepared by the student;

4. advise the court of the student's participation in accordance with subparagraph (C) above, be present with the student at all times in Court, and be prepared to supplement oral or written work of the student as requested by the Court or as necessary to ensure proper representation of the client; and

5. be available for consultation with the client.

F. Law School Clinical Program Requirements. Each law school seeking to gain admission

of its students to practice as student interns in this Court shall certify to the Court that its clinical program:

1. is a clinical program for credit in which a law student obtains academic and practice advocacy training under supervision of qualified attorneys;

2. is conducted in such a manner as not to conflict with the normal court schedules;

3. is under the direction of a member of the faculty of the law school; and

4. provides for the designation and maintenance of an office in the Court's geographical boundaries to which legal and other notices may be sent in connection with the clinical program or legal representation provided pursuant to this rule.

No law student shall appear pursuant to this rule unless and until the law school clinical program in which he or she is enrolled is approved by the court en banc as in conformance with this rule.

(Adopted Sept. 16, 1987, effective Oct. 19, 1987.)

APPENDIX A TO RULE 33. NOTICE OF APPEARANCE OF STUDENT INTERN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
MISSOURI WESTERN DIVISION

(Style of Case)

NOTICE OF APPEARANCE OF
STUDENT INTERN

_____, an attorney of record
(Name of Supervising Attorney)
for the above-named _____, plaintiff/de-
(Name of Client)
fendant, hereby advises the Court that he/she is acting as supervising attorney for _____
(Name of Law Stu-
_____, a law student who is eligible to appear in
dent)
this Court under the approved law school clinical program conducted at _____ and that
(Name of Law School)
said student intern will make an appearance in this matter under the supervision of the undersigned supervising attorney.

Please also be advised that both the supervising attorney and the law student have read and agreed to abide by Rule 33 of this Court governing the practice by student interns.

Dated: _____

_____
Signature of Supervising Attorney

Address and Phone Number:

_____
_____
_____

Signature of Law Student

Name and address of law school student is attending:

_____
_____
_____
_____

CLIENT CONSENT

I authorize the above-named law student who is being supervised by my attorney to appear in court or at other proceedings on my behalf and to prepare documents on my behalf under the supervision of the above-named supervising attorney. My attorney must be present when the law student appears in court.

_____ _____
Date: (Signature of Client)

Address of Client: _____
_____
_____
_____

(Adopted Sept. 16, 1987, effective Oct. 19, 1987.)

RULE 34. PROPOSED INSTRUCTIONS AND VERDICT FORMS

A. Proposed jury instructions and verdict forms submitted under Rule 30, Federal Rules of Criminal Procedure, or Rule 51, Federal Rules of Civil Procedure, shall be distributed as follows:

a) an original and one copy shall be delivered to the appropriate courtroom deputy;

b) one copy shall be filed with the Clerk's office;

c) one copy shall be served on each party.

B. At the top of the original and each copy of each instruction shall appear the words "Instruction No. _____." Neither "Plaintiff" nor "Defendant" shall precede "Instruction No. _____."

C. At the bottom of each copy the party tendering it shall state who is submitting the instruction and the number of the instruction (*e.g.*, Plaintiff's Instruction No. 1) and the source and authority for the instruction. The original shall be "clean" with no identification of the source or the party submitting the instruction.

(Adopted Aug. 12, 1988, effective Aug. 12, 1988.)

RULE 35. ASSIGNMENT OF CASES

Unless otherwise provided in an Administrative Order approved by the Court en banc, the assign-

ment of newly filed criminal and civil matters shall be by blind draw among the qualified judges. Judges shall be considered qualified unless they have given blanket recusal instructions to the Clerk in writing. However, any judge may enter an order in any case at the request of or in the event of unavailability of the judge to whom the case is assigned. Cases may be transferred between judges by mutual consent. Cases on a joint trial docket may be reassigned in order to promote their prompt and efficient disposition. If a case that has been dismissed is refiled, the refiled case shall be assigned to the judge last handling the dismissed case. Related cases, by mutual consent of the judges to whom the cases are assigned, shall be transferred to the judge with the lowest numbered case.

(Adopted Aug. 17, 1988, effective Aug. 17, 1988.)

APPENDIX B

Statistical Analysis of the Docket of the U.S. District Court for the Western District of Missouri

Prepared by Davis P. Loupe, Management Analyst

Acknowledgements of assistance go to:

Clerk Robert F. Connor
Don Hendrix
Debbie Starks
Bill Terry
Randy Gladish
Diana Diaz
Courtroom Deputies of Missouri Western

1. Analysis Of Missouri Western Cases Pending More Than Two Years

1a. The number of cases pending more than two years were assessed for the 1990 and 1991 statistical years. Nature of suit categories with median disposition times (excluding transfers and Magistrate cases greater than one year by the nature of suit are listed in Table 1.

NAT#	Nature of Suit	Median Disposition Time (Days)	Number Studied
	Contracts		
190	Other Contracts	366	323
	Real Property		
245	Tort Product Liability	699	6
240	Torts to Land	509	7
	Personal Injury		
368	Asbestos	820	15
	Personal Property		
370	Other Fraud	388	27
	Civil Rights		
378	Employment	378	230
	Forfeiture/Penalty		
620	Other Food and Drug	486	12
	Federal Tax Suits		
870	Taxes	408	34
	Other Statutes		
891	Agricultural Acts	390	5
893	Environmental Matters	387	6

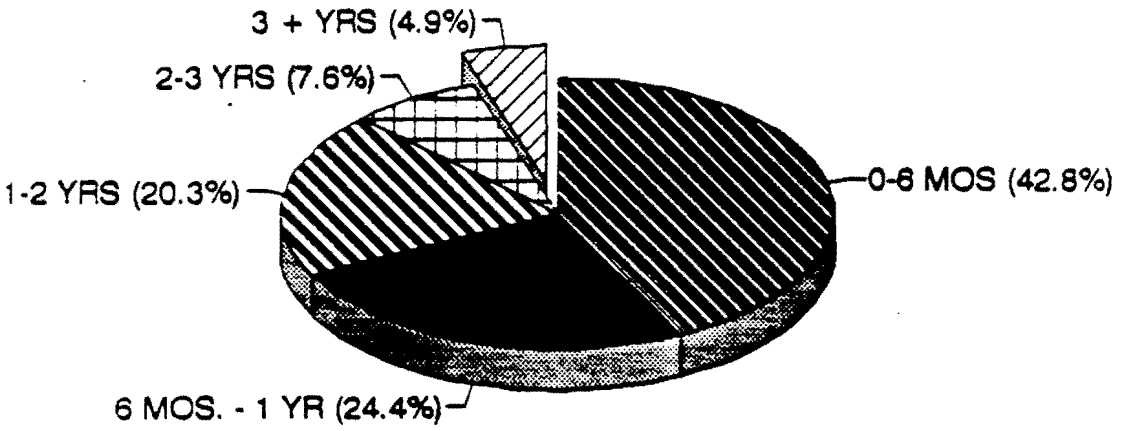
1b. An analysis of the composition of the age of pending cases as of 9/30/91 indicated that 12.5% of all pending cases were over two years old (See Chart 1).

1c. The composition of cases pending over two years by nature of suit is reflected in Chart 2. The greatest percentage of cases were prisoner petitions (43.9%), followed by contracts (12.9%) and civil rights (12.5%).

1d. The percentages of cases pending over two years for the statistical years 1990 and

CHART 1

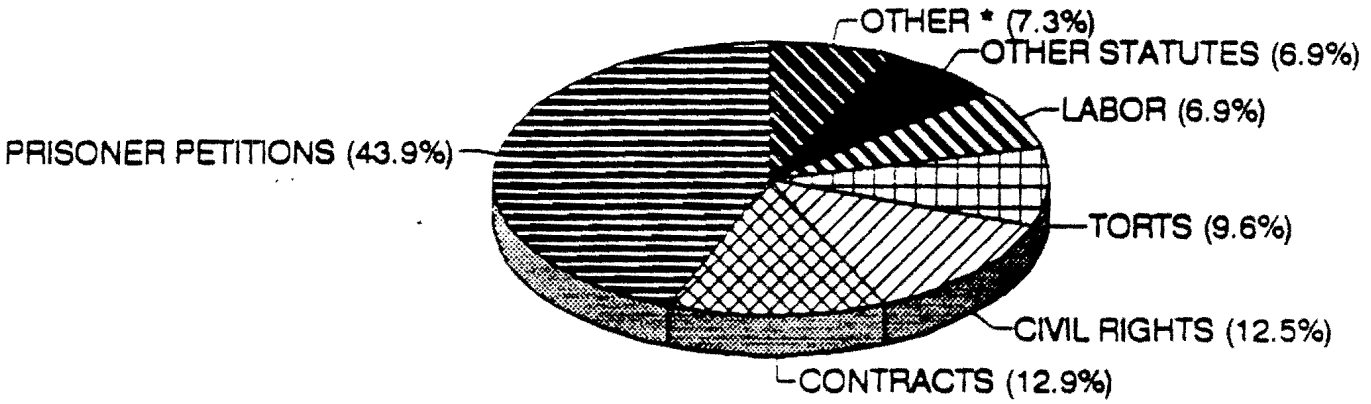
WESTERN MO - Age of Pending Cases
Cases Pending 9/30/91



SOURCE: State of the Docket Report for September 1991

CHART 2

COMPOSITION OF CASES > 2 YEARS BY NATURE OF SUIT, 10/31/91



OTHER *: SOCIAL SECURITY 3%, ANTITRUST 1%, PROPERTY RIGHTS 1%, REAL PROPERTY 1%, FOREITURE/ PENALTY 1%

SOURCE: Terminated Cases Report - Stat Years 90-91

1991 were compared to the percentages of filings in 1988 and 1989 in Chart 3. Findings indicate that across nature of suit categories the percentages of cases pending over two years generally follow the trend in the percentages of the filings from 2 to 3 years before. Exceptions were in civil rights cases which had a slightly larger percentage of over two year old cases as compared to its 1988/89 filings, and social security cases which had a smaller percentage of two year old cases as compared to its 1988/89 filings. There were no student loan/VA benefit cases over two years old.

1e. Recommendations for further study: The greatest opportunity to lower overall district cases pending over two years would be to study methods of processing prisoner petitions which constitute a large percentage of overall filings and cases pending over two years.

2. Analysis of Missouri Western Cases Pending Over Three Years

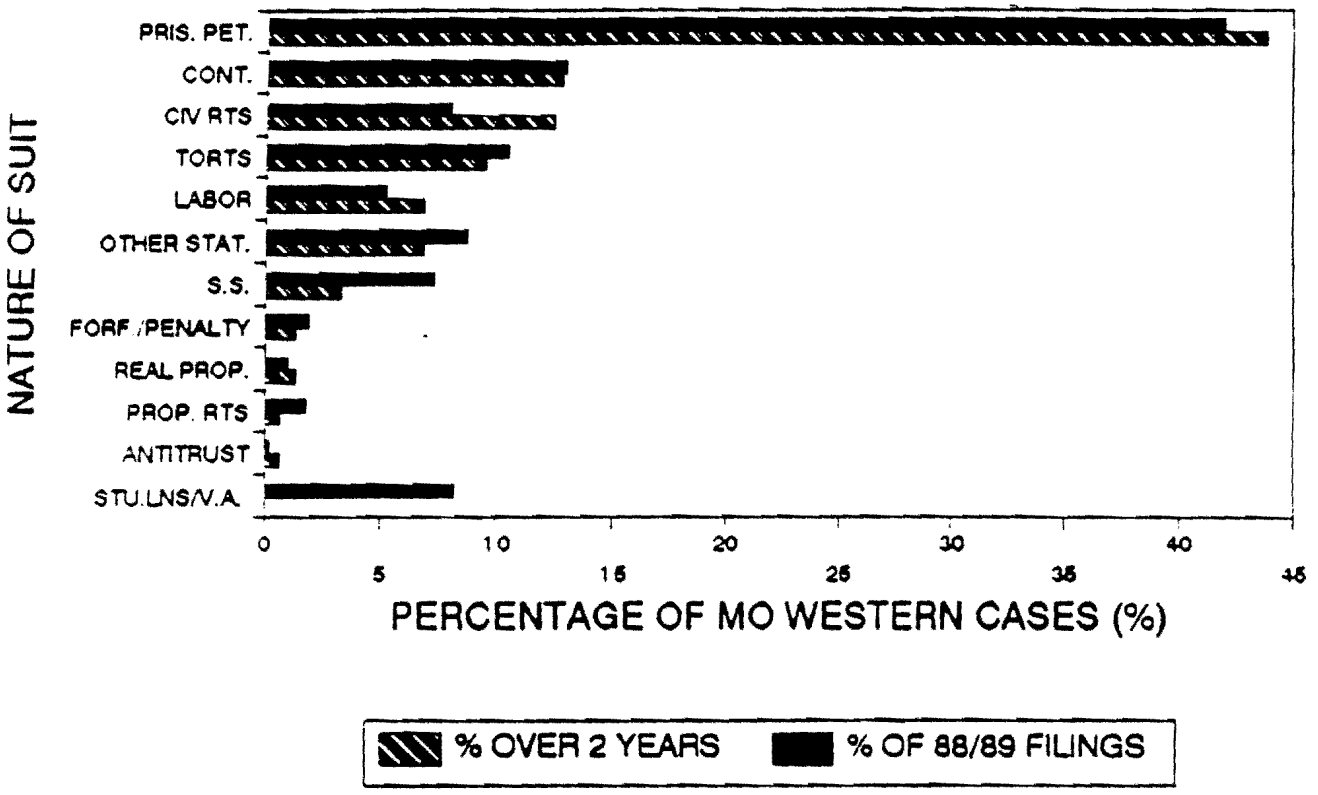
2a. A study of the number of civil cases per judgeship pending over three years from 1971 to 1991 is presented in Chart 4. The number of three year old cases are compared to the number of civil cases per judgeship which were filed three years before. Chart 4 indicates that the number of cases over three years old are related to the previous years filing trends. This positive relation suggests that caseloads have an influence on the age of cases.

3. Comparison of Disposition Time for Cases Set for Trial Before Versus After Discovery

3a. The disposition time from filing to disposition for cases set for trial before discovery were compared to those cases set for trial after discovery. It is hypothesized that judges who set cases for trial before discovery have a better disposition time than judges who set cases after discovery. In the analysis, all cases which were terminated by transfers were not considered. In addition, the cases studied were chosen because they contained a large

CHART 3

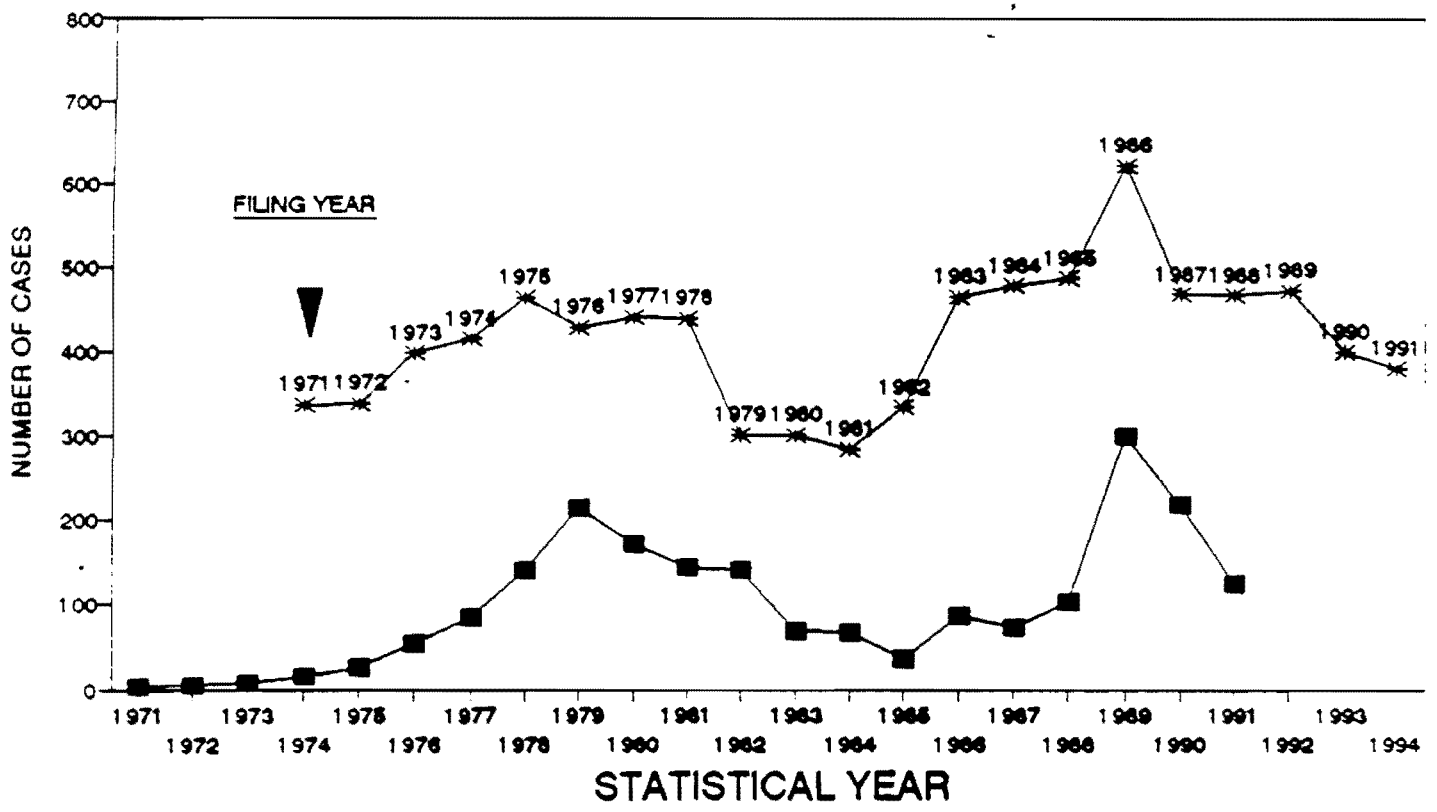
% MO WESTERN CASES PENDING > 2 YEARS BY NATURE OF SUIT, 10/31/91



SOURCE: Cases Pending Over Two Years Report - 10/31/91

CHART 4

CIVIL FILINGS PER JUDGESHIP VS TOTAL CASES PEND. OVER 3 YRS, 1971-1991



enough sample for analysis. The twelve nature of suit categories studied in statistical years 1990 and 1991 are listed in Table 2.

Table 2

NAT #	Nature of Suit	Number of Cases Observed
	Contract	
110	Insurance	102
140	Negotiable Instrument	56
190	Other	323
	Personal Injury	350
350	Motor Vehicle	86
360	Other	112
	Personal Property	
380	Other	36
	Bankruptcy	
422	Appeal	79
	Civil Rights	
440	Other	152
442	Employment	230
	Labor	
791	E.R.I.S.A.	169
	Social Security	
863	DIWC/DIWW	228
870	Federal Tax Suits	
870	Taxes	34

3b. The disposition time for cases of the twelve nature of suit categories were compared using the Kruskal-Wallis One-Way Analysis of Variance by Ranks. This statistical method computed the average rankings for each judge according to the case disposition time. The results of the Kruskal-Wallis analysis show that there are differences in the average rankings of the disposition time for judges who differed in trial setting procedures (before and after discovery). There were significant differences in disposition time average rankings in 5 of 12 categories at a .05 probability level of significance (95% certainty that the differences were not due to chance). There were marginally significant differences in disposition time average rankings in 4 of 12 categories at a .10 probability level of significance (90% certainty that the differences were not due to chance). Three of 12 categories yielded no significant differences

in disposition time average rankings.

3c. Table 3 describes the effect of setting trial dates before versus after discovery. The significant differences in average rank of disposition time between individual judges differing in trial setting procedure are presented for cases of five nature of suit categories.

Table 3
Trial Setting Procedure

Nature of Suit	Better Rank Judge's Procedure	Lesser Rank Judge's Procedure
Contract:		
Negotiable Instrument	after discovery	after discovery
	after discovery	before discovery
Other Contracts	before discovery	after discovery
	before discovery	after discovery
Personal Injury:		
Motor Vehiclebefore	discovery	before discovery
Bankruptcy:		
Appeal	before discovery	after discovery
	before discovery	after discovery
Social Security:		
DIWC/DIWW	before discovery	after discovery
	before discovery	after discovery
	before discovery	before discovery

Findings indicate that 6 of the comparisons between individual judges support the hypothesis that judges who set cases for trial before versus after discovery have a faster disposition time. One of the comparisons between individual judges does not support the hypothesis and 3 of the comparisons do not affect the conclusions.

3d. In the Kruskal-Wallis analysis, the judges are ranked for each case from 1 to 7 with a rank of 1 indicating the fastest disposition time. An assessment of the combined average ranking of the judges grouped according to trial setting procedure (before versus after discovery) indicates that 57% of the combined average rankings of the nature of suit cases

of judges who set trial dates before discovery had an average rank of 1, 2, or 3 out of 7 as compared to 21% for those who set trial dates after discovery. Table 4 describes the breakdown of percentages across combined average ranks of the judges grouped according to trial setting procedures. For instance, 19% of the combined average rankings of the judges who set trial before discovery were first place ranks.

Table 4

Trial Setting Procedure	Percentage of Combined Average Ranks						
	Rank						
	1	2	3	4	5	6	7
Before Discovery	19%	23%	15%	13%	12%	8%	10%
After Discovery	4%	4%	13%	12%	25%	25%	17%

4. Comparison of Disposition Time for Cases of Judges Using Telephone Conferences to Resolve Discovery Disputes Versus Those Who Do Not

4a. The time from filing to disposition of the cases for judges who use telephone conferences were compared to those cases whose judges did not use telephone conferences. It is hypothesized that judges who use telephone conferences to resolve discovery disputes have a faster disposition time than judges who do not use telephone conferences. In the analysis, all cases which were terminated by transfers were not considered. In addition, the cases studied were chosen because they contained a large enough sample for analysis. The twelve nature of suit categories studied in statistical years 1990 and 1991 are listed previously in Table 2.

4b. The disposition time for cases of the twelve nature of suit categories were compared using the Kruskal-Wallis One-Way Analysis of Variance by Ranks. This statistical method computed the average rankings for each judge according to the case disposition time. The

results of the Kruskal-Wallis analysis show that there are significant differences in the average rankings of the disposition time for judges who differed in the use of telephone conferences. There were significant differences in disposition time average rankings in 5 out 12 categories at a .05 probability level of significance (95% certainty that the differences were not due to chance). There were marginally significant differences in disposition time average rankings in 4 out of 12 categories at a .10 probability level of significance (90% certainty that the differences were not due to chance). Three out of 12 categories yielded no significant differences in disposition time average rankings.

4c. Table 5 describes the effect of telephone conferences for the resolution of discovery disputes. The significant differences in the average ranks of disposition time between individual judges according to whether they used telephone conferences are presented for cases of five nature of suit categories.

Table 5

Use of Telephone Conferences to Resolve Discovery Disputes

Nature of Suit	Better Rank Judge's Procedure	Lesser Rank Judge's Procedure
Contract:		
Negotiable Instrument		
	telephone conference	no telephone conference
	telephone conference	no telephone conference
Other Contracts		
	telephone conference	no telephone conference
	telephone conference	no telephone conference
Personal Injury:		
Motor Vehicle		
	telephone conference	no telephone conference
Bankruptcy:		
Appeal		
	telephone conference	no telephone conference
	telephone conference	no telephone conference
Social Security:		
DIWC/DIWW		
	telephone conference	telephone conference
	telephone conference	no telephone conference
	telephone conference	no telephone conference

Findings indicate that 9 of the comparisons between individual judges support the hypothesis that judges who use telephone conferences to resolve discovery disputes have a faster disposition time. None of the comparisons between individual judges disprove the hypothesis and one of the comparisons does not affect the conclusion.

4d. In the Kruskal-Wallis analysis, the judges are ranked for each case from 1 to 7 with a rank of 1 indicating the fastest disposition time. An assessment of the combined average ranking of the judges grouped according to telephone conference use indicates that 61% of the combined average rankings of the individual nature of suit categories of the judges who use telephone conferences had the average rank of 1, 2, or 3 out of 7 as compared to 20% of the combined average rankings for those who did not use telephone conferences. Table 6 describes the breakdown of percentages across combined average ranks of the judges grouped according to use of telephone conferences. For instance, 25% of the combined average rankings of the judges who used telephone conferences were second place ranks.

Table 6

Discovery Dispute Procedure	Percentage of Combined Average Ranks						
	Rank 1	2	3	4	5	6	7
Telephone Conferences	19%	25%	17%	17%	14%	8%	0%
No Telephone Conferences	8%	8%	11%	8%	20%	20%	25%

4e. Recommendations for future study: Study the median number of motions filed per case for judges who use telephone conferences versus those who do not use telephone conferences.

5. Analysis of Dispositive Motions pending more than 60 days

5a. The analysis of dispositive motions pending more than 60 days consisted of tallying the number of dispositive motions for Civil pending motions as of 10/31/91. Of the overall dispositive motions which were past due, 230 were over 60 days past the date when said motion was ready to rule (See Chart 5).

