

CJRA PLAN
ANNUAL ASSESSMENT OF DOCKETS

as of April 1, 1994

by

H. Russel Holland, Chief Judge
District of Alaska

By Miscellaneous General Order No. 698, this court adopted its Civil Justice Expense & Delay Reduction Plan. The plan was modified by Amendment No. 1 to, among other things, make provision for a schedule for effecting various components of the plan. The Civil Justice Reform Act of 1990 requires that:

[Each court shall] assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court.

28 U.S.C. § 475. In order to accomplish the foregoing, the court examined both the state of its docket, as well as the state of its realization of goals or objectives set out in the court's plan.

Attached hereto is the court's summary appraisal of the state of its civil and criminal dockets. Appendix 1. The court has employed the most current statistical data available. Also attached hereto is the court's appraisal of the status of its CJRA Plan. Appendix 2.

The court summarizes the condition of its civil and criminal dockets as follows.

As to criminal cases, the court continues to process cases in compliance with the Speedy Trial Act. Criminal cases are entitled to substantial priority over civil litigation, and they receive that treatment. While there have been some "peaks and valleys" in the flow of criminal cases through this court over the past two years, the court's criminal docket has been rather stable. See Appendix 1, Part B. Although the cold statistics do not reflect this very well, anecdotal information from the judges suggests that there has been a noticeable decrease in the complexity (along with a modest decrease in the absolute number of) criminal filings made in this district during the past twelve months. We think this is in part the result of a change in administration at the Department of Justice. A new United States Attorney has recently been appointed and sworn into office. We think the appointment is likely to result in a near-term "surge" in criminal filings.

With respect to the court's civil docket, the court continues to be modestly encouraged. The number of civil cases filed and the number of civil cases pending over the last five years have remained more or less constant, during which time the court has absorbed both a year-long hiatus between the departure of Judge Kleinfeld and the appointment of Judge Sedwick and the impact of the Exxon Valdez litigation. Perhaps we are no better off, but we certainly could have been a whole lot worse off.

By the end of March, 1994, the court (both district judges and magistrate judges) had substantially improved the state of their matters under advisement for six months. For all practical pur-

poses, all of the judicial officers are current with respect to their motion practice.¹

We can again report that this court does not have a "backlog" of civil cases which are ready for trial but have no assigned trial date. As civil cases come ripe for trial, trial dates are routinely and promptly assigned, usually at times requested by the parties and generally no more than six months from the date of the request.

In its report last year, the court reported its view that discovery was still taking too long. During the last year, the court has consciously imposed modest restrictions of the time requested by counsel for discovery. In doing so, the court has made provision for an automatic two-month extension of the time for discovery if counsel are in agreement that such an extension is needed. The court has done no statistical study of the results of this initiative, but anecdotal information suggests that most parties (probably over 50%) have absorbed the constriction of discovery time without difficulty. A number of parties (perhaps 25%) have taken advantage of the automatic two-month extension. Only a very few have either asked for in excess of a two-month extension or have endeavored to avoid the restrictions imposed by

¹ Unless one manipulates the reporting system, it is inevitable --under the current reporting regimen which operates off the date a motion was filed--that there will be a few motions which get filed and, for one or another good reason, are not ruled upon within six months from the date of the filing of the motion. For example, one currently reported case involves a summary judgment motion which was pending for approximately a year before opposition was filed. The court considers there to have been good reason for this delay.

the court. Some of the latter endeavors have succeeded, others have been squelched.

A pro bono discovery master program has been underway during the past year. The program has not received quite as much use as the court had expected. The program will be promoted at a continuing legal education seminar to be held in conjunction with the Alaska Bar Association convention in May. Initial reports indicate that this initiative has been well received by those involved in the process.

Last year, the court reported its intention to revisit the question of "fast-track" proceedings and alternative dispute resolution. The CJRA Group subcommittee which reexamined the fast-track concept has just submitted its report to the Group. No progress was made in the area of alternative dispute resolution.

A year ago, the court suggested that its CJRA Group reevaluate this court's plan in light of the model plan for reduction of expense and delay in civil cases. This did not happen. It is the court's intention to insist that this be a top priority for the coming year.

The annual assessment of the court's plan for reduction of costs and delay in civil litigation is intended to achieve three goals:

- (1) to inform the court itself of the impact of its plan so that adjustments can be made;

- (2) to provide information to other courts and advisory groups who may benefit from this court's experience; and
- (3) to provide assistance to the Judicial Conference of the United States in reporting to Congress.

