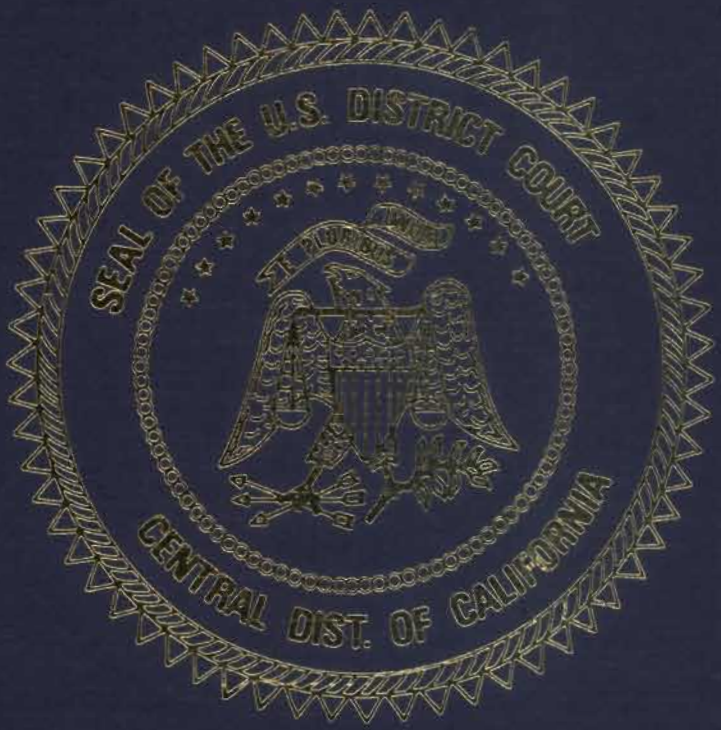
REPORT OF THE ADVISORY GROUP OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA PURSUANT TO THE CIVIL JUSTICE REFORM ACT OF 1990



MARCH 19, 1993

REPORT OF THE ADVISORY GROUP

OF THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

PURSUANT TO THE CIVIL JUSTICE REFORM ACT OF 1990

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EXECUTIVE SUMMARY

The Civil Justice Reform Act of 1990, popularly known as the Biden Bill, requires all United States District Courts to adopt a "civil expense and delay reduction plan." The Chief Judge of each district court must appoint an "advisory group" to assist in the development of the plan. This document is the report for the Advisory Group appointed for the Central District of California.

While the Act does not define the terms "cost" and "delay," for the purposes of its Report, the Advisory Group defined "cost" as that increment of cost not required for fair resolution of the litigation which was created by unnecessary procedures of the court, attorneys and litigants. "Delay" is defined in terms of unnecessary lapses to the fair and efficient resolution of the litigation. The terms "costs" and "delays" are intertwined.

The Advisory Group is concerned that while the national mood and congressional attention have focused on reducing costs and delays, little seems to be said about maintaining the quality of justice. The parties need to develop their proof and the Court needs time to render a fair resolution. Deliberateness so necessary to fair adjudication must not be trampled in the rush for reform. The parties need time to develop their proof and the Court needs time for the consideration necessary to a fair resolution.

The Advisory Group examined the condition of the Court's civil and criminal dockets to determine whether

litigation was subject to unnecessary costs and delays. The Advisory Group found that the Court generally manages its docket efficiently, a particularly impressive achievement for a district which has the largest number of annual civil filings in the country. Under both the life expectancy of cases filed in the Central District and the "indexed average lifespan" of cases, which adjusts the caseload to account for the different types of cases heard in various districts, the Central District is well within the top third of the nation's districts in disposition times.

There are, however, certain reasons for concern. Most importantly, the Court's docket shows a consistent increase since 1984 in the number of civil cases pending for more than three years. That increase is not accounted for by an increase in the number of new filings in the Central District. Further, the mix of civil and criminal trials has changed, with the District consistently now trying more criminal than civil cases. As the percentage of time devoted to criminal matters has increased, the Court has less time available to deal with civil matters.

In conducting its study, the Advisory Group sent out questionnaires concerning unnecessary delays and costs to Judges, Magistrate Judges, practitioners, and various Bar organizations, as well as to a group of lawyers and litigants from decided cases. Two respected outside consultants analyzed the responses to the questionnaires. The most frequently indicated causes of delay and excess costs, in order of importance, were: the heavy criminal case load, the backlog of cases before the Court,

excessive uncontrolled discovery practices, judicial mismanagement, inability to maintain firm trial dates, and various other attorney and judicial practices. The responses were clear and consistent across all groups of attorney respondents, although the responses to the litigants' survey were too small to form a representative sample.

Various of the Central District's Local Rules and practices created significant time demands which resulted in increased and unnecessary litigation costs. The Advisory Group noted that while the Local Rules result in the trial judges' early involvement in case management, the Rules erect a number of procedural barriers which impede and increase the expense of the trial process. This problem is exacerbated because the vast majority of judges have adopted their own rules -- which are superimposed on the Local Rules.

In recent years Congress has passed significant legislation which has placed a heavy burden on the Court without any effort to consider the impact of the new legislation on the judicial system. The Advisory Group concluded that much could be accomplished if Congress would focus on answering several specific questions that have not been addressed in many new laws, and that therefore are left to the Courts to resolve. These include questions about the statute of limitations, the availability of standing to bring actions, the existence of private rights of action, and the availability of remedies for violations. Finally, the Group recommends that Congress make

certain specific findings about the effect of each new bill that it passes into law.

The Civil Justice Reform Act requires the District Court to consider a variety of listed "principles and guidelines of litigation management and cost and delay reduction." 28 U.S.C. § 473(a)(1). To decide upon its recommendations, the Advisory Group first analyzed the current Local Rules of the Central District to determine which of these principles was embodied in those rules. It found that, while the Central District has been a leader in case management and the Local Rules contain a number of the principles and guidelines listed in the Act, many measures are not addressed. For example, the Local Rules (1) do not specifically require case management plans, although they do require many of the features of such plans; (2) do not directly call for differential case management in most types of cases; (3) do not require the setting of a trial date within a specific period of time; and (4) include a series of requirements relating to control of discovery but omit several other important measures.

The Report then sets forth the Group's 16 recommendations for changes in the Court's existing practices and other steps the court should take to reduce costs and delays. The Advisory Group concluded that filling judicial vacancies promptly is the single most important step that Congress could take to reduce unnecessary delays and costs in litigation before the Central District.

The specific recommendations of the Advisory Group are divided into three parts, but they are interrelated and cumulative. In the first part, entitled "Tools for More Effective Case Management by the Court," the Advisory Group initially recommends that the Court follow the practice of setting realistic, firm trial dates in all cases. Under the Court's current institutional structure, the Court simply cannot commit that trials in civil cases will occur when scheduled, given the priority that criminal cases have on the Court's time. The Advisory Group therefore recommends that the Court take the difficult step of splitting into criminal and civil divisions, with judges rotating in and out of the criminal division on a yearly basis.

The Advisory Group also recommends that the Court adopt a three-tier case tracking system in which individual cases would be assigned to simple, standard, or complex tracks. The case would then be managed according to that assignment, with specific limits on discovery and other pretrial procedures dependent on the assignment. The Group calls for the use of "early neutral evaluation" as a case management technique for standard cases and increased use of status conferences as a means of increasing judicial control over all cases. Mandatory settlement conferences should be required in all cases, and they should be held either by District Judges or Magistrate Judges. Finally, special masters should be appointed in all complex cases.

The second series of recommendations is intended to control discovery costs and delays. First, the Advisory Group

recommends that the Court adopt a general order on discovery that addresses issues that recur in the discovery process and are patently improper. Second, the Report recommends that all discovery disputes be assigned either to Magistrate Judges or Special Masters for resolution, with District Judges available to hear them only on appeal. Finally, a majority of the members of the Advisory Group believes that the current scope of discovery under Federal Rule of Civil Procedure 16 is too broad, and the Group urges that the Court support an amendment to that rule.

The Report also contains a third, more general series of recommendations. Strongly endorsing the use of telephone conferences instead of actual appearances for most Court hearings, it also urges the Court to adopt split calendars for law and motion matters, rather than following the current practice of scheduling all law and motion matters for the same time. The Report also suggests increased use of bifurcation in cases, and the use of cover sheets to identify certain key issues at the outset of the litigation. Finally, a variety of methods for judicial control of lawyer conduct is suggested.

A minority statement of certain Group members who support legislation authorizing the prevailing party to recover attorneys' fees is included. Their thesis is that such a provision would deter the filing of spurious and unfounded lawsuits, and promote settlement of litigation even where each party had a reasonably strong belief in the merits of its case.

REPORT OF THE ADVISORY GROUP OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA PURSUANT TO THE CIVIL JUSTICE REFORM ACT OF 1990

I. INTRODUCTION.

The Civil Justice Reform Act of 1990, codified at 28 U.S.C. § 471 et seq. and popularly known as the "Biden Bill," requires all United States District Courts to adopt a "civil justice expense and delay reduction plan." The purpose of each plan is to "facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes." 28 U.S.C. § 471.1/

The Act envisions that the plan, which the Court must adopt by December 31, 1993, will result from a collaborative effort by the judges in the district and members of the Bar. As part of that effort, the Act requires the Chief Judge of each District to appoint an "advisory group" to assist in the development of the plan. Each advisory group must prepare a report which:

-- includes "recommended measures, rules and programs" which the Court may adopt (§ 472(b)(3));

-- includes the "basis for its recommendation" to the Court (§ 472(b)(2));

1/ All statutory references below are to Title 28 of the United States Code unless otherwise noted.

-- explains "the manner in which the recommended plan complies with section 473" of the Act (§ 472(b)(4));

-- "take[s] into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys" (§ 472(c)(2)); and

-- "ensure[s] that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts." (§ 472(c)(3).)

The report set forth below fulfills this mandate. It is the result of over two years of work by the Advisory Group members, and it includes contributions by the Judges of the Central District, various Bar Associations, individual members of the Bar, and litigants.

II. THE ADVISORY GROUP AND THE METHODOLOGY USED IN PREPARING THIS REPORT.

At the outset, the Advisory Group wishes to explain the methodology it used in preparing its Report. The Group's work can be divided into three phases: (1) examination of specific subjects by five subcommittees; (2) preparation and circulation of questionnaires to the judiciary, federal practitioners, Bar groups, and litigants; and (3) preparation, consideration, resolution, and adoption of the final Report.

A. THE MEMBERS OF THE ADVISORY GROUP.

The Advisory Group includes twenty-three members of the California Bar who have a wealth of experience practicing before the Judges of the Central District. These attorneys have both

substantial criminal and civil experience, and many have worked in government law offices as well as in the private sector.

The majority of the Group are members of private law firms of varying sizes, but some currently practice in corporate law offices. One other member of the group, who is not a lawyer, is a senior executive with a large company and is well acquainted with the litigation process and its attendant costs. The Court Clerk, Leonard Brosnan, is a member of the Committee, and his insight was invaluable. Chief Judge Manuel L. Real is an ex officio member and rendered significant assistance and leadership to the Group. He did not, however, participate in the preparation of the final Report.

B. THE WORK OF THE ADVISORY GROUP SUBCOMMITTEES.

After two initial meetings at which the Advisory Group discussed the overall scope of its work, the Chair appointed five subcommittees to examine various subjects integral to the preparation of the Group's report. The members of those subcommittees and the subcommittees' tasks were:

1. Subcommittee A: Review the Condition of the Civil and Criminal Docket.

Chair: Robert M. Talcott. Members: Leonard Brosnan, Daniel G. Clement, Joan Shores Ortolano.

2. Subcommittee B: Identify and examine the Causes for the High Cost of Civil Litigation and Recommend Realistic Means to Reduce Costs.

Chair: George Babikian. Members: William M. Molfetta, Michelle A. Reinglass, Garvin F. Shallenberger, William W. Vaughn.

3. Subcommittee C: Identify and Examine the Principal Reasons for Delay and Recommend Realistic Ways to Reduce Delay.

Chair: Richard H. Borow. Members: Joseph A. Ball, Howard O. Boltz, Jr., Richard L. Fruin, Frank Rothman.

4. Subcommittee D: Identify How Costs and Delays Could Be Reduced by Assessing the Impact of New Legislation.

Chair: Wayne W. Smith. Members: Bruce Hochman, John M. McCormick, Brian O'Neill, James D. Riddet.

5. Subcommittee E: Review the Local Rules and General Orders and Determine if They Adequately Address the Reasons for Excessive Costs and Delays.

Chair: William B. Campbell. Members: Terree A. Bowers, Richard M. Coleman, Douglas Dalton, Peter M. Horstman.

Each subcommittee completed its task by drafting a separate report which was circulated to the entire Advisory Group membership for consideration and comment.

C. THE SURVEYS OF THE COURT, ATTORNEYS, BAR GROUPS AND LITIGANTS.

Although the members of the Advisory Group are experienced in a wide variety of litigation typically heard in the Central District, the Group determined that additional information from other sources would be very useful. Accordingly, it sought input from the Central District's Judges, attorneys, litigants, and bar groups.

To gather this information, the Advisory Group prepared six separate questionnaires. The group contacted the Judges of the Central District, the Magistrate Judges of the District, various Bar Associations, and practitioners. Additionally, to ensure that the experiences examined were typical of litigation in the Central District, the Advisory Group requested the Clerk's Office, in conjunction with the Administrative Office of the Courts, to randomly draw a list of 300 cases that had been tried to completion in the Central District between 1985 and 1990. From that list, the Advisory Group attempted to contact the lawyers who had tried the cases and the parties to the litigation and seek information about their experiences.

The groups contacted, the number of questionnaires sent, and the responses received, were:

Group	No. Sent	Responses Received
District Judges	29	22
Magistrate Judges	11	9
Bar Groups	72	27
Practitioners	908	190
Litigants (clients)	1,000	62
Litigants' Attorneys	800	182

While the responses to the questionnaires from the litigants were lower than expected and probably not representative,2/ the responses did provide an additional perspective in assessing the reasons for excessive cost and delay in litigation before the

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2/ The litigants and their attorneys were given different questionnaires. Because the litigants' addresses were unknown to the Office of the Clerk for the Central District, the questionnaires to the litigants were sent through the litigants' attorneys. This cumbersome method may account for the somewhat disappointing response rate.

Central District. The Summary and Analysis of Survey Results prepared by Dr. Ben Enis of the University of Southern California and JurEcon, Inc., and Mr. William V. Trefethen of Schaffer Trefethen & Co. is attached as Appendix A, and copies of each of the six questionnaires are attached as Appendix B.

D. PREPARATION OF THE FINAL REPORT.

Once the subcommittee reports were complete and the data from the questionnaires compiled, a draft report was circulated to the entire Advisory Group for comment. The Advisory Group then met as a whole to discuss the report. Individual members were asked to put further comments in writing and circulate them to the Chair and the Reporter.

Thereafter, the subcommittee chairs held a lengthy meeting -- beginning at the unearthly hour of 6:30 a.m. -- at which those comments and a series of issues arising from the draft report were reviewed and resolved. A second draft was prepared and circulated for final comment, and this report is the product of these efforts.

E. ACKNOWLEDGMENTS OF ASSISTANCE.

Before setting forth its conclusions, the Advisory Group would like to acknowledge the invaluable assistance of a number of individuals in the completion of its work. Rather than placing the acknowledgements in their usual position at the end of the report, the Advisory Group recognizes their important contributions at the outset:

-- **Robert L. Aldisert, Esq.**, of Irell & Manella, supervised the compilation of portions of the Advisory Group survey reports;

-- **Christopher H. Benbow, Esq.**, of Smaltz & Anderson, supervised the final preparation of the questionnaires for each of the various groups, mailed them, and coded the responses that were received to preserve the anonymity of the respondents;

-- **Laura Enciso**, of the Office of the Clerk for the Central District of California, provided invaluable technical and practical assistance in compiling the data used in this report and supervised its printing and compilation;

-- **Dr. Ben Enis**, of the University of Southern California and JurEcon, Inc., collaborated with Mr. Trefethen in preparing the analysis of survey results reproduced as Appendix A to this Report;

-- **Neill Freeman**, of Freeman & Mills, tabulated and summarized the results of various questionnaires;

-- **Elisa M. Martinez**, Attorney at Atlantic Richfield, summarized and quantified responses from the Bar groups and the Magistrate Judges;

-- **John Shapard**, of the Federal Judicial Center's Research Division in Washington, D.C., also provided superb assistance, including the compilation of special data requested by the Advisory Group;

-- **Bill Trefethen**, of the consulting firm Schaffer Trefethen & Company, was responsible for the difficult and

time-consuming task of quantifying and evaluating of the questionnaire responses and preparing the database of responses.

III. ASSESSMENT OF THE COURT'S DOCKET, OF THE PRINCIPAL CAUSES OF EXCESSIVE COST AND DELAY, AND OF THE IMPACT OF NEW LEGISLATION.

Section 472(c)(1) of the Civil Justice Reform Act requires the Advisory Group to "complete a thorough assessment of the state of the court's civil and criminal dockets." The group also must identify the "principal causes of cost and delay" in civil litigation and assess the impact of new legislation on the Court. (§ 472(c)(2)(C)-(D).)

A. THE CONDITION OF THE CIVIL AND CRIMINAL DOCKET, AND TRENDS IN CASE FILINGS AND DEMANDS ON THE COURT'S RESOURCES.

1. Description of the Court.

By many measures the Central District of California is the largest district court in the United States. For example, in 1992, 11,414 civil filings occurred in the Central District, the most civil cases filed in any single United States District Court.3/ The civil filings in the Central District in 1992 accounted for slightly less than 13% of all civil filings in all United States District Courts during that year.