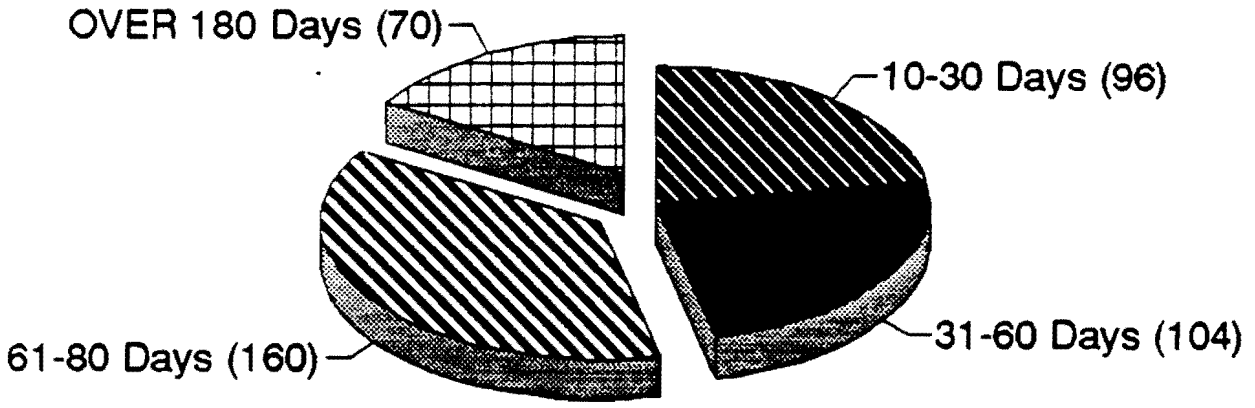
The composition of dispositive motions past due over 60 days by nature of suit shows Prisoner Petitions and Social Security categories containing the largest number of motions past due (See Chart 6). An analysis of all dispositive motions past due and over 60 days past due is presented in Appendix B.

6. Analysis of the disposition of criminal cases prior to and following the implementation of the sentencing guidelines

6a. This analysis consisted of charting the median disposition time from filing to disposition for all criminal cases for statistical years 1971 - 1991 (See Chart 7). Criminal filings per judgeship have remained steady over the last ten years (See Chart 8). The sentencing guidelines took effect on November 1, 1987. Statistical years run from July 1 to June 30th. The first full year that any effect of the sentencing guidelines could be measured would be statistical year 1989 (July 1, 1988 - June 30, 1989). The median processing times for the 3 years prior to the sentencing guidelines were: 1986, 3.3 months; 1987, 3.8 months; and 1988, 3.6 months; in the three years following, the median filing to disposition times were: 1989, 5.1 months; 1990, 5.8 months; and 1991, 7.1 months (See Chart 7). This trend indicates that sentencing guidelines have caused an increase in the filing to disposition times for criminal cases. Whether these increases have caused additional work for the judges should be the subject of a future study.

CHART 5

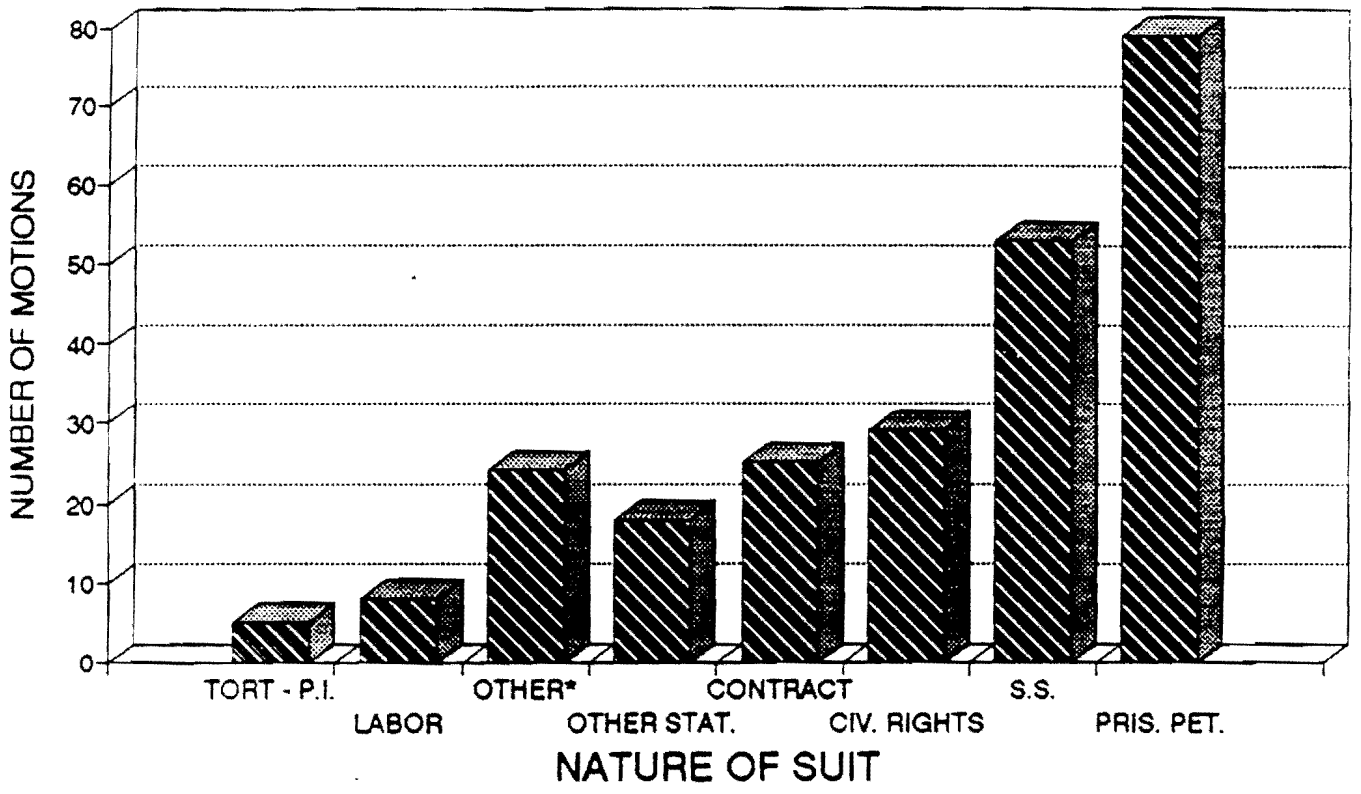
OVERALL DISPOSITIVE MOTIONS - 10/31/91
NUMBER OF PAST DUE MOTIONS
NUMBER OF DAYS PAST READY TO RULE DATE



SOURCE: Civil Pending Motions Report - 10/31/91

CHART 6

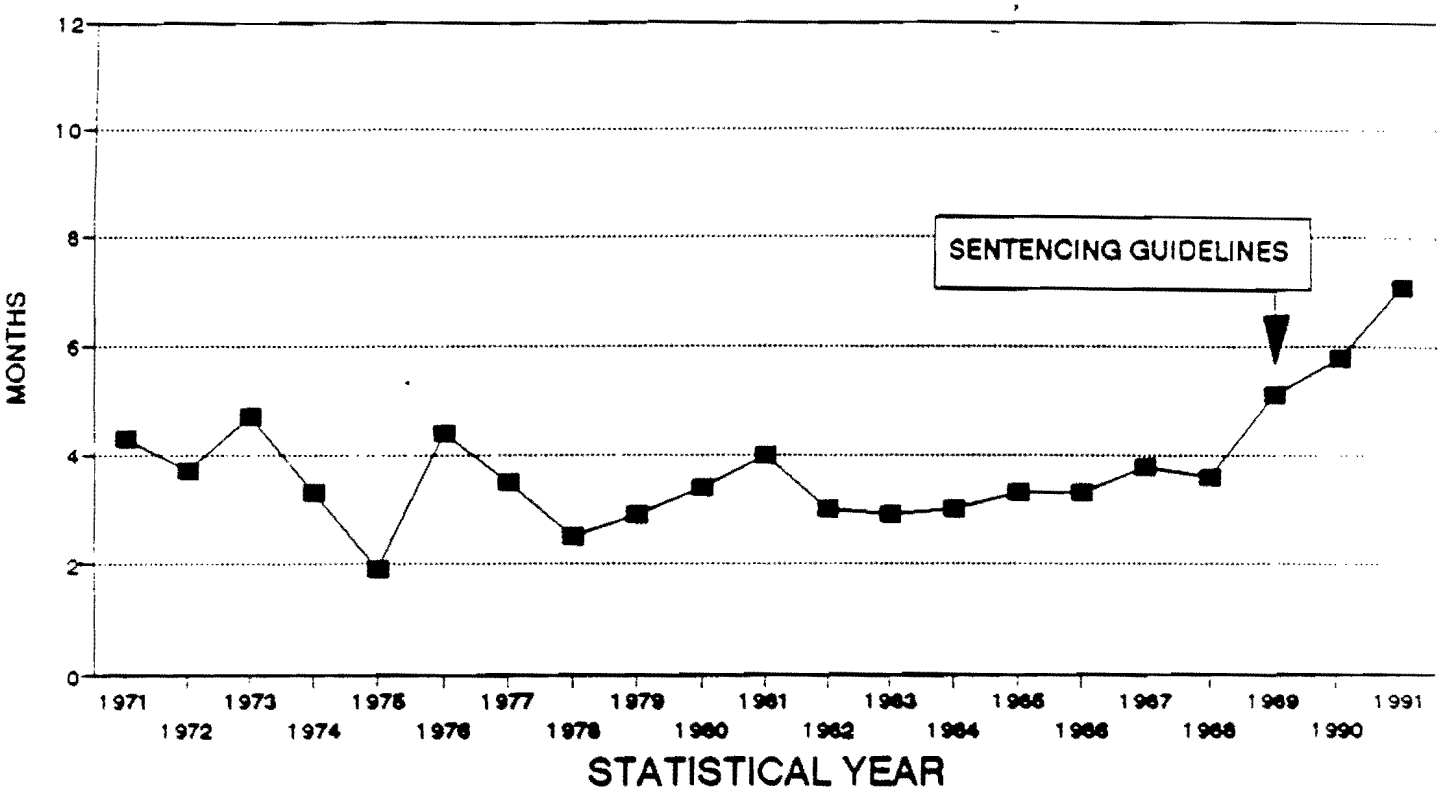
DISPOSITIVE MOTIONS - BY NATURE OF SUIT OVER 60 DAYS PAST THE READY TO RULE DATE 10/31/91



SOURCE: Civil Pending Motions Report - 10/31/91

CHART 7

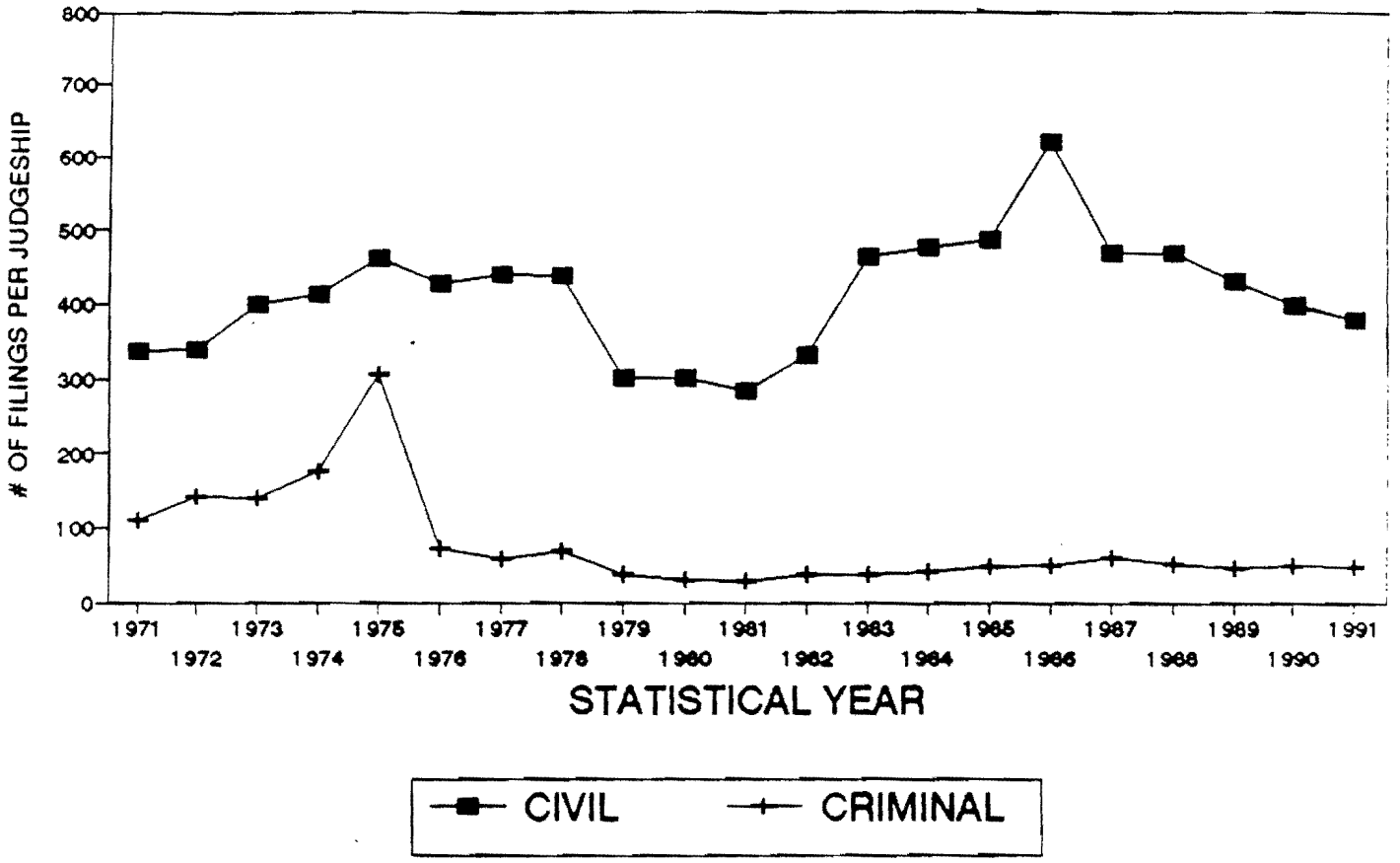
MEDIAN - FILING TO DISPOSITION
CRIMINAL FELONY 1971-1991



SOURCE: Federal Court Management Statistics - 1971 - 1991

CHART 8

NO. OF CIVIL VS CRIMINAL FILINGS PER JUDGESHIP 1971-1991



Source: Federal Court Management Statistics 1971-1991

7. Analysis of the disposition of cases placed on the accelerated docket

7a. Accelerated Docket Median Disposition Time

The median disposition time for cases placed on the April and October 1991 accelerated docket was 465 days.

8. Median Filing to Disposition Times

8a. Median disposition times by nature of suit were calculated in categories containing at least five cases. The results are listed in Table 8.

Table 8

Median Filing to Disposition Time Overall Docket
By Nature of Suit Category

NATURE OF SUIT	OVERALL MEDIAN	# OF CASES OBSERVED
Contract:		
Insurance	346	102
Miller Act	217	16
Negotiable Instrument	249	52
Student Loans	118	66
Overpayment Veteran's Benefits	103	79
Other Contract	366	323
Contract Product Liability	281	6
Real Property:		
Foreclosure	184	5
Torts to Land	509	7
Tort Product Liability	699	6
All Other Real Property	242	16
Tort - Personal Injury:		
Federal Employers' Liability	306	33
Motor Vehicle	290	86
Motor Vehicle Product Liability	362	17
Other Personal Injury	348	112
Medical Malpractice	333	24
Asbestos Pers.Inj.Prod.Liab.	820	15
Tort - Personal Property:		
Other Fraud	388	27
Other Personal Property Damage	281	36
Property Damage Product Liability	320	11
Civil Rights:		
Employment	378	230
Other Civil Rights	312	152
Bankruptcy:		
Appeal 28 USC 158	176	79
Prisoner Petitions:		
Motions to Vacate Sentence	96	74
General	126	301
Mandamus and Other	78	21
Other	235	1110

Forfeiture/Penalty:		
Other Food and Drug	486	12
Drug Relat.Seiz.Prop.21 USC 881	103	11
Other	198	21
Labor:		
Fair Labor Standards Act	362	22
Labor/Mgmt. Relations	309	28
Railway Labor Act	188	9
Other Labor Litigation	400	17
Empl. Ret. Inc. Security Act	312	169
Property Rights:		
Copyrights	254	29
Trademark	293	24
Social Security:		
DIWC/DIWW	260	228
SSID Title XVI	228	16
Federal Tax Suits:		
Taxes (U.S. Plaintiff or Defendant)	408	34
Other Statutes:		
Banks and Banking	321	8
Commerce/ICC Rates, etc.	80	26
RICO	327	10
Other Statutory Actions	390	5
Environmental Matters	387	6
Constitutionality of State Statutes	273	19

* Median times exclude transfers
Categories containing at least five cases were considered.

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Appendix A: Filing trends

Case Weighting Chart

Missouri Western rank within U.S. weighted filings, disposition time 1972-91

Number of cases filed per judgeship 1971-91

Weighted versus actual filings overall 1971-91

Number of filings by nature of suit 1974-1991

Source: 1979 Federal District Court Time Study

TABLE 16

ALL CIVIL CASE WEIGHTS, WITH ADJUSTMENTS

Code	Nature of Suit	Cases in Survey	1977-79 Terminations	Percentage of Time	Initial Weight	Revised Weight	Comments (see below)
	U.S. Plaintiff						
1-110	Contract: Insurance	2	30	0.0032	0.5750		
1-120	Contract: Marine	1	98	0.0016	0.3861		
1-140	Contract: Negotiable Instrument	41	1,603	0.1357	0.2008		
1-150	Contract: Recovery Enforcement	55	6,575	0.0439	0.0356	0.0326	C
1-151	Contract: Medicare Act	1	106	0.0076	0.3829		
1-190	"Other" Contract	58	4,738	0.1520	0.1710		
1-195	Contract Product Liability	0	8	0.0000	0.0000	1.0000	A
1-210	Land Condemnation	90	7,250	0.4965	0.3651		
1-220	Foreclosure	145	9,064	0.1600	0.0941		
1-230	Rent, Lease, & Ejectment	7	490	0.0131	0.1427		
1-240	Torts to Land	7	120	0.0179	0.7937		
1-290	All Other Real Property	6	294	0.0253	0.4579		
1-370	Fraud or Truth in Lending	3	380	0.0035	0.0497		
1-380	"Other" Personal Property Damage	4	155	0.0022	0.0752		
1-385	Property Damage Product Liability	0	1	0.0000	0.0000	1.0000	A
1-410	Antitrust	11	129	1.5093	62.3759	33.7715	B
1-422	Bankruptcy Appeal Rule 901	0	2	0.0000	0.0000	1.0000	A
1-430	Banks and Banking	5	56	0.3208	1.9806	2.9831	C
1-440	Civil Rights: Other	6	92	0.3924	5.3553	1.2026	C
1-441	Civil Rights: Voting	3	26	0.3283	5.8116	1.2026	C
1-442	Civil Rights: Jobs	20	693	0.0877	0.6744	1.2026	C
1-443	Civil Rights: Accommodations	1	124	0.0025	0.1069	1.2026	C
1-444	Civil Rights: Welfare	0	2	0.0000	0.0000	1.2026	C
1-450	Commerce, ICC Rates, etc.	4	450	0.0106	0.1259		
1-460	Deportation	0	1	0.0000	0.0000	1.0000	A
1-610	Forfeiture/Penalty: Agriculture	0	210	0.0000	0.0000	0.2913	C
1-620	Forfeiture/Penalty: Food and Drug	15	1,572	0.0458	0.1556		
1-630	Forfeiture/Penalty: Liquor Laws	0	41	0.0000	0.0000	0.2913	C
1-640	Forfeiture/Penalty: Railroad & Truck	0	40	0.0000	0.0000	0.2913	C
1-650	Air Line Regulations	1	195	0.0087	0.2370		
1-660	Occupational Safety/Health	4	1,008	0.0115	0.0606		
1-690	"Other" Forfeiture/Penalty	74	5,310	0.3060	0.3073	0.2913	C
1-710	Fair Labor Standards Act	50	3,716	0.6324	0.9073		
1-720	Labor Management Relations	23	651	0.3366	2.7562		
1-730	Labor/Management Reporting & Disclosure Act	1	136	0.0326	1.2795	1.8352	C
1-740	Railway Labor Act	1	3	0.3011	1.8754	1.8494	C
1-790	"Other" Labor Litigation	16	685	0.1621	1.2619		
1-791	Employee Retirement Income Security Act	1	21	0.0262	6.6403	1.1219	C
1-830	Patent	0	1	0.0000	0.0000	1.0000	A
1-850	Securities, Commodities Exchange	22	527	0.1007	1.3188		
1-870	Tax Suits	58	3,228	0.3107	0.5132		
1-871	Internal Revenue Service-Third Party	48	522	0.3898	0.9169	0.4017	D
1-890	"Other" Statutory Actions	21	1,215	0.7246	3.1795	1.4335	B
1-891	Agricultural Acts	2	171	0.3054	0.1692	0.9395	C
1-892	Economic Stabilization Act	1	29	0.0131	2.4112	5.7815	C
1-893	Environmental Matters	13	639	0.2943	0.7867	4.9509	C
1-894	Energy Allocation Act	2	13	0.3720	29.5214	6.5798	C
1-895	Freedom of Information Act	0	2	0.0000	0.0000	1.5827	C
1-950	Constitutionality of State Statutes	0	5	0.0000	0.0000	1.0000	A
1-970	Narcotics Addict Rehabilitation Act	1	249	0.0000	0.0000	0.0100	G
1-990	Miscellaneous Local Matters	0	36	0.0000	0.0000	1.0000	A

Table 4--Continued

Code	Nature of Suit	Cases in Survey	Terminations	Percentage of Time	Initial Weight	Revised Weight	Comments See Below
	U.S. Defendant						
2-110	Contract: Insurance	4	[illegible]	0.0103	0.3113	[illegible]	2
2-120	Contract: Marine	2	30	0.0044	0.2590	[illegible]	2
2-130	Contract: Negotiable Instrument	2	50	0.0066	0.4726	[illegible]	2
2-150	Contract: Recovery Enforcement	2	424	0.0000	0.0000	0.0126	2
2-190	"Other" Contract	95	1,831	0.2471	0.3523	[illegible]	2
2-195	Contract Product Liability	2	2	0.0000	0.0000	0.0000	4
2-210	Land Condemnation	2	72	0041	0.3014		
2-230	Rent, Lease, & Ejectment	2	81	022	0.1439		
2-240	Torts to Land	6	153	.2167	0.5469		
2-245	Real Property Product Liability	2	4	0.0000	0.0000	1.7000	4
2-290	All Other Real Property	26	362	0.2167	0.3403		
2-310	Airplane Personal Injury	11	462	0.0795	0.8797	0.2302	2
2-315	Airplane Product Liability	1	33	0.0005	0.2156	0.0252	2
2-320	Assault, Libel & Slander	6	172	0.1238	0.9364		
2-340	Marine Personal Injury	13	337	0.1943	0.8730		
2-345	Marine Product Liability	1	13	0.0011	0.5626	0.8690	2
2-350	Motor Vehicle Personal Injury	46	1,636	0.2620	0.8538		
2-355	Motor Vehicle Product Liability	2	4	0.0262	0.9605	[illegible]	2
2-360	"Other" Personal Injury	105	2,647	0.2830	2.5819		
2-362	Medical Malpractice	3	112	0.0065	0.1158		
2-365	Personal Injury Product Liability	6	194	0.0302	0.4196		
2-370	Fraud or Truth in Lending	6	82	0.0152	0.3851		
2-380	"Other" Personal Property Damage	12	524	0.0224	0.1913	0.2088	2
2-385	Property Damage Product Liability	2	77	0.0027	0.8510	0.2298	2
2-410	Antitrust	1	34	0.0008	0.2600	5.7434	2
2-422	Bankruptcy Appeal Rule 801	3	29	0.0041	0.7483	0.4441	2
2-430	Banks and Banking	4	34	0.0196	[illegible]	0.9431	2
2-440	Civil Rights: Other	55	2,093	0.9861	2.5118	0.3972	2
2-441	Civil Rights: Voting	1	12	0.0399	9.5716	0.3972	2
2-442	Civil Rights: Jobs	68	1,392	0.8829	0.3812		
2-443	Civil Rights: Accommodations	3	59	0.0054	0.4904	0.3972	2
2-444	Civil Rights: Welfare	3	124	0.0022	0.2940	0.3972	2
2-450	Commerce, ICC Rates, etc.	1	73	0.0005	0.0185	0.9317	2
2-460	Deportation	6	730	0.0247	0.1883		
2-510	Vacate Sentence	54	5,331	0.2133	0.2133	0.5831	2
2-520	Parole Board Review	1	567	0.0003	0.0028		
2-530	Habeas Corpus	31	4,539	0.1505	0.1767		
2-540	Prisoner Mandamus and Other	21	1,188	0.3523	1.3530	0.6054	3
2-550	Prisoner Civil Rights	17	1,513	0.2015	0.7700		
2-710	Fair Labor Standards Act	5	70	0.1827	13.9159	1.2970	2
2-720	Labor Management Relations	9	148	0.0289	1.0400		
2-730	Labor Management Reporting & Disclosure Act	1	12	0.0033	1.4735	0.9352	2
2-740	Railway Labor Act	3	15	0.0000	0.0000	1.8444	2
2-790	Other Labor Litigation	9	108	0.0150	0.2596		
2-791	Employee Retirement Income Security Act	1	13	0.0005	0.2164	1.1219	2
2-810	Selective Service	3	12	0.0000	0.0000	1.0000	4
2-850	Securities, Commodities Exchange	2	41	0.0098	1.0244	2.3312	2
2-860	Social Security-General	269	19,810	1.0353	0.2934	0.2637	2
2-861	Social Security-HIA	5	52	0.0256	2.6276	0.2637	2
2-862	Social Security-Black Lung	15	5,107	0.0308	0.9269	0.2637	2
2-863	Social Security-DIWC	57	1,139	0.1684	0.7488	0.2637	2
2-864	Social Security-SSID	16	139	0.0390	1.1014	0.2637	2
2-865	Social Security-RSI	3	56	0.0071	0.6746	0.2637	2
2-870	Tax Suits	135	3,732	0.4711	0.6730		
2-871	Internal Revenue Service-Third Party	2	28	0.0057	1.0908		
2-875	Tax Challenge	3	2	0.0000	0.0000	1.0000	4
2-890	"Other" Statutory Actions	160	4,844	0.9992	1.0997		
2-891	Agricultural Acts	19	240	0.0855	1.8908	0.9395	2
2-892	Economic Stabilization Act	1	30	0.0006	17.5212	5.7815	2