By performing the foregoing self-analysis, the court concludes that satisfactory progress has been made in several areas. As noted in Appendix 2, a number of major goals have been achieved. However, it is also the court's perception at this time that the process of delay and cost reduction has reached a sort of plateau. While modest gains in limiting the duration and expense of discovery will probably be achieved through the continued implementation of early case management procedures, significant gains in either cost reduction or delay reduction will not be achieved without some breakthrough--without some new initiative. That is why the court is of the view that its entire plan should be reevaluated.

It is the court's perception that its civil docket has improved modestly during the last year; however, a lengthy, complex trial of the Exxon Valdez claims is expected to commence on May 2, 1994. The initial three phases of this litigation are expected to take three months. While that trial will dispose of most of the claims, there could yet be many weeks of trial of individual cases not included in the first three phases. Inevitably, this will affect the court's overall ability to address other matters. Responsibility for all criminal cases has already been shifted to two of the three active judges, rather than all three. Additional adjustments to balance

immediate work demands will be implemented at this time.² Litigation over the federal subsistence hunting and fishing program for rural Alaskans continues, but has this month reached a point where initial, fundamental issues have been decided and a stay pending appeal has been imposed. Two of three Alaska Native sovereignty movement cases have been tried and are being briefed at the present time. Decisions in these cases will require considerable amounts of time, but neither the subsistence nor sovereignty cases are expected to disrupt the normal flow of routine cases or the criminal or civil dockets. The court is satisfied that civil cases will proceed at the pace contemplated by individual scheduling and planning orders and be set for trial or otherwise terminated without delay.

Not mentioned above, but probably the high point of the year for meetings of the CJRA Group was a seminar put on by Dr. Dale Lefever (Applied Theory Incorporated) of Ann Arbor, Michigan. Dr. Lefever routinely works in the area of strategic planning for the University of Michigan Medical Center and does private consulting work in the area, often with court systems. His one-day seminar, sponsored by the CJRA Group at the end of October, appeared to have been very well received. It is the court's hope and expectation that his presentation will bear fruit in the coming year in the form of a general reappraisal of the court's CJRA plan.

² Full-time magistrate judges at Anchorage will be asked to assist with routine civil motion practice during the Exxon Valdez trial so that the normal flow of that work will not be disrupted.

Finally, the court sought input for this report from the members of the CJRA Group. The number who took the time to respond was disappointing. The court is appreciative of the input from those who did make the effort. By and large, the comments tended to mirror what is contained in this report. We continue to "tinker" with the system in various specific areas; and, by and large, civil litigation appears to be progressing to the satisfaction of the bar. Your reporter wonders what the public thinks. Quite probably the public still thinks that litigation takes too long, is too complicated, and, above all else, is too expensive.

As already suggested, the court would like to see the CJRA Group reevaluate its entire plan, and would also like to see a survey of litigants undertaken to test the court's perception of the litigants' impression of how litigation is handled by this court.

APPENDIX 1

The Civil Justice Reform Act of 1990 requires the court to conduct an annual assessment of the condition of its civil and criminal dockets. The following is a summary of information available from various statistical reports prepared by the office of the clerk and the Administrative Office of the United States Courts.

Part A. Judicial officers of the district are required to make a report semiannually of motions and bench trials held under advisement for more than six months. The following chart details the semiannual status reports.

		03/92	09/92	09/93	10/93	03/94 ¹
HRH	motions	40	60	27	20	3
	trials	0	0	0	0	0
JKS	motions	13	52	17	3	2
	trials	0	0	1	0	0
JWS ²	motions				31	2
	trials				0	0
JDR	motions	16	43	38	3	0
	trials	0	0	0	0	0
HB	motions	22	28	26	12	0
	trials	0	0	0	0	0

¹ Based upon projected data as of March 31, 1994; reports not yet filed.

² Judge Sedwick was not subject to a reporting requirement until September 30, 1993, based upon his date of appointment.

The following chart reflects the number of civil cases pending per judge from just prior to institution of the court's CJRA Plan to date. The numbers reflect the net cases assigned to a judge at the end of the month, after reduction for closed cases and addition of new assignments during the month.