The Central District of California encompasses seven counties totaling 40,009 square miles in size. The counties are: Los Angles, Orange, Riverside, San Bernardino, San Luis Obispo, Ventura, and Santa Barbara. The population of the area which

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3/ The next largest district, the Southern District of New York, had 9,918 filings during 1992 -- almost 1500 less filings than the Central District.

comprises the Central District is larger than all but three of the 50 states: California, Texas, and New York.

The Central District currently has 23 active judges handling the Court's docket, as well as seven senior judges. Eleven full-time Magistrate Judges hear matters in the Central District, along with seven part-time Magistrate Judges.4/

The majority of the Court's facilities are housed in the United States Court House, located at 312 North Spring Street in Los Angeles. In 1992, however, the District's facilities expanded with the dedication on January 30, 1992, of the Edward R. Roybal Center and Federal Building, which is located about two blocks away from the United States Court House. All of the Central District's Bankruptcy Judges were relocated to the new building. In addition, six District Judges will relocate from the Court House to the Roybal Building, and four new judges yet to be appointed will sit in that building.

The Central District also operates out of the Santa Ana Court House located in Orange County. Three judges and one senior judge on the Court sit permanently in that facility. The Court currently is in the midst of planning for the construction of a new court house in Santa Ana, which is scheduled for occupancy in 1997.

4/ Additionally, the Central District has 19 bankruptcy judges. This report does not address the condition of the bankruptcy courts or the reasons for costs and delay in those courts.

2. The District's Docket in Perspective.

At the outset, the Advisory Group wishes to emphasize its overall conclusion that the Judges of the Central District can be pleased with the District's case management record. The statistics indicate that, by most measures, the efficiency with which the Central District disposes of cases compares favorably with the other district courts throughout the country. The record is particularly striking in that few other districts have a docket which approaches that of the Central District in terms of either sheer numbers of cases or complexity of litigation.

There is, however, a need for a note of caution, for an examination of the Central District's docket leads to certain concerns about the Court's continuing ability to dispose of civil cases. As is discussed below, the most obvious of these is the increase in the number of civil cases pending for more than three years before the Court, while another is the change in the mix of civil and criminal trials. These figures suggest that the Court is beginning to lose ground in some respects.

a. Life Expectancy of Cases.

The Advisory Group examined the statistics on the Central District docket5/ with three goals in mind. The first goal was to put the Central District's numbers into some perspective by determining how the District stood in relation to other federal courts in the country. Second, the examination attempted to identify certain key indicators that might demonstrate how the Court's docket was changing. Lastly, the Advisory Group attempted to see whether any individual categories of cases stood out as an excessive drain on the Court's time, and thus might need special attention.

Case duration is one of the most useful indicators of judicial efficiency. The Federal Judicial Center ("FJC") has prepared -- although, apparently, has not widely released -- a comparison of all district courts with respect to this measure. The initial study covered the statistical years 1988 to 1990. At the Advisory Group's request, however, the FJC prepared an update to that earlier material using only 1992 data.

5/ The discussion below is based on an examination of the following source materials: The Annual Reports of the Director of the Administrative Office of the Courts for the Years 1984, 1986, 1988, 1989, 1990, and 1991; further statistical information provided by the Office of the Central District's Clerk of the Court; information provided by the Federal Judicial Center that compares all district courts in the United States in various categories; the submittal by the Central District to the Administrative Office of the Courts justifying its request for new judgeships; the 1991 and 1992 Annual Reports of the Central District; and information provided by the Executive of the Ninth Circuit Court of Appeals.

The first category used by the FJC is the simple one of "life expectancy" -- how long a case is likely to remain on the court's docket. The 1992 comparison revealed that cases in the Central District have a life expectancy of 10.8 months, which ranked the Court 23rd nationally out of 93 districts. During the earlier 1988-90 period, the Central District's cases had a life expectancy of 10.8 months, which ranked 22nd nationally.

The second category that the FJC used was "indexed average lifespan" ("IAL"). This measurement is likely a more accurate measure than life expectancy for comparing case duration in different federal courts, because it adjusts the caseloads of districts to account for differences in case mixes. The distinction between life expectancy and IAL is explained in the document entitled "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990" 15 (Feb. 1991) as follows:

> Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in the case mix. IAL is used for comparison among districts; it is corrected for changes in the case mix but not for changes in the filing rate.

Under this measure, the Central District had an IAL of 10.1 months, which ranks 28th nationally. During the 1988-90 time period, the IAL for the Central District was 9.7, which ranked 18th of 93 districts.

Thus, under these measures the Central District's docket is in comparatively good shape. However, the average lifespan of cases has slipped slightly in recent years.

The yearly "Judicial Workload Profile" prepared by the Administrative Office of the Courts for all district courts in the United States further confirms this conclusion. This profile includes the median times from filing to disposition of criminal felony cases and civil cases. In the most recent profile for the period ending June 30, 1992, the Central District shows a median time of six months for civil cases, which ranks the District fourth nationally and first within the Ninth Circuit. It also shows a median time of just over 4.5 months for the criminal felony cases, which ranks the Central District 12th nationally. Even more encouraging, both of these figures show improvement from the period two years before. In the period ending June 30, 1990, the median time for disposing of civil cases was 5.1 months, while the median time for disposing of criminal cases was seven months.

It should be noted, however, that the "Judicial Workload Profile" does not account for the mix of cases that a District handles. For example, a large number of student loan default cases are filed in the Central District and typically result in defaults. Cases like these will lower the District's overall median time for disposition of cases, although in reality the student loan cases are very different from typical civil litigation in the Central District in terms of demands upon the Court's time.

b. Disposition Times for Civil Cases.

Because criminal cases have priority before the Court, concerns over delay necessarily center on civil cases. The

Circuit Executive for the Ninth Circuit has produced a report comparing disposition times for various types of civil cases among the districts included in the Ninth Circuit. The chart, which is several years old and has not been updated, lists the median and mean numbers of months that it took Central District judges to dispose of two categories of cases: (1) the three most frequent types of diversity cases (contract, insurance, and asbestos), and (2) the three most frequent types of federal question cases (prisoner civil rights, habeas corpus, and other civil rights).

The Central District was below the circuit norm in all but one category, prisoner civil rights cases, and here the Central District was only one month over the Ninth Circuit's mean. Thus, under this standard as well, the Central District appears to dispose of its cases promptly. Again, however, this statistic must be viewed with caution. Some of the types of cases listed, such as habeas corpus and prisoner civil rights, are not representative of cases that are demanding in terms of judicial resources. Accordingly, this statistic tells relatively little about how the Court is actually managing its time on cases that place great demands upon it.

c. Conclusion.

These figures indicate that the Court ranks among the more efficient districts in the country in terms of turning over its caseload. There is, however, cause for concern from these statistics. The life expectancy for cases in the District has been increasing rather steadily since 1981. When considered with

the fact that the IAL showed a rise between 1990 and 1992, the data suggest recent slippage in the court's ability to dispose of cases promptly.

3. **Key Indicators of Trends in the Docket.**

The statistics discussed above generally present a "snapshot" of how the Court's caseload stands at present. The Advisory Group, however, is more concerned with what will happen to the District's caseload in the future than what has happened in the past. In this respect, other relevant statistical indicators are examined immediately below.

a. Civil Cases Pending More Than Three Years.

If one assumes, as most analysts apparently do, that the life expectancy of a case is a fairly reliable indicator of whether it is being handled efficiently, the Advisory Group must be concerned with any indications that civil cases are taking longer to reach termination. Here, a clear trend emerges: the Central District has experienced a rapid increase in the number of civil cases that remain pending on its docket for more than three years.

The following chart, derived from the Annual Report of the Administrative Office, shows the increase:

Year	No. of 3 yr. Cases	% of Civil Cases Pending	No. of 2-3 Year Cases
1984	292	4.1%	424
1986	310	3.3%	506
1988	536	5.4%	885
1989	574	5.9%	1577
1990	742	8.6%	1054
1991	946	10.4%	946
1992	928	10.5%	1064

The statistics reveal that since 1986, the number of three-year cases has more than doubled.

This data is consistent with the "Life Expectancy" and "Indexed Average Lifetime" information discussed above in the Report. As cases remain pending for more than three years, the overall life expectancy of cases on the Court's docket necessarily must lengthen.

There is some explanation for the increase. According to the Federal Judicial Center, in 1985 over 300 products liability actions were filed against A.H. Robbins Co. These cases were still pending in 1988, accounting for a large part of the increase in that year. In addition, the 1990 statistics include 128 veterans cases still pending over three years, although this latter type of case does not require an extensive amount of judicial resources.

b. Overall Civil and Criminal Case Filings.

If the total caseload of the Central District had increased during this period, an increase in the number of three-year cases also might be expected. The yearly new filings, however, do not explain the increase. The numbers are as follows:

Year	No. of New Filings
1986	11,842
1988	12,838
1989	11,091
1990	9,876
1991	10,601
1992	12,482

The number of filings actually decreased in 1989 and 1990, with the 1990 decrease undoubtedly due to the higher dollar amount now required for diversity jurisdiction. Also, increases in the number of student loan case filings account for some of the change, but as noted above, these cases have little impact on the Court's day-to-day operations.

Cases filed in 1990 would be three years old at the end of the 1993 statistical year. Given the smaller number of filings in 1990, a decrease in three-year cases is possible in the near future. Thereafter, however, the Court will have to deal with the large number of new filings in 1991 and 1992.

c. Civil-Criminal Trial Mix.

A general theory expressed by various members of the Advisory Group at its initial meetings, which was confirmed by the answers of Judges and litigants to the questionnaires discussed below, is that criminal cases are taking up an increasingly large part of the judicial workload. An important indicator of whether criminal cases are delaying civil litigation is the ratio of civil to criminal trials completed. Other factors -- such as the number of judges available -- being equal, a change in the ratio indicating an increased number of criminal

trials would tend to show that civil cases cannot get to trial as easily. Here the figures are as follows:

Year	Trials Civil/Criminal		Jury/Non Jury: Civil and Criminal	
1984	369/298	(1.23 to 1)	105/264	147/151
1986	370/292	(1.26 to 1)	127/243	177/115
1988	384/270	(1.42 to 1)	141/243	151/119
1989	336/317	(1.06 to 1)	123/213	196/121
1990	311/321	(0.96 to 1)	100/211	185/136
1991	318/358	(0.88 to 1)	139/179	236/122
1992	329/334	(0.98 to 1)	133/196	205/129

The statistics show a relatively consistent trend in the ratio over time. In 1990, the District for the first time had more criminal than civil trials. Moreover, the long-term trend of an increase in criminal jury trials also is clear. In 1984, there were more non-jury than jury criminal trials, but by 1992, 61 percent of the criminal trials were now jury trials. Plainly, as the percentage of criminal jury trials increases, judges have less time available to deal with civil matters.

d. Growth in Pending Cases and Commencement-Termination Ratios.

Another meaningful statistic is a yearly comparison of pending cases to terminated cases. A one-to-one ratio of cases terminated to cases pending at the end of a year would mean that, if no new cases were filed with the Court, it would take one year for the Court to clear its docket.

The Federal Courts Study Committee used this statistic as a primary indication of case duration in its 1990 report. As the Committee noted, "Growth in the number of pending cases suggests that -- despite the addition of new judges -- the court is having more trouble disposing of new filings." Federal Courts

Study Committee, Working Papers, vol. I, p. 35 (1990). Arguably, however, an increase in the pending-termination ratio does not necessarily say anything about the difficulty a court is having in disposing of new filings. Rather, it may simply mean that the number of new filings has increased, and as a result, the Court has more cases to handle and cannot dispose of them as quickly.

The figures for civil cases in the Central District are as follows:

Year	Pending	Terminated	Ratio	Pending (Year End)
1984	6115 (6/30/83)	8036	1.31/1	7113 (6/30/84)
1986	8074 (6/30/85)	9533	1.18/1	9311 (6/30/86)
1988	10,456 (6/30/87)	12,437	1.19/1	9839 (6/30/88)
1989	9839 (6/30/88)	10,285	1.05/1	9724 (6/30/89)
1990	8728 (6/30/89)	8966	1.03/1	8586 (6/30/90)
1991	8465 (6/30/90)	8806	1.04/1	9138 (6/30/91)
1992	8681 (6/20/91)	11,122	1.28/1	7753 (6/30/92)

Here, the figures show a decrease in the growth of pending cases since 1984, but there is an inconsistency in the figures. The cases listed as "pending" are different in the 1989 and 1990 Annual Reports of the Director of the Administrative Office, as well as in the 1991 and 1992 Reports. Also, the large increase in terminations in 1988, 1989, and 1992 (presumably, veterans and loan default cases) somewhat skews the statistics. Thus, drawing conclusions here is problematic.

A related statistic is the commencement-termination ratio. The figures for criminal cases are:

Year	Commenced	Terminated	Ratio
1984	1217	1102	110%
1986	1088	939	116%
1988	998	894	112%
1989	932	495	188%
1990	1055	1006	105%
1991	1088	840	130%
1992	1114	992	112%

Here, a change occurred in 1989, as the court's ratio of commencement to termination of criminal cases, which was relatively constant before, suddenly changed markedly. This change might be explained by a large number of criminal cases filed at the end of the statistical year (i.e., in June), which were disposed of in the next statistical year.6/ Ignoring the 1989 statistical blip, overall there appears to be relatively little change here.

If the Court is taking an increasing amount of its time to handle criminal cases, this change should be reflected in the median times from filing to disposition of criminal defendants. Those times, in months, are as follows:

Year	Median	Court Trial	Jury Trial
1984	4.6	4.9	6.2
1986	3.4	3.9	4.4
1988	3.9	4.7	5.3
1989	4.7	5.7	7.0
1990	5.0	5.6	6.9
1991	5.0	7.6	7.4
1992	3.9	4.6	5.6

6/ The figures for 1990 and the years thereafter, in which the ratio returned to its normal pattern, provide some support for this theory.

Until 1992, the previous three years show a marked increase in the amount of time that it takes the Court to dispose of criminal cases tried to juries.7/ This increase could be the result of a change in the case mix (perhaps caused by implementation of the Sentencing Guidelines) or a change in the character of the cases brought (perhaps an increase in white collar, multi-defendant cases). The data in 1992, however, sharply diverges from this trend. Accordingly, any conclusions drawn from this category of data must be tentative.

4. **Case Mix.**

The figures set forth above are mainly useful as aids in determining causes for delay in litigation. Because one of the Group's principal charges is also investigation of unnecessary expense in litigation, it is helpful to get some sense of the kinds of cases on the Court's docket. Certain types of cases may tend to last longer than others or unduly drain the Court's resources, and thus might be targeted for some sort of recommended changes in how they are handled.

a. Overall Distribution of Case Filings and Weighted Case Filings.

The data on the Central District's overall case distribution reveal the type of case mix that might be expected in a large, commerce-oriented district court. The data are not, however, particularly helpful in drawing conclusions about expense or delay. For example, the second largest category of

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7/ Additionally, in 1991 the time for disposing of criminal cases through non-jury trials increased markedly for the first time.

cases, student loan and veterans' cases, takes only a very small part of the Court's total available time.

A more helpful measure is one that in some manner reflects the difficulty in processing different types of cases. One statistic that is kept shows the distribution of weighted civil case filings. The "weights" for individual cases are determined based on a 1979 time study carried out by the FJC.8/

These figures show that the Court spends much time on civil rights cases and on contract cases. It spends considerable time as well on personal injury cases and on intellectual property cases (copyright, patent, and trademark).

b. Complexity of Case Filings.

In a similar vein, other statistics categorize cases as Type I or Type II cases. The first category involves cases which do not require full use of the discovery process through a possible trial on the merits, and thus do not need significant judicial attention. By and large, Type I cases are quite simple; for example, this category includes social security cases. In contrast, Type II cases are ones which the Advisory Group must be more concerned about, since the Court spends the bulk of its time on these cases.

In the Central District, the number of Type II cases has been relatively steady since the mid-1980s. Although Type II cases did increase slightly in 1989, they headed downward again in 1990. In contrast, the Type I cases show a marked increase

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8/ The FJC is now in the process of updating that study.

from 1986 to 1988, an increase attributable largely to the student loan and veterans' cases. This jump, however, was temporary.

Thus, in the civil area, there have been no marked changes in the types of civil cases filed other than the temporary increase in student loans and veterans' cases. Additionally, the number of complex civil cases has remained very steady. These facts suggest that the increase in three-year civil cases, which was discussed above in this Report, is not due to some change in the mix of civil cases.

c. Trials Taking More Than 20 Days.

Lengthy trials obviously expend greater amounts of the Court's resources than the usual one or two day trial. Accordingly, it may be useful to determine if any patterns exist regarding the types of cases which repeatedly result in long trials. Listed below are the trial times and subject matters of cases which have taken more than 20 days to try for most years during the period 1984 to 1989:

1984: 6 civil, 7 criminal

Civil: antitrust (39); civil rights (31); personal property (27 -- non-jury); securities (25 -- non-jury); antitrust (24 non-jury); and antitrust (20).

Criminal: postal fraud (78); extortion/racketeering (hereinafter "E/R") (29); postal fraud (27); E/R (27); civil rights (24); narcotics (21); and narcotics (21).

1986: 9 civil, 7 criminal

Civil: trademark (61 days); civil rights (46); patent (34-non-jury); antitrust (27); contract (26 -- non-jury); antitrust (25); patent (21 -- non-jury); contract (21); and contract (21).

Criminal: espionage (66); espionage (56); narcotics (39); narcotics (28); postal fraud (25); lending fraud (25); and E/R (20).

1988: 12 civil, 2 criminal

Civil: antitrust (37); civil rights (35); contract (30); copyright (26 -- non-jury); contract (26); personal injury (25); antitrust (24); patent (23); labor (22); contract (21); patent (21 -- non-jury); and securities (20).