Table 6—Continued

Code	Nature of Suit	Cases in Survey	Terminations	Percentage of Time	Initial Weight	Revised Weight	Comments See Below
3-893	Environmental Matters	31	556	0.3456	9.2672	4.9509	C
3-894	Energy Allocation Act	10	122	0.1227	7.9945	6.5798	C
3-895	Freedom of Information Act	41	719	0.3915	2.3935	1.5827	C
3-990	Miscellaneous Local Matters	1	11	0.0000	0.0000	1.0000	A
	Federal Question						
3-110	Contract: Insurance	3	72	0.0246	1.9715		
3-120	Contract: Marine Contract	248	1,425	0.2341	0.4826		
3-130	Contract: Miller Act	52	2,929	0.4345	0.8198		
3-140	Contract: Negotiable Instrument	3	43	0.0000	0.0000	0.4086	C
3-150	Contract: Recovery Enforcement	3	9	0.0000	0.0000	0.0326	C
3-190	"Other" Contract	7	305	0.0113	0.2332		
3-210	Land Condemnation	0	146	0.0000	0.0000	0.0100	C
3-220	Foreclosure	1	1,908	0.0005	0.0016		
3-240	Torts to Land	11	495	0.0325	1.4272		
3-245	Tort Product Liability	1	7	0.0017	1.2630		
3-290	All Other Real Property	5	117	0.2430	1.9812		
3-310	Airplane Personal Injury	5	192	0.1403	1.1813	3.0302	C
3-315	Airplane Product Liability	0	8	0.0000	0.0000	3.0302	C
3-320	Assault, Libel, & Slander	1	56	0.0120	0.8407		
3-330	Federal Employers' Liability	126	3,918	0.6949	0.9456		
3-340	Marine Personal Injury	257	10,821	1.5579	0.7675		
3-345	Marine Product Liability	1	67	0.0038	0.3059	0.9690	C
3-350	Motor Vehicle Personal Injury	2	96	0.0022	0.1216	0.8181	C
3-355	Motor Vehicle Product Liability	0	11	0.0000	0.0000	0.7174	C
3-360	"Other" Personal Injury	6	126	0.0342	1.4480	0.8181	C
3-365	Personal Injury Product Liability	2	17	0.0019	0.5910	0.8181	C
3-370	Fraud or Truth in Lending	111	6,241	0.5051	0.4315		
3-380	"Other" Personal Property Damage	42	1,650	0.2564	0.8286	0.8191	C
3-385	Property Damage Product Liability	1	42	0.0017	0.2105	0.8181	C
3-410	Antitrust	224	6,042	4.0724	5.3711	5.3499	C
3-420	Bankruptcy Trustee	33	1,236	0.2743	1.1832	1.1708	C
3-421	Bankruptcy Transfer	9	130	0.0231	0.9490		
3-422	Bankruptcy Appeal Rule 801	44	2,895	0.2394	0.4409	0.4441	C
3-430	Banks and Banking	11	318	0.1015	1.7022	2.9831	C
3-440	Civil Rights: Other	627	15,918	7.5176	2.4177		
3-441	Civil Rights: Voting	21	416	0.2218	2.8620		
3-442	Civil Rights: Jobs	636	12,254	6.0564	2.6349		
3-443	Civil Rights: Accommodations	39	1,294	0.3373	1.3897		
3-444	Civil Rights: Welfare	24	470	0.2395	2.7144		
3-450	Commerce, ICC Rates, etc.	44	2,373	0.4270	0.9592	0.9317	C, F
3-530	Habeas Corpus	379	20,221	1.2941	0.3412		
3-540	Prisoner Mandamus and Other	8	671	0.0305	0.2426		
3-550	Prisoner Civil Rights	662	25,863	1.4904	0.4103		
3-710	Fair Labor Standards Act	50	1,628	0.1567	0.5458	1.0970	C
3-720	Labor Management Relations	242	11,014	1.7930	0.8630		
3-730	Labor Management Reporting & Disclosure Act	31	619	0.3864	4.6924	3.8352	C
3-740	Railway Labor Act	15	471	0.1689	1.9112	1.8494	C
3-790	"Other" Labor Litigation	90	3,799	0.6145	1.8312		
3-791	Employee Retirement Income Security Act	19	394	0.1396	1.0168	1.1219	C
3-820	Copyright	90	3,214	0.3202	0.5311		
3-830	Patent	127	2,440	1.4156	3.0920	2.9971	C
3-840	Trademark	39	1,372	0.7809	1.3553		
3-850	Securities, Commodities Exchange	236	5,626	2.4726	2.3430	2.3312	C
3-890	"Other" Statutory Actions	99	2,504	0.7294	1.5529	1.5516	C
3-891	Agricultural Acts	2	116	0.0019	0.0866	0.9395	C
3-892	Economic Stabilization Act	1	47	0.0032	0.3677	5.7915	C
3-893	Environmental Matters	14	465	0.2231	3.2067	4.9509	C
3-894	Energy Allocation Act	1	74	0.0032	0.2335	6.5798	C
3-950	Constitutionality of State Statutes	4	417	0.6424	4.1918	4.0338	C
3-990	Miscellaneous Local Matters	0	13	0.0000	0.0000	1.0000	A

Table 5—Continued

Code	Nature of Suit	Cases in Survey	1977-79 Terminations	Percentage of Time	Initial Weight	Revised Weight	Comments See pp. [illegible]
	Diversity						
4-110	Contract: Insurance	275	3,324	1.6241	1.3613		
4-120	Contract: Marine	1	1	0.0000	0.0000	1.0000	A
4-130	Contract: Negotiable Instrument	10	1,397	0.0253	0.0986		
4-150	Contract: Recovery Enforcement	13	760	0.0230	0.0139		
4-151	Contract: Medicare Act	1	1	0.0000	0.0000	1.0000	A
4-160	Contract: Stockholders' Suits	2	2	0.0000	0.0000	1.0000	A
4-190	"Other" Contract	364	10,863	0.1138	0.4010		
4-195	Contract Product Liability	51	958	0.6900	0.8199		
4-210	Land Condemnation	1	1*	0.0000	0.0000	1.0000	A
4-220	Foreclosure	20	982	0.1791	0.3723		
4-230	Rent, Lease, & Ejectment	11	421	0.0729	0.0221		
4-245	Tort Product Liability	4	125	0.2496	0.1154		
4-290	All Other Real Property	19	909	0.2632	0.5433		
4-310	Airplane Personal Injury	47	1,373	1.1724	4.5443	3.0302	C
4-315	Airplane Product Liability	14	463	0.8674	2.2729	3.0302	C
4-320	Assault, Libel, & Slander	19	1,496	0.4209	0.1935		
4-340	Marine Personal Injury	46	1,125	0.6431	1.0312		
4-345	Marine Product Liability	9	243	0.2473	1.0369	0.8640	C
4-350	Motor Vehicle Personal Injury	112	4,907	2.4758	0.9917		
4-355	Motor Vehicle Product Liability	12	1,036	0.8190	0.6071	0.7574	C
4-360	"Other" Personal Injury	275	11,360	2.1045	0.1152		
4-362	Medical Malpractice	22	497	0.3829	0.4479		
4-365	Personal Injury Product Liability	117	6,929	0.8516	0.8119		
4-370	Fraud or Truth in Lending	10	1,525	0.5078	0.7389		
4-380	"Other" Personal Property Damage	32	1,726	0.2806	0.8770		
4-385	Property Damage Product Liability	14	648	0.1385	0.1392		
4-890	"Other" Statutory Actions	2	4	0.3000	0.3000	1.0000	A
4-950	Constitutionality of State Statutes	2	2	0.3000	0.3000	1.0000	A
4-990	Miscellaneous Local Matters	2	2	0.3000	0.3000	1.0000	A

A. Arbitrary weight of 1.0000 assigned because few cases (or no cases) appeared in the survey.

B. Adjusted for one large case: see tables 7 and 9.

C. Aggregated with closely related codes: see table 9.

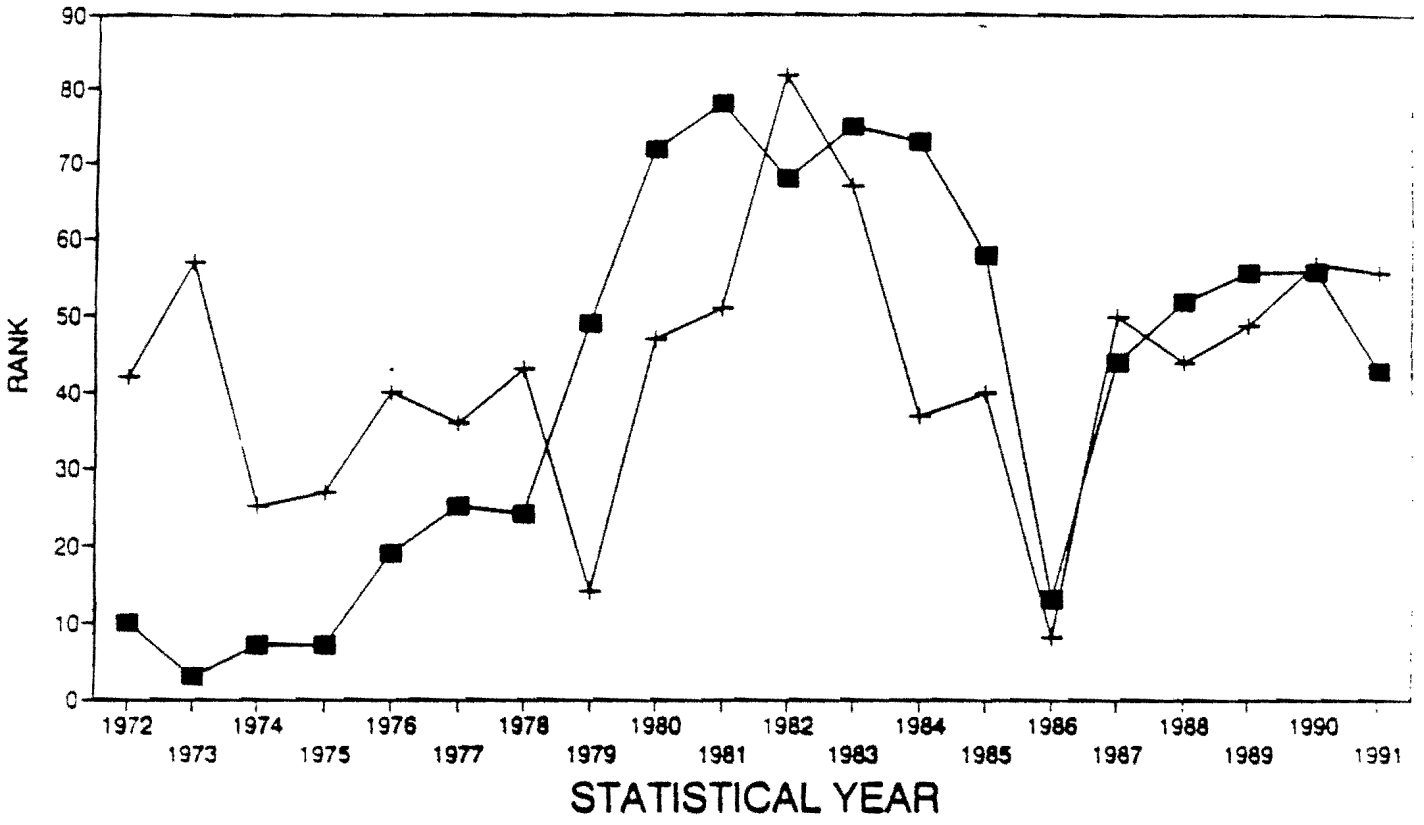
D. This case type has been recalculated to reflect only 1979 terminations, instead of 1977-79, because it is a new code and case type.

E. Includes data from original code 2510.

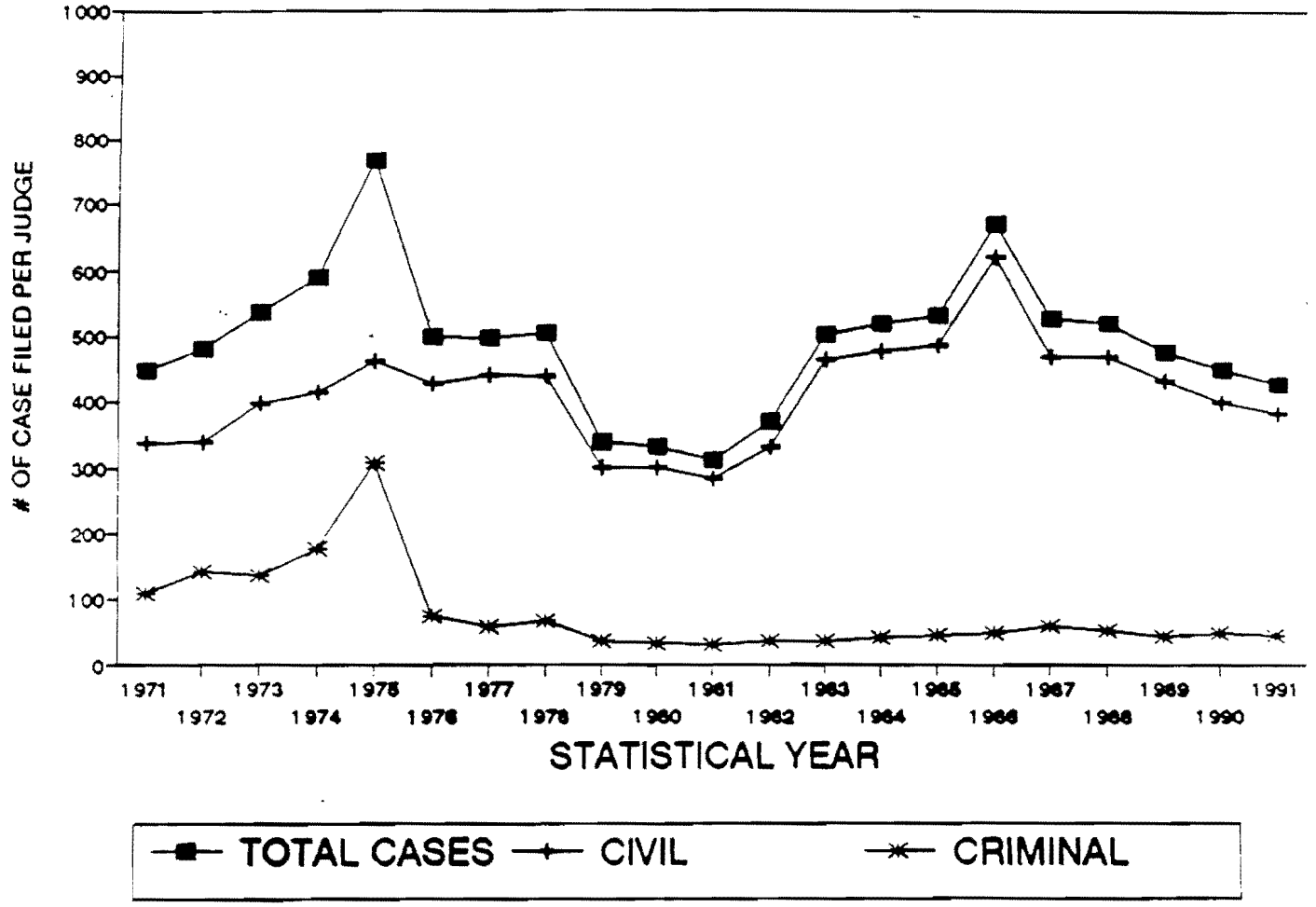
F. Cases terminated in Massachusetts are excluded: see p. 44.

G. In a finding that this nontrivial case type consumed no survey time, an arbitrary weight of 0.01 has been assigned (see p. 44).

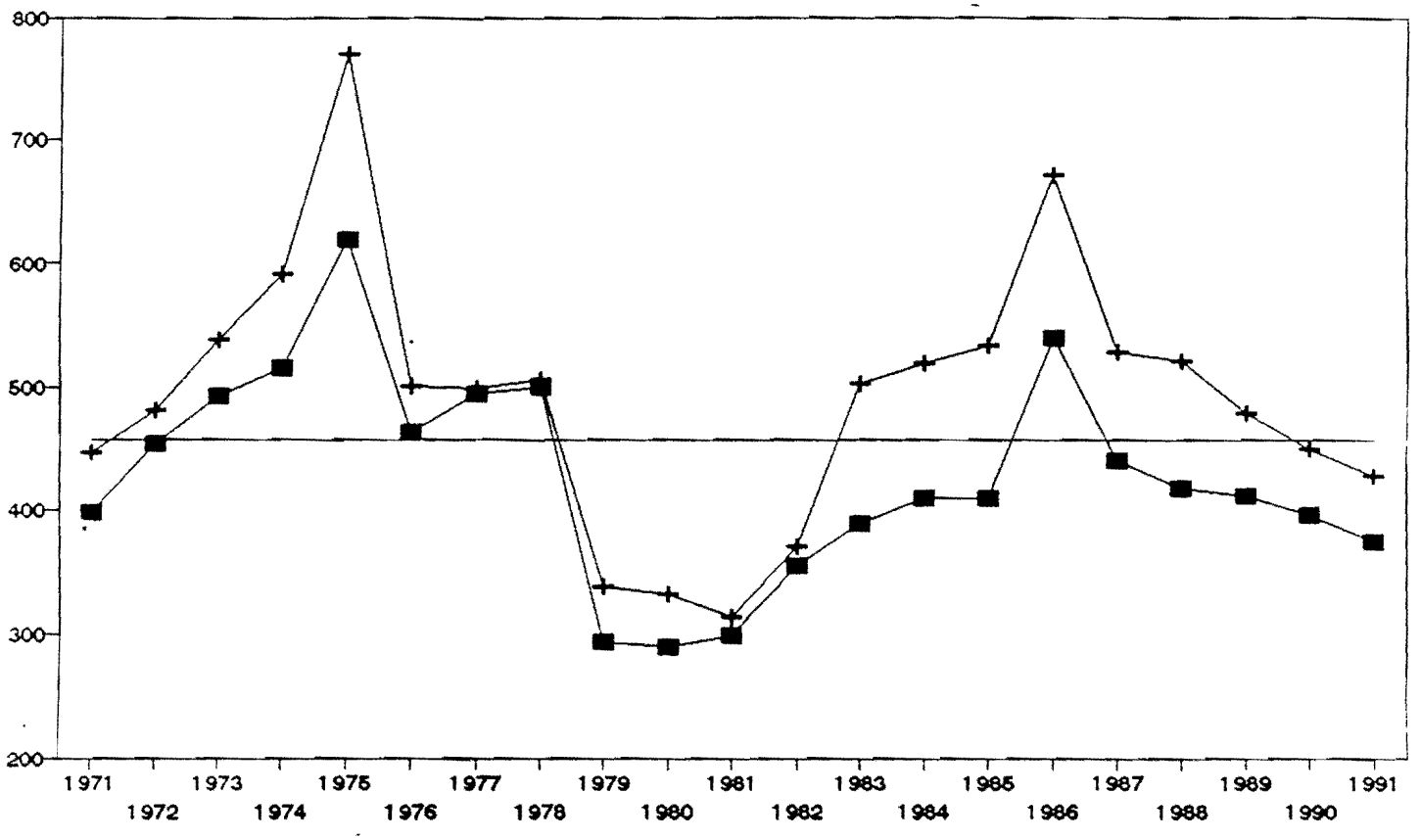
WESTERN MO RANK IN U.S. 1972 - 1991
WEIGHTED FILING VS FILING TO DISP. TIME