<u>Number of Civil Cases Pending per Judge</u>						
	09/91	03/92	09/92	03/93	09/93	03/94
Judge Holland	435	617	704	552	475	432
Judge Singleton	371	472	434	243	195	216
Judge Sedwick	0	0	0	259	251	235
Judge von der Heydt	138	124	147	155	114	82
Judge Fitzgerald	2	2	3	3	2	1

Total Number of Civil Cases Pending

September 1991	1040
March 1992	1221
September 1992	1293
March 1993	1216
September 1993	1040
March 1994	968

The impact of the Exxon Valdez litigation on the foregoing statistics can be roughly approximated by subtracting 300 cases from the statistics for Judge Holland for September 1992 and March 1993, and by subtracting 270 cases for subsequent time periods. Similarly, these subtractions from the total number of cases pending will reflect the state of the court's overall civil docket apart from the Exxon Valdez litigation. Despite the pendency of 270 Exxon Valdez cases, the total number of civil cases pending in the dis-

trict has declined steadily since mid-1992 when the Exxon Valdez filings cause a "spike" in the statistics. Thus it continues to appear that the court's processing of general civil litigation has not been adversely impacted to date by the Exxon Valdez litigation.

Attached as the next page to this appendix is the most recently published judicial workload profile for the District of Alaska as compiled by the Administrative Office of the United States Courts. The latter document is included in this analysis primarily for reference to three items. Firstly, the weighted filings per judge dramatically increased in 1992 due to a very large influx of Exxon Valdez cases in that period. The weighted filing number per judge has dropped back considerably in year 1993, reflecting a return to more normal business. Secondly, this report discloses that terminations per judge are up significantly, as would be expected in light of the decrease in pending cases.

Finally, the attached report indicates that the median time from filing to disposition for civil cases has been reduced slightly, again hopefully confirming that some progress is being made in expediting civil litigation. The median time from cases being at issue to trial has increased somewhat. This number probably suggests that during the last reporting period some of the court's older cases went to trial, thereby driving the median time upwards.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

ALASKA		TWELVE MONTH PERIOD ENDED SEPTEMBER 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT		
		1993	1992	1991	1990	1989	1988			
OVERALL WORKLOAD STATISTICS	Filings*	763	1,112	759	683	705	858			
	Terminations	975	822	755	612	724	933			
	Pending	1,132	1,345	1,055	1,104	1,049	1,077			
	Percent Change In Total Filings Current Year	Over Last Year. . .	-31.4						[93] [63]	[15] [10]
	Over Earlier Years. . .		.5	11.7	8.2	-11.1				
	Number of Judgeships	3	3	3	3	3	3			
	Vacant Judgeship Months**	7.0	12.0	.6	12.0	5.9	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	254	371	253	228	235	286	[86]	[13]
		Civil	222	317	225	203	209	248	[82]	[12]
		Criminal Felony	32	54	28	25	26	38	[80]	[13]
	Pending Cases	377	448	352	368	350	359	[43]	[7]	
	Weighted Filings**	294	447	281	242	250	286	[80]	[12]	
	95% Confidence	Upper	322	504	309	266	277	309		
		Lower	266	389	254	217	222	263		
	Terminations	325	274	252	204	241	311	[74]	[9]	
Trials Completed	13	19	16	12	11	17	[90]	[13]		
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.7	5.0	4.5	5.2	4.8	4.3	[33]	[6]
		Civil**	12	12	15	13	13	13	[85]	[14]
	From Issue to Trial (Civil Only)	27	22	33	32	14	21	[83]	[11]	
OTHER	Number (and %) of Civil Cases Over 3 Years Old		120	114	124	173	160	148		
			11.3	8.9	12.4	16.3	16.0	14.4	[81]	[14]
	Average Number of Felony Defendants Filed per Case	1.8	1.5	1.7	1.4	1.3	1.2			
	Jurors	Avg. Present for Jury Selection**	63.84	54.12	45.31	46.55	49.29	38.58	[90]	[15]
Percent Not Selected or Challenged**		50.8	45.9	34.7	54.1	43.5	37.2	[92]	[15]	

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

1993 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	665	3	3	104	43	30	32	150	158	7	45	1	89
Criminal*	96	4	2	7	1	5	10	25	-	16	2	5	19

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

Part B. Criminal case assignments are not reported on a judge-by-judge basis. The cases are usually assigned equally amongst all active district judges³ and are reported for statistical purposes on the basis of number of cases handled by district judges versus the number of cases handled by magistrates.