Criminal: trading with enemy (31); larceny and theft (27).

1989: 12 civil, 7 criminal

Civil: airplane personal injury (82); contract (47); insurance (39); civil RICO (33); products liability (29); civil rights (26); civil rights (23); bankruptcy appeal (22 -- non-jury); antitrust (21); securities (21); trademark (20 -- non-jury); and airplane personal injury (20).

Criminal: narcotics (61); transportation of stolen property (45); bank fraud (38); murder (34); fraud (34); postal fraud (25); and narcotics (23).

1990 10 civil, 8 criminal

Civil: civil rights (43 -- non-jury); civil RICO (40); contract (39); securities (39); antitrust (37); trademark (35) antitrust (34); contract (26); contract (23); and contract (20).

Criminal: continuing criminal enterprise (77); bank fraud (44); narcotics (34 -- non-jury); election laws (30); narcotics (30); marijuana (28); continuing criminal enterprise (20); and income tax (20).

1991 1 civil, 9 criminal

Civil: civil rights (26).

Criminal: narcotics (105); false claims and statements (57); narcotics (41); kidnapping (36); structuring transactions (28); narcotics (26); postal fraud (21); bank robbery (20); narcotics (20).

1992 9 civil, 5 criminal

Civil: other statutory (92); patent (30 -- non-jury); civil rights (29); other statutory (28 -- non-jury); patent (23 -- non-jury); other statutory (21 -- non-jury); civil rights (21); civil rights (20); and antitrust (20).

Criminal: civil rights (80); narcotics (61); postal fraud (28); national defense (26 -- non-jury); securities fraud (24); and racketeering/murder (21).

The most interesting trend is the apparent long-term tilt toward more lengthy civil trials through at least 1989. Only two years later, however, the Court had only one civil trial over twenty days, although the most recent year, 1992, saw an increase in the civil trial activity.

As to the lengthy civil cases, the case mix is so varied that singling out any particular type of case is difficult. Further, the types of cases that do recur periodically in this list -- air crash injuries, civil rights, antitrust, patent, etc. -- are the types that one might expect would take longer to try, as those cases often appear on lists of "complex" litigation. The fact that they recur, however, suggests that significant judicial resources can be saved if some other means is found to dispose of them, such as by increased settlement, or use of arbitration or mediation.

d. Three-Year Civil Cases by Nature of Suit.

If the Advisory Group is concerned that an increasing number of civil cases are extending into the three-year category,

the type of case mix falling in this category might be revealing. Those cases9/ are as follows:

	1988	1989	1990	1992
Contract	86	79	190	70
Real Property	6	5	3	10
Torts	286	344	363	198
Civil Rights	25	19	38	40
Prisoner Petitions	6	10	13	18
Forfeiture/Penalty	1	3	4	17
Labor	9	13	12	8
Bankruptcy	6	5	6	1
Property Rights	14	11	24	39
Social Security	3	3	5	2
Federal Tax Suits	4	1	5	6
Other Statutes	88	79	78	86

Here, a pattern does suggest itself: the bulk of the three-year civil cases are tort and contract cases. Because the dispute often is solely over monetary amounts for compensation, these cases might be amenable to special efforts at settlement.

5. Contribution of Senior Judges and Magistrate Judges.

a. Senior Judges.

Finally, to get a more complete picture of judicial resource allocation, the contribution of senior district judges and magistrate judges should be considered. The most current statistics list seven senior judges who maintain a reduced caseload but regularly accept cases: Judges Hauk, Hill, Kelleher, Lydick, Stephens, Waters, and Williams. This number contrasts with 23 active judges.

Perhaps the best means of determining how much these Judges are contributing to the Court's handling of its docket is

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9/ Data for 1991 was unavailable.

to see what percentage of time they spend actually trying cases or otherwise hearing matters in the courtroom. For 1990, that figure was as follows:

Total No. of In-Court Hours (all judges): 15,761
Total No. of In-Court Hours (senior judges): 2,685

The senior judges thus accounted for about 17% of the Court's actual in-court work. Two years later, however, they accounted only for about 11% of the in-court work:

Total No. of In-Court Hours (all judges): 16,051
Total No. of In-Court Hours (senior judges): 1,728

b. Magistrate Judges.

The questionnaire results provide some indication of the workload which the Magistrate Judges handle.10/ The Magistrate Judges answered the question "[w]hat three categories of cases are assigned to you most often" as follows:

Social Security -- 8 of 9
Civil Rights (prisoner pro per) -- 7 of 9
Habeas Corpus -- 5 of 9
Prisoner -- 4 of 9
Civil Rights (non-prisoner) -- 2 of 9
Pro per -- 2 of 9

The questionnaires also reveal that most of the Magistrate Judges' time is spent on preparation of reports and recommendations for the District Judges' resolution of the cases listed above. The reports recommend what actions should or should not be taken on dispositive motions for these cases. These reports are time-consuming and effectively require the Magistrate Judge to write an opinion to support his or her

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10/ Nine of the 11 Magistrate Judges completed the questionnaire. Two declined because they had been appointed only shortly before the questionnaire was issued.

recommendations.11/ In contrast, they spend less time "hearing and determining non-case dispositive motions." Although Magistrate Judges are authorized to try civil cases upon stipulation of the parties, relatively few cases have been heard by them.12/

Moreover, the Magistrate Judges spend almost no time acting as special masters on assignment pursuant to Federal Rule of Civil Procedure 53. And they spend relatively little time handling civil cases assigned to them.

Based on this data, it appears that the Magistrate Judges' talents could be better utilized by assigning them more non-dispositive matters, thus eliminating some of the reports and recommendations. Perhaps consideration should be given to relieving them from at least one category of their current cases, e.g., habeas corpus. The District Judges probably can handle these cases more efficiently and are not required to write detailed reports justifying their actions.

6. **Summary of Conclusions**.

The most telling statistic is the increase in the number of civil cases pending more than three years. Some of

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11/ Six of the nine judges answered that they spend at least 60% of their time on this task, while a seventh judge stated that he or she spent "substantial" time on it. Six of the nine Magistrate Judges stated that writing reports and recommendations was the "most time consuming aspect" of their docket.

12/ Eight of the nine judges stated that over the past three years, ten or less civil cases had been assigned to them.

this increase is attributable to special types of cases, but the Advisory Group's work on delay still must focus in this area.

The statistics also show that the Court is now, for the first item, trying more criminal than civil cases. Because the number of judges has remained relatively constant over this period, the change in the mix of trials necessarily causes delays in civil cases. The increased amount of time consumed by criminal cases also shows up in the median time that it takes criminal cases to get to trial.

Accordingly, the statistics seem to confirm that the Court's criminal workload is having a fairly significant effect on civil cases. But it must be remembered that, overall, the Central District still handles its civil caseload efficiently by almost any standard.

B. PRINCIPAL CAUSES OF EXCESSIVE COST AND DELAY.

Analyzing the "principal causes of cost and delay," as the Civil Justice Reform Act requires, is among the most difficult tasks that the Advisory Group faced. Statistical information available on cost and delay is difficult to gather. While the statistical information discussed above in this report provides some indication of how conditions on the court's docket are creating delays in some cases, it does not begin to address the cost of litigation or many of the reasons for delay.

To analyze the reasons for cost and delay, the Group adopted a two-fold approach. First, through the distribution of questionnaires, it sought and obtained opinions of judges, lawyers, and litigants in the Central District. Second, it

tested those responses against the experiences of its own members individually and collectively.

1. **Defining "Cost" and "Delay."**

A threshold concern is defining the terms "cost" and "delay" for purposes of analysis. By definition, all litigation generates costs that the parties must bear, and any pretrial procedures also cause delay in resolution of the matter. Neither the Biden Bill nor its legislative history define the types of cost and delay that the Advisory Group is to consider.

Accordingly, in the report below the Advisory Group adopted the following approach. "Cost" considered was not the total cost of litigation, but the increment of cost that is not required for the fair and efficient resolution of the litigation and that is occasioned by unneeded procedures or actions by the Court, attorneys, or litigants. In this sense, the Advisory Group considered efficiency from the standpoint of the Court as well as the parties.

Section 471 of the Act states that an objective of the Court's plan should be to "facilitate deliberate adjudication of civil cases on the merits." The Advisory Group evaluated "delay" in terms of any lapses of time that were unnecessary to the fair and efficient resolution of the litigation. The essential components of fairness -- due process, deliberateness, and the careful receipt of evidence -- all necessarily require time. Only with the expectation that these components of justice are met can a legitimate assessment of "undue delay" be made. Accordingly, the recommendations and proposals to reduce delay

are made with the intent and expectation that the fairness of the Court's procedures will not and must not be affected.

Finally, it should also be noted, of course, that the terms "cost" and "delay" are intimately related, for unnecessary delays will almost always result in increased costs to the litigants.

2. **Reasons for Excessive Cost in Litigation.**

Initially, the Advisory Group examined the surveys to see whether there is agreement that excessive costs are being incurred in litigation before the Central District. Over 59% of the attorneys surveyed through the Advisory Group's questionnaire believe that the fees and costs incurred by their clients in the case were "about right," with only 25% stating that the fees and costs were "much too high" or "slightly too high." The litigants' views were significantly different. 35.48% of the litigants surveyed believed that the legal costs incurred were "much too high," while 12.90% thought they were "slightly too high." Among these litigants, 44.44% of the plaintiffs believed that their cases fit within this excessive cost category, while 51.51% of the defendants held this view.

Assuming that costs are excessive, the precise reasons for the excess must be determined. Accordingly, the survey asked the various Bar Association groups to list the "most common causes of excessive costs in getting to trial in civil matters pending before the Central District." A variety of responses were given, including excessive court appearances, compliance with Local Rule 9, frivolous motions, and postponements of trial

when witnesses had already been scheduled. Plainly, however, the most commonly cited cost factors were unnecessary discovery and the costs associated with solving discovery disputes.

The Judges of the Central District share this perception. The Judges were asked "the principal causes of expense in the conduct of civil litigation," and approximately two-thirds of the respondents named discovery as a principal cause. Others cited broader factors such as "overly litigious attorneys," "attorneys fees," and "over lawyering" which are consistent with an excess of discovery.

Within the category of discovery as a cause of excessive costs, pinning down the precise nature of the excesses is a difficult task. For example, the Bar Association respondents cited as reasons the following: unnecessary discovery, unfinished discovery, request for additional discovery on peripheral issues, unnecessary discovery disputes, failure to make comprehensive responses to discovery requests on first request, discovery "gamesmanship," and failure to conduct timely discovery. If addressed through appropriate remedial steps, these causes would call for quite different "cures" to avoid the consequent costs that accompany them.

In any event, one conclusion is clear. All participants -- the litigants, attorneys, and the Court -- believe that something is wrong with the current discovery process, and that this process is leading to unnecessary costs.

3. Reasons for Excessive Delay in Litigation.

The attorneys surveyed through the Advisory Group's questionnaire believe that cases could be handled more expeditiously than they are now.

Both groups surveyed, attorneys who represented clients in the sample of randomly drawn cases as well as other practitioners, were given a list of possible causes of delay in civil actions in the Central District. They were then asked to choose from five possible responses: (1) "Agree Strongly"; (2) "Agree Somewhat"; (3) "Disagree Somewhat"; (4) "Strongly Disagree"; and (5) "Uncertain or No Opinion." Those statements, and the corresponding number of attorneys/practitioners who either "agreed strongly" or "agreed somewhat" were:

Statement	Attorney Survey	Practitioner Survey
(1) Recent Congressional Legislation is a substantial cause of congestion in federal district courts.	44.51%	53.68%
(2) Delay is caused by the failure of the President to fill promptly judicial vacancies in the Central District.	52.20%	77.37%
(3) Delay is caused by the failure of Congress to consider confirmation of presidential nominations to the federal bench in a timely manner.	42.41%	54.73%
(4) Delay is caused by the use of different rules in Central District courtrooms and uniform adherence to the Local Rules would reduce delay.	45.60%	56.85%

The following is a frequent source of judge-caused delay in the trial of civil actions in the Central District:		
(1) Judges holding motions under submission without decisions in excess of 30 days.	43.95%	51.58%
(2) Civil trials postponed shortly before scheduled trial date upon court's order.	70.88%	68.42%
(3) Judges allowing unrealistically long periods of discovery or the filing of dispositive motions.	23.08%	17.9%
(4) Judges not requiring a discovery plan.	29.12%	31.05%
(5) Judges not setting and adhering to a firm trial date.	58.79%	60.00%
(6) Judges not rendering decisions on motions immediately after argument.	32.97%	41.58%
(7) Judges declining to consider seriously dispositive motions.	42.31%	53.68%
(8) Judges not actively managing the matter.	40.11%	43.16%

These figures reveal fairly broad agreement on the cause of delays in the Central District. The principal causes cited are delays in filling judicial vacancies, postponements of trial dates by the Court, and failure of judges to set and adhere to firm trial dates.13/ These causes can be synthesized into a

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13/ The responses of the Bar groups are similar. Seventeen of the 27 Bar groups either "agree strongly" or "agree somewhat" that the postponement of trials before the scheduled trial date is a cause of delay. Similarly, 19 of the 27 groups marked these answers when asked whether the failure to adhere to a firm trial date is a cause of delay.

common root, viz., the principal cause of delay is insufficient judges to cope with the current case load.

Two limitations on these responses must be kept in mind. First, the responses indicate only the causes for whatever delay that exists. They do not reveal whether the overall amount of time that the case took to disposition was unreasonably long, and as was discussed above in the analysis of the Court's docket, the Central District fares well in a national comparison of overall disposition times.14/

Second, these responses identify causes of delay in individual cases; they do not address systemic causes of delay that apply to all courts in much the same manner. Here, it is clear that a substantial number of judges and lawyers believe that increased trials and procedures in criminal matters are causing corresponding delay in the disposition of civil cases. In the responses to the judicial survey, 77.27% of the Judges answered "yes" to the question "has the necessity of continuing civil trials in order to accommodate criminal trials contributed significantly to delay in your handling of your civil docket?" Similarly, 59.09% of the Judges opined that the Sentencing Guidelines have contributed to delay in handling the civil calendar. The Judges' individual written comments, while not quantifiable, also emphasize that fewer criminal cases settle than in previous years and thus must be tried, and that the

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14/ Despite this favorable record, 61.29% of the litigants surveyed still felt that the time it took to resolve the matter was either "much too long" or "slightly too long."

number of disputes over sentencing matters is increasing. Finally, the individual written responses to the Bar Association surveys confirm this conclusion, often mentioning criminal matters as "the most important cause of delay in getting to trial in civil matters pending before the Central District."

4. Summary of Conclusions.

A "Summary and Analysis of Survey Results" prepared by Dr. Ben M. Enis of the University of Southern California and JurEcon, Inc., and Mr. William V. Trefethen, a principal of Schaffer Trefethen & Co., is attached to this Report as Appendix A. This analysis found a consistent pattern in the survey responses, which the authors summarized as follows:

> [P]ractitioner responses obtained from a census of the Los Angeles and Orange County Federal Bar Associations track closely with the attorney responses from the random sample drawn from Federal Court cases. . . . Moreover, the responses of individual attorneys closely parallel those of the Bar Group.
>
> [T]he most frequent causes of delay and excess costs, in order of mention, are as follows: the heavy criminal case load upon the civil justice system, the backlog of cases, excessive uncontrolled discovery practices, judicial mismanagement, inability to maintain firm trial dates, and various other attorney and judicial practices. The responses are very clear and consistent across all groups of attorney respondents.
>
> The responses of the Judiciary and the Magistrates indicate similar unanimity. As might be expected, the judges place somewhat more emphasis on attorney practices as causes of delay and excess costs, and somewhat less emphasis upon judicial shortcomings, although these also are mentioned. Again, the data

are clear and consistent across judges, and track fairly closely with attorney responses.

Summary and Analysis at 5-6.

C. ASSESSING THE IMPACT OF NEW LEGISLATION ON THE COURTS.

The Civil Justice Reform Act requires the Advisory Group to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts." (§ 472(c)(1)(D).) As is discussed above in this Report, one factor which appears to have significantly affected the Court's ability to manage its docket is the recent change in federal sentencing guidelines. This development, combined with the increasing federalization of criminal law, has caused criminal cases gradually to take up a large part of the Court's docket.

Unless these trends are reversed, which seems unlikely, the courts will need additional personnel and financial resources to handle the criminal docket. If they are not provided these additional resources, the delays and attendant increases in the cost of civil litigation may well become intolerable.

1. Overview.

With respect to civil litigation, Congressional failures have contributed significantly to delay and expense in federal legislation in two ways. First, Congress has failed to consider the impact of new legislation on the judicial system. Congress has not tailored new legislation to minimize its effect on the judiciary, nor has Congress considered the increase in judicial resources necessary to handle new legislation. Second,

Congress has repeatedly refused to answer certain important questions of law in new legislation which it has enacted. By failing to do so, Congress leaves these questions for the Courts to resolve, and the litigation necessary to put them to rest replicates itself in district after district throughout the country.

These two problems can only be solved by Congress. As discussed below in this section, however, the Advisory Group does recommend one action on the local level: the requirement of a cover sheet filed with each new complaint intended to identify potentially case-dispositive issues.

2. Congressional Failure to Consider the Impact of New Legislation on the Judicial System.

Much has been written about the congressional tendency to pass legislation without evaluating its impact on the judiciary.15/ The examples of legislation placing massive burdens on the district courts, without any substantial analysis of those burdens prior to passage, are legion. Prominent recent illustrations include Racketeer Influenced and Corrupt Organizations Act ("RICO"),16/ the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"),17/ the

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15/ See, e.g., Report of the Federal Courts Study Committee 89 (1990) (recommending creation of an "Office of Judicial Impact Assessment" to advise Congress on (1) the effect of proposed legislation on the judicial branch and (2) legislative drafting matters likely to lead to unnecessary litigation).