OF CASES FILED PER JUDGESHIP
1971-1991

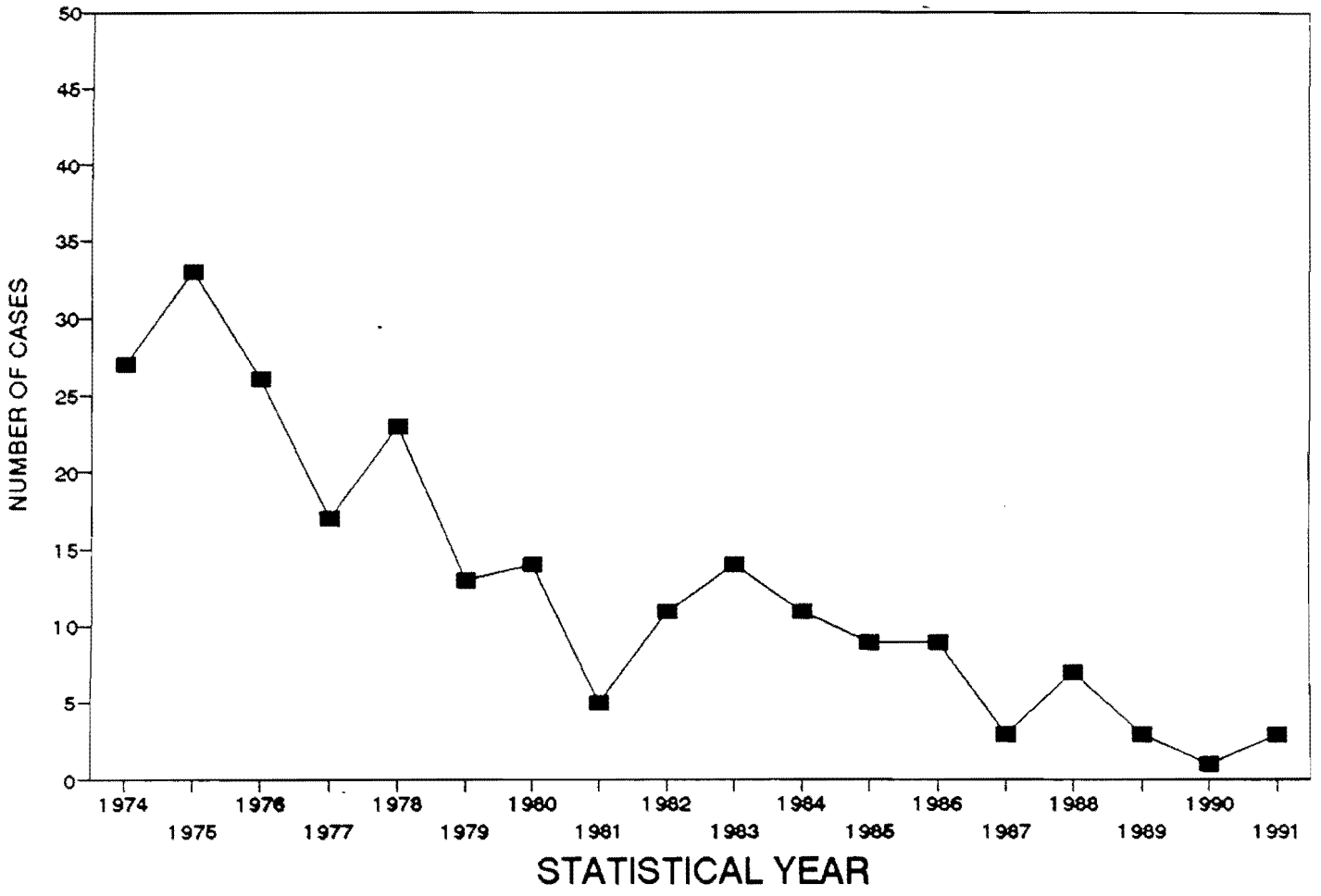


WEIGHTED VS ACTUAL FILINGS
PER JUDGESHIP 1971-1991

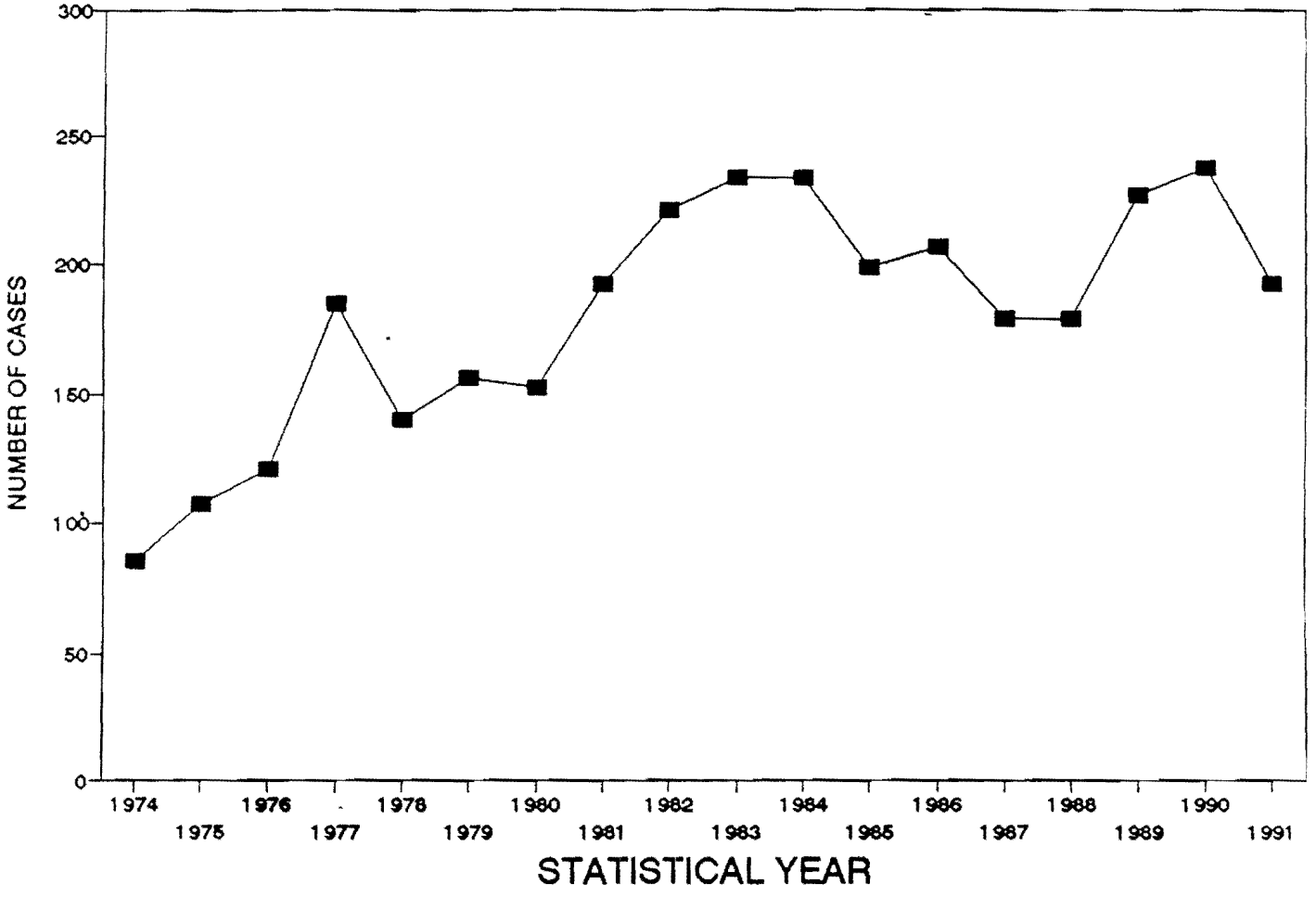


WEIGHTED FILINGS — ACTUAL FILINGS — NEW JUDGESHIP

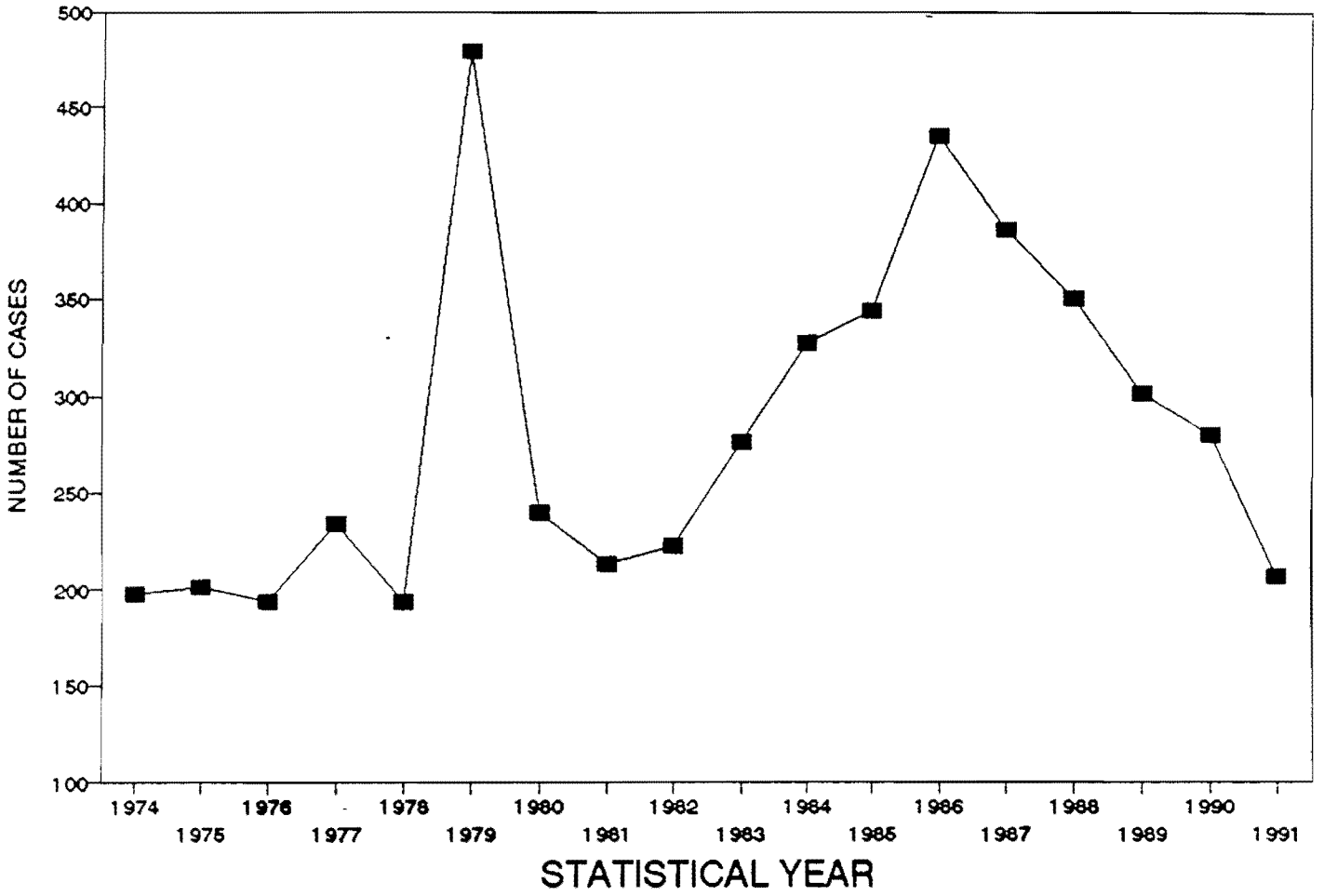
OF ANTITRUST CASES FILED
1974-1991



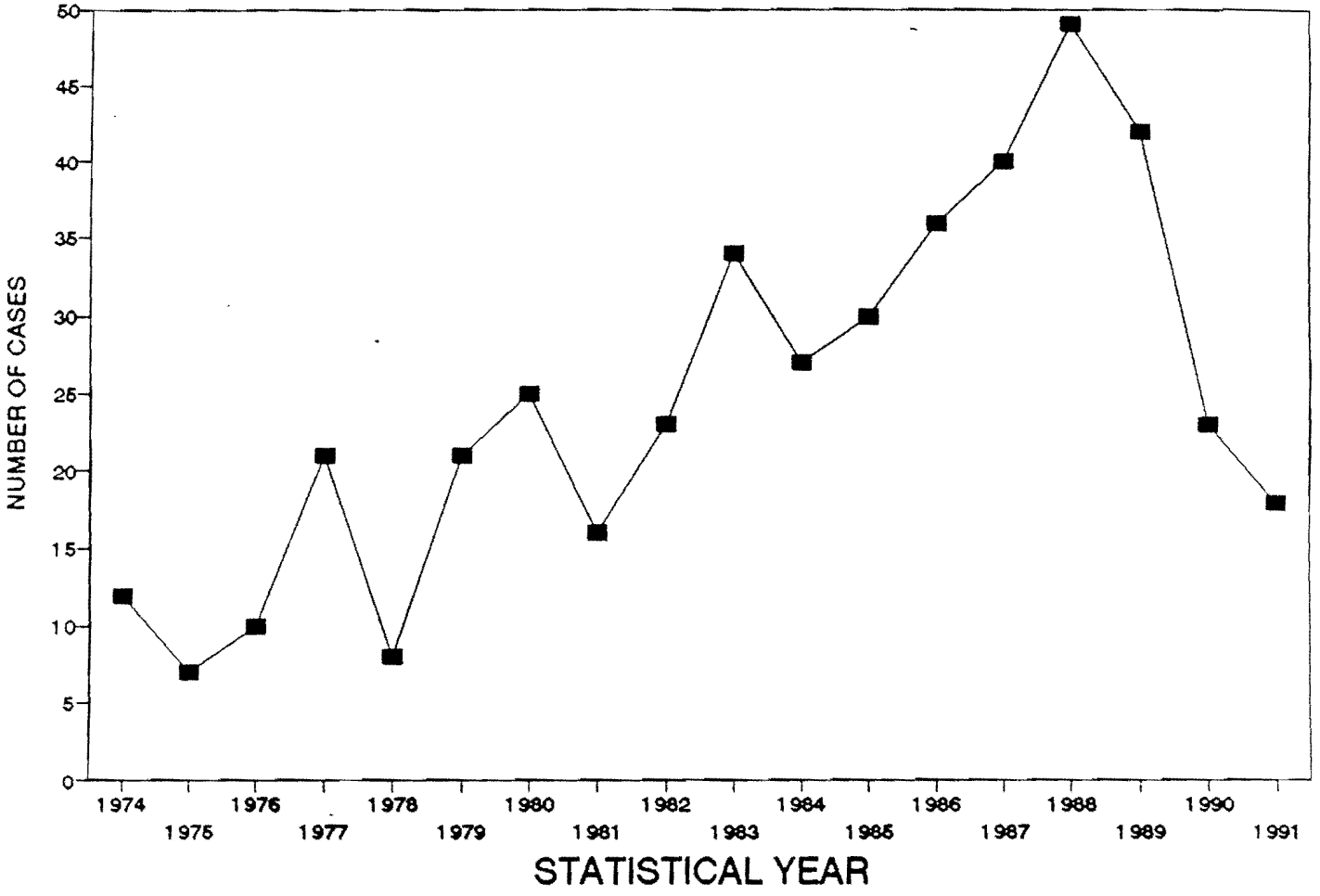
OF CIVIL RIGHTS CASES FILED
1974-1991



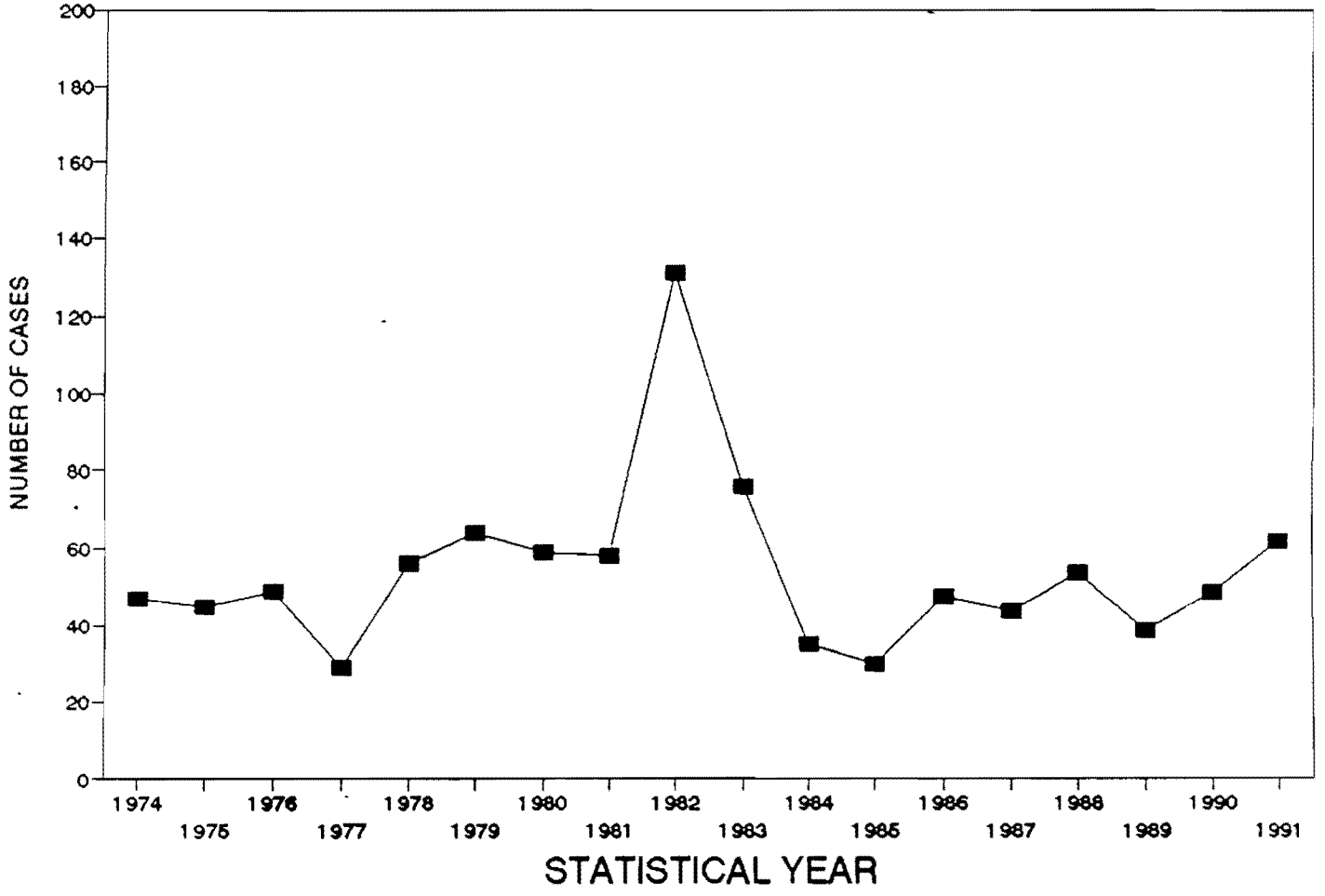
OF CONTRACT CASES FILED
1974-1991



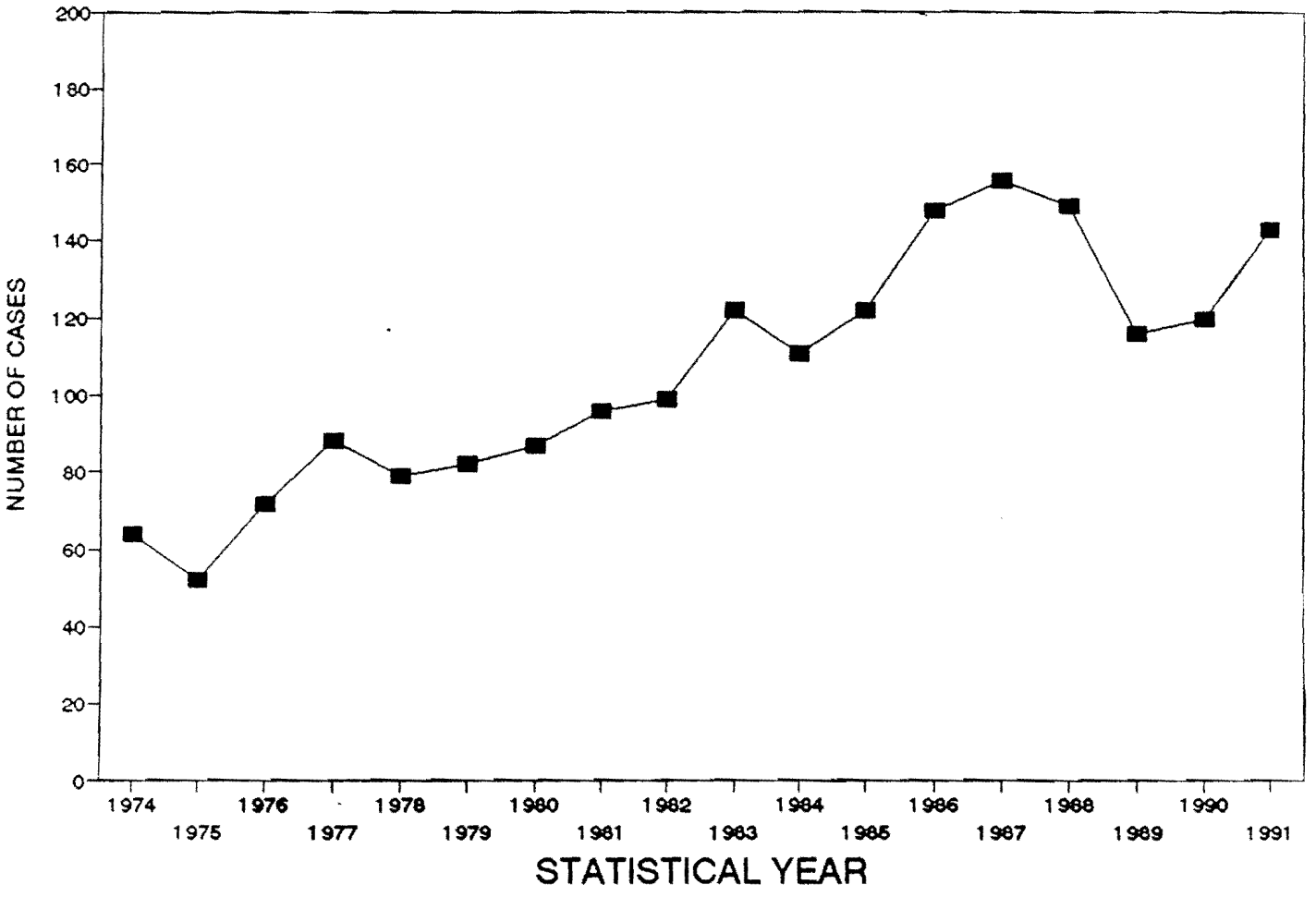
OF COPYRIGHT/TRADEMARK/PATENT FILED
1974-1991



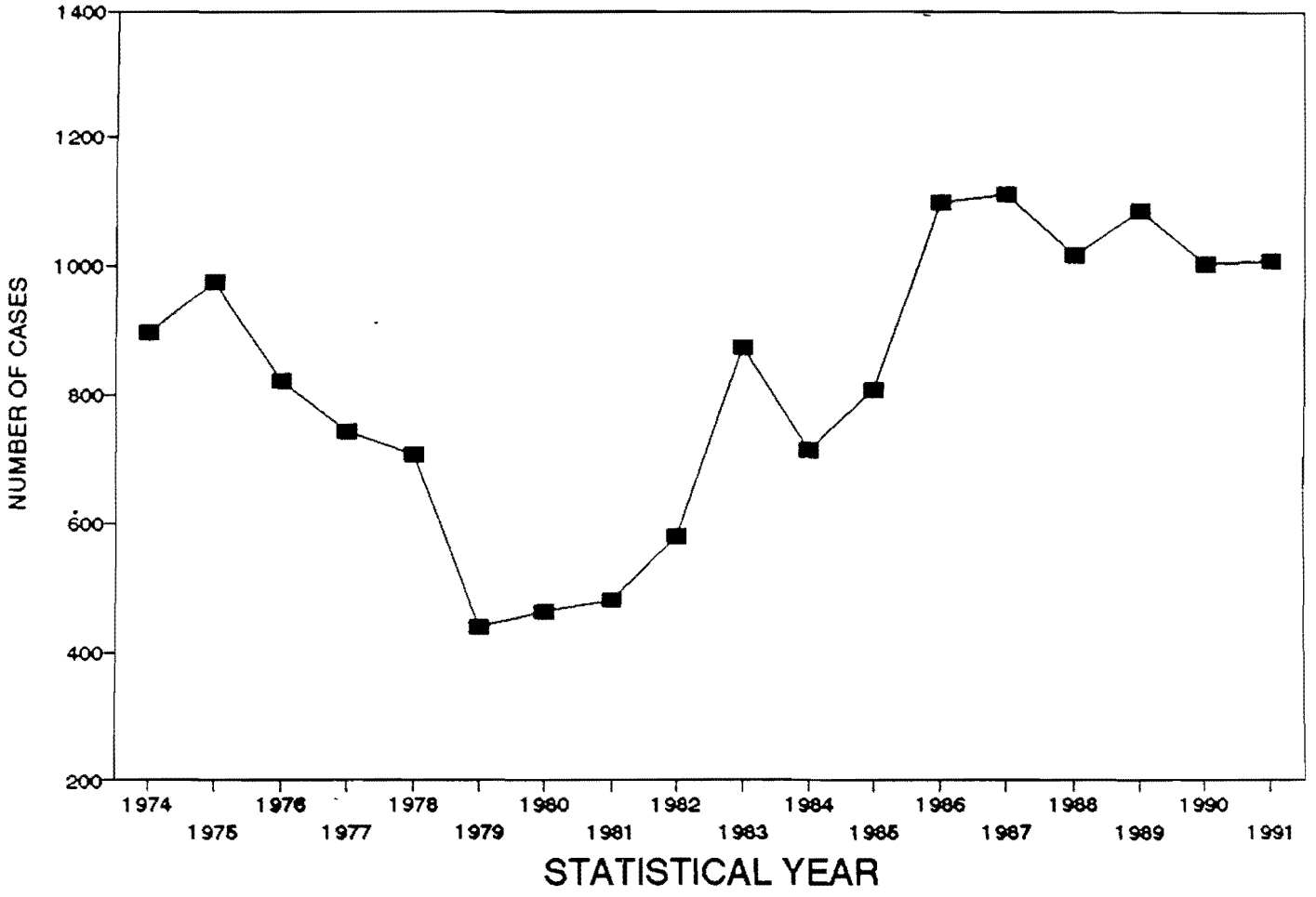
OF FORFEITURES, PENALTY, TAX FILED
1974-1991