<u>Number of Criminal Cases / Defendants Pending</u>						
	09/91	03/92	09/92	03/93	09/93	03/94
district judges	57/90	81/132	85/121	59/127	65/96	67/92
magistrate judges	70/73	11/17	44/50	43/49	40/40	57/58

Total Number of Criminal	Cases	/	Defendants
	Pending		Pending
September 1991	127	/	163
March 1992	92	/	149
September 1992	129	/	171
March 1993	102	/	176
September 1993	105	/	136
March 1994	124	/	150

Between 1991 and 1992, the court experienced a significant bulge in the number of felony criminal cases assigned to district judges. The impact of these filings was somewhat masked in the combined statistics for the entire court because of a significant offsetting decrease in the number of cases assigned to magistrate judges in this same period. The bulge of felony criminal cases (which was largely driven by the filing of a number of drug cases

³ As of January 1994, Judge Holland was, by agreement of the judges, taken off the criminal "draw" in anticipation of the heavy motion practice and expected three-month trial in In re the Exxon Valdez.

involving a large number of defendants) had passed through the system by the end of 1992 or early 1993. Both felony and misdemeanor filings have since dropped back to a more normal, workable level.

Not too far into the administration of Attorney General Reno, all United States Attorneys were asked to resign. At that time, United States Attorney Wevley Shea was replaced by Acting United States Attorney Joseph Bottini. Mr. Bottini was, and remains, a highly-experienced litigator on the staff of the United States Attorney. On March 4, 1994, Robert Bundy was sworn in as United States Attorney for the District of Alaska.

Based upon anecdotal information, the court has the impression that there may have been some criminal matters which were briefly deferred pending confirmation and installation of Mr. Bundy. It may be that the court will experience a brief surge of indictments following installation of the new United States Attorney.

APPENDIX 2

By Amendment No. 1 to Miscellaneous General Order No. 698, the court set out a schedule of objectives or goals for the court's Civil Justice Expense & Delay Reduction Plan. As a part of the court's annual assessment of its civil and criminal dockets the court has conducted a review of the progress which has been made with respect to the goals and objectives of the court's original plan. What follows is a full exposition of the court's appraisal of the progress made to date.

I.

SYSTEMIC CHANGES

A. Prompt Action to Fill Vacant Judgeships

This goal was achieved with the appointment of Judge Sedwick who took office on October 22, 1992.

B. Add Additional Court Judgeship

Especially with the removal of a very significant number of Exxon Valdez cases to this court in 1992, this court gave serious consideration to the possibility of securing an additional district judgeship. The September 30, 1992, judicial workload profile placed the weighted filings per judge in the District of Alaska at 697 at that time. That workload placed the court far over the 400-case guideline for new judgeships. The Judicial Conference Subcommittee on Judicial Statistics declined to consider Alaska for off-cycle appointment of an additional judge. Thereafter, the weighting formula was changed such that the 1992 weighted filings (originally

reported at 697 per judge) were downgraded to 447 per judge (see Appendix 1, page iv), and the weighted filings per judge for 1993 dropped back into the normal range of prior years (as refigured under the new weighting formula) such that Alaska is considerably below the 400-case guideline.

As a practical matter, there is no possibility of securing an additional district judgeship at this time.

C. Upgrade Anchorage
Part-Time U.S. Magistrate Judge Position

Magistrate Judge Branson's status was upgraded to full-time as of May 3, 1993.

D. Adopt a Mandatory Disclosure Rule

This aspect of the court's plan has been rendered moot by the revisions to Rule 26, Federal Rules of Civil Procedure, which now requires disclosure. The district court has taken no action to opt out of the disclosure requirements of this rule.¹ While it is too early to evaluate the new provisions of Rule 26, the court is yet to receive any negative comment, nor has any unusual motion practice been generated by changes in the discovery rules.

E. Assignment of Certain Cases
to "Fast-Track" Schedules

The CJRA Group currently has a subcommittee studying use of "fast-track" procedures. A report from this committee has just been received.

¹ The bankruptcy court has elected to delay implementation of automatic disclosure.

Through a computerized case management system, the court continues to do individualized case management for all civil cases.²

F. Increased Discovery Master Utilization

The court has made heavy use of a discovery master in the Exxon Valdez oil spill litigation. That discovery master continues to deal with hundreds of motions which have been diverted from this court's regular motion calendar. The number of appeals from decisions of the discovery master have not been exceptional.

During the past year, the court has had in place a pro bono discovery master program initiated by the CJRA Group. While there have not been as many appointments from this panel as the court had expected, there have been seven appointments of discovery masters.

At this point, the court has received very little feedback on this program. Evaluation of the program through the CJRA Group is probably still premature.

G. Revised Case Weighting Criteria

The CJRA Group had hoped that revisions of the case weighting criteria would result in recognition that cases pending in this district were "under-weighted". The new criteria have been applied as mentioned above. The new weighting criteria have substantially decreased the weighting of those cases filed in this district.