16/ 18 U.S.C. § 1961 et seq.

17/ 12 U.S.C. § 1811 et seq.

Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"),18/ and the Sentencing Reform Act of 1984, which required adoption of the Sentencing Guidelines.19/

A principal corrective measure suggested by various groups has been a requirement that Congress prepare a "judicial impact statement" for each piece of proposed legislation which it considers. That suggestion has not been adopted, however, nor does it appear likely to be accepted in the near future. The Advisory Group believes that such legislation at least would constitute a first step in remedying what is unquestionably a significant defect in the legislative process.

In the absence of broader legislation of this type, the Advisory Group believes that much could be accomplished if Congress would at least focus on answering several specific questions that, in the Advisory Group's experience, repeatedly have not been answered in new legislation. These questions are:

-- Whether the legislation will be enforceable through a private right of action;

-- Who will have standing to bring suits under the legislation;

-- Whether the legislation is intended to expand existing rights, and thus will engender new litigation;

-- What statutes of limitations will apply to any rights created under the legislation; and

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18/ 42 U.S.C. § 9601 et seq.

19/ 28 U.S.C. § 994.

-- What remedies are available to those who sue under the new legislation.

Congress should establish a mechanism for evaluating these questions for each new enactment. This evaluation should be prepared by individuals with sufficient expertise to fairly and accurately determine the answers to these questions. For example, the Advisory Group suggests that the evaluation could be prepared by a body containing representatives from the Senate Judiciary Committee, the House Judiciary Committee, and the Administrative Office of the Courts.

The Advisory Group emphasizes that it is expressing no view on the policy issues raised by these considerations, such as whether private rights of action should exist as part of any particular legislative scheme, or how long the statute of limitations should be in a particular case. Rather, the point is that these issues, which arise under many of the laws passed today, must be evaluated and resolved for two important reasons relating to the Advisory Group's charge. First, if they are answered, the considerable judicial resources necessary to decide them in the various federal courts around the United States need not be spent. Second, the answers to these questions will go far toward determining whether the new legislation will add a significant burden to the existing judicial caseload.

Finally, the Advisory Group suggests that Congress commit itself to taking one of three actions as the concluding step of this judicial evaluation process:

-- Make a finding that the legislation does not create sufficient new demands on the judicial system to require additional resources;

-- If the legislation will create new demands on the judicial system, provide offsetting decreases in the demands on the judicial system; or

-- If the legislation will create new demands on the judicial system, provide the additional personnel and resources necessary to meet the increased burden.

It is somewhat ironic that, in trying to address the problem of "cost and delay" in the judicial system, the Civil Justice Reform Act has placed yet another additional burden on the judiciary by requiring courts to appoint advisory groups, consider the groups' reports, and adopt plans to alleviate the identified problems. Both the judiciary and advisory group members throughout the country have responded to the call and expended many thousands of hours of time to study the causes of excessive cost and delay. The Advisory Group submits that, in turn, Congress should heed the call of many of these groups to impose discipline upon itself by considering and minimizing the impact of its legislative proposals upon the judiciary.

3. Congressional Correction of Existing Legislative Shortcomings.

The discussion immediately above addresses actions that Congress could take to address specific issues in future legislation. The Advisory Group also believes that Congress should address these issues with respect to existing legislation.

It recommends that Congress adopt a one time "clean up" bill to cover three areas:

-- Private Rights of Action: The legislation should provide that on a generic basis, a federal law does not create a private right of action unless specifically so provided in that particular law. Further, in this legislation Congress should review existing legislation which is silent on the question of private rights of action and determine whether or not they exist.

-- Standing: For each private right of action recognized in existing legislation by this "clean up" bill, Congress should specify any standing requirements that are prerequisites to maintaining a cause of action.

-- Statutes of Limitation: Finally, for each private right of action identified in the "clean up" bill, Congress should specify the applicable statute of limitations.

Once again, the Advisory Group expresses no view as to the merits of whether specific statutory schemes should contain private rights of action, what standing requirements should exist, or what is the appropriate statute of limitations in a given piece of legislation. Rather, it simply urges that Congress make these determinations, rather than leave them to the courts.

4. Action by the District Court.

If, as unfortunately seems likely, Congress does not proceed along the path recommended above, the courts must continue to resolve these thorny issues. Nothing can be done at the local level to make the issues disappear. However, since

these commonly found legislative gaps concern issues which can be dispositive of particular litigation, early determination of these issues may speed the resolution of some civil cases. Accordingly, in Part V below, the Advisory Group recommends an amendment to the local rules that is intended to help identify such "case dispositive" issues at the outset of the litigation.

IV. EXISTING CASE MANAGEMENT IN THE CENTRAL DISTRICT: ANALYSIS OF THE CURRENT LOCAL RULES.

The Civil Justice Reform Act requires that in formulating an expense and delay reduction plan "in consultation with [the] advisory group," the District Court is to consider a variety of listed "principles and guidelines of litigation management and cost and delay reduction." (§ 473(a).) Accordingly, the Advisory Group must examine the applicability of these "principles and guidelines" in its analysis of how the Court might best address the root causes of unnecessary delay and expense which the Advisory Committee has identified. That examination is found in Parts IV and V of this Report.

A. OVERVIEW.

To determine what actions the Court should take to address unnecessary cost and delay, the Advisory Group must first determine what the Court has already done. The Central District is and for the past decade has been in the vanguard of innovative case management. Indeed, many of the steps that have been recommended for advisory groups to consider were either pioneered in this District or are currently in operation here, and a

variety of its longstanding rules are now being adopted by other districts throughout the country.

However, while the existing Local Rules result in the trial judges' early involvement in case management, these same rules erect a number of procedural hurdles in the pretrial process which many lawyers criticize as designed to deter parties from obtaining a trial rather than to expedite that process. The problem is exacerbated because the vast majority of judges have their own rules which are superimposed upon the District's Local Rules and are unique to those jurists. Indeed, the local chapter of the Federal Bar Association now publishes a volume of the Central District judges' own rules.

A major concern of the Advisory Group is that almost every new rule adds yet another step to the litigation process, which in turn adds to the expense of the litigation. Indeed, while the Central District efficiently manages its cases, the litigants bear unnecessarily high costs from a variety of local rules and individual judges' local rules.

In light of this background, the Advisory Group decided to examine the current state of the Court's rules so that it would have a clear basis upon which to consider further improvements. That examination, summarized immediately below, is straightforward and non-judgmental. The discussion simply outlines the suggested litigation management techniques which the Civil Justice Reform Act requires the Group to consider and which are already in place in the Central District.

To make that analysis, the Advisory Group compared the Central District's Local Rules with the list of various litigation management techniques included in the Federal Judicial Center's document entitled "Implementation of the Civil Justice Reform Act of 1990" (Jan. 16, 1991) (hereinafter, "FJC Comment"). Then, in Part V of the Report below, the Advisory Group recommends additional techniques not currently used in this District which should be adopted by the Court. In other words, Part IV of the report sets the stage for the specific recommendations which are made below in Part V.

B. ANALYSIS OF "PRINCIPLES AND GUIDELINES" CURRENTLY REFLECTED IN THE CENTRAL DISTRICT'S LOCAL RULES.

1. Differential Case Management.

The Civil Justice Reform Act requires courts to consider "systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case." (§ 473(a)(1).) The Federal Judicial Center Comment opines that this requirement might be met by a local rule that contained three mandates. Those mandates, together with the Central District's current rules which meet them, are as follows:

(a) A requirement that a case management conference be held before a judicial officer within 60 days of the filing of the action.

Local Rule 6 of the Central District provides for the Early Meeting of Counsel; however, it does not specially provide for a "case management conference" before a judicial officer. Under Local Rule 6.4, however, the Court may place the action or proceeding on calendar for a status conference no earlier than 20 days after the Joint Report of Early Meeting is due to be filed with the Court.

(b) A requirement that "in advance of the conference counsel confer, prepare and submit to the court a case management plan . . . tailored to the needs of the particular case, stating each anticipated litigation event in the case and the scheduled time for each. . . ."

Local Rule 6.4.2 appears generally to meet these requirements. It provides that:

> 6.4.2 *Report for Conference*. At least ten (10) days before the date set for a Status Conference the parties are mutually required to file a Joint Status Report discussing the following:
>
> State of discovery, including a description of completed discovery and detailed schedule of all further discovery then contemplated.
>
> A discovery cut-off date.
>
> A schedule of then contemplated law and motion matters.
>
> Prospects for settlement.
>
> A proposed date for the Pre-Trial Conference and the trial.
>
> Any other issues affecting the status or management of the case.

(c) A requirement that the case management plan, and any objections to it, would be considered by the Court at the conference and incorporated in a case management order.

The Local Rules are silent on this subject.

The Federal Judicial Center Comment also recommends that a differential case management rule should recognize certain categories of cases that involve little or no discovery and ordinarily require no judicial intervention, such as government collection cases, and establish an appropriate procedure for such cases. Similarly, appropriate procedures should be established for other categories of cases which generally fall within a standard pattern, such as prisoner, civil rights, and habeas corpus cases. FJC Comment, 13.

Local Rule 26 provides procedures for habeas corpus petitions, but none of the other specific types of cases are covered in the Local Rules. Several General Orders, however, do address these specific types of cases. General Order No. 194 lists a variety of civil and criminal matters which are assigned to Magistrate Judges. These include civil rights complaints filed pro se, habeas corpus petitions filed by or on behalf of state or federal prisoners, and civil rights proceedings under 42 U.S.C. §§ 1987, 1989 and 1990. General Order No. 224 also addresses cases involving prisoner petitions and writs of habeas corpus.

2. Early and Ongoing Judicial Intervention.

The Act requires a court to consider "early and ongoing control of the pretrial process through involvement of a judicial officer in assessing and planning the progress of a case." (§ 473(a)(2)(A).) The Federal Judicial Center Comment suggests adopting a rule which provides for a case management conference

and sets forth items that could be on the agenda of such a conference. FJC Comment, 14-15.20/ Those items are listed below, together with a discussion of whether the Local Rules currently call for them:

(a) Identifying, defining, and clarifying issues of fact and of law genuinely in dispute.

Local Rule 9.4.10 mandates that "[e]ach party shall make known to the opposing party its contentions regarding the applicable facts and law." Aside from this provision, the Local Rules do not address the above-referenced topic.

(b) Making stipulations of fact and law and otherwise narrowing the scope of the action to eliminate superfluous issues.

Local Rule 9.4.3 on "Pre-Trial Proceedings" requires the parties to "make every effort to stipulate to facts upon which the parties know or have reason to know there can be no dispute for the purpose of simplifying the issues of fact to be tried."

(c) Scheduling cutoff dates for amendment of pleadings.

20/ The Federal Judicial Center Comment also suggests that such conferences would be bifurcated. The first stage would be conducted by the attorneys without the presence of the judicial officer, but with representatives of the litigants authorized to make decisions in the case. The attorneys would be required to address each item on the agenda prescribed in the rule and submit to the court a case management conference report stating the matters agreed on and those on which no agreement was reached.

The second stage of the conference would be conducted by the judicial officer on the basis of the attorneys' report. Authorized representatives of the litigants would be required to be present and have authority to bind their client in all matters on the agenda.

The Local Rules are silent on this subject.

(d) Scheduling filing and, if necessary, hearing dates for motions, and, where appropriate, providing for the management of motion practice.

Local Rule 6.4.2 on the "Report For Conference" requires that the parties submit a Joint Status Report which includes "[a] schedule of then contemplated law and motion matters."

(e) Scheduling discovery cutoff dates and, where appropriate, providing for management of discovery.

Local Rule 6.1.2 provides for the "exchange of preliminary schedules of discovery" at the Early Meeting of Counsel. Additionally, Local Rule 9.4.8 stipulates that "[t]he parties shall provide for the resolution of all outstanding discovery matters with the view that all discovery be completed at least twenty (20) days before the Pre-Trial Conference."

(f) Scheduling dates for future management and final pretrial conferences.

Local Rule 9.2 provides: "The Court may cause the notice for a Pre-Trial Conference to be sent to the parties on a date no earlier than sixty (60) days after the Joint Report of Early Meeting required by Local Rule 6 is due to be filed with the Court. The Pre-Trial Conference shall be set for a date no earlier than sixty (60) days after the mailing of such notice."

(g) Scheduling trial date(s) and providing, where appropriate, for bifurcation.

Local Rules 9.5 and 9.5.3 require that not later than twenty-one (21) days in advance of the Pre-Trial Conference, each party shall serve and file a Memorandum of Contentions of Fact

and Law which "shall contain any request for bifurcation of issues together with a statement of reasons for the request." Additionally, Rule 9.9.3 simply provides that "the trial shall be set at the earliest date permitted by the calendar of the Court."

(h) Adopting procedures, where appropriate, for the management of expert witnesses.

Local Rules 9.4 and 9.4.6 on Pre-Trial Proceedings require the parties to meet at least 40 days prior to the date set for the Pre-Trial Conference and to "exchange short narrative statements of the qualifications of the expert and the testimony expected to be elicited at trial."

(i) Exploring the feasibility of initiating settlement negotiations or invoking alternative dispute resolution procedures.

Local Rules 6.1 and 6.1.5 require that within 20 days after service of the answer by the first answering defendant, counsel for the parties shall meet in order to discuss, among other things, settlement of the action. Additionally, Local Rules 9.4 and 9.4.11 require that at least 40 days in advance of the date set for the Pre-Trial Conference, counsel for the parties shall meet and "exhaust all possibilities of settlement."

(j) Determining the feasibility of reference of the case, or certain matters, to a magistrate judge or master.

There is no mechanism in the Local Rules which provides for a determination of the feasibility of referring the case, or certain matters, to a magistrate, judge, or master. However, General Order No. 194 provides detailed guidance on the assignment of duties to magistrates. Additionally, Local Rule

25.10 states that "[t]he Court may appoint a master to supervise discovery and rule on objections to discovery by an opposing party upon stipulation of the parties or when the Court determines that the efficient processing of the litigation and the interests of justice so require."

(k) Providing that all requests for continuances of discovery deadlines or trial dates be signed by counsel and the client.

Local Rule 9.10 addresses the requirements for continuances of Pre-Trial Conferences, and Local Rule 11 provides for the continuance of any trial or similar proceeding. Neither rule, however, requires that the requests for continuances be signed by both counsel and the client.

(l) Considering and resolving such other matters as may be conducive to the just, speedy, and inexpensive resolution of the case.

The Local Rules do not contain a specific "catch-all" provision such as this one.

3. **Setting Early and Firm Trial Dates**.

The Act requires the court to consider "setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that . . . the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice. . . ." (§ 473(a)(2)(B).) The FJC Comment recommends that (1) counsel provide in their case management plan or in their case management conference report for a trial date not more than 18 months after the filing of the action; and (2) the court shall set a trial date to occur within

18 months of the filing of the action or issue an order stating why this action cannot be taken. FJC Comment, 15.

Local Rule 9.9.3 states: "The trial shall be set at the earliest date permitted by the calendar of the Court." Aside from this mandate, no other provision of the Local Rules or General Orders requires the setting of a trial date within a specific period of time.21/

4. Control of Discovery.

The Act requires the court to consider:

> [C]ontrolling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion.

(§ 473(a)(2)(C).) For complex or other appropriate cases, the court is to consider preparation of:

> [A] discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to (i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and (ii) phase discovery into two or more stages.

(§ 473(a)(3)(C).)

To supplement these principles, the Federal Judicial Center Comment has proposed a "Suggested Local Rule" relating to discovery. FJC Comment, 16. Part (A) of that rule requires

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21/ As discussed in Part V of this Report, the Advisory Group believes it inappropriate to promulgate specific time requirements on an across-the-board basis because such requirements fail to consider the significant differences in the complexity of cases and the need of litigants to obtain proof.

disclosure of certain information that is similar to Central District Local Rule 6, but in certain respects exceeds the requirements of that rule. If Local Rule 6 were to be made consistent with the Federal Judicial Center's suggested rule, the following changes would be necessary:

-- Local Rule 6.1.4, which requires the exchange of witnesses, would need to state that the list "shall include, but not be limited to, the identity of all persons known or believed to have substantial discoverable information about the claims or defenses, together with a summary of that information."

-- Local Rule 6.1.1, which deals with the exchange of documents, would have to state that the term "documents" includes all documents bearing upon damages claimed in the case, insurance agreements or policies which may cover the judgment, and reports of experts who may be called at trial. The rule should also state that the disclosure obligations imposed are reciprocal and continue throughout the case.

The Federal Judicial Center's Suggested Local Rule also proposes the following specific limitations on various discovery methods: No more than five depositions, 15 interrogatories, and two requests for production. FJC Comment, 16. At present, Local Rule 8.2.1 limits the number of interrogatories that can be propounded in any civil case to 30 except upon leave of court for good cause shown.

The Advisory Group notes that while this rule has generally worked well, a limit of 15 interrogatories in most cases would simply not be sufficient to obtain any useful

information. Furthermore, it might well result in an increase in the number of depositions, as attorneys attempt to obtain information through other means. Moreover, if the suggested limit on depositions were enacted, the result would be an increase in the number of motions, as attorneys in most civil cases will find these limits unrealistically low and will seek to convince the Court that good cause exists for an increase. If a deposition limit is to be enacted, the Advisory Group suggests (1) that the limit be set according to the type of case or track to which the case is assigned; and (2) that upon a showing of good cause, the Court could adjust the limit to meet the exigencies of the particular case. (See discussion of tracking in Part V, below.)