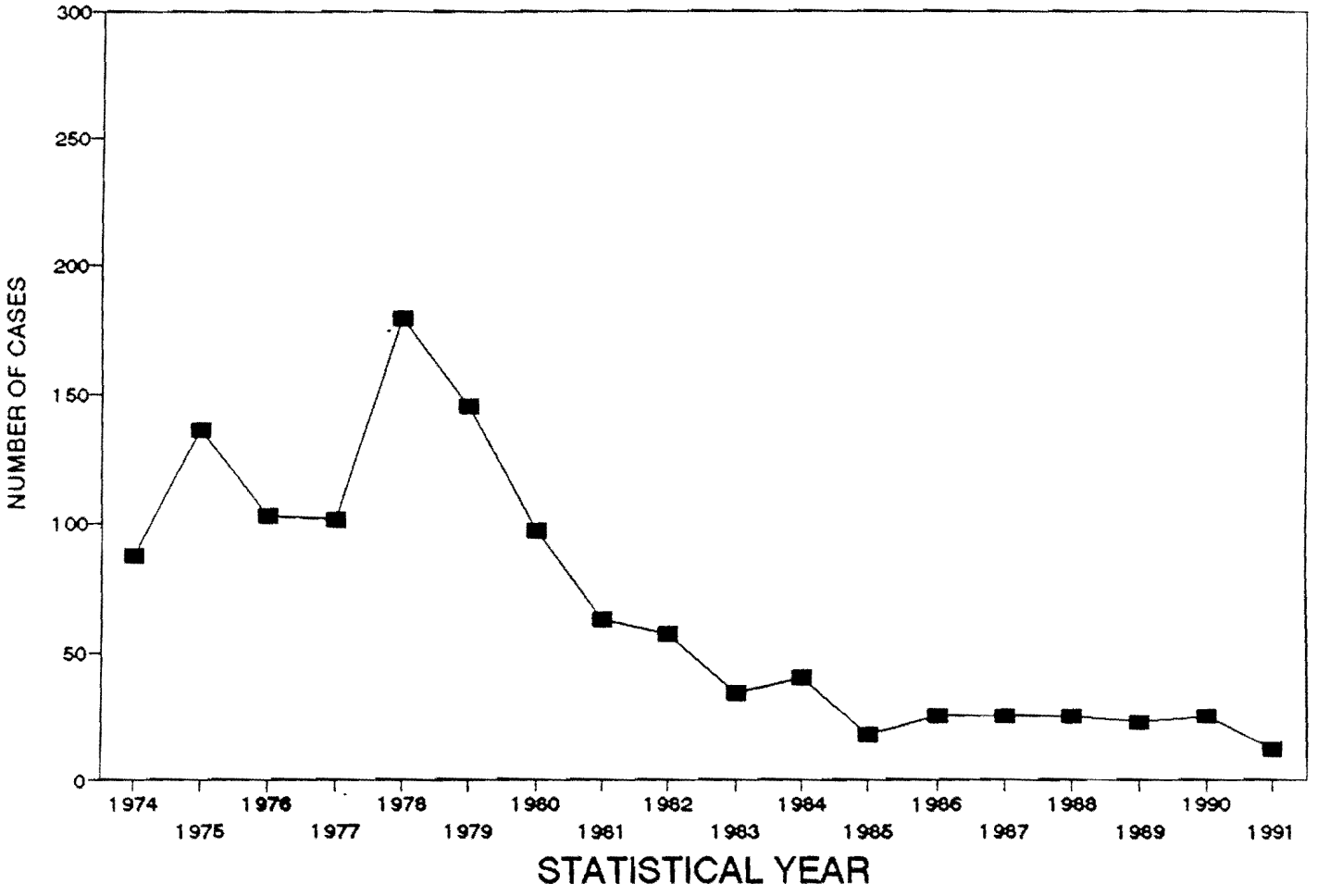
OF LABOR SUITS FILED
1974-1991



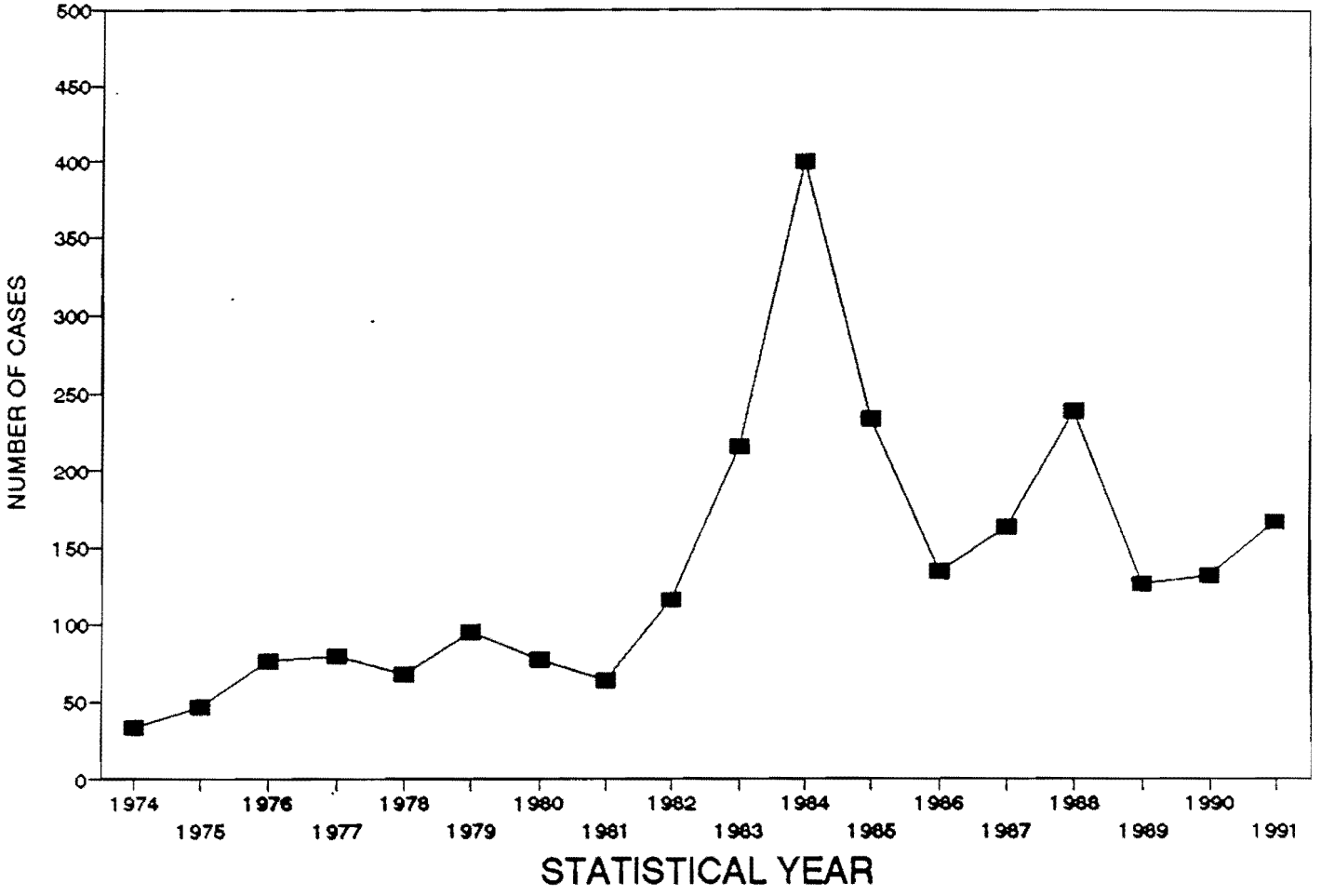
OF PRISONER PETITIONS FILED
1974-1991



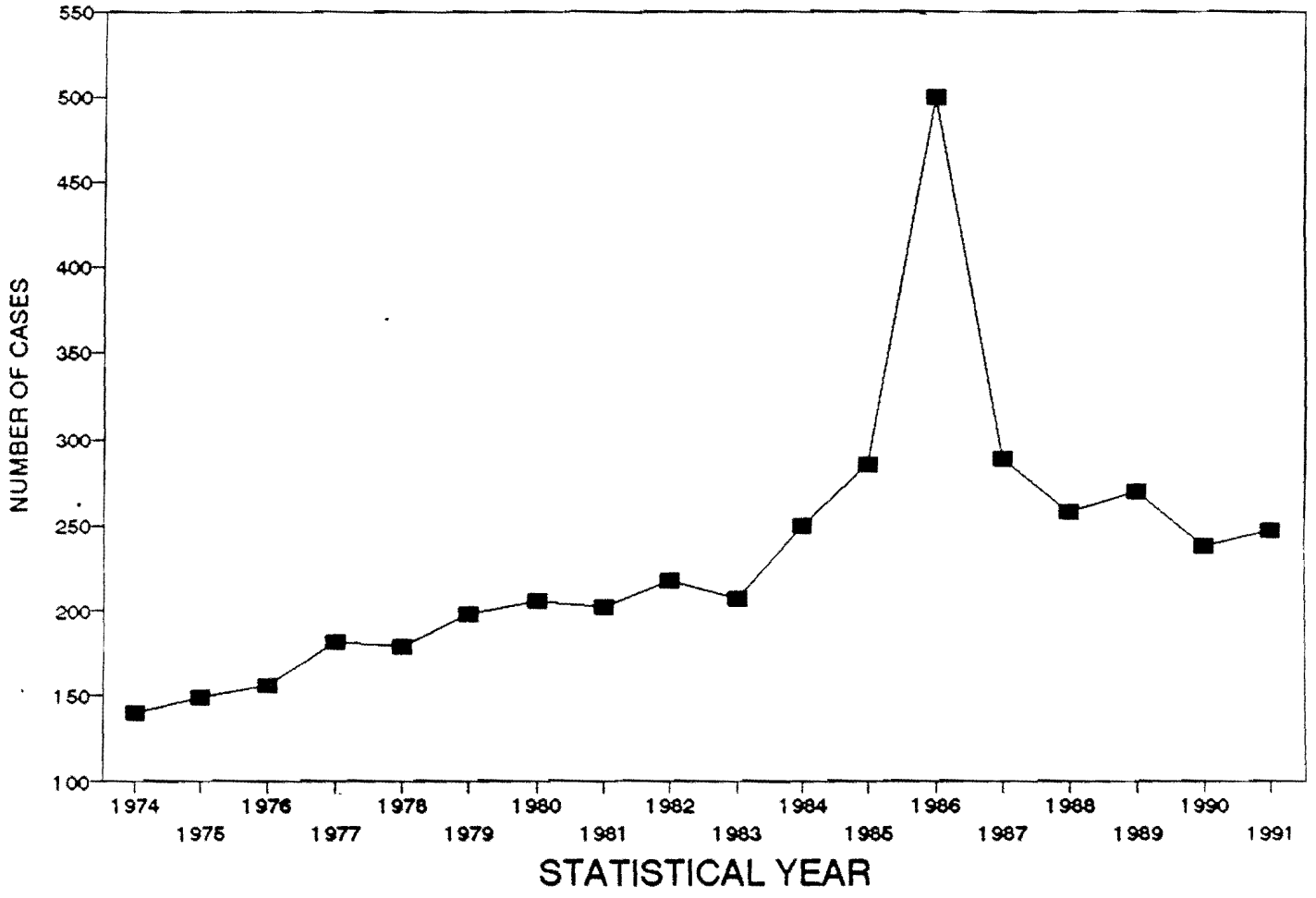
OF REAL PROPERTY CASES FILED
1974-1991



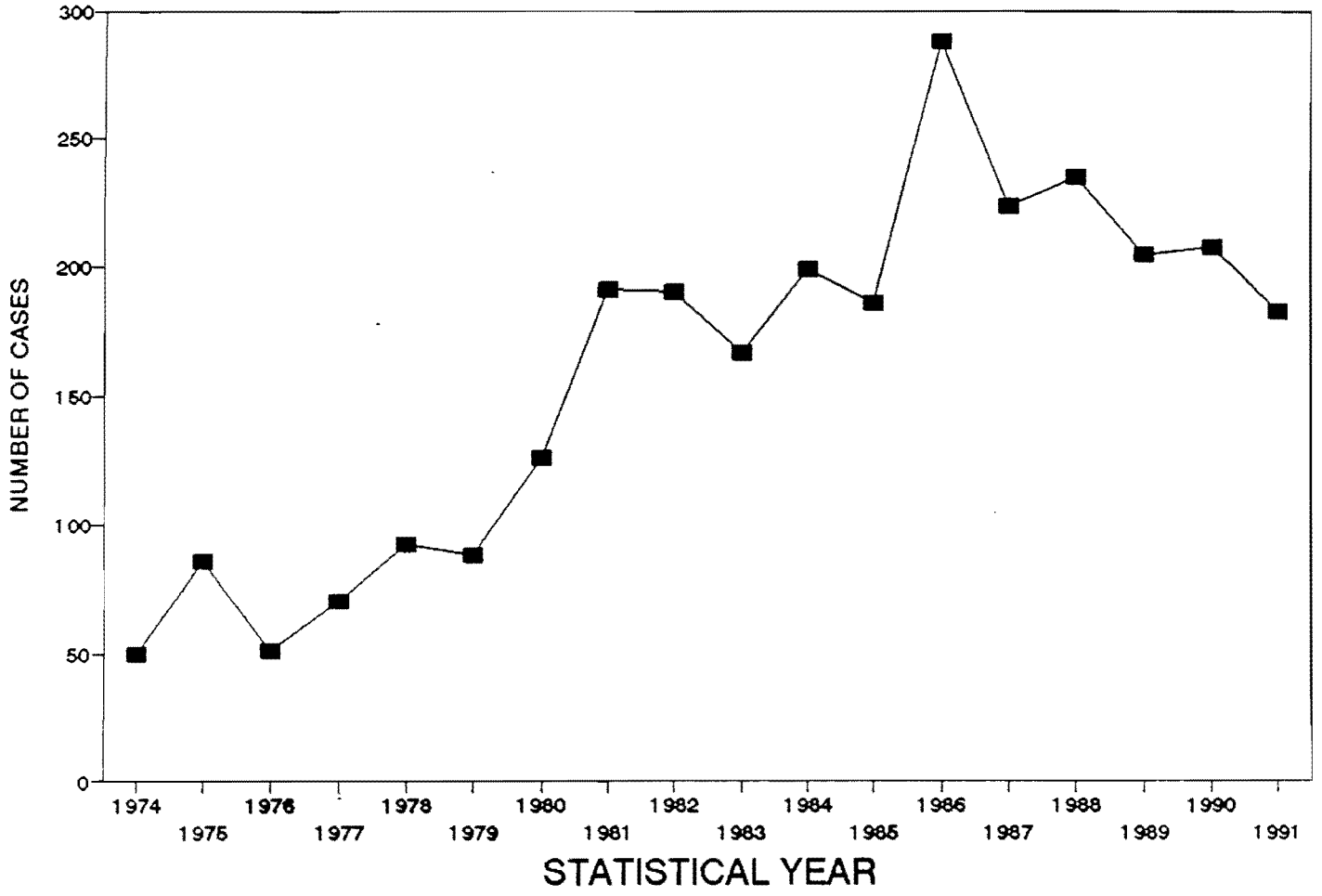
OF SOCIAL SECURITY CASES FILED
1974-1991



OF TORTS FILED
1974-1991



OF ALL OTHER CIVIL FILINGS
1974-1991



Appendix B: Disposition trends

Median filing to disposition - civil 1971-91

Median issue to trial - civil 1971-91

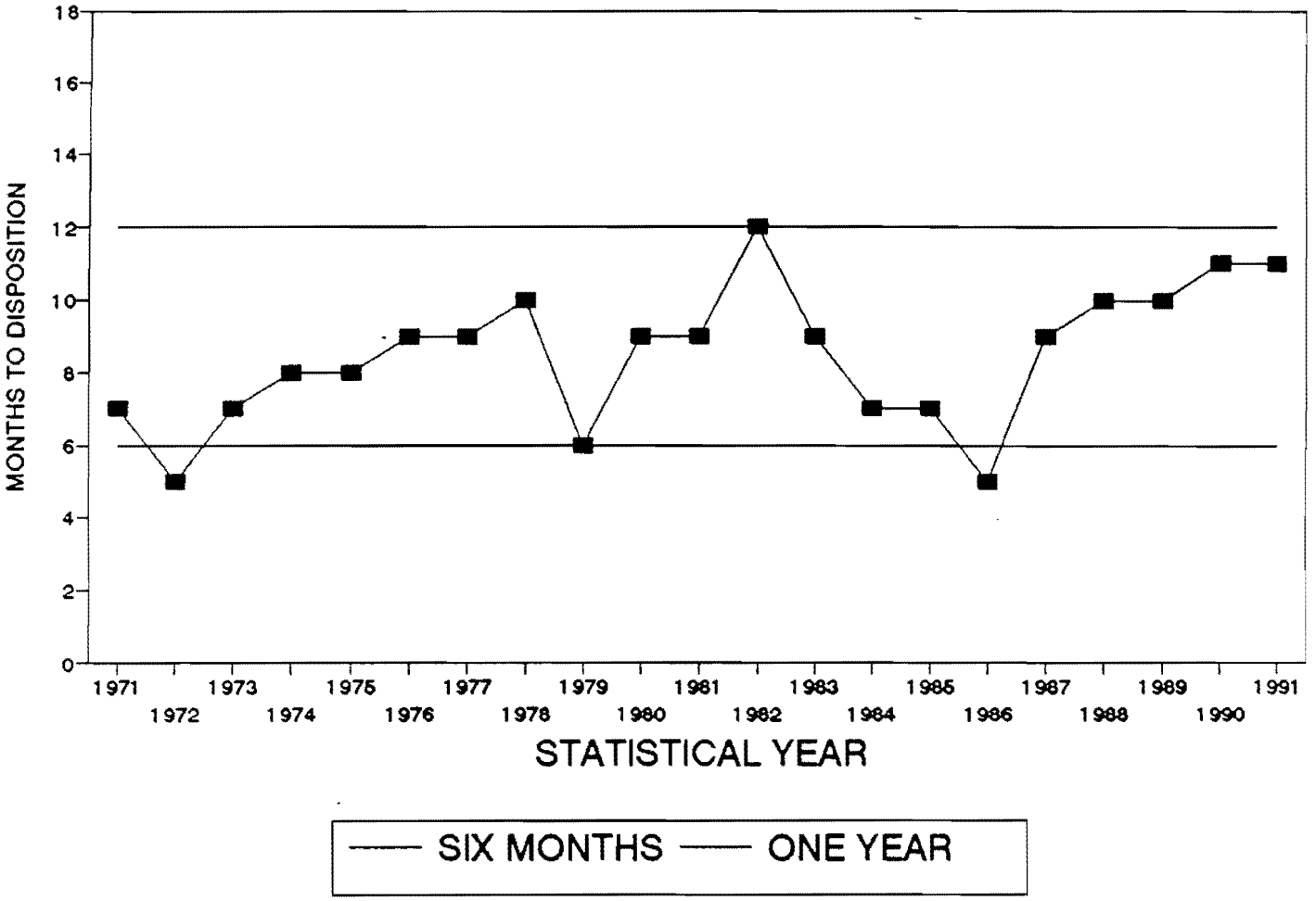
Pending/terminated ratio 1971-91

Termination by division 1991

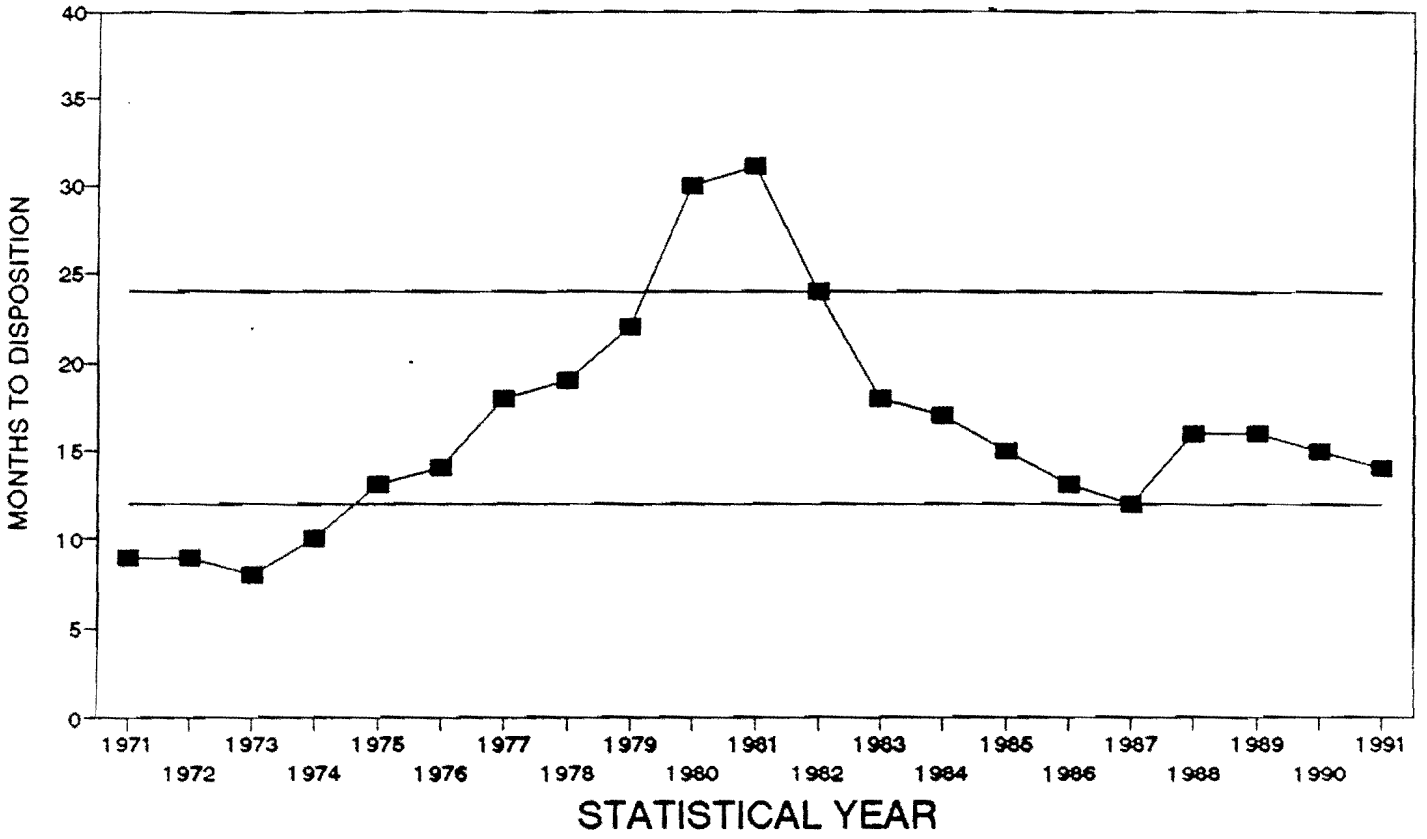
Disposition by type 1990-91

Trials Per Judgeship

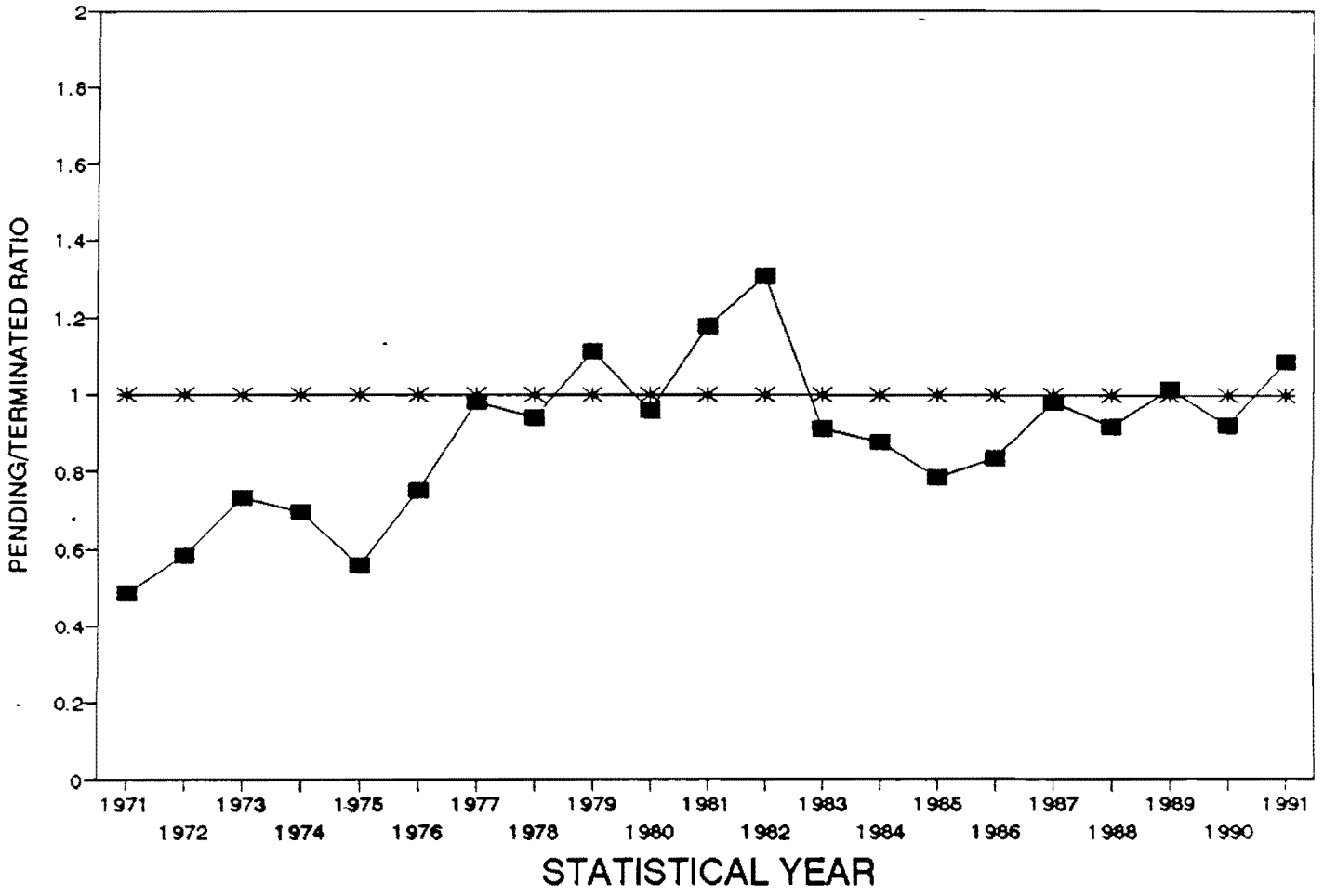
MEDIAN - FILING TO DISPOSITION TIME
CIVIL 1971-1991



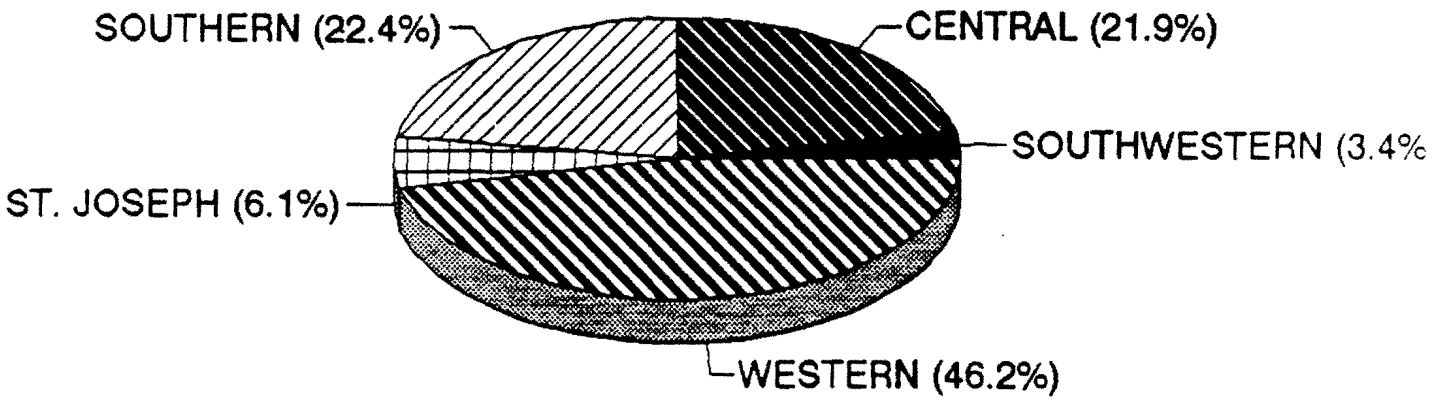
MEDIAN - ISSUE TO TRIAL TIME
CIVIL ONLY 1971-1991