² Through reports received pursuant to Rule 16(b), Federal Rules of Civil Procedure, and scheduling and planning orders, the court fixes a case-specific calendar for the development of virtually all civil cases. In a sense, individual case management is the ultimate extension of differential case management (the use of tracks).

H. Bifurcation of Issues
and Staged Discovery

This matter has received little or no attention during the last year. The court remains committed to the proposition that there are economies to be gained both through bifurcated trials and the staging of discovery in complex cases.

I. Alternative Dispute Resolution

The Alaska Court System has adopted a new Civil Rule 100 which implements a court-annexed mediation program. The court is considering adopting a similar rule as a part of the local general rules of this court. Quite probably the fact that the Alaska Court System has entered this area will make it feasible for this court to do so, whereas it would not have been feasible for this court to do so on its own.

J. Assessment of Judicial Impact
of New Legislation

This matter continues to be a concern; but there is nothing new on the subject to report at this time. The court does not perceive that legislation adopted in the last year has materially affected the cost or duration of civil litigation in this district.

K. Abate the Paper Shuffle

See Section II.A, below.

L. Criminal Justice Advisory Committee

The Criminal Justice Advisory Subcommittee of the CJRA Group continues in a standby capacity.

II.

RECOMMENDATIONS FOR JUDICIAL ACTION

A. Standardization of Procedures

The court continues its efforts to standardize procedures. We continue to reexamine and revise case management forms and procedures. Most recently, revisions have been necessary to incorporate into the court's case management procedures the changes that were effected in Rules 4, 16, and 26, Federal Rules of Civil Procedure. These changes are in place at this time.

B. More Aggressive Case Management

As reported last year, the court continues to employ and upgrade its individualized case management system. As already noted, changes in this system have been occasioned by changes in Rules 4, 16(b), and 26. These changes should result in cases coming to issue more rapidly, and in the earlier entry of a scheduling and planning order for the development of all civil cases.

The changes in Rule 16(b) and Rule 26 have occasioned further revisions in the court's form scheduling and planning order. The court is in the process of effecting a change-over to a new scheduling and planning order at this time.

C. More Rapid Resolution of Dispositive Motions

The court's automated program for tracking and reporting motions ready for attention by judges has remained in place and essentially unchanged during the last year. Aging reports of pending motions are periodically available to judges. Updated reports

are available from the data base at any time. The court believes that it has made substantial progress in the last year in its efforts to decide civil motions more expeditiously.

D. Early Screening and
Tentative Ruling Experiment

This suggestion has been dropped by the CJRA Group.

III.

RECOMMENDATIONS FOR ACTION
BY LITIGANTS AND COUNSEL

A. Representation by Counsel
with Power to Bind

This subject has not presented a problem in the last year.

B. Case Management Plans

The CJRA Group recommended that the court reject the concept of discovery/case management plans. The recently effected changes in Rule 26, Federal Rules of Civil Procedure, coupled with this court's decision to implement that rule as written, now require counsel to submit a discovery plan as a part of an initial report leading to the issuance of a scheduling and planning order. The court is currently approving discovery plans which are a little imprecise. As the court gains more experience with disclosure procedures under Rule 26(a), and the feasibility of limitations on discovery, the court expects to develop a "feel" for what an appropriate discovery plan should include. The court expects to steer counsel through the use of scheduling and planning orders on this subject.

C. Parties' Signature to Requests for
Extension of Discovery Deadline or Trial Date

The court has not deemed it necessary to take any action in this regard.

D. Continuing Legal Education

During the past year, the court has, with the Alaska Bar Association, jointly sponsored three CLE programs on subjects involving civil litigation. Attendance at these programs was good. The court expects to continue to participate in such programs, and will be presenting a program on the new discovery rules at the May meeting of the Alaska Bar Association.

IV.

RECOMMENDATIONS FOR ACTION
BY THE CLERK'S OFFICE

A. Redundant Docketing

The court continues its efforts to integrate its automated case management system with electronic docketing. The court is currently testing a new automated system with live data.

B. Speed Up Processing of Orders

It is the court's perception that orders are now being processed to everyone's satisfaction.

C. Law Clerk Training

The court conducts an orientation program for new law clerks on an annual basis.

D. File Clerk Position

The clerk's office continues to suffer rollbacks in staffing. For this fiscal year, the clerk's office has been reduced to 79% of

authorized staffing. With these kinds of constraints, the creation of new positions is out of the question.

V.

AREAS FOR FURTHER STUDY

As already mentioned, the court is hopeful that in the coming year the CJRA Group will reevaluate this court's plan and consider whether it should be replaced with the model plan.