The Federal Judicial Center's Suggested Local Rule also incorporates provisions dealing with "phased discovery." FJC Comment, 16. Currently, the Central District's Local Rules contain no analogous provision.

Finally, the Suggested Local Rule calls for counsel to "meet and confer" to resolve discovery disputes and declares that disputes not resolved "shall be presented by telephone call to a judicial officer." FJC Comment, 16. Local Rule 7.15 currently contains "meet and confer" provisions, but not the other requirements of the suggested rule.

5. Controlling Motion Practice.

The Civil Justice Reform Act requires the Court to consider "setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition."

(§ 473(a)(2)(D), (3)(D).) The Federal Judicial Center Comment recommended a rule which would have the following provisions:

(a) Counsel shall submit an agreed schedule for filing motions as part of their case management plan.

Local Rule 6.4.2 requires that a Joint Status Report be filed prior to the Status Conference and that it include "[a] schedule of then contemplated law and motion matters."

(b) No motion shall be filed unless counsel attempt to resolve or narrow the issue.

The Local Rules are silent on this subject.

(c) Memoranda in support of a motion shall not exceed 25 pages and the response 20 pages, unless otherwise ordered.

Local Rule 7.5.1(a), which regulates "moving papers," requires "a brief but complete memorandum" in support of the motion as well as the points and authorities upon which the moving party will rely. Rule 7.6, which regulates "opposing papers," requires "a brief but complete memorandum" which shall contain a statement of all reasons in opposition to the motion and all the points and authorities upon which the opposing party will rely. Neither rule places specific page limitations on motions; rather, the requirement is only that they be "brief."

(d) Motions may be decided without hearing.

Local Rule 7.11 provides that counsel may waive oral argument with the consent of the Court.

(e) Whenever the Court is unable to decide a motion within 60 days of submission, it shall issue an order reporting the motion under submission.

Local Rule 32 imposes time limits for decisions by the Court. As to any motion, the Court must render its decision

within 120 days after the matter has been submitted. Additionally, upon a request that the decision be made without further delay, the Court must render a decision within 30 days of the request or notify the Chief Judge of the Court.

(f) Alternative Dispute Resolution

The Act requires consideration of case-specific measures and Court-wide programs which encourage settlement and alternative dispute resolution procedures. These measures are to be explored early in the process and at every phase of the proceedings. (§ 473(a)(3)(A), (a)(6).)

Local Rule 6.1.5 requires an Early Meeting of Counsel to discuss settlement of the action, and Local Rule 6.2 requires a report to the Court regarding the Early Meeting which discusses, among other things, the likelihood of settlement. Additionally, Local Rule 9.4.11 requires the parties to exhaust all possibilities of settlement in a Pre-Trial Conference. Aside from these provisions, however, there are no formal Local Rules or General Orders regarding alternative dispute resolution procedures or requirements for the Central District.

(g) Final Pretrial Conference

The Act contains no express requirement concerning final pretrial conferences. However, the Federal Judicial Center Comment points out that the longer the trial, the greater the expense and delay that is involved and the more other litigants' access to the Courts is obstructed. Since final pretrial conferences can be an effective tool for exercising control over the length of the trial, the Comment suggests an eleven-point

agenda for preparing and conducting the final pretrial conference. FJC Comment, 18-19. Those eleven items are addressed below:

-- Determining final and binding definitions of issues to be tried: Local Rules 9.5.2 and 9.8.3 so provide.

-- Disclosing expected and potential witnesses and the substance of their testimony: Local Rule 9.4.5 provides for an exchange of witnesses' names, except those contemplated to be used for impeachment or rebuttal, but does not require the disclosure of their testimony.22/

-- Exchanging all proposed exhibits: Local Rule 9.4.4 so provides.

-- Pretrial ruling, where possible, upon objections to evidence: Rule 9.4.7 provides that the parties shall attempt to resolve any objections to the admission of oral and documentary evidence. Rule 9.4.9 provides for marking objections to deposition testimony, and Rule 9.4.12 provides for registering objections to the use of graphic or illustrative material. Rule 9.5.2 provides that a party state positions on anticipated evidentiary problems, but Rule 9 does not provide for the Court's pretrial rulings on objections to evidence. Rule 9.9 does allow the Court to consider "motions and other proceedings," including four specifically enumerated motions, but none of them include motions to rule on objections to anticipated evidence.

22/ Compare Rule 235-7(i) of the Local Rules for the Northern District of California, which requires a "brief statement following each name describing the substance of the testimony to be given."

-- Eliminating unnecessary or redundant proof, including limitation of expert witnesses: Local Rules 9.4.2 and 9.4.3, which concern dispositive motions and stipulation of fact, speak to this factor, as does Local Rule 9.5.6 relating to abandonment of issues. While Rule 9.4.6 requires a statement of the testimony of expert witnesses, it does not provide for limiting testimony.23/

-- Considering bifurcation of issues to be tried: Rule 9.5.3 provides for such consideration.

-- Establishing time and other limits for the trial: Rule 9 makes no such provision.24/

-- Expediting jury selection: Rule 9 has no provision on this topic.25/

-- Considering means of enhancing jury comprehension in simplifying and expediting the trial: Rule 9.4.3 (stipulation of facts), Rule 9.4.9 (handling of deposition testimony), Rule 9.4.12 (exchange of graphic and illustrative material), and Rule

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23/ Compare Civil Rule 281 of the Local Rules for the Eastern District of California, which requires a statement by the parties as to whether a limitation on the number of expert witnesses is advisable.

24/ Compare Rule 235-7(p) of the Local Rules for the Northern District of California, which requires an estimate of the number of court days expected to be necessary for the presentation of each party's case. See also Rule 283(b) of the Local Rules for the Eastern District of California, which provides for the pretrial order to contain the Court's estimate of the number of Court days required for the trial.

25/ Compare Rule 282(3) of the Local Rules for the Eastern District of California, which provides for discussion of the procedures for voir dire and the filing of proposed voir dire questions and instructions.

9.7 (requirements for exhibit list) all relate to this factor. All of the requirements of Rule 9, to the extent that they force counsel to articulate the elements of their case in a persuasive manner, work to this end, but there is no provision for an agreed statement of the case.26/

-- Considering the feasibility of presenting direct testimony by written statement: Rule 9.4.9(c) does provide that "in appropriate cases and when ordered by the Court, the parties shall jointly prepare a deposition summary to be used in lieu of question and answer reading of a deposition at trial." However, the only specific provision for written statements in lieu of direct testimony is contained in Section 9.11. Rule 9.11.2 calls for the use in non-jury cases of "detailed narrative statements of witnesses to be used at trial as the direct testimony of the witnesses, subject to cross examination by the opposing party."

-- Considering other means to facilitate and expedite the trial: Rule 9 directs counsel to provide information as to specific items in connection with certain specified causes of action as set forth in Appendix B to the Local Rules.

The Federal Judicial Center Comment also suggests consideration in the final pretrial conference of five additional factors in cases where experts may play a significant role. FJC

26/ Compare Section 19.3 of the Civil Trials Manual, Los Angeles Superior Court, which provides for "[t]he text of a brief statement of the case suitable to be read by the trial judge of the panel of prospective jurors."

Comment, 19. Those five factors are currently reflected in the Central District's Local Rules as follows:

(a) Early and binding disclosure of expert witnesses, precluding the appearance of witnesses not previously identified.

Rule 9.4.6 calls for disclosure of the expert witnesses 40 days prior to trial, although the rule does not specifically address the penalty for failure to disclose the expert at that time. Additionally, Rule 9.6 requires a witness list to be filed not later than 21 days in advance of the pretrial conference. Except for good cause shown, any witness not listed shall be precluded from testifying.

(b) Submission of a complete statement of the expert witness' proposed testimony in advance of his or her deposition.

Local Rule 9.4.6 requires a short narrative statement of the qualifications of the expert and the testimony expected to be elicited, as well as the exchange of any reports which have been prepared. These actions must be taken 40 days in advance of the pretrial conference.

(c) Use of videotaped depositions.

Local Rule 9 is silent on this subject.

(d) Preclusion of any trial testimony by an expert at variance with the written statement and any deposition testimony.

Rule 9 is silent on this subject.

(e) Ruling on the admissibility of expert testimony at the final pretrial conference.

Rule 9 is silent on this subject.

V. RECOMMENDATIONS TO THE COURT WITH SUPPORTING REASONS.

A. OVERVIEW.

Based upon its review of the questionnaires, its consideration of the docket, and its own experience, the Advisory Group has concluded that while the Central District on the whole manages its litigation well, the litigants bear unnecessarily high costs and face delays resulting in part from some of the Court's existing practices. The Court should take steps to reduce these costs and delays associated with litigation.

Although the Advisory Group's recommendations are interrelated and cumulative, they can be grouped into five general categories: (1) tools for more effective case management by the Court; (2) actions to control discovery costs and delays; (3) Other methods for controlling costs and delays; (4) availability of "alternative dispute resolution" mechanisms; and (5) improvement in lawyer-litigant deportment. First, however, the Advisory Group believes that it must point out the single most important step that could be taken to speed justice in the Central District: the prompt filling of judicial vacancies.

B. PROMPT FILLING OF JUDICIAL VACANCIES.

At the time of the preparation of this Report, four of the 27 judicial positions authorized for the Central District remain vacant. Nominations for three of these positions had been pending before the Senate Judiciary Committee, but as of October 9, 1992, these nominations were returned to the White House. It is likely that the positions will remain unfilled well into 1993.

Furthermore, these vacancies have existed since the passage of the Civil Justice Reform Act.

The Advisory Group emphasizes that it is nonsensical to delay the appointment of individuals to fill authorized judicial vacancies in the Central District, and that delays of this type have seriously hindered the efficient management of the District's caseload. The survey responses of practitioners and other groups confirm this view. In short, the failure to fill vacancies in authorized judgeships unquestionably is the single most significant cause of delay and expense to litigants in this District.

A few simple statistics underscore this conclusion. First, over the decade from 1982 through 1992, the District has accumulated a total of 328 "vacancy months" in unfilled judicial positions. This figure means that on an average over this period, the Court was deprived of the services of 2.7 judges per year. Looked at another way, the unfilled positions are the equivalent of having 27.4 judges sit on the Court for a single year.

By increasing the workload of sitting judges, particularly with respect to criminal cases that are subject to the constraints established by the Speedy Trial Act and the Sentencing Guidelines, these vacancies make it more difficult for civil cases to receive "firm" trial dates. At the same time, they diminish the credibility of Court-imposed deadlines, an important tool in judicial management of the Court's docket that

the Advisory Group believes should receive increased emphasis in the future.

The Advisory Group recognizes that the Court is not responsible for this situation and cannot remedy it. The Group believes, however, that it would be remiss in not speaking bluntly about this problem, a problem which should not exist and which is having an undeniably adverse impact on the administration of justice in the Central District.

C. MORE EFFECTIVE CASE MANAGEMENT.

1. The Court Should Set Realistic, Firm Trial Dates and Adhere to Them.

The Advisory Group has concluded that, from the perspective of whether a case will be brought to trial expeditiously, the most important action that the Court can take is to set a firm trial date for the action that is realistic. A realistic, firm trial date is one which allows the parties sufficient time to meaningfully develop the facts necessary to a fair and reasoned adjudication of their lawsuit and is a date on which the Court believes and expects that it will try the case.27/ This date should be set as early in the litigation as is practicable, and the Court must adhere to it for the date to have the intended effect.

The judges of the Central District effectively handle all matters within their responsibility when they have sufficient time to address the issues. The primary problem which leads to

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27/ A realistic trial date is not a date set by the clerk or by the Judge for a fixed number of days after the complaint or answer is filed.

delays, and thus to excessive costs, is insufficient judges to actively manage all the criminal and civil litigation filed. The unavailability of a trial judge is most acute when the judge cannot try a case on the date set for trial. When firm trial dates cannot be maintained, the entire litigation process for that case becomes gridlocked.

In this situation, a recurrent scenario unfolds. As the trial date approaches, lawyers and litigants stand at the ready. Witnesses, both percipient and expert, must be prepared, transported, and ready to proceed to trial the moment that the Court is available. Because slippages in the actual start of the trial are anticipated, the lawyers and the litigants must schedule blocks of time that not only take into account the immediate, scheduled trial days but also additional slippage days. Thus, witnesses whose testimony may take only a single day must be scheduled to be available over several days.

When a case does not proceed to trial on the appointed day and trails, the lawyers and witnesses still must stand at the ready -- a status that directly increases the amount of time and the costs for litigants. On some occasions, cases trail for weeks or even months.

When a case is continued from the scheduled trial date rather than merely trailed, the lawyers, witnesses, and litigants all turn their time and attention to other matters. The litigation process for that case essentially becomes dormant. Over time, it stagnates. As the new trial date approaches, the litigants once again prepare for trial, with their lawyers

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The Federal Judicial Center Comment also recommends that a differential case management rule should recognize certain categories of cases that involve little or no discovery and ordinarily require no judicial intervention, such as government collection cases, and establish an appropriate procedure for such cases. Similarly, appropriate procedures should be established for other categories of cases which generally fall within a standard pattern, such as prisoner, civil rights, and habeas corpus cases. FJC Comment, 13.

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and sets forth items that could be on the agenda of such a conference. FJC Comment, 14-15.20/ Those items are listed below, together with a discussion of whether the Local Rules currently call for them:

(a) Identifying, defining, and clarifying issues of fact and of law genuinely in dispute.

Local Rule 9.4.10 mandates that "[e]ach party shall make known to the opposing party its contentions regarding the applicable facts and law." Aside from this provision, the Local Rules do not address the above-referenced topic.

(b) Making stipulations of fact and law and otherwise narrowing the scope of the action to eliminate superfluous issues.

Local Rule 9.4.3 on "Pre-Trial Proceedings" requires the parties to "make every effort to stipulate to facts upon which the parties know or have reason to know there can be no dispute for the purpose of simplifying the issues of fact to be tried."

(c) Scheduling cutoff dates for amendment of pleadings.

20/ The Federal Judicial Center Comment also suggests that such conferences would be bifurcated. The first stage would be conducted by the attorneys without the presence of the judicial officer, but with representatives of the litigants authorized to make decisions in the case. The attorneys would be required to address each item on the agenda prescribed in the rule and submit to the court a case management conference report stating the matters agreed on and those on which no agreement was reached.

The second stage of the conference would be conducted by the judicial officer on the basis of the attorneys' report. Authorized representatives of the litigants would be required to be present and have authority to bind their client in all matters on the agenda.

The Local Rules are silent on this subject.

(d) Scheduling filing and, if necessary, hearing dates for motions, and, where appropriate, providing for the management of motion practice.

Local Rule 6.4.2 on the "Report For Conference" requires that the parties submit a Joint Status Report which includes "[a] schedule of then contemplated law and motion matters."

(e) Scheduling discovery cutoff dates and, where appropriate, providing for management of discovery.

Local Rule 6.1.2 provides for the "exchange of preliminary schedules of discovery" at the Early Meeting of Counsel. Additionally, Local Rule 9.4.8 stipulates that "[t]he parties shall provide for the resolution of all outstanding discovery matters with the view that all discovery be completed at least twenty (20) days before the Pre-Trial Conference."

(f) Scheduling dates for future management and final pretrial conferences.

Local Rule 9.2 provides: "The Court may cause the notice for a Pre-Trial Conference to be sent to the parties on a date no earlier than sixty (60) days after the Joint Report of Early Meeting required by Local Rule 6 is due to be filed with the Court. The Pre-Trial Conference shall be set for a date no earlier than sixty (60) days after the mailing of such notice."

(g) Scheduling trial date(s) and providing, where appropriate, for bifurcation.

Local Rules 9.5 and 9.5.3 require that not later than twenty-one (21) days in advance of the Pre-Trial Conference, each party shall serve and file a Memorandum of Contentions of Fact

and Law which "shall contain any request for bifurcation of issues together with a statement of reasons for the request." Additionally, Rule 9.9.3 simply provides that "the trial shall be set at the earliest date permitted by the calendar of the Court."

(h) Adopting procedures, where appropriate, for the management of expert witnesses.

Local Rules 9.4 and 9.4.6 on Pre-Trial Proceedings require the parties to meet at least 40 days prior to the date set for the Pre-Trial Conference and to "exchange short narrative statements of the qualifications of the expert and the testimony expected to be elicited at trial."

(i) Exploring the feasibility of initiating settlement negotiations or invoking alternative dispute resolution procedures.

Local Rules 6.1 and 6.1.5 require that within 20 days after service of the answer by the first answering defendant, counsel for the parties shall meet in order to discuss, among other things, settlement of the action. Additionally, Local Rules 9.4 and 9.4.11 require that at least 40 days in advance of the date set for the Pre-Trial Conference, counsel for the parties shall meet and "exhaust all possibilities of settlement."

(j) Determining the feasibility of reference of the case, or certain matters, to a magistrate judge or master.

There is no mechanism in the Local Rules which provides for a determination of the feasibility of referring the case, or certain matters, to a magistrate, judge, or master. However, General Order No. 194 provides detailed guidance on the assignment of duties to magistrates. Additionally, Local Rule

25.10 states that "[t]he Court may appoint a master to supervise discovery and rule on objections to discovery by an opposing party upon stipulation of the parties or when the Court determines that the efficient processing of the litigation and the interests of justice so require."

(k) Providing that all requests for continuances of discovery deadlines or trial dates be signed by counsel and the client.

Local Rule 9.10 addresses the requirements for continuances of Pre-Trial Conferences, and Local Rule 11 provides for the continuance of any trial or similar proceeding. Neither rule, however, requires that the requests for continuances be signed by both counsel and the client.