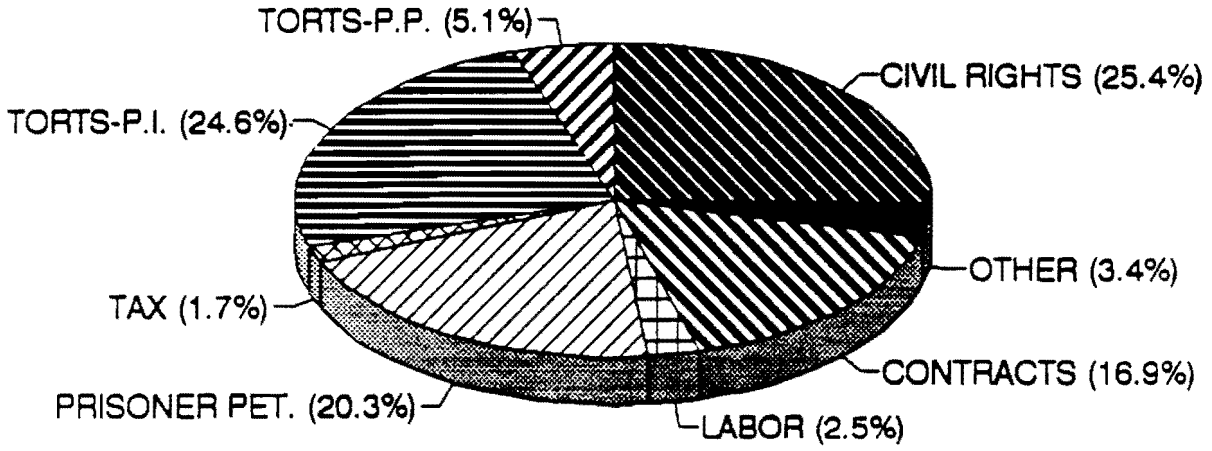
PENDING CASES/TERMINATED CASES RATIO
1971-1991



TERMINATIONS BY DIVISION
STAT YEAR 1991

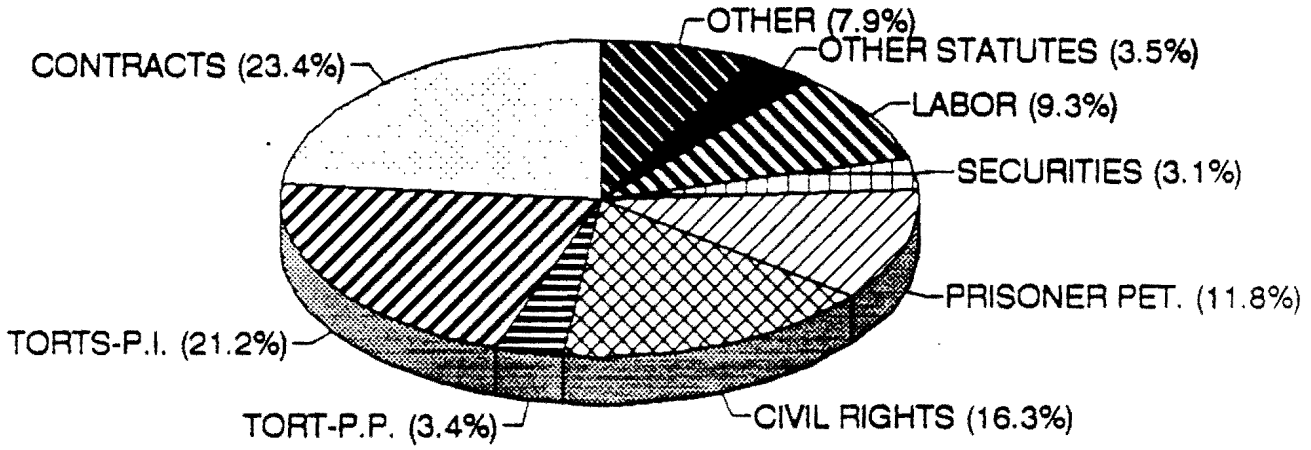


PERCENTAGE , BY NATURE OF SUIT, OF CASES DISPOSED OF BY TRIAL STAT YR 1990-1991

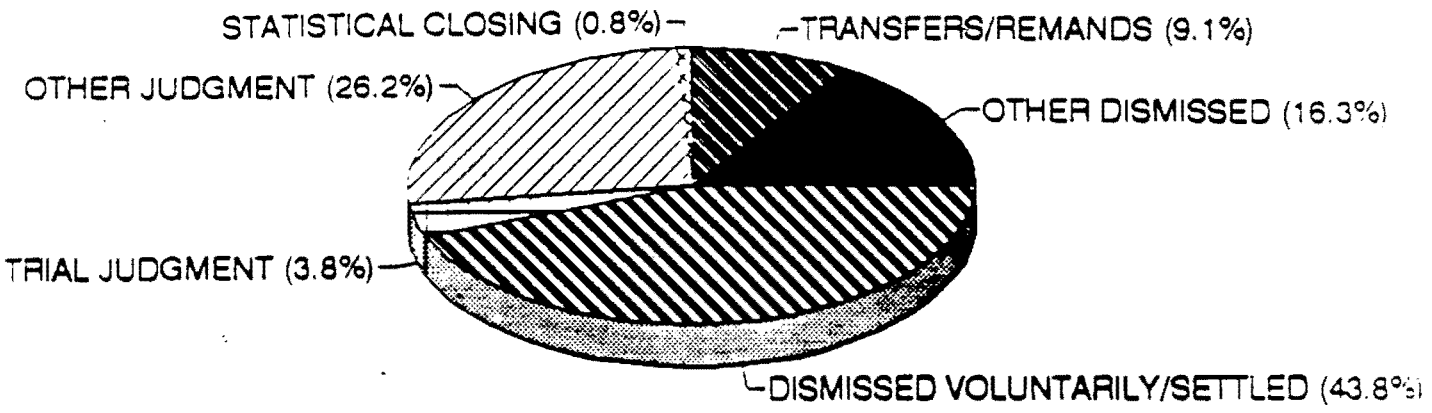


PERCENTAGE, BY NATURE OF SUIT OF CASES DISPOSED OF BY SETTLEMENT OR VOLUNTARY DISMISSAL

STAT YR 1990-1991



DISPOSITION OF CIVIL DOCKET - 1990-1991
Excluding: STU. LOANS, V.A., PRIS. PET.
TETRACYCLINE & MDL SECURITIES



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

TRANSFERS / REMANDS :

- Transfer to Other District
- MDL Transfer
- Remanded to State Court
- Remanded to U.S. Agency

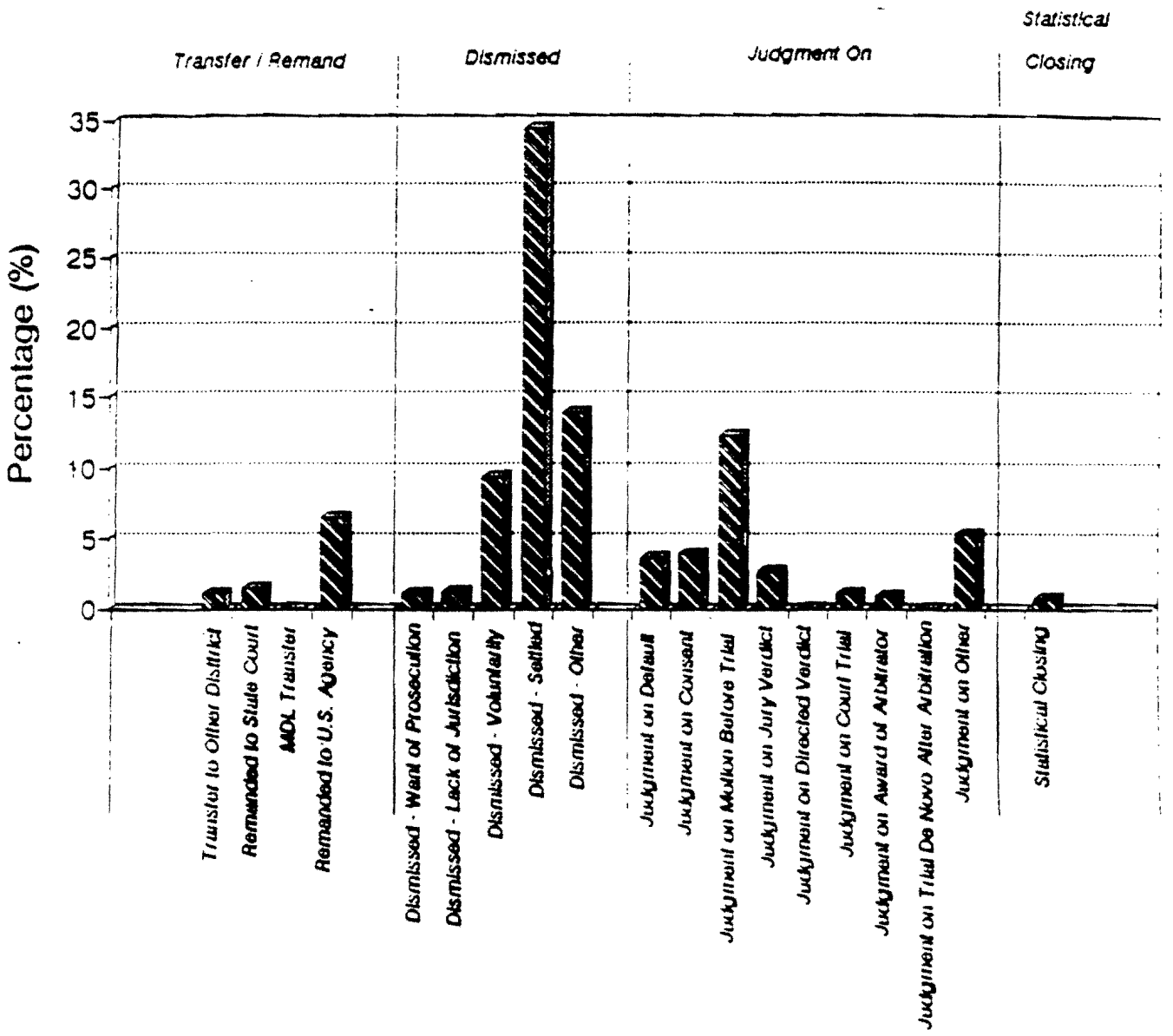
TRIAL JUDGMENT:

- Jury Verdict
- Directed Verdict
- Court Trial

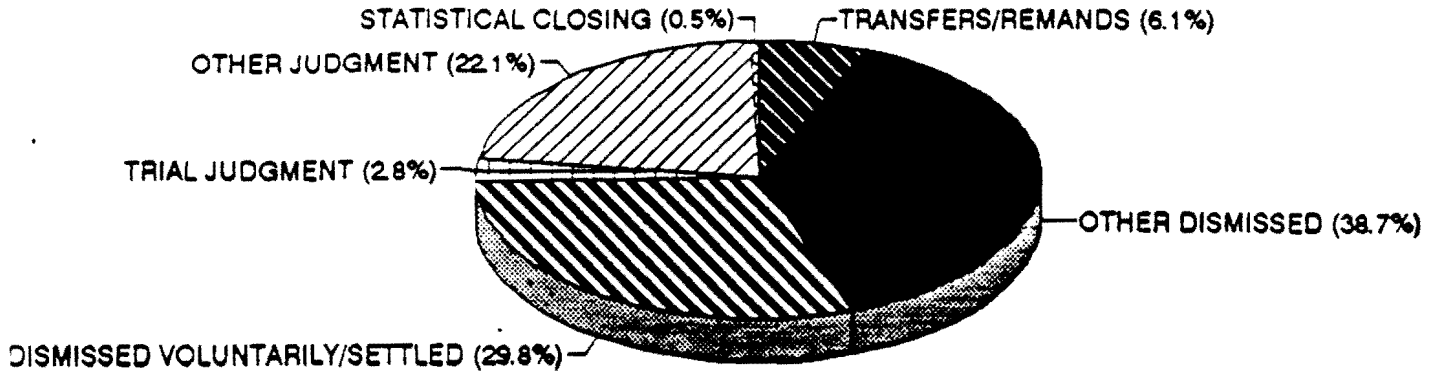
OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF CIVIL DOCKET 1990-1991
Excluding: STU. LOANS, V.A., PRIS. PET.
TETRACYCLINE, & MDL SECURITIES



DISPOSITION OF ENTIRE CIVIL DOCKET
STAT YR 90 - 91



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

TRANSFERS / REMANDS :

- Transfer to Other District
- MDL Transfer
- Remanded to State Court
- Remanded to U.S. Agency

TRIAL JUDGMENT:

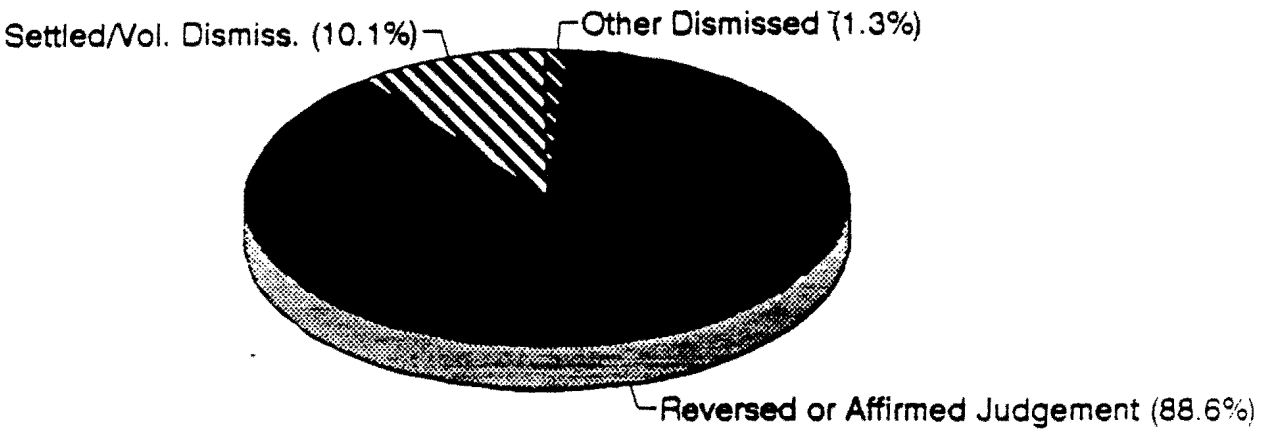
- Jury Verdict
- Directed Verdict
- Court Trial

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF BANKRUPTCY APPEAL & WITHDRAWAL CASES

STAT YR 90 - 91



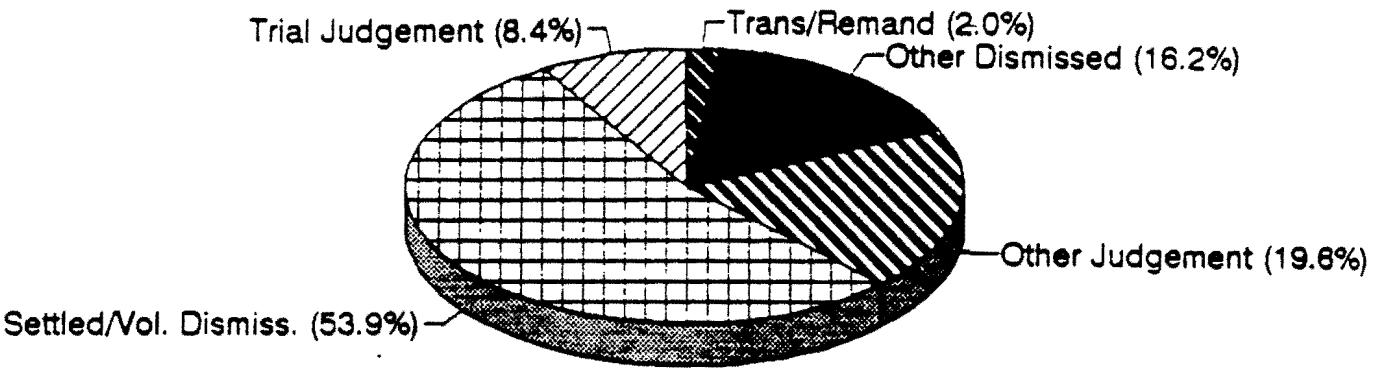
OTHER DISMISSED:

Want of Prosecution

Lack of Jurisdiction

Other Dismiss: W/Prejudice etc.

DISPOSITION OF CIVIL RIGHTS
STAT YR 90 - 91



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

TRANSFERS / REMANDS :

- Transfer to Other District
- MDL Transfer
- Remanded to State Court
- Remanded to U.S. Agency

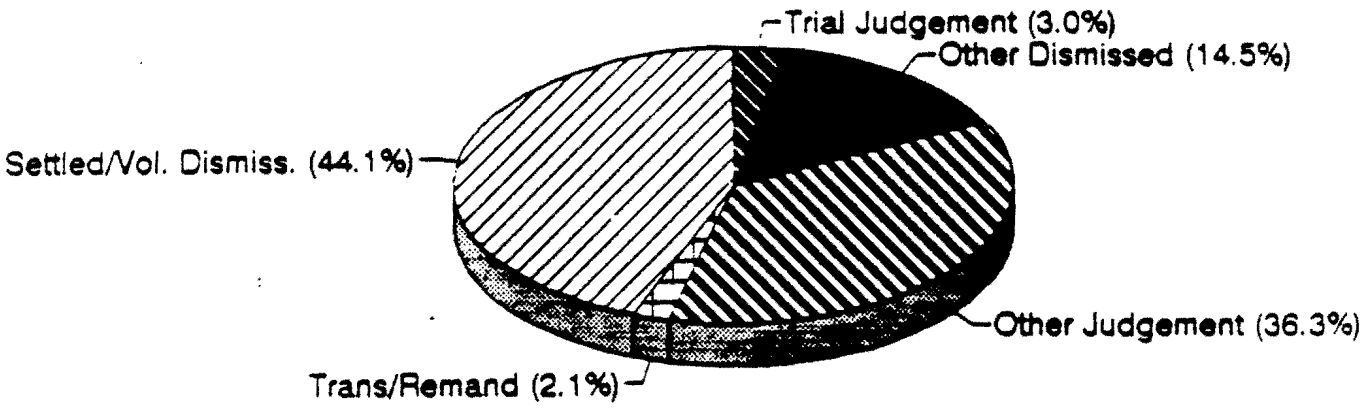
TRIAL JUDGMENT:

- Jury Verdict
- Directed Verdict
- Court Trial

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF CONTRACT CASES
STAT YR 90 - 91



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

TRANSFERS / REMANDS :

- Transfer to Other District
- MDL Transfer
- Remanded to State Court
- Remanded to U.S. Agency

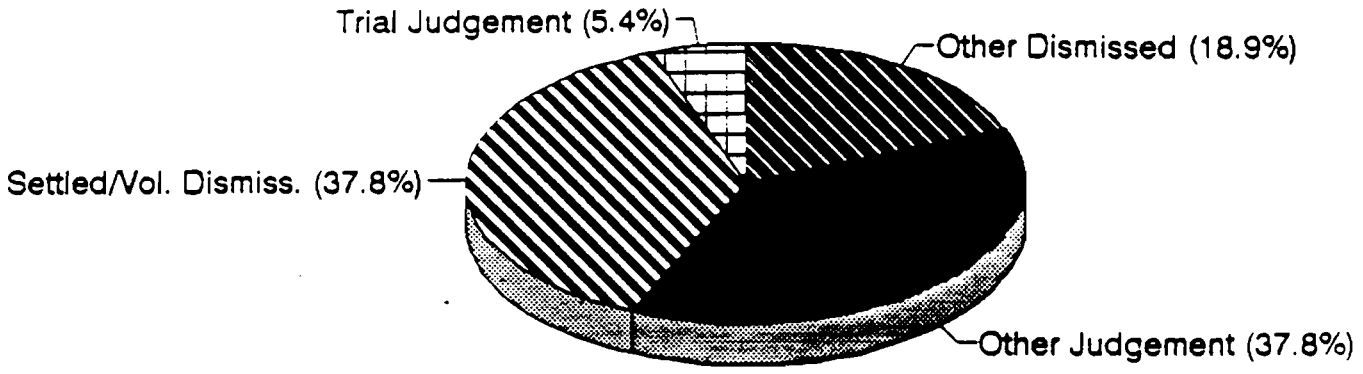
TRIAL JUDGMENT:

- Jury Verdict
- Directed Verdict
- Court Trial

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF FEDERAL TAX CASES
STAT YR 90 - 91



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

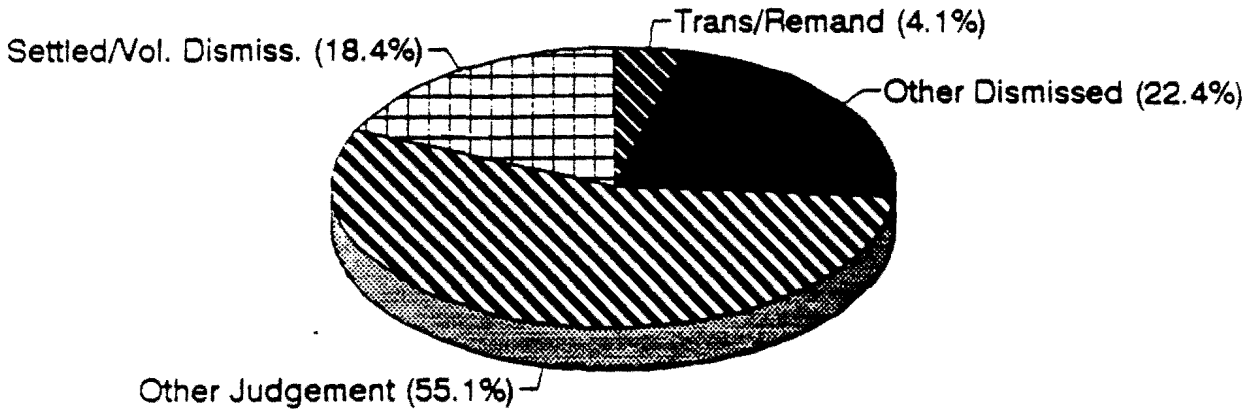
TRIAL JUDGMENT:

- Jury Verdict
- Directed Verdict
- Court Trial

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF FORFEITURE/PENALTY CASES
STAT YR 90 - 91



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

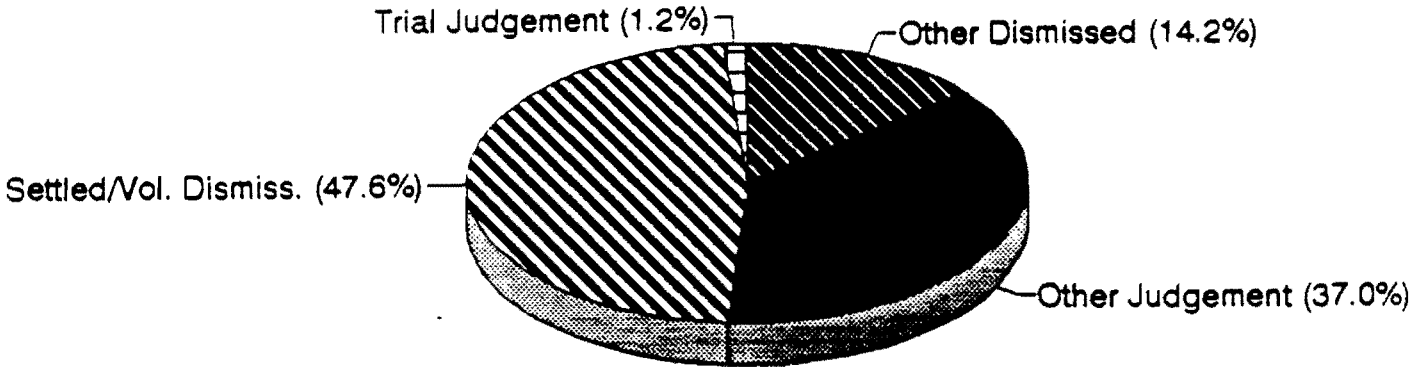
TRANSFERS / REMANDS :

- Transfer to Other District
- MDL Transfer
- Remanded to State Court
- Remanded to U.S. Agency

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF LABOR CASES
STAT YR 90 - 91



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

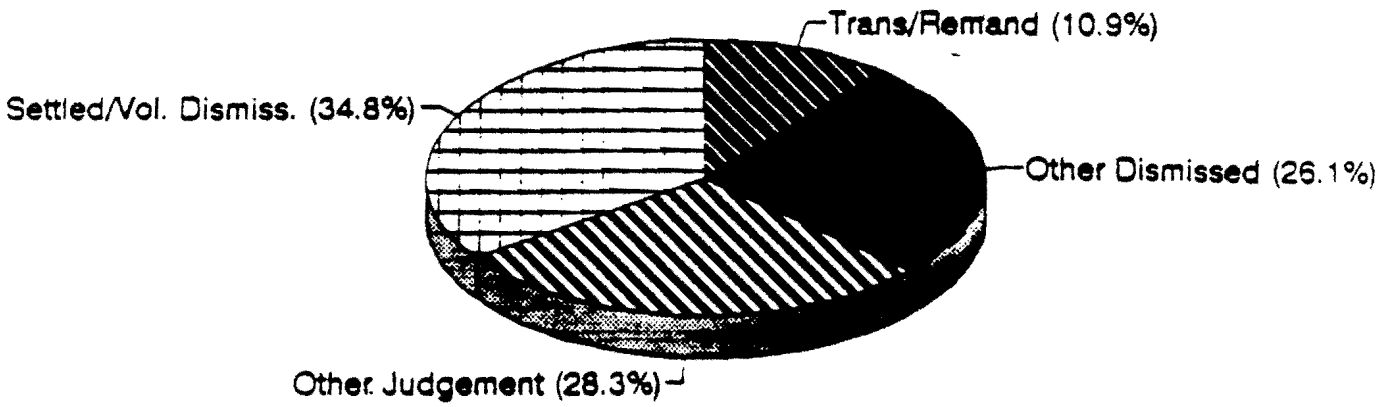
TRIAL JUDGMENT:

- Jury Verdict
- Directed Verdict
- Court Trial

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF REAL PROPERTY CASES
STAT YR 90 - 91



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal Etc.