(l) Considering and resolving such other matters as may be conducive to the just, speedy, and inexpensive resolution of the case.

The Local Rules do not contain a specific "catch-all" provision such as this one.

3. **Setting Early and Firm Trial Dates.**

The Act requires the court to consider "setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that . . . the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice. . . ." (§ 473(a)(2)(B).) The FJC Comment recommends that (1) counsel provide in their case management plan or in their case management conference report for a trial date not more than 18 months after the filing of the action; and (2) the court shall set a trial date to occur within

18 months of the filing of the action or issue an order stating why this action cannot be taken. FJC Comment, 15.

Local Rule 9.9.3 states: "The trial shall be set at the earliest date permitted by the calendar of the Court." Aside from this mandate, no other provision of the Local Rules or General Orders requires the setting of a trial date within a specific period of time.21/

4. Control of Discovery.

The Act requires the court to consider:

> [C]ontrolling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion.

(§ 473(a)(2)(C).) For complex or other appropriate cases, the court is to consider preparation of:

> [A] discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to (i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and (ii) phase discovery into two or more stages.

(§ 473(a)(3)(C).)

To supplement these principles, the Federal Judicial Center Comment has proposed a "Suggested Local Rule" relating to discovery. FJC Comment, 16. Part (A) of that rule requires

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21/ As discussed in Part V of this Report, the Advisory Group believes it inappropriate to promulgate specific time requirements on an across-the-board basis because such requirements fail to consider the significant differences in the complexity of cases and the need of litigants to obtain proof.

disclosure of certain information that is similar to Central District Local Rule 6, but in certain respects exceeds the requirements of that rule. If Local Rule 6 were to be made consistent with the Federal Judicial Center's suggested rule, the following changes would be necessary:

-- Local Rule 6.1.4, which requires the exchange of witnesses, would need to state that the list "shall include, but not be limited to, the identity of all persons known or believed to have substantial discoverable information about the claims or defenses, together with a summary of that information."

-- Local Rule 6.1.1, which deals with the exchange of documents, would have to state that the term "documents" includes all documents bearing upon damages claimed in the case, insurance agreements or policies which may cover the judgment, and reports of experts who may be called at trial. The rule should also state that the disclosure obligations imposed are reciprocal and continue throughout the case.

The Federal Judicial Center's Suggested Local Rule also proposes the following specific limitations on various discovery methods: No more than five depositions, 15 interrogatories, and two requests for production. FJC Comment, 16. At present, Local Rule 8.2.1 limits the number of interrogatories that can be propounded in any civil case to 30 except upon leave of court for good cause shown.

The Advisory Group notes that while this rule has generally worked well, a limit of 15 interrogatories in most cases would simply not be sufficient to obtain any useful

information. Furthermore, it might well result in an increase in the number of depositions, as attorneys attempt to obtain information through other means. Moreover, if the suggested limit on depositions were enacted, the result would be an increase in the number of motions, as attorneys in most civil cases will find these limits unrealistically low and will seek to convince the Court that good cause exists for an increase. If a deposition limit is to be enacted, the Advisory Group suggests (1) that the limit be set according to the type of case or track to which the case is assigned; and (2) that upon a showing of good cause, the Court could adjust the limit to meet the exigencies of the particular case. (See discussion of tracking in Part V, below.)

The Federal Judicial Center's Suggested Local Rule also incorporates provisions dealing with "phased discovery." FJC Comment, 16. Currently, the Central District's Local Rules contain no analogous provision.

Finally, the Suggested Local Rule calls for counsel to "meet and confer" to resolve discovery disputes and declares that disputes not resolved "shall be presented by telephone call to a judicial officer." FJC Comment, 16. Local Rule 7.15 currently contains "meet and confer" provisions, but not the other requirements of the suggested rule.

5. Controlling Motion Practice.

The Civil Justice Reform Act requires the Court to consider "setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition."

(§ 473(a)(2)(D), (3)(D).) The Federal Judicial Center Comment recommended a rule which would have the following provisions:

(a) Counsel shall submit an agreed schedule for filing motions as part of their case management plan.

Local Rule 6.4.2 requires that a Joint Status Report be filed prior to the Status Conference and that it include "[a] schedule of then contemplated law and motion matters."

(b) No motion shall be filed unless counsel attempt to resolve or narrow the issue.

The Local Rules are silent on this subject.

(c) Memoranda in support of a motion shall not exceed 25 pages and the response 20 pages, unless otherwise ordered.

Local Rule 7.5.1(a), which regulates "moving papers," requires "a brief but complete memorandum" in support of the motion as well as the points and authorities upon which the moving party will rely. Rule 7.6, which regulates "opposing papers," requires "a brief but complete memorandum" which shall contain a statement of all reasons in opposition to the motion and all the points and authorities upon which the opposing party will rely. Neither rule places specific page limitations on motions; rather, the requirement is only that they be "brief."

(d) Motions may be decided without hearing.

Local Rule 7.11 provides that counsel may waive oral argument with the consent of the Court.

(e) Whenever the Court is unable to decide a motion within 60 days of submission, it shall issue an order reporting the motion under submission.

Local Rule 32 imposes time limits for decisions by the Court. As to any motion, the Court must render its decision

within 120 days after the matter has been submitted. Additionally, upon a request that the decision be made without further delay, the Court must render a decision within 30 days of the request or notify the Chief Judge of the Court.

(f) Alternative Dispute Resolution

The Act requires consideration of case-specific measures and Court-wide programs which encourage settlement and alternative dispute resolution procedures. These measures are to be explored early in the process and at every phase of the proceedings. (§ 473(a)(3)(A), (a)(6).)

Local Rule 6.1.5 requires an Early Meeting of Counsel to discuss settlement of the action, and Local Rule 6.2 requires a report to the Court regarding the Early Meeting which discusses, among other things, the likelihood of settlement. Additionally, Local Rule 9.4.11 requires the parties to exhaust all possibilities of settlement in a Pre-Trial Conference. Aside from these provisions, however, there are no formal Local Rules or General Orders regarding alternative dispute resolution procedures or requirements for the Central District.

(g) Final Pretrial Conference

The Act contains no express requirement concerning final pretrial conferences. However, the Federal Judicial Center Comment points out that the longer the trial, the greater the expense and delay that is involved and the more other litigants' access to the Courts is obstructed. Since final pretrial conferences can be an effective tool for exercising control over the length of the trial, the Comment suggests an eleven-point

agenda for preparing and conducting the final pretrial conference. FJC Comment, 18-19. Those eleven items are addressed below:

-- Determining final and binding definitions of issues to be tried: Local Rules 9.5.2 and 9.8.3 so provide.

-- Disclosing expected and potential witnesses and the substance of their testimony: Local Rule 9.4.5 provides for an exchange of witnesses' names, except those contemplated to be used for impeachment or rebuttal, but does not require the disclosure of their testimony.22/

-- Exchanging all proposed exhibits: Local Rule 9.4.4 so provides.

-- Pretrial ruling, where possible, upon objections to evidence: Rule 9.4.7 provides that the parties shall attempt to resolve any objections to the admission of oral and documentary evidence. Rule 9.4.9 provides for marking objections to deposition testimony, and Rule 9.4.12 provides for registering objections to the use of graphic or illustrative material. Rule 9.5.2 provides that a party state positions on anticipated evidentiary problems, but Rule 9 does not provide for the Court's pretrial rulings on objections to evidence. Rule 9.9 does allow the Court to consider "motions and other proceedings," including four specifically enumerated motions, but none of them include motions to rule on objections to anticipated evidence.

22/ Compare Rule 235-7(i) of the Local Rules for the Northern District of California, which requires a "brief statement following each name describing the substance of the testimony to be given."

-- Eliminating unnecessary or redundant proof, including limitation of expert witnesses: Local Rules 9.4.2 and 9.4.3, which concern dispositive motions and stipulation of fact, speak to this factor, as does Local Rule 9.5.6 relating to abandonment of issues. While Rule 9.4.6 requires a statement of the testimony of expert witnesses, it does not provide for limiting testimony.23/

-- Considering bifurcation of issues to be tried: Rule 9.5.3 provides for such consideration.

-- Establishing time and other limits for the trial: Rule 9 makes no such provision.24/

-- Expediting jury selection: Rule 9 has no provision on this topic.25/

-- Considering means of enhancing jury comprehension in simplifying and expediting the trial: Rule 9.4.3 (stipulation of facts), Rule 9.4.9 (handling of deposition testimony), Rule 9.4.12 (exchange of graphic and illustrative material), and Rule

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23/ Compare Civil Rule 281 of the Local Rules for the Eastern District of California, which requires a statement by the parties as to whether a limitation on the number of expert witnesses is advisable.

24/ Compare Rule 235-7(p) of the Local Rules for the Northern District of California, which requires an estimate of the number of court days expected to be necessary for the presentation of each party's case. See also Rule 283(b) of the Local Rules for the Eastern District of California, which provides for the pretrial order to contain the Court's estimate of the number of Court days required for the trial.

25/ Compare Rule 282(3) of the Local Rules for the Eastern District of California, which provides for discussion of the procedures for voir dire and the filing of proposed voir dire questions and instructions.

9.7 (requirements for exhibit list) all relate to this factor. All of the requirements of Rule 9, to the extent that they force counsel to articulate the elements of their case in a persuasive manner, work to this end, but there is no provision for an agreed statement of the case.26/

-- Considering the feasibility of presenting direct testimony by written statement: Rule 9.4.9(c) does provide that "in appropriate cases and when ordered by the Court, the parties shall jointly prepare a deposition summary to be used in lieu of question and answer reading of a deposition at trial." However, the only specific provision for written statements in lieu of direct testimony is contained in Section 9.11. Rule 9.11.2 calls for the use in non-jury cases of "detailed narrative statements of witnesses to be used at trial as the direct testimony of the witnesses, subject to cross examination by the opposing party."

-- Considering other means to facilitate and expedite the trial: Rule 9 directs counsel to provide information as to specific items in connection with certain specified causes of action as set forth in Appendix B to the Local Rules.

The Federal Judicial Center Comment also suggests consideration in the final pretrial conference of five additional factors in cases where experts may play a significant role. FJC

26/ Compare Section 19.3 of the Civil Trials Manual, Los Angeles Superior Court, which provides for "[t]he text of a brief statement of the case suitable to be read by the trial judge of the panel of prospective jurors."

Comment, 19. Those five factors are currently reflected in the Central District's Local Rules as follows:

(a) Early and binding disclosure of expert witnesses, precluding the appearance of witnesses not previously identified.

Rule 9.4.6 calls for disclosure of the expert witnesses 40 days prior to trial, although the rule does not specifically address the penalty for failure to disclose the expert at that time. Additionally, Rule 9.6 requires a witness list to be filed not later than 21 days in advance of the pretrial conference. Except for good cause shown, any witness not listed shall be precluded from testifying.

(b) Submission of a complete statement of the expert witness' proposed testimony in advance of his or her deposition.

Local Rule 9.4.6 requires a short narrative statement of the qualifications of the expert and the testimony expected to be elicited, as well as the exchange of any reports which have been prepared. These actions must be taken 40 days in advance of the pretrial conference.

(c) Use of videotaped depositions.

Local Rule 9 is silent on this subject.

(d) Preclusion of any trial testimony by an expert at variance with the written statement and any deposition testimony.

Rule 9 is silent on this subject.

(e) Ruling on the admissibility of expert testimony at the final pretrial conference.

Rule 9 is silent on this subject.

V. RECOMMENDATIONS TO THE COURT WITH SUPPORTING REASONS.

A. OVERVIEW.

Based upon its review of the questionnaires, its consideration of the docket, and its own experience, the Advisory Group has concluded that while the Central District on the whole manages its litigation well, the litigants bear unnecessarily high costs and face delays resulting in part from some of the Court's existing practices. The Court should take steps to reduce these costs and delays associated with litigation.

Although the Advisory Group's recommendations are interrelated and cumulative, they can be grouped into five general categories: (1) tools for more effective case management by the Court; (2) actions to control discovery costs and delays; (3) Other methods for controlling costs and delays; (4) availability of "alternative dispute resolution" mechanisms; and (5) improvement in lawyer-litigant deportment. First, however, the Advisory Group believes that it must point out the single most important step that could be taken to speed justice in the Central District: the prompt filling of judicial vacancies.

B. PROMPT FILLING OF JUDICIAL VACANCIES.

At the time of the preparation of this Report, four of the 27 judicial positions authorized for the Central District remain vacant. Nominations for three of these positions had been pending before the Senate Judiciary Committee, but as of October 9, 1992, these nominations were returned to the White House. It is likely that the positions will remain unfilled well into 1993.

Furthermore, these vacancies have existed since the passage of the Civil Justice Reform Act.

The Advisory Group emphasizes that it is nonsensical to delay the appointment of individuals to fill authorized judicial vacancies in the Central District, and that delays of this type have seriously hindered the efficient management of the District's caseload. The survey responses of practitioners and other groups confirm this view. In short, the failure to fill vacancies in authorized judgeships unquestionably is the single most significant cause of delay and expense to litigants in this District.

A few simple statistics underscore this conclusion. First, over the decade from 1982 through 1992, the District has accumulated a total of 328 "vacancy months" in unfilled judicial positions. This figure means that on an average over this period, the Court was deprived of the services of 2.7 judges per year. Looked at another way, the unfilled positions are the equivalent of having 27.4 judges sit on the Court for a single year.

By increasing the workload of sitting judges, particularly with respect to criminal cases that are subject to the constraints established by the Speedy Trial Act and the Sentencing Guidelines, these vacancies make it more difficult for civil cases to receive "firm" trial dates. At the same time, they diminish the credibility of Court-imposed deadlines, an important tool in judicial management of the Court's docket that

the Advisory Group believes should receive increased emphasis in the future.

The Advisory Group recognizes that the Court is not responsible for this situation and cannot remedy it. The Group believes, however, that it would be remiss in not speaking bluntly about this problem, a problem which should not exist and which is having an undeniably adverse impact on the administration of justice in the Central District.

C. MORE EFFECTIVE CASE MANAGEMENT.

1. The Court Should Set Realistic, Firm Trial Dates and Adhere to Them.

The Advisory Group has concluded that, from the perspective of whether a case will be brought to trial expeditiously, the most important action that the Court can take is to set a firm trial date for the action that is realistic. A realistic, firm trial date is one which allows the parties sufficient time to meaningfully develop the facts necessary to a fair and reasoned adjudication of their lawsuit and is a date on which the Court believes and expects that it will try the case.27/ This date should be set as early in the litigation as is practicable, and the Court must adhere to it for the date to have the intended effect.

The judges of the Central District effectively handle all matters within their responsibility when they have sufficient time to address the issues. The primary problem which leads to

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27/ A realistic trial date is not a date set by the clerk or by the Judge for a fixed number of days after the complaint or answer is filed.

delays, and thus to excessive costs, is insufficient judges to actively manage all the criminal and civil litigation filed. The unavailability of a trial judge is most acute when the judge cannot try a case on the date set for trial. When firm trial dates cannot be maintained, the entire litigation process for that case becomes gridlocked.

In this situation, a recurrent scenario unfolds. As the trial date approaches, lawyers and litigants stand at the ready. Witnesses, both percipient and expert, must be prepared, transported, and ready to proceed to trial the moment that the Court is available. Because slippages in the actual start of the trial are anticipated, the lawyers and the litigants must schedule blocks of time that not only take into account the immediate, scheduled trial days but also additional slippage days. Thus, witnesses whose testimony may take only a single day must be scheduled to be available over several days.

When a case does not proceed to trial on the appointed day and trails, the lawyers and witnesses still must stand at the ready -- a status that directly increases the amount of time and the costs for litigants. On some occasions, cases trail for weeks or even months.

When a case is continued from the scheduled trial date rather than merely trailed, the lawyers, witnesses, and litigants all turn their time and attention to other matters. The litigation process for that case essentially becomes dormant. Over time, it stagnates. As the new trial date approaches, the litigants once again prepare for trial, with their lawyers

duplicating a substantial part of the trial preparation that occurred for the first trial date. This time-consuming and expensive process occurs repeatedly in the Central District as the judges are usually unable to proceed on the date originally set.

Accordingly, the Advisory Group recommends that all judges on the Court must commit themselves to using this litigation management tool. However, to ensure that the date is realistic and that the trial occurs when scheduled, the Advisory Group recommends a fundamental change in the Court's management of its caseload: the use of separate Civil and Criminal Divisions.

2. The Court Should Divide Into Criminal and Civil Divisions.

The Advisory Group recognizes that its recommendation regarding firm trial dates is difficult if not impossible to implement. All too often the Court is unable to adhere to the trial date that it has set because of the ever-expanding demands of the criminal calendars. Because the Constitution demands that criminal matters take precedence over civil ones, criminal cases are on a rigid timetable under the mandates of the Speedy Trial Act.

Further, in recent years criminal cases have become more complicated and prolix, resulting in greater trial time for them. And as criminal sentencing has become much more adversarial as a result of the Sentencing Guidelines, the sentencing process also has utilized much more judicial time.

For all these reasons, a district judge all too often has no choice but to postpone a civil trial date when faced with a new criminal matter that demands immediate attention.

Given these factors driving the judges' calendars, the question then becomes whether any procedures can be adopted that would permit judges to meet the civil trial dates assigned and still handle the criminal matters which take precedence. After considering the matter carefully, the Advisory Group concluded that the only realistic solution was to create two divisions of the Central District: a criminal division and a civil division.

The Advisory Group recognizes that the judges of the Court almost certainly would prefer to continue the current system of a joint criminal/civil docket. But it is the considered judgment of the Advisory Group that, as long as criminal cases take precedence over civil ones and delays continue in appointing a full complement of judges on the Court, civil trials will be postponed in far too many cases. When such postponements occur, the costs in terms of lost preparation for trial are very substantial, and the utility of a firm trial date as an important case management tool is lost.

The Advisory Group has concluded that a change in the assignment of cases is the only realistic means of addressing this problem, and thus recommends the institution of separate criminal and civil divisions. The system of two divisions that is being recommended would work as follows:

-- A series of six judges28/ would be assigned for a period of one year to handle all criminal cases. Judges would rotate into the criminal division for a 12-month period.

-- Upon transfer into the criminal division, the judge would keep his or her full complement of civil cases and would handle all matters relating to those cases except for trial. Once the civil case is ready for trial, it would be assigned to a judge in the civil division. Further, during the period that the judge remained in the criminal division, no new civil cases would be assigned to that judge.

-- Judges assigned to the criminal division of the court would handle only criminal matters, except for pretrial matters concerning the unresolved civil cases on the judge's docket at the time of transfer. To the extent that the criminal cases are too numerous for the complement of judges in the criminal division, excess cases would be assigned out to judges handling only civil cases, probably through some type of master calendar system.

-- At the conclusion of the 12-month assignment to the criminal division, the judge would complete any criminal trials that he or she had begun. All remaining criminal matters would be turned over to that judge's replacement, except cases in which only sentencing remained or in which the defendant had pleaded

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28/ This figure is a rough estimate arrived at by the Advisory Group after analysis of available data.

guilty. The judge would be rotated back to the civil division at this time.29/

This procedure would create a body of judges that would hear only civil cases. These judges would be able to set realistic trial dates and adhere to those dates. This type of system seems to work well in the Los Angeles County state courts, in which judges hear only civil or criminal matters exclusively.

Until this system can be implemented, the Advisory Group strongly urges a much greater sensitivity on the part of the Court to postponement of civil trial dates. Trial dates must be set as realistically as possible, given the various contingencies such as new criminal cases, other civil cases set for trial that may settle, etc. However, when a trial must be postponed, every effort should be made to notify counsel as early as possible and certainly before the expense of trial preparation and witness production is made, for a large part of the expense associated with these efforts is wasted when the trial does not take place as scheduled.

3. The Court Should Adopt a Three-Tier Tracking System.

Case management is an area that has been intensively studied over the last decade, and the literature on it is extensive. The 1989 Brookings Institute publication Justice for

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29/ One member of the Advisory Group expressed the opinion that judges rotating into the criminal division would be unduly burdened by maintaining the full complement of civil cases for pretrial purposes, and that the one-year assignment period was not sufficiently long for the program to be effective.

All, which greatly influenced the shaping of the Civil Justice Reform Act, takes note of the information developed on case management and recommends a tracking system. The available studies of such a system indicate strongly that is an effective means of reducing delays and the high costs of litigation.30/ The recent Report of the Federal Courts Study Committee declares:

> We encourage case management efforts by district courts, in particular (1) early judicial involvement to control the pace and cost of litigation (especially but not exclusively in complex cases), (2) phased discovery, (3) use of locally developed case management plans, and (4) additional training of judges in appropriate techniques of case management.

Report of the Federal Courts Study Committee 99 (1990).

Drawing from this background, the Advisory Group recommends that the Court adopt a case management system that

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30/ The Project Director of the American Law Institute's study, "Paths to a 'Better Way': Litigation, Alternatives, and Accommodation," has written:

> "Tracking" can be viewed in part as a response to the point made by many studies that general civil litigation today is roughly divisible between numerous modest claims and a smaller number of large, frequently complex cases. It can take several forms and already is found to some extent in most jurisdictions. . . . The state of the art is advancing, with such innovations as the apparently successful Differentiated Case Management Project in Bergen County, New Jersey, with three basic tracks (expedited, standard and complex) and regularized, active management as the case progresses.

Rowe, Background Paper, "American Law Institute Study on Paths to a 'Better Way': Litigation, Alternatives and Accommodation," 1989 Duke L.J. 824, 880-81.

assigns cases to different "tracks" for pretrial purposes. From the perspective of reducing delay, the tracking system has the benefit of setting a proposed length for the pretrial phase of the case at the outset of the litigation based upon the case's complexity. Thus, the case is managed according to its individual features, rather than through a method that treats all litigation as functionally equivalent.

Specifically, the Advisory Group endorses a "three-track" system: simple, standard, and complex cases. Plaintiff's counsel would designate on the face of the complaint whether the case will require "simple," "standard," or "complex" case management by the Court, while defense counsel would answer the same question in their responsive pleading. If the parties differed in their designations, they would be required to meet and confer in an attempt to reach an agreement. If no agreement was reached, the Court, either prior to or as part of the first mandatory status conference, would enter an order assigning the case to one of the three tracks.31/

The tracking system would have specific limits and features applicable to each separate track. For example, the Court's rules could require that absent good cause shown to the contrary, simple cases must be completed by trial or otherwise within 18 months of filing, standards cases within 24 months of filing, and complex cases within 36 months of filing. The tracks would also have limits on discovery assigned and differences in

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31/ See recommendation on status conferences set forth below in this Report.

pretrial procedures. The amount of discovery initially authorized for each of the three tracks is different. Fewer depositions and interrogatories would be permitted for simple cases than for standard cases, and more permitted for complex cases than standard cases. Any threshold limit, however, could be adjusted upon a showing of good cause to meet the exigencies of the particular case.

The tracking system also will take into account the need for "phased discovery" in cases. Phased discovery should not ordinarily be necessary in cases on the simple track. In standard cases, the individual conducting the early neutral evaluation of the case will consider whether discovery should be phased, while the special master will perform that function in complex cases.

To provide incentives to litigants and lawyers not to overstate the case's complexity and to minimize costs, cases in the simple track should be exempt from personal appearances before the Court in all pretrial proceedings, such as status conferences and discovery conferences, and from the full requirements of Rule 9. Conferences would be held by telephone unless for good cause the Court orders otherwise. Further, other recommendations in this Report suggest several ways in which the tracks would differ, such as through the routine appointment of a special master for complex cases.

The responses by the Central District Judges to the questionnaire circulated by the Advisory Group indicated some consensus on the key factors in determining whether a given case

is "complex." They listed, in order of importance, the type of action (e.g., class action, derivative action), the nature and number of parties, and the type of claim or claims.32/ In addition, several existing models of three-track systems that are used in other districts set forth criteria which could be used. If the criteria were clearly spelled out in the Court's rules, the Court would have to assure itself that the parties' suggestions of the appropriate track for the case fulfill the requirements of the rule. If they did not, the submission would violate Rule 11's requirement that the pleading or other paper be "well grounded in fact and . . . warranted by existing law."

The Advisory Group emphasizes that the key to any tracking system is the setting of a realistic firm trial date, a recommendation made above in this Report. Unless the Court assigns a firm trial date to the case and adheres to it, the use of a tracking system will not be particularly productive. Indeed, it could actually increase the expense in a particular case and perhaps delay it as well, if the parties find that the trial is postponed time after time.

32/ In deciding the appropriate track, the following additional factors would appear appropriate for the Court's consideration: (1) the nature, scope, and complexity of anticipated discovery and evidence, and the potential case management by the Court to reduce such scope and complexity; (2) the anticipated number of witnesses and the length of trial, and the potential for reduction of both by active case management by the Court; and (3) the general necessity or potential for active case management by the Court to enhance or expedite settlement, to expedite disposition of the case by limiting discovery or requiring that discovery or issue resolution proceed in a particular order, or to address issues of special precedential or public significance (e.g., national security, public figures, etc).

4. The Court Should Adopt Early Neutral Evaluation for Standard Cases.

A mechanism for alternative dispute resolution that has gained increased attention and respect in recent years is the use of so-called "early neutral evaluation" ("ENE"). In such an evaluation, which occurs soon after the commencement of the litigation, the parties meet with a neutral, non-judicial evaluator who informally analyzes the merits and demerits of the parties' cases. The purpose of the evaluation is to assist the parties and their counsel in candidly evaluating the case before embarking on the more expensive stage of discovery in the litigation. Such a system has been in place in the Northern District of California for some years, and that District has reported success with it.

The Advisory Group recommends that the Central District adopt a modified form of ENE. In particular, the Group recommends that in addition to evaluating the merits of the case, the evaluator also perform a second function: attempting to aid the parties in crafting a case management plan for use in the litigation. The evaluator would assist the parties in such matters as sequencing discovery, scheduling motions, and informally exchanging information.

Furthermore, the Advisory Group recommends that the ENE process be coordinated with the tracking system that it has also endorsed. In particular, the Group recommends as follows:

-- Cases assigned to the "simple" track would have no early neutral evaluation. The reasons are twofold. First,

because these cases are relatively uncomplicated to begin with, an evaluator is of less use in sorting out various aspects of the case for the parties. Second, because discovery and pretrial proceedings in such cases will be limited, the evaluator is not really needed to guide the formulation of a case management plan for the parties. In short, the Advisory Group concluded that "simple" track cases should be kept as simple as possible, with a minimum of required pretrial procedures such as use of early neutral evaluation.

-- Cases assigned to the "standard" track would make use of early neutral evaluation at the outset of the case.33/ In many ways, these are ideal cases for ENE: sufficiently complicated so that ENE can be useful in evaluating the case for the parties and in creating a case management plan, but not so complex that neutral evaluation is realistically not possible at the outset of the case.

-- Cases assigned to the "complex" track would not use any formal early neutral evaluation. By their nature, complex cases are so complicated as to make an early evaluation by any one quite difficult; moreover, the information to make that evaluation may not be available until substantial discovery is completed. In many of these cases, the parties are sophisticated business entities engaged in very serious disputes and have thought carefully about the pros and cons of litigation, and its costs, before bringing the lawsuit.

33/ One member of the Advisory Group favored ENE, but only after initial discovery had been taken.

Instead of using ENE in complex cases, these cases should be assigned to a special master.34/ The special master will assist the parties in creating a case management plan and, with the assistance of the parties, will determine when and how settlement discussions will take place.

5. The Court Should Increase the Number of Status Conferences and Hear Them Telephonically.

The Advisory Group members concluded that an important step which the Court can take to reduce delay is increasing the number of status conferences held in particular cases. The benefits of these conferences are often subtle, but they are real and very significant. First, if counsel recognize that they must periodically account to the Court for the progress of the litigation, they are more likely to avoid posturing in pretrial proceedings such as discovery and to approach the litigation more reasonably and responsibly. Second, status conferences ensure that the case is constantly kept moving toward trial, and thus toward a final disposition.

Third, status conferences allow the parties to raise issues in a less formal setting, in a more timely manner, and at less cost than by the usual procedure of noticed motions. They also afford the Court an opportunity to give the parties its views on a variety of subjects of interest to them, thus providing an efficient mechanism for ensuring the continued progress of the litigation.

34/ See discussion of this recommendation below in this Report.

Finally, the status conference serves as an important but informal means by which the Court can indicate the specific direction that it believes the case should take. For example, the Court might indicate to one of the parties that a motion for partial summary judgment on a particular issue would be appropriate, point out a fruitful avenue for settlement discussions, or suggest how the sequencing of discovery might proceed.

Local Rule 6.4 should be amended so that status conferences are mandatory in all cases and are scheduled at regular intervals by the Court. The actual number of conferences in any case would depend upon the particular management "track" to which the case was assigned at the first status conference. Even simple cases, however, benefit significantly from more than a single status conference. Furthermore, Local Rule 6.4 should also be amended to expressly require the Court to enter an order at the conclusion of a status conference which would both define and confine aspects of the case as it progresses toward trial.

The Advisory Group recognizes that preparation for and attendance at such conferences can be expensive and thus drive up the cost of the litigation. In general, however, the Advisory Group believes that the benefits of such periodic conferences in pushing the litigation toward an earlier resolution far outweigh the costs. To avoid undue expense, the Advisory Group suggests that in all simple and standard cases, the conferences take place by telephone.

6. The Court Should Require Mandatory Settlement Conferences Before Any Civil Case Goes to Trial.

The Advisory Group believes that mandatory settlement conferences are a useful, important means of reducing delay in civil litigation. They force parties to confront the merits of a case as well as the costs of litigating the matter, and they can perform this function both at the outset of litigation as well as just prior to trial.

In addition to affecting delay, the mandatory settlement conference also has features that make it an important method for controlling litigation costs. The conference provides counsel and the parties with a judicially supervised forum in which to explore the potential for settlement. Such a forum is particularly important at the point in a case where discovery is complete, for a party now knows, often for the first time, the full scope of the evidence and whether that evidence is favorable or unfavorable. The settlement judge, moreover, can use this forum as a means of educating the principals about the "realities" of their case. Finally, the conference can be used as a last-chance vehicle for suggesting alternative dispute resolution as a means of settling the case without a full-blown trial.

Accordingly, the Advisory Group believes that the use of mandatory settlement conferences should be increased under the circumstances outlined below. In particular, mandatory settlement conferences should be held at the completion of the discovery stage of the litigation prior to trial.

Who attends the conference is critical to its usefulness. The Advisory Group believes that such conferences are more likely to bear fruit if the parties are required to attend them, as well as representatives of any insurance carriers that are involved.

7. **The Mandatory Settlement Conference Should Be Heard by a Judicial Officer.**

Another important issue is who should preside over the settlement conference. If the judge to whom the case is assigned presides, there is the obvious problem of appearing to jeopardize a fair trial if the matter is not settled, since the same judge who supervised the settlement conference also would have to try the case. A related problem is that having the trial judge hear the settlement conference encourages gamesmanship on the part of lawyers, who may seek to place their case in the best light for the upcoming trial rather than honestly attempting to settle the matter.

For these reasons, the Advisory Group believes that, given the benefits in delay and cost reduction when cases are settled, the best practice would be to have another judicial officer sit as the settlement judge in the case. The active participation of a federal and judicial officer in the settlement conference is the best mechanism for maximizing settlement possibilities; indeed, certain judges on the Court are well known to the practicing Bar for their ability to fashion settlements among parties. District Judges or Magistrate Judges who have demonstrated ability in this area might be appointed for a period

of three to six months to act in a full-time capacity as settlement judges. Judges who sit in this capacity would continue with their civil calendars but would not try cases while acting as full-time settlement judges.

The Advisory Group fully recognizes that requiring judicial officers to sit as settlement judges is a step that imposes a burden on those judges. It considered whether this burden was justified, particularly in light of the fact that using judicial resources for this function renders judges unavailable for other work, such as trying cases, while they are attempting to facilitate settlements.35/

It ultimately concluded that only judicial officers -- whether District or Magistrate Judges -- have the authority necessary to conduct effective settlement conferences. Further, it decided that on a cost-benefit basis, the use of judicial resources in this effort would be positive, as effective settlement conferences can avoid prolonged days in trial.

Mandatory settlement conferences require attorneys to face the prospect of settling cases, and litigants to face the

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35/ One suggestion considered at length by the Advisory Group was to have the Federal Bar Association compile a list of attorneys to act as settlement officers, with only attorneys who fulfilled certain criteria (litigation experience, expertise in certain fields, etc.) placed on the approved list. The settlement attorneys in the normal case would be compensated for their work by the parties, although in cases where compensation would not be fair to a particular party, the settlement attorney would have to work on a pro bono basis. In the end, however, the Advisory Group rejected this suggestion as ineffective.

the litigation, although perhaps not to the total cost when discovery disputes are immediately resolved or the case is settled short of trial. When a party in a complex case is unable to reasonably bear its pro rata share of the special master's charges, the parties could stipulate to (or the Court to appoint) a Magistrate Judge. Certainly the Magistrate Judges are currently quite busy, but at least some of them have indicated informally to members of the Advisory Group that they would like to do more of this type of work.

D. CONTROLLING DISCOVERY COSTS AND DELAYS.

The Advisory Group's experiences and the responses to its questionnaire confirm that discovery unquestionably causes a large segment of the costs and delays that the Civil Justice Reform Act was intended to address. There are, however, various components to the problem of discovery cost, each of which requires separate consideration. One component is the amount of discovery, while another is attorney misconduct during the discovery process. A third component is the amount of time and effort necessary to present and obtain a resolution of the discovery dispute from the court.

1. The Court's Adoption of the Suggested Tracking System will Place Presumptive Limits On the Quantity of Discovery.

The amount of discovery necessary for a particular case is difficult to determine in a vacuum. It depends in significant part upon the complexity of the issues and the location, availability, and forthrightness of the witnesses. If the Court

adopts the tracking system suggested above in this Report, it can address the amount of discovery initially permissible.

However, the utilization of a tracking system which allocates the number of interrogatories and depositions based upon the complexity of the case is only a first step. It does not ultimately resolve the discovery needs of a particular case, for whether the parties require more depositions or interrogatories depends upon the nature of the issues and the parties' access to proof. While the tracking system at least with regard to simple cases has a presumptive limit on the amount of discovery, this limit is only a general estimate of what that case normally requires to achieve a timely, reasoned, and fair adjudication. If the suggested tracking system is adopted and early neutral evaluation is utilized in "standard" cases, the evaluator -- after consulting with the parties and considering their requests -- will suggest to the Court an appropriate discovery program for that case. The parties to "simple" and "standard" cases will be free to apply to the Court for orders to limit or expand the initial allocation.

While a perception exists among some lawyers and judges that the discovery process has run amuck and that lawyers take far too many depositions, the Advisory Group believes those concerns are addressed through the tracking system. Under that system: (1) there is a presumptive limit on discovery in simple cases, (2) the neutral evaluator participates in the planning of the discovery process for standard cases, and (3) a special master is involved in determining the amount of discovery in a

complex case. The special masters, who will be lawyers experienced in handling the particular type of complex case, will have a good sense of the various types and amount of evidence necessary to support the parties' respective claims.