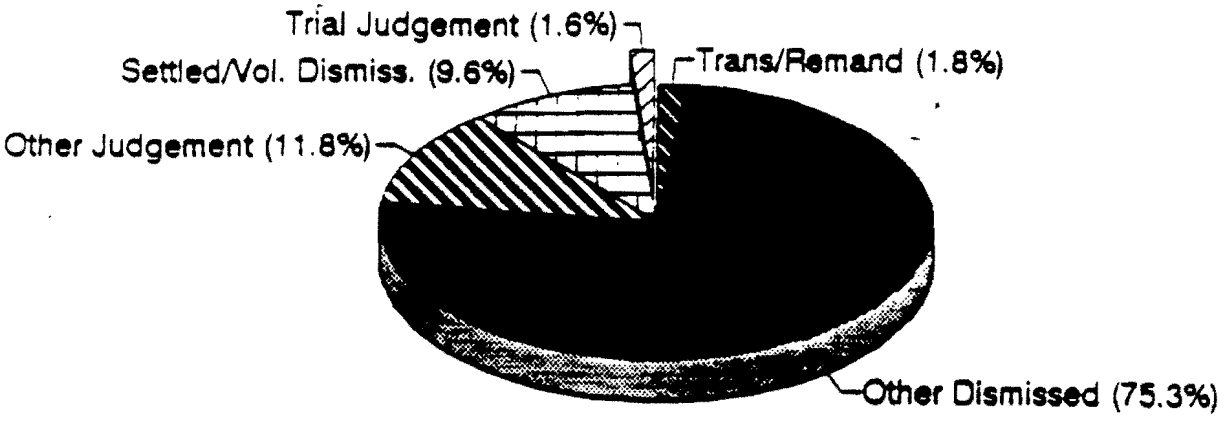
TRANSFERS / REMANDS :

- Transfer to Other District
- MDL Transfer
- Remanded to State Court
- Remanded to U.S. Agency

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF PRISONER PETITIONS
STAT YR 90 - 91



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

TRIAL JUDGMENT:

- Jury Verdict
- Directed Verdict
- Court Trial

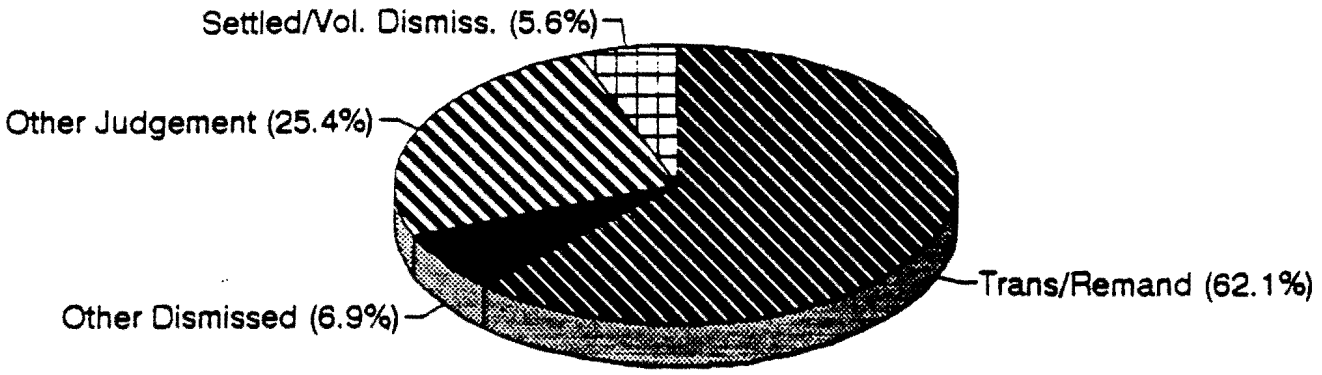
TRANSFERS / REMANDS:

- Transfer to Other District
- MDL Transfer
- Remanded to State Court
- Remanded to U.S. Agency

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF SOCIAL SECURITY CASES
STAT YR 90 - 91



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

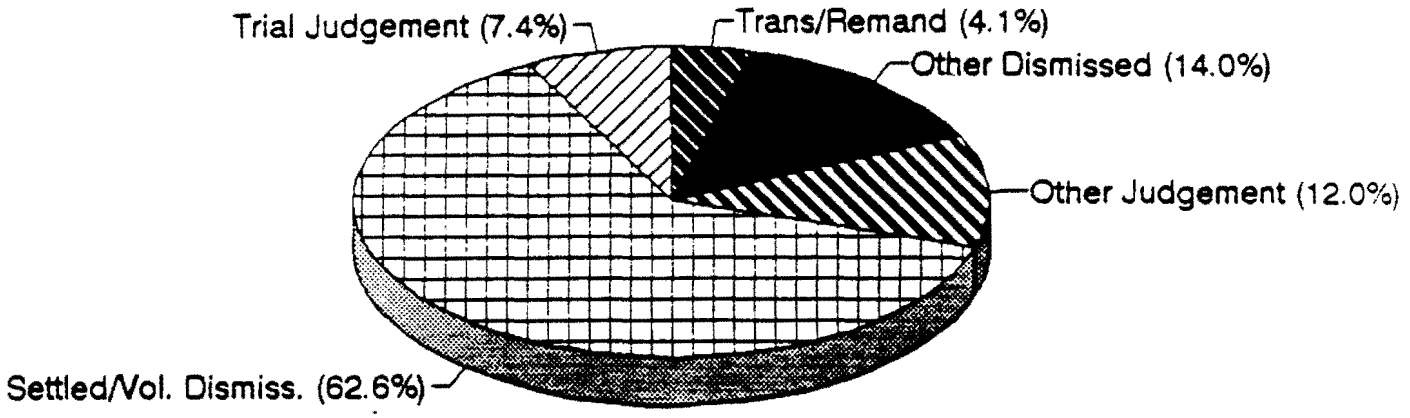
TRANSFERS / REMANDS :

- Transfer to Other District
- MDL Transfer
- Remanded to State Court
- Remanded to U.S. Agency

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF TORT - PERSONAL INJURY CASES
Excluding: Tetracycline Cases - STAT YR 1990-1991



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

TRANSFERS / REMANDS :

- Transfer to Other District
- MDL Transfer
- Remanded to State Court
- Remanded to U.S. Agency

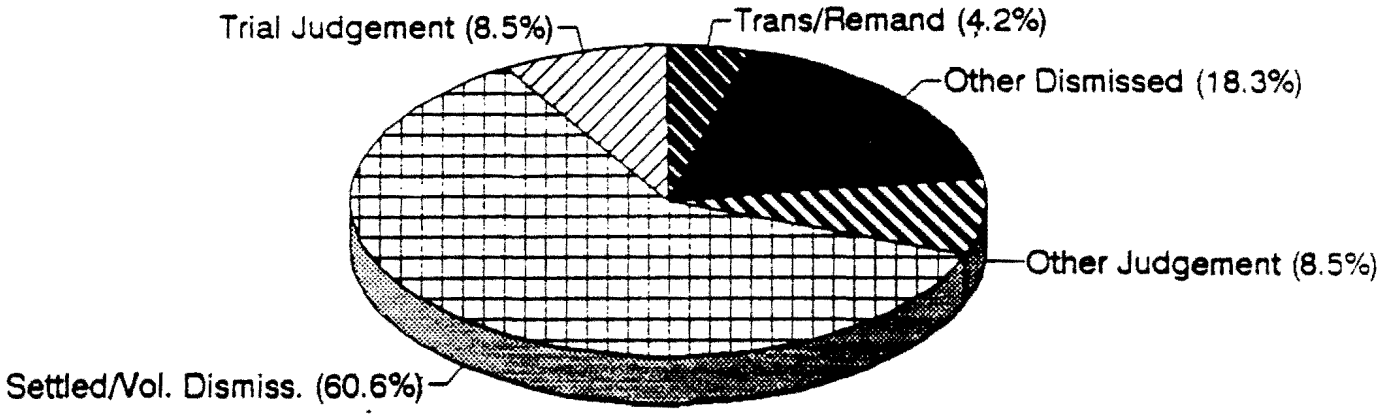
TRIAL JUDGMENT:

- Jury Verdict
- Directed Verdict
- Court Trial

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF TORT - PERSONAL PROPERTY CASES
STAT YR 1990 -1991



OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

TRIAL JUDGMENT:

- Jury Verdict
- Directed Verdict
- Court Trial

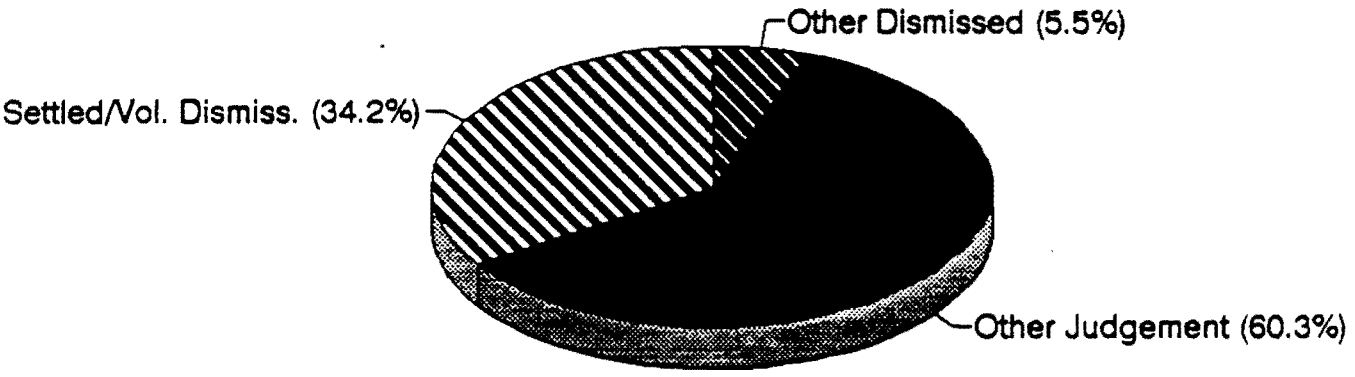
TRANSFERS / REMANDS :

- Transfer to Other District
- MDL Transfer
- Remanded to State Court
- Remanded to U.S. Agency

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

DISPOSITION OF PROPERTY RIGHTS CASES
STAT YR 90 - 91



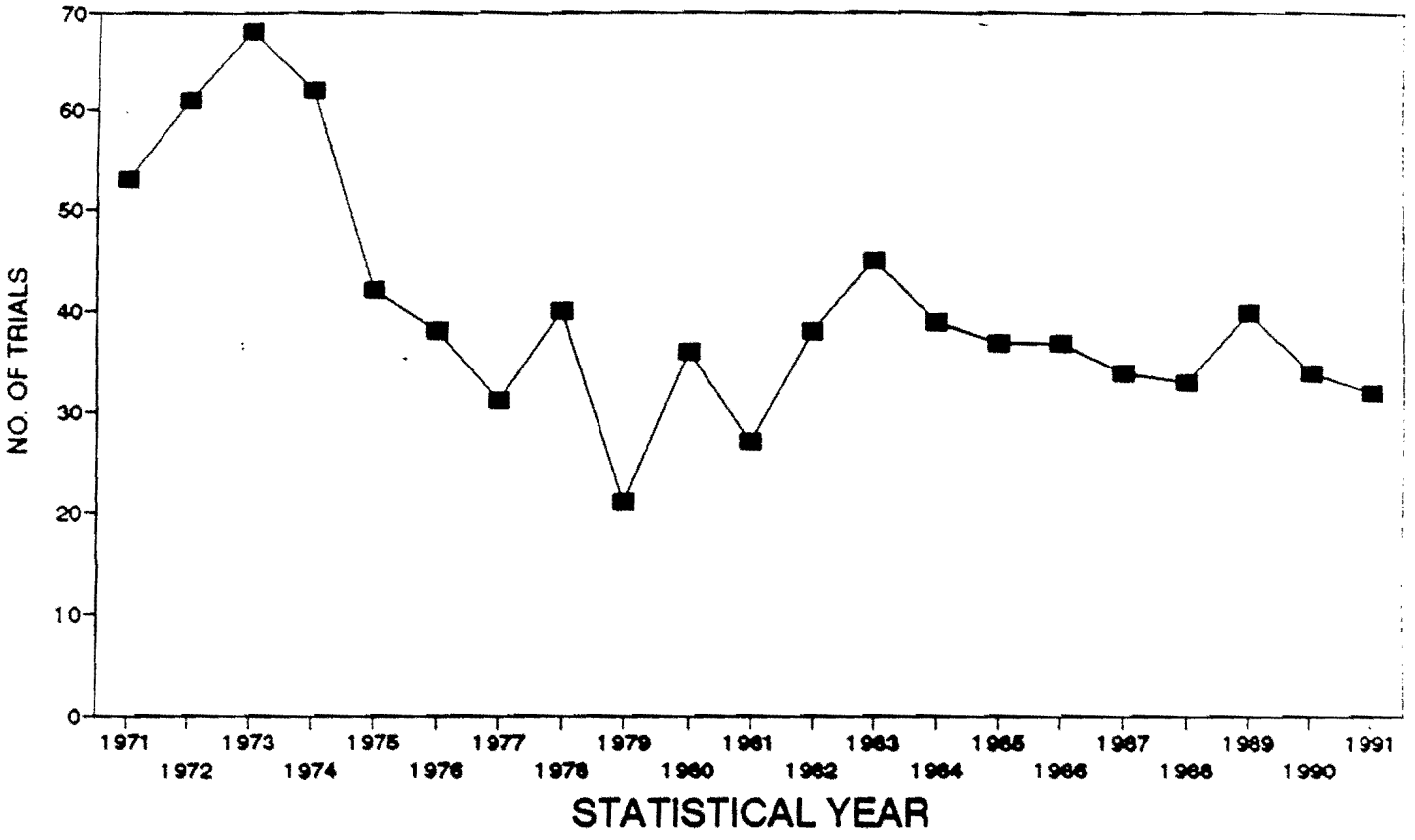
OTHER JUDGMENT:

- Default
- Consent
- Motion Before Trial
- Award of Arbitrator
- Trial De Novo After Arbitration
- Other: Reverse or Affirm Appeal, Etc.

OTHER DISMISSED:

- Want of Prosecution
- Lack of Jurisdiction
- Other Dismiss: W/Prejudice etc.

CIVIL & CRIMINAL TRIALS PER JUDGESHIP
1971-1991



Source: Federal Court Management Statistics 1971-1991

APPENDIX C

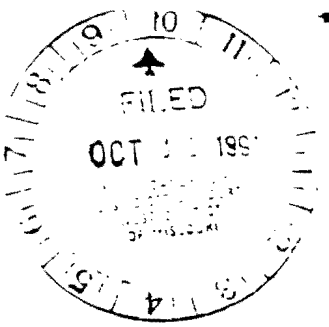
Early Assessment Program

U.S. District Court for the Western District of Missouri

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

EARLY ASSESSMENT PROGRAM

COURT-APPROVED GENERAL ORDER



IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MISSOURI
EN BANC

G E N E R A L O R D E R

Pursuant to the provisions of Section 104 of Public Law 101-50, The Civil Justice Reform Act of 1990, the United States District Court for the Western District of Missouri does hereby

ORDER that the Early Assessment Program attached hereto is the official Demonstration Project of this Court. The project is for a period of three (3) years beginning January 1, 1992, and ending December 31, 1994.

Howard F. Sachs
Chief United States District Judge
At the direction of the Court
en banc

Kansas City, Missouri

Dated: October 31, 1991

Outline of General Order
EARLY ASSESSMENT PROGRAM

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  B. Early Assessment Meeting
  C. Opting Out
  D. Notice to Parties
III. Project Administrator
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  H. Reports of Violations
IX. Sanctions
X. Selection of a Neutral

* * *

ATTACHMENTS

Attachment A - Notice Regarding the Early Assessment Program
Attachment B - Neutral's Application Form
Attachment C - Notice to Parties When Case Selected for Early Assessment Program

General Order 11/7/91

United States District Court

Western District of Missouri

Early Assessment Program

Early Implementation Project

I. PURPOSE

The Court recognizes that full formal litigation of civil claims can impose large economic and other burdens on parties and can delay the resolution of disputes. There is presently no procedure in place that encourages the parties to: (1) confront the facts and issues in their case before engaging in expensive and time consuming discovery procedures, or, (2) engage in early discussions of the issues, or, (3) consider the views of the opposing side, or, (4) consider the projected costs of future proceedings in an effort to settle the case before costs and lawyers fees have made settlement more difficult, or (5) consider other methods of resolving their disputes.

Therefore, the Court has decided to implement an experimental program beginning January 1, 1992 and extending through December 31, 1994 designed to give parties the means to resolve their disputes in a faster and less costly manner. This program is called the "Early Assessment Program" (Program).

An evaluation of the Program will be completed at the end of the experimental period to measure its success or failure.

II. PROGRAM DESCRIPTION AND PROCEDURE

A. Case Selection.

1. The following cases are excluded from the Program:

   a. Multi-district cases
   b. Social security appeals
   c. Bankruptcy appeals
   d. Habeas Corpus actions
   e. Prisoner *pro se* cases and other *pro se* cases where motion for appointment of counsel is pending
   f. Class actions

2. Automatic Program Cases. One of every three civil cases filed in the Western Division, except those types of cases excluded, during the period January 1, 1992 to December 31, 1994, shall be randomly assigned to the Program.

3. Voluntary Program Cases. One of every three civil cases filed in the Western Division, except those types of cases excluded, during the period January 1, 1992 to December 31, 1994, shall be

randomly assigned to a group of cases that may or may not elect to participate in the Program. From this group of cases the Project Administrator (Administrator) will select cases that appear promising for use of alternative dispute resolution, based on the experience of other Courts and his or her judgment. The Administrator will contact the lawyers and parties in those cases selected to encourage their participation in the Program, but they shall not be required to participate. If they do elect to participate, they shall generally follow the same procedures as those cases automatically assigned to the Program.

4. Control Group Cases. One of every three civil cases filed in the Western Division, except those types of cases excluded, during the period January 1, 1992 to December 31, 1994, shall be assigned to the Control Group. Those cases shall be exempted from any mandated use of alternative dispute resolution. However, the parties may specifically request of the Administrator to be included in the Program, or agree to use some form of alternative dispute resolution on their own.

B. **Early Assessment Meeting (Assessment).** For those cases automatically assigned to the Program, an Assessment will be held within 30 days after completion of responsive pleadings. An Assessment will be held at a mutually convenient time with the Administrator.

1. The Administrator shall notify the lawyers (or *pro se* parties, if applicable) of the date of the Assessment.

2. The Administrator, at the Assessment, shall advise the parties and their lawyers of the various "alternative dispute resolution" (ADR) options available to them for a resolution of their dispute as set out in paragraph VII.

3. If the Administrator determines, in consultation with the parties, that additional discovery is needed or if the parties, at the Assessment, elect the option of "early neutral evaluation" (ENE) the administrator shall, working with the parties, devise a plan for sharing the important information and/or conducting the key discovery that will equip them, as expeditiously as possible, to enter meaningful settlement discussions, or to posture the case for another session or other form of disposition.

4. Regardless of whether a case enters the ENE program, the Administrator shall also help the parties identify areas of agreement and explore the possibility of settling the case through mediation techniques. If appropriate, and agreeable to the parties and the Administrator, a mediation process may be initiated immediately, or at a later date, with the Administrator serving as mediator.

5. Participants in the Program must select, with the assistance of the Administrator, one of the ADR options. If the parties are unable to agree, the Administrator shall select the ADR option. If the Administrator determines that a second session is necessary before a decision can be reached on the appropriate ADR process, it may be scheduled as soon as possible thereafter.

6. The first session of the ADR process selected typically shall be held not later than 90 days after the Assessment, unless the Administrator, in his or her discretion determines that a later date is necessary.

C. Opting Out. Cases will not normally be allowed to opt out of that phase of the Program to which they were originally assigned, primarily because of the experimental nature of the Program and the need for empirical data to test it. Allowing a significant number of cases to opt out may affect the evaluation of the Program. However, there may be cases where good cause can be demonstrated for opting out.

All requests to opt out shall be in letter form and shall set forth in detail the reasons for the request. A letter asking to opt out shall be directed to the Administrator within 10 days of receiving notice that the case is assigned to the Program. Subject to the considerations stated herein, the Administrator may grant or deny the request in his or her discretion. Appeals from the Administrator's decision, while discouraged, may be made by written motion to the Judge to whom the case is assigned.

D. Notice to Parties. Notice to parties of case selection for the Program shall be provided (using the form provided in Appendix C) as follows:

1. The Clerk shall provide a copy of the Notice to each lawyer filing an action and to each eligible person filing such action *pro se*.

2. The Notice shall be attached by the Clerk to each summons issued in such action;

3. Within 20 days of the filing, the lawyer shall file with the Court a certificate stating that the lawyer has mailed or otherwise provided a copy of the Notice to each party that the lawyer represents in the action, or the guardian or representative of each such party.

4. In each action in which service of process is waived or accepted by a lawyer on behalf of a party, the lawyer for the party shall file, within 20 days of waiving or accepting service, a certificate stating that the lawyer has mailed or otherwise provided a copy of the Notice to each party that the lawyer represents in the action, or the guardian or representative of each such party. The

certificate may be contained in the answer or other responsive pleading.

III. PROJECT ADMINISTRATOR (Administrator)

A. **Selection**. The Administrator shall be selected by the Court.

B. **Responsibilities**. In addition to any responsibilities or duties noted elsewhere in this General Order, the Administrator shall have the following responsibilities:

1. Administer the Program, including coordination of all activities with the office of the Western District Clerk.

2. Coordinate the selection of cases for the Assessment, and establish procedures to provide a copy of this General Order (and notice listed in Appendix C) to the lawyers or a pro se party in cases selected for the Program.

3. Conduct the Assessment. Where requested by the parties, and in his or her discretion, serve as a mediator at the Assessment or at any subsequent session.

4. Assist in monitoring the evaluation of the program, including participation in the development, compilation, and analysis of questionnaires for lawyers and clients.

5. Take original action on requests of parties to be allowed out of the phase of the Program to which they were originally assigned.

6. Report regularly to the Court and the Advisory Group on the status of the Program, making appropriate recommendations for modifications of the Program.

7. Decide, in his or her discretion, at any time in the process, to exempt or withdraw a case from the Program, if for any reason the case is not suitable for the Program.

8. Permit, in his or her discretion, parties to submit written statements, no longer than ten (10) pages, and no sooner than seven (7) days prior to the session, for those ADR processes where written statements are not usually submitted.

9. Collect all files, written statements, and other confidential materials from the neutrals, for storage or destruction.

IV. ATTENDANCE AT PROGRAM SESSIONS

A. **Parties**.

1. It is the intent of the Court that the parties attend all Program sessions where there will be significant discussion about resolving the case. The parties themselves shall attend all Program sessions unless their attendance has been excused by the Administrator. This attendance requirement reflects the Court's view that one of the principal purposes of the Program sessions is to afford litigants an opportunity to articulate their positions and to learn about opposing parties' positions.

2. Where attendance of a party is required, a party other than a natural person satisfies the attendance requirement if it is represented by a person or persons, other than outside or local counsel, with authority to enter into stipulations, with reasonable settlement authority, and with sufficient stature in the organization to have direct access to those who make the ultimate decision about settlement. Upon showing of good cause, the Administrator may vary the mandates of this Section 4.A.2.

B. Counsel. Each party shall be accompanied at the Program sessions by the lawyer expected to be primarily responsible for handling the trial of the matter. If a natural party is not represented by counsel, that party may appear on his or her own behalf.

C. Location. The Program sessions shall be held in meeting space at the United States Courthouse, or in some other neutral location selected by the Administrator, or in a location agreed to by the parties and approved by the Administrator.

V. CONFIDENTIALITY

A. General Provisions.

1. This Court shall treat as confidential all written and oral communications, not under oath, made in connection with or during any Program session except as noted in paragraph V.B. and C.

2. The Court hereby extends to all communications not under oath all the protections federal Courts and Federal Rule of Evidence 408 give to communications made in settlement negotiations or as offers of compromise. No communication made in connection with or during any Program session may be disclosed (by either the parties, their counsel, or the neutrals who provide ADR assistance) or used for any purpose (including impeachment or to prove bias or prejudice of a witness) in any pending or future proceeding in this Court. The privileged and confidential status afforded to communications made in connection with or during any Program session is extended to include (but is not limited to) the Administrator's, Mediator's, Evaluator's, Arbitrator's or other neutral's comments, assessment, evaluations, and recommendations about case development, discovery, or motions. The Administrator and neutrals shall not discuss matters addressed at the Program sessions outside those sessions,

except with the permission of the parties or as allowed under paragraphs V.B. or C. below.

B. **Exception**. The Administrator and neutrals may communicate to the assigned Judge or the Court en banc regarding matters of non-compliance by parties or lawyers with this General Order.

C. **Evaluation**. Nothing in paragraph V.A. shall be construed to prevent parties, counsel, or neutrals from responding to inquiries by persons duly authorized by the Court en banc to analyze and evaluate the Program. The names of the people responding and any information that could be used to identify specific cases or parties shall be confidential.

D. **No Recording**. No recording shall be made of any of the meetings or sessions held under the Program, nor shall parties utilize private reporters or any other type of recording technology during the Program meetings or sessions, unless all parties agree, or unless the recording is made under non-binding arbitration described in paragraph VII below.

VI. EVALUATION

An ongoing evaluation of the project shall be undertaken beginning with its initial implementation. The purpose of the evaluation will be to determine the success of the Program in speeding the processing of cases and reducing costs. The evaluation will also measure the satisfaction of parties with the Program. The evaluation will be performed by an outside group selected by the Court; however, day-to-day analysis and evaluation of the program will be the responsibility of the Administrator. Quarterly and annual reports shall be prepared, with a final report after the conclusion of the Program.

VII. ALTERNATIVE DISPUTE RESOLUTION (ADR) OPTIONS AND PROCEDURES

A. Procedures Applicable to Mediation, Non-Binding Arbitration and Early Neutral Evaluation.

1. In every case in which mediation, non-binding arbitration or early neutral evaluation is selected the Administrator shall:

a. Designate the neutral as set out in paragraph X of the General Order, unless the parties agree on a neutral, drawn from the list of certified neutrals.

b. Designate the time period in which the ADR process shall be conducted.

2. Not later than ten (10) days after selection of the neutral, counsel shall file a report with the Administrator indicating the agreed-upon meeting date for the ADR process selected.

3. Upon failure of counsel either to file the report or to secure a mutually agreeable date, the Administrator shall fix the date, after consultation with the neutral involved.

4. Failure to comply with the attendance or settlement authority requirements of paragraphs IV.A. B. and C. of the General Order may subject a party to sanctions by the Court.

5. The neutral may, with the consent of all parties and counsel, reschedule the session to a date certain not later than ten (10) days after the scheduled date. Any continuance beyond that time must be approved by the Administrator.

6. Subject to approval of the neutral, the session may proceed in the absence of a party who, after due notice, fails to be present. Upon motion of an attending party or upon the Court's own motion, sanctions may be imposed by the Court on any party who, absent good cause shown, failed to attend the meeting.

7. Within thirty (30) days following the conclusion of the session, the neutral shall file a report with the Administrator indicating whether all required parties were present and the outcome of the session, in addition to other information the Administrator may require for evaluation purposes.

8. If the parties settle the case prior to the ADR session, the neutral, Administrator and Court shall be advised promptly.

B. <u>Description of Specific ADR Options and Procedures</u>.

1. <u>Mediation</u>.

a. Mediation is a process in which a neutral third party assists the parties in developing and exploring their underlying interests (in addition to their legal positions), promotes the development of options and assists the parties toward settling the case through negotiations.

b. The mediator must be an lawyer at law, certified by the Court in accordance with this order, who possesses the unique skills required to facilitate the mediation process including the ability to help the parties develop alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

c. The mediation process does not normally contemplate presentations by witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case.

2. Non-Binding Arbitration. Non-binding Arbitration is a procedure in which the parties choose a neutral person to hear their dispute and render a decision. An arbitration is typically less formal than a trial, is usually shorter, and is conducted in a neutral setting. An arbitrator may be selected by the parties on the basis of his or her expertise, or on the basis of the mutual respect of the parties for the arbitrator. The decision becomes a final judgment of the Court after 30 days unless a party files an appeal as provided herein. In that event, the case proceeds as scheduled to trial.

a. A list of all exhibits a party intends to offer, a list of all witnesses a party intends to call, and a list of all depositions or portions of depositions a party intends to use, shall be served on each party at least ten days prior to the hearing. A copy of each written exhibit, marked for identification, and a copy of all affidavits a party intends to use must be delivered to each party by the same date. Any exhibit which is not easily or economically copied shall be made available for inspection at any reasonable time.

b. Formal proof of authenticity or foundation for any exhibit listed in accordance with paragraph a. above shall not be required unless the proponent has been notified in writing at least five days prior to the hearing of the precise objection to authenticity or foundation.

c. The arbitrator may refuse to receive an exhibit or to permit the testimony of a witness if a party has failed to comply with paragraph a. or b. above in connection with that exhibit or witness.

d. Each party shall deliver to the arbitrator, and file with the Administrator, at least seven days prior to the hearing, a written statement which sets forth briefly the following:

(1) A summary of the claims made;
(2) The critical fact issues; and
(3) Contested legal issues, with citation of the party's primary authority.

e. Rule 45, Federal Rules of Civil Procedure, shall govern the issuance of subpoenas for attendance of witnesses and for the production of documentary evidence. Testimony at an arbitration hearing shall be under oath or affirmation administered by the arbitrator.

f. The Court contemplates that ordinarily each party's presentation at the arbitration hearing will require no more than two and one-half hours. The presentation of testimony shall be kept to a minimum. Each party's presentation to the

arbitrator should be primarily through the statements and arguments of counsel.

g. A party may record the arbitration hearing in any non-disruptive manner. The cost of the recording shall be paid by the party making the recording.

h. A written arbitration award shall be filed with the Administrator and the Court and served upon each party promptly after the hearing is concluded. The arbitration award shall be entered as the judgment of the Court at the end of thirty days after filing unless a party files a statement with the Administrator and the Court that the award is not accepted.

i. A judgment so entered shall be deemed a judgment by the consent of the parties and shall have the same force and effect as a judgment of the Court in any other civil action, except that it may not be appealed. In a case involving multiple claims or parties, any part of an arbitration award for which a party does not file a statement of non-acceptance shall become part of the final judgment in the case with the same force and effect as a judgment of the Court in a civil action, except that it shall not be subject to appeal.

3. Early Neutral Evaluation. Early neutral evaluation is a process in which parties obtain from an experienced neutral (an Evaluator) a non-binding, reasoned evaluation of the case on its merits. After essential information and position statements are exchanged, the Evaluator convenes a session which typically lasts about two hours. At the meeting, each side briefly presents the factual and legal basis of its position. The Evaluator may ask questions and help the parties identify the parties' underlying interests, the main issues in dispute as well as areas of agreement. He or she may also help the parties explore options for settlement. If settlement does not occur, the Evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the Evaluator's assistance. They may also explore ways of narrowing the issues, exchanging information about the case or otherwise preparing efficiently for trial.

The Evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case.

a. No later than seven calendar days in advance of the evaluation session, each party shall submit to the Evaluator, and serve on all parties, a written evaluation statement. Such statements may not exceed ten pages and shall conform to the following guidelines: While they may include any information that would be useful, they must (1) give a brief statement of

the facts; (2) identify the pertinent principles of law; (3) identify the legal and factual issues that are in dispute; (4) address whether there are any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute significantly to the productivity of settlement discussions; (5) identify any additional discovery that promises to contribute most to equipping the parties for meaningful settlement negotiations; and (6) identify the person(s), in addition to counsel, who will attend the session as the party's representative with decision-making authority. Parties may identify in these statements persons associated with a party opponent whose presence at the evaluation session would improve significantly the prospects for making the session productive; the fact that a person has been so identified shall not be a sufficient basis for compelling the presence of that person at the evaluation session. Parties should attach to their statement any photographs, declarations or other documentary evidence (e.g., contract, medical reports, relevant photos, or statements of key witnesses), the availability of which will advance the purposes of the session and assist the Evaluator as well as the other parties in appreciating the merits of each party's case. Documents shall be indexed so that they are easily assessed by the Evaluator.

These statements shall not be filed with the Court, and the assigned Judge shall not have access to them.

b. The Evaluator shall have considerable discretion in structuring the evaluation sessions. The sessions shall proceed informally. Rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses.

c. In each case the Evaluator shall:

(1) permit each party to make an oral presentation;

(2) help the parties identify areas of agreement and, where appropriate, enter stipulations;

(3) assess strengths and weaknesses of the parties' contentions and evidence; and

(4) explore the possibility of settling the case through private caucusing and mediation techniques such as:

(i) Drawing the parties out in private caucus as to their opinions of their chances of success on each important issue, the consequences of an unfavorable verdict on that issue to the value of their case, the number of witnesses needed to be

deposed regarding that issue, and the cost and fees entailed in proving that issue through discovery and the trial; and

(ii) Drawing the parties out on their underlying interests and settlement offers they are willing to make at this time and whether those offers can be communicated to the opposing party.

d. If settlement negotiations and mediation do not result in settlement, the Evaluator shall in writing:

(1) estimate, where feasible, his or her view of the likelihood of liability and the dollar range of damages; and

(2) give his or her opinion of the verdict if he or she were the trier of fact.

e. At the close of the evaluation session, the Evaluator shall determine whether it would be appropriate to schedule a followup to the session. While the nature of any such followup shall be fixed by the Evaluator, in his or her discretion, it might include written or telephonic reports by the parties to one another or to the Evaluator, or, if the parties consent, a second evaluation session or a settlement conference hosted by the Evaluator.

f. Within limits imposed by this General Order, or by the Administrator, Evaluators shall have authority to structure and conduct evaluation sessions and to fix the time and place thereof. Except as described here and in paragraphs d. and e. above, Evaluators shall have no authority to order parties or counsel to take any action outside the evaluation session, to compel parties to produce information, to rule on disputed matters, or to determine what the issues are in the case.

4. Magistrate Settlement.

a. The purpose of the settlement conference is to permit an informal discussion between the lawyers, parties and the magistrate of every aspect of the lawsuit, thus permitting the magistrate privately to express his or her views concerning the actual dollar settlement value or other reasonable disposition of the case.

b. The settlement conference statement (oral) of each party shall be presented to the magistrate, setting forth the positions of the parties concerning factual issues, issues of law, damage or relief requested. Pertinent evidence to be offered at trial, documents or otherwise, should be brought to

the settlement conference for presentation to the magistrate if thought particularly relevant.

c. The magistrate may, with the agreement of the parties, converse with any or all sides of the dispute outside the hearing of the other.

d. The failure to attend a settlement conference or the refusal to cooperate fully may result in the imposition of sanctions by the magistrate. The magistrate may issue such other and additional requirements of the parties or persons having an interest in the outcome as he or she shall deem proper in order to expedite the amicable resolution of the case. The magistrate shall not discuss the merits of the case with the assigned Judge but may discuss the status of motions and other procedural matters with him or her.

5. Other Options. The Administrator, in his or her discretion, after consultation with the parties, may select some other form of alternative dispute resolution such as mini-trials, summary jury trials, binding arbitration, or some hybrid form of alternative dispute resolution. However, the Administrator may not select binding arbitration unless all parties agree.

VIII. CERTIFICATION QUALIFICATION AND COMPENSATION OF NEUTRALS (Mediators, Arbitrators, Evaluators)

A. Certification. The Court shall certify those persons who are eligible and qualified to serve as neutrals (mediators, evaluators, arbitrators) under this General Order, in such numbers as the Court shall deem appropriate. Thereafter, the Court shall have complete discretion and authority to withdraw the certification of any neutral at any time. The Administrator shall be a certified neutral.

B. Lists of Certified Neutrals. Lists of certified neutrals shall be maintained by the Administrator, and shall be made available to counsel, parties and the public upon request.

C. Qualifications.

1. An individual may be certified to serve as a neutral if:

a. He or she is a former State Court Judge who presided in a Court of general jurisdiction, or

b. He or she is a retired federal judicial officer, or

c. He or she is currently a member of The Missouri Bar and has been a member of another state bar and/or The Missouri Bar for at least eight (8) years and is currently admitted to the Bar of this Court,

2. In addition, an applicant for certification must have completed a minimum of:

a. for mediators, sixteen (16) 50-minute continuing legal education equivalent hours of training, certified under Missouri Supreme Court Rule 17 or by this Court, or

b. for arbitrators, four (4) 50-minute continuing legal education equivalent hours of training certified under Missouri Supreme Court Rule 17 or by this Court, or

c. for evaluators, sixteen (16) 50-minute continuing legal education equivalent hours of training certified by this Court,

3. In addition, an applicant must complete the required application form (see Appendix B) and be approved by the Court, or the Court's designee.

D. Oath. Every neutral shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a neutral.

E. Disqualification.

1. Any person selected as a neutral may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144, and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate governed by 28 U.S.C. § 455.

2. No person shall serve as a neutral in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist.

3. Any party who believes an assigned neutral has a conflict of interest shall bring this to the attention of the Administrator within 10 days of learning the source of conflict or shall be deemed to have waived objection.

F. Compensation.

1. Neutrals shall be compensated at the hourly rate as listed by them on the application (Appendix B) and shown on the list of certified neutrals. Absent agreement of the parties to the contrary, the cost of the neutral's services shall be borne equally by the parties. Except as provided in this General Order, no neutral shall charge or accept in connection with his or her service in any particular case, any fee or thing of value from any other source whatever, absent written approval of the Court given in advance of the receipt of any such payment or thing of value.

2. A party may request the service of a neutral who has agreed to serve pro bono, if a party demonstrates to the Administrator an inability to pay the fees of the neutral. The

lists of certified neutrals maintained by the Administrator shall indicate if a neutral has agreed to serve pro bono.

G. **Neutrals as Counsel in Other Cases**. Any member of the bar who is certified and designated as a neutral pursuant to this General Order shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court. However, such member of the bar may not represent any party to an ADR session in which he or she serves as neutral in any matter related to that service.

H. **Reports of Violations**. Neutrals shall promptly report to the Administrator and the Court violations of this General Order.

IX. SANCTIONS

If a party fails to make a good faith effort to participate in the Program in accordance with the provisions and spirit of this Order, the assigned Judge or Court may impose appropriate sanctions.

X. SELECTION OF A NEUTRAL

The parties may agree upon the selection of a neutral before or at the Assessment. If they do not agree, the Administrator will give the parties a list of potential neutrals for the type of ADR process selected. The number of potential neutrals on the list will be twice the number of "sides" in the litigation plus one. (For example, in litigation having two "sides," the list will contain five names.) The parties will have ten days from the Assessment to select a neutral and report their selection, in writing, to the Administrator. If the parties are unable to agree on a neutral, each side of the action may strike (within ten (10) days of the Assessment) up to two of the potential neutrals, doing so by indicating its "strikes" in writing to the Administrator. The Administrator shall then designate one of the remaining neutrals as the neutral assigned to the case and shall promptly notify the parties (and the neutral) of the designation.

Attachment A

UNITED STATES DISTRICT Court
WESTERN DISTRICT OF MISSOURI
Office of the Clerk

NOTICE REGARDING THE EARLY ASSESSMENT PROGRAM IN THE WESTERN DISTRICT OF MISSOURI

The U.S. District Court, Western District of Missouri recently adopted an Early Assessment Program. The Program is a 3-year experiment applicable to cases filed in the Western Division of the District. The purpose of the Program is to offer alternative dispute resolution services to selected cases in order to reduce costs and time in processing cases. Pursuant to General Order, the Court of the District shall certify those persons who are eligible and qualified to serve as neutrals (i.e., mediators, arbitrators, evaluators), in such numbers as the Court shall deem appropriate. An individual may be certified to serve as a neutral if:

(1) He or she is a former State Court Judge who presided in a Court of general jurisdiction, or

(2) He or she is a retired federal judicial officer, or

(3) He or she is currently a member of The Missouri Bar and has been a member of another state bar and/or The Missouri Bar for at least eight (8) years and is currently admitted to the Bar of this Court,

In addition, an applicant for certification must have completed a minimum of:

(4) for mediators, sixteen (16) 50-minute continuing legal education equivalent hours of training, certified under Missouri Supreme Court Rule 17 or by this Court, or

(5) for arbitration, four (4) 50-minute continuing legal education equivalent hours of training certified under Missouri Supreme Court Rule 17 or by this Court, or

(6) for evaluators, sixteen (16) 50-minute continuing legal education equivalent hours of training certified by this Court,

In addition, the applicant must complete the application form (see attachment) and be approved by the Court, or the Court's designee.

If you are interested in becoming a neutral for the Western District of Missouri and meet the above requirements, please complete the attached application form and return to:

Clerk, U.S. District Court
Western District of Missouri
U.S. Courthouse
Kansas City, MO 64106
Attn: Early Assessment Program

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

NEUTRAL'S APPLICATION FORM

In accordance with General Order of the Western District of Missouri, I am applying for certification as a neutral with the United State District Court for the Western District of Missouri. The following information is supplied in support of this application:

1. Last Name/First/MI: _____ Missouri Bar ID No.: _____

2. Firm's Name: _____

3. Street Address: _____

4. City/Zip + Ext.: _____

5. Office Phone No: _____ Office Fax No: _____

6. Date admitted to: The Missouri Bar:_____ Bar of This Court:____

7. Are you a member in good standing of The Missouri Bar? _____

8. What is the hourly fee you will charge for your services? _____

9. Will you handle a limited number of cases (1-2 per year) pro bono? ____

10. Check all of areas of legal practice or experience which best describes your legal background.

____ Insurance	____ Contracts	____ Real Property
____ Products Liability	____ Patents/Trademark	____ Personal Injury
____ Civil Rights	____ State Judicial Off.	____ Administrative Law
____ Federal Judicial Off.	____ Labor	____ Anti Trust
____ Banks & Banking	____ Environmental	____ Securities

____ Other(Describe)_____

11. (a) Have you ever been disciplined for violation of any code of professional ethics or responsibility _____ (b) Have you ever been found by a Court to be guilty of a felony? _____ (c) Have you even been liable for fraud or any other intentional tort? _____ (d) Have you ever had a professional license revoked or suspended other than for non payment of dues? _____

If any answer to 11(a)-(d) is yes, please explain the circumstances on a separate sheet and attach.

12. List below the training sessions, sponsor, location, dates, hours that qualify you as a neutral:

_____

_____

_____

_____

_____

NEUTRALS APPLICATION FORM

13. In the space below briefly describe your experience, qualifications, special areas of expertise, and any other reasons why you should be selected as a neutral.

Signature _____ Date _____

[NOTE. This complete form will be made available to parties to assist them in choosing a neutral.]

FOR Court USE ONLY

Date Certified by the Court as a neutral: _____

Attachment C
United States District Court
Western District of Missouri
Kansas City, Missouri

(Notice to parties when case has been selected for Early Assessment Program so that parties can commence preparation)

RE: _____
(Case Title and Civil No.)

This notice is to advise you that your case has been selected for inclusion in the Western District Early Assessment Program. Enclosed please find a copy of the General Order describing the Program in more detail. Please read carefully.

As a party to a lawsuit filed in this Court, you are entitled to pursue all claims or defenses to claims that you have asserted until a disposition of the claims or defenses is made by the Court or a jury. However, the vast majority of lawsuits filed in this and other Courts are resolved not by the Court or a jury, but by voluntary settlement by the parties before any trial takes place. This is often true even in cases in which the parties believe at the outset of the lawsuit that no voluntary resolution of the dispute is possible. By settlement, the expense and inconvenience of litigation can be reduced, the dispute can often be resolved more quickly, and any uncertainty as to the result of the litigation can be eliminated.

In many cases that are settled, however, the settlement does not take place as early, economically, or satisfactorily to the parties as possible. The purpose of the Early Assessment Program is to provide alternative dispute resolution (ADR) services to assist parties in arriving at a voluntary early resolution of a dispute efficiently and satisfactorily.

YOUR OBLIGATIONS IN THIS COURT ARE NOT AFFECTED BY YOUR INCLUSION IN THIS PROGRAM

Good faith participation in the Early Assessment Program and use of one of the ADR processes is required but you are not required to settle the case.

Inclusion in this program does not relieve you of any of the obligations or deadlines that you have in the lawsuit that has been filed. IF YOU HAVE BEEN SERVED YOU MUST FILE A TIMELY RESPONSE IN ORDER TO AVOID THE RISK OF A DEFAULT JUDGMENT.

The Project Administrator will schedule an Early Assessment Meeting within 30 days after the filing of responsive pleadings. The goal of the Assessment is to determine which ADR procedure is most likely to help the parties reach a settlement. Ideally the parties will mutually decide which ADR option to use.

However, if the parties are unable to agree, the decision will be made by the Administrator.

To ensure the success of this Assessment, it is important that you carefully review and objectively assess your case prior to the Assessment. In addition you should clarify your underlying interests in the case, that is, what you really wish to gain or achieve. You should come prepared to discuss your case and act in good faith in the selection of an appropriate ADR option.

Please note that parties are required to attend the Assessment unless excused by the Administrator.

The actions of a neutral can have no binding effect on discovery, motion practice or other aspects of preparation for trial. Only the assigned Judge can control these matters. However, all communications made in connection with the Program are absolutely confidential and cannot be used at trial, except as provided in the General Order and Federal Rule of Evidence 408.

Set out below are some of the major ADR options that are available through this Program. This list does not preclude the development of some other procedures by the parties, in consultation with the Administrator.

Mediation

Mediation is a process in which a neutral third party assists the parties in developing and exploring their underlying interests (in addition to their legal positions), promotes the development of options and assists the parties toward settling the case through negotiations.

The mediator is an lawyer, certified by the Court in accordance with this order, who possesses the unique skills required to facilitate the mediation process including the ability to help the parties develop alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

The mediation process does not normally contemplate presentations by witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case.

Non-Binding Arbitration

Non-binding Arbitration is a procedure in which the parties choose a neutral person to hear their dispute and render a decision. An arbitration is typically less formal than a trial, is usually shorter, and is conducted in a neutral setting. An arbitrator may be selected by the parties on the basis of his or her expertise, or on the basis of the mutual respect of the parties for the arbitrator. The decision can become final and a judgment of the Court after 30 days unless a party does not agree to the decision. In that event, the case proceeds as scheduled to trial.

Early Neutral Evaluation (ENE)

Early neutral evaluation is a process in which parties obtain from an experienced neutral (an Evaluator) a non-binding, reasoned evaluation of their case on its merits. After essential information and position statements are exchanged, the Evaluator convenes a session which typically lasts about two hours. At the meeting, each side briefly presents the factual and legal basis of its position. The Evaluator may ask questions and help the parties identify the parties' underlying interests, the main issues in dispute as well as areas of agreement. He or she may also help the parties explore options for settlement. If settlement does not occur, the Evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the Evaluator's assistance. They may also explore ways of narrowing the issues, exchanging information about the case or otherwise preparing efficiently for trial.

The Evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case.

Magistrate Settlement Conference

The purpose of the settlement conference is to permit an informal discussion between the lawyers, parties and the magistrate of every aspect of the lawsuit, thus permitting the magistrate privately to express his or her views concerning the actual dollar settlement value or other reasonable disposition of this case.

The settlement conference statement (oral) of each party shall be presented to the magistrate, setting forth the positions of the parties concerning factual issues, issues of law, damage or relief requested. Pertinent evidence to be offered at trial, documents or otherwise, should be brought to the settlement conference for presentation to the magistrate if thought particularly relevant.

The magistrate may with the agreement of the parties converse with the any or all sides of the dispute outside the hearing of the other.

The failure to attend a settlement conference or the refusal to cooperate fully may result in the imposition of sanctions by the magistrate. The magistrate may issue such other and additional requirements of the parties or persons having an interest in the outcome as he or she shall deem proper in order to expedite the amicable resolution of the case. The magistrate shall not discuss the merits of the case with the assigned Judge but may discuss the status of motions and other procedural matters with him or her.

Other Alternative Dispute Resolution Mechanisms

The Administrator and the parties may decide that some other form of alternative dispute resolution might be useful. Such other forms could include mini-trials, summary jury trials, binding arbitration or some other form of ADR developed by the parties in consultation with the Administrator.

Remember, the purpose of this Program is to help parties save time and money. It will succeed only if lawyers and parties make a good faith effort to comply with the spirit of the Program. If you have questions or concerns about the program, please have your lawyer contact:

Project Administrator
(816) _____
U.S. Courthouse
Room _____
Kansas City, Missouri 64106