With this background in mind, the Advisory Group now turns to several other recommendations addressed to the problem of unnecessary costs and delays caused by discovery.

2. The Court Should Issue a Standing Order Defining Inappropriate Conduct During Depositions.

Attorney conduct during discovery is a significant problem. For whatever reasons, many young lawyers believe that "hardball" tactics are to be desired and emulated as a successful litigation strategy. However, there is a fine line between fair and foul conduct.

The Advisory Group's sense is that the Court must establish a baseline standard of conduct. That baseline could take the form of a general order, such as that issued by the Eastern District of New York, or an individual order issued to the parties in each case, as is the practice of the Western District of Washington. Certain actions invariably lead to excessive discovery costs, as they recur repeatedly in litigation and require countless hours of briefing and ultimately hearing before the Court. The Advisory Group believes that the Court should address these problems generically to prevent them from occurring.

By outlining in general fashion behavior that is and is not appropriate at a deposition, the order puts counsel on notice

that if they descend below the line without good cause, they can expect sanctions. The positive effects of such an order would be twofold: (1) the deportment of offending counsel would significantly improve, and (2) the party seeking sanctions would not face the time and costs of demonstrating the inappropriateness of the offending lawyer's conduct. Thus, time would be saved during the actual discovery process as well as in the research and writing of the pleading which presents the issue to the Court.

Matters which could be handled through a standing order include:

-- Setting forth rules about how depositions are to be conducted where multiple parties are involved. For example, the Court could require that each side ordinarily designate a single attorney to conduct the main examination of the deponent, and that questioning by other counsel primarily cover matters not previously addressed.36/

-- Limiting the types of objections that may be raised at deposition to those involving (1) a privilege against disclosure; (2) some matter that may be remedied if presented at the time, such as objecting to the form of the question; (3) the responsiveness of the answer; or (4) an objection that the question seeks information beyond the scope of discovery.

36/ The Advisory Group is not suggesting that any party forfeit its right to participate in the deposition, only that the deposition be coordinated for purposes of efficiency.

-- Limiting the circumstances under which a direction to the deponent not to answer will be considered proper. The Court could order that such directions are improper, except (1) on the ground of privilege or on the ground that the questioning assumes a fact not established, or (2) for the purpose of enabling a party or deponent to present a motion to the Court or special master for termination of the deposition. When directions not to answer are improperly given and the Court is forced later to correct the matter, the delay and expense of obtaining that correction are unnecessary.

-- Limiting the circumstances under which private conferences between deponents and their attorneys are allowed.

Given the variety of circumstances under which depositions occur, a general order of this type can address only a relatively narrow set of issues. It will, however, chill improper conduct and give the Court added credibility by predicting discovery sanctions when attorneys engage in these inappropriate, expensive, and time-consuming tactics.

3. . <u>Court Procedures Should Permit the Parties to Raise Deposition Disputes with the Court During the Course of the Deposition</u>.

The most serious attorney misconduct often occurs during the course of deposition, and that misconduct has a tremendous effect on the cost of the litigation. Consider the following scenario in a Central District case:

An officer for a party is being deposed at his corporate headquarters in New York City. Opposing counsel is vigorously and legitimately pressing the witness, who is on the

verge of making significant admissions. To avoid those admissions, counsel for the witness terminates the deposition on spurious grounds, and all lawyers return to Los Angeles. The witness, who resides and works in South Carolina, returns home.

To obtain an order requiring resumption of the deposition, the lawyer taking the deposition must: (1) order a transcript of the deposition; (2) initiate the time-consuming process of meeting and conferring with opposing counsel, who understandably will not be interested in a meeting, let alone a prompt meeting; (3) draft an appropriate pleading; (4) obtain a date to have the matter heard by a judicial officer, a date that may be as late as 30 days after the motion is filed; and (5) appear for a hearing and argue the matter. After the judge issues an order, the deposition will not resume until two or perhaps three months after the deposition was improperly aborted. The parties will incur the expense of transporting their lawyers and the deponent back to New York and the deposition will continue, but the witness will have been "taken to the woodshed" so that his further testimony is now without real significance. In sum, the party taking the deposition will be denied legitimate evidence, and the costs for this deposition may well have quadrupled.

If the judicial officer supervising the discovery had been available for a telephone conference, the termination of the deposition could have been avoided by a telephone call from the lawyers during the deposition. Various federal districts throughout the country have general orders or rules which

authorize the attorneys, during the course of depositions, to call the judicial officer for immediate resolution of a dispute. This procedure has the effect not only of resolving the problem immediately, thus significantly reducing the cost to litigants, but also of preserving evidence which otherwise may be lost. Moreover, the fact that the procedure is available has a salutary effect on the deportment of contentious counsel.

The Judges of the Central District currently do not follow this procedure. They should, however, and the Advisory Group so recommends.

4. **District Judges Should Be Relieved of Initially Deciding Discovery Disputes, and the Matters Should Be Assigned to Magistrates in Simple and Standard Cases, and to Special Masters in Complex Cases.**

The Advisory Group spent much time discussing the current methods used by the Court to resolve discovery disputes. The so-called "meet and confer" requirement for discovery disputes in the Central District was examined in light of the Group's charge to address factors which cause increased delays and costs in litigation. The Advisory Group certainly recognizes that, from the Court's perspective, the procedure was intended to narrow particular disputes that must be decided during the discovery phase of litigation.

The Advisory Group members, however, felt that this requirement has significant negative impact upon the expeditious progress and cost of the litigation. The requirement builds into the case a 30-to-60 day delay in settling each discovery dispute, and the negotiations mandated by the rule are often protracted,

disharmonious, and expensive. Furthermore, because lawyers are aware that bargaining will occur during those "meet and confer" sessions, they tend to raise spurious issues with the knowledge that they can bargain them away during the negotiations. Thus, lawyers sometimes act improperly during the discovery process because they realize that they can get off the "misconduct hook" by dropping their opposition at the meet and confer session.

In short, the Advisory Group felt that lawyers were frustrated with the "meet and confer" process, and that while in some measure it advanced the Court's goal of settling disputes by negotiation rather than judicial resolution, it was contributing to unnecessary delays and costs. Given the Court's commitment to this process, however, the Advisory Group is not recommending that the "meet and confer" requirement be eliminated. Rather, in light of the adverse effects associated with the process, it believes that some effort should be made to identify alternative means of handling discovery disputes.

Accordingly, the Advisory Group recommends that the Judges be relieved of initial resolution of discovery disputes. Complex cases should be assigned automatically to a special master whose duties would include discovery disputes. In simple and standard cases, the Advisory Group recommends that disputes initially be sent to Magistrate Judges for resolution. In all instances, problems arising during depositions should be resolved by telephone conferences with the judicial officer.

The Advisory Group recognizes that this suggestion would involve a reallocation of court resources, as Magistrate

Judges would have to be freed from other duties. The Report does not recommend where that time could be found. The Advisory Group believes, however, that possibilities do exist for streamlining other tasks performed by the Magistrate Judges so that their time could be spent on discovery motions and disputes.37/

This recommendation to take initial discovery disputes away from the Judges in the Central District has two premises. The first is that judicial time is better spent on matters directly related to managing the litigation or deciding it: dispositive motions, status conferences, and trials. Discovery disputes too often involve posturing, and while the issues in them can be important, they are unlikely to affect the resolution of the case.

Second, the Advisory Group is not recommending that District Judges totally abdicate any role in discovery. The Judges must remain available as the ultimate arbiters of discovery disputes; they would hear parties' appeals from discovery decisions by special masters or Magistrate Judges, should those appeals be made.38/

The Advisory Group also submits that the recommendation for increased use of status conferences (see discussion above)

37/ For example, the Advisory Group questions whether the Magistrate Judges' time is well-spent writing the lengthy reports and recommendations which are now required of them in numerous cases.

38/ One member of the Advisory Group believed that taking initial discovery disputes away from the Judges would not aid the goal of reducing costs and resolving cases more quickly.

can be helpful in avoiding discovery disputes. Lawyers who feel that a judge is keeping a watchful eye on their particular litigation are less likely to posture in discovery matters. Status conferences also provide an opportunity for the parties to resolve a particular discovery matter without the need for a formal motion.

5. **The Court Should Endorse a Rule Change Restricting the Permissible Scope of Discovery.**

A majority of the Advisory Group members believes that it is time for a fundamental change in the scope of discovery allowed under the Federal Rules of Civil Procedure. It is now well-established under current law that a party in federal litigation may pursue the discovery of any facts that are "relevant to the subject matter involved in the pending action." Fed. R. Civ. P. 26(b)(1). The federal courts have construed this section broadly. As one leading text observes, this term "allow[s] discovery of matters within the knowledge of the party seeking it, of opinions and conclusions, and of matters not directly admissible in evidence." 4 Moore, Moore's Federal Practice ¶ 26.55, pp. 26-92.

The wisdom of this empowerment for broad discovery has recently come under intense scrutiny. Many have alleged that authorizing such discovery needlessly escalates the cost of litigation, and that its cost is far disproportionate to the benefits which accrue from it. Most recently, the Bush Administration proposed changes in the scope of discovery as a

major feature of its suggested reforms of the civil justice system in the United States.

A majority of the Advisory Group believes that these criticisms of the scope of discovery are well-taken. The Advisory Group certainly recognizes that the Central District cannot unilaterally implement changes of this nature, but rather must await reform either through amendments to the Federal Rules of Civil Procedure or through legislation. Nonetheless, the Advisory Group believes that the Court should endorse these reform efforts and thereby go on record that the present system of discovery imposes excessive costs on parties that are not warranted by corresponding benefits.

E. OTHER METHODS FOR CONTROLLING COSTS AND DELAYS.

1. The Court Should Use Telephone Conferencing and Eliminate Personal Appearances of Counsel in Simple and Standard Cases, Except for Case Dispositive Motions.

A significant contributor to the high cost of litigation is the attorney's time attending hearings at which lawyers for many parties in diverse cases are scheduled to appear before the Court at the same time. The obvious problem is that since only one case is heard at a time, attorneys in the other cases -- and sometimes their clients -- spend time traveling to the courtroom and then wait, often for lengthy periods of time. They cannot use the waiting time productively, for it is very difficult to predict when the Court will reach a particular case on its calendar. Indeed, members of the Advisory Group have seen instances in which an entire courtroom full of attorneys had to

wait the better part of a full morning while a trial judge heard arguments in only two cases.

In the vast majority of cases, matters could be handled just as easily by a telephone conference call among the judge and counsel. For example, status conferences and final pretrial hearings in simple and standard cases are generally appropriate for telephone conferences. The Court sets the date and time, and orders plaintiff's counsel to arrange the telephone conference. The charges for telephone conferences are taxed as costs against the losing party. In each case, the judge retains discretion to order personal appearances, and at case-dispositive motions, counsel usually will wish to be present and should be permitted to appear personally.

Given the excessive costs and unproductive time spent by attorneys and litigants traveling to and awaiting hearing of their matters, the Advisory Group recommends that the Court make telephone conferences part of its usual regimen. Although telephone conferences are not presently used in the Central District, the Advisory Group emphasizes that its survey found widespread support for implementation of this practice among attorneys practicing before the Central District. It is time to use this existing technology.

2. <u>The Court Should Use Split Calendars</u>.

A second method exists to avoid the unnecessary costs incurred while counsel sit in the courtroom awaiting the call of their case on law and motion matters: the use of a "split calendar." Rather than have all matters calendared for a single

time -- 9:00 a.m., for example -- the Court would stagger the times at which matters are heard over a single morning. Thus, some matters may be scheduled for 9:00 a.m., others for 10:00 a.m. and 11:00 a.m.

Attorneys on the Advisory Group have seen this technique used very effectively by district judges elsewhere. While the technique poses a slight disadvantage if the Court completes its calendar ahead of time and then must leave the bench to await the calendar call on the next hour, the Advisory Group believes that judges can accommodate themselves to this problem by making productive use of the interim time. More importantly, however, a split calendar will save on the immense, unnecessary costs incurred by attorneys who now simply sit in the courtroom for as long as two hours awaiting the call of their cases.

3. The Court and the Parties Should Continuously Evaluate the Appropriateness of Bifurcation.

The Advisory Group recommends that the Court's Rules be amended to require all parties in their pretrial statements to address whether bifurcation or separate trial of specific dispositive issues is feasible and desirable. The appeal of bifurcation is obvious. Bifurcating issues of liability from issues of damages can result in significant savings for litigants. From a defendant's perspective, for example, bifurcation may result in avoiding the need to develop a case on damages' issues, while a plaintiff's verdict on the initial phase may yield a quick settlement from the defendant. Furthermore, in

a time of excessive demands upon judicial resources, bifurcation is efficient from the standpoint of the Court, for it can avoid the need for a "second trial" on the bifurcated issue.

Studies of federal and state courts have shown the benefits of bifurcation, and the vast majority of judges surveyed on this question have overwhelmingly supported the principle and practice of bifurcation. Despite this support, however, the Advisory Group feels that bifurcation is an under-utilized technique that often is overlooked in the drive to get the case to trial. The Court should focus more attention on the issue by in essence adopting an institutional viewpoint that bifurcation is something that presumptively should occur in many cases, rather than only rarely.

The Advisory Group recognizes that in some cases liability and damages are not easily separable or the issues involved are not complex. But when bifurcation is appropriate, it is a reasonable, cost-effective technique for streamlining civil litigation that should be encouraged. If the Court makes greater use of status conferences, as recommended above, it should be in a better position to determine which issues in the case are subject to bifurcation.

4. The Court Should Require Cover Sheet Identification of Certain Facts and Legal Issues.

As noted above in Part III of this Report, the Advisory Group believes that several important, case-dispositive issues consistently recur in litigation. These include questions of standing, determination of whether a private right of action

exists, and determination of the applicable statute of limitation. Early identification of such dispositive issues may speed resolution of a number of civil cases, thus reducing the burden on the Court.

Accordingly, the Advisory Group recommends that the local rules be amended to require that all civil case filings be accompanied by a cover sheet containing a succinct statement of each of the following:

-- The statutory or case authority which creates a private right of action for each claim for relief;

-- The factual and legal basis for plaintiff's standing to maintain each claim for relief;

-- The statute of limitations applicable to each claim for relief, the date on which each claim accrued, and the length of and basis for any periods of tolling of the statute; and

-- Other information that might be useful to disposing of issues in the case. For example, some judges have required the parties to submit information about causes of action under the Racketeer Influenced Corrupt Organizations Act.

This procedure will not eliminate the necessity for the Court to fill in legislative gaps by deciding these questions. It will, however, permit the trial judge to focus immediately on these potentially case-dispositive issues, perhaps reducing litigation costs.

5. The Court Should Encourage, But Not Require, Alternative Dispute Resolution.

Much has been written about the use of alternative dispute resolution ("ADR") as a means of avoiding the delay and expense of the judicial system. The methods explored include early neutral evaluation, mediation, court-annexed arbitration, and summary trials. To date, the Central District has not made extensive use of these tools.

As discussed above in this report, the Advisory Group is recommending that a form of early neutral evaluation be used in conjunction with a three-tier tracking system for case management. Other than this method, the Advisory Group does not believe that any other form of alternative dispute resolution should be imposed upon the parties to a case. It does believe, however, that these ADR tools should be made more widely available to parties on a voluntary basis.

Accordingly, it encourages the Court to experiment with setting up such mechanisms and to publicize their availability to lawyers and their clients who have matters pending before the Court. At the first status conference, the Court could inform the parties of ADR methods which are available and encourage the parties to make use of them. If any of these methods proves particularly effective, the Court at a later date could consider more extensive use of them. For the moment, however, use of these methods should be left to the discretion of the parties.

F. METHODS FOR JUDICIAL CONTROL OF LAWYER CONDUCT.

1. The Court Should Continue to Strongly Endorse and Should Also Enforce the County Bar Association Guidelines for the Conduct of Litigation.

In April 1989, the Los Angeles County Bar Association formally adopted its so-called "guidelines" for the conduct of litigation. These guidelines, which received widespread publicity, were in response to the increasingly accepted notion that common tenets of professionalism no longer exist among lawyers, and that the erosion of these tenets has given rise to a competitive, "dog eat dog" atmosphere. That atmosphere encourages -- indeed, guarantees -- excessive costs in litigation.

The Court already has recently endorsed the concept of the guidelines, and they are now distributed to the lawyers at the commencement of litigation. So, some may ask why further action is necessary. Furthermore, others may argue that it is inappropriate for any court to intrude into such ethical areas, as lawyer conduct generally is a subject for lawyer self-governance rather than judicial interference.

The Advisory Group has considered these arguments and rejects them. Lawyer conduct that is outside the bounds of commonly accepted standards of professionalism has profound effects on the judicial system. Not only does such conduct produce excessive litigation costs, such as where parties engage in "discovery battles" to wear each other down, it contributes to the growing public perception that justice is not the principal goal of the judicial system in this country. The Advisory Group

believes that the Court has a strong role to play in endorsing the guidelines, which set forth a standard of conduct that will not jeopardize clients' rights but will ensure vindication of them in a cost-effective manner. Furthermore, the guidelines, as well as the requirements of the general order on discovery recommended above in this Report, can be used as appropriate standards of conduct when the Court considers whether sanctions, including those called for by Rule 11, are warranted in particular cases.

2. The Court Should Adopt a Consistent Approach to Enforcement of Rule 11.

The Advisory Group recommends that the Judges of the Central District attempt a more uniform enforcement of the provisions of Federal Rule of Civil Procedure 11.

Rule 11, which has become well known to federal practitioners in the last decade, declares:

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction. . . .

Rule 11 is aimed at curtailing abuses that so often lead to excessive costs in civil litigation. At present, it is the best tool available for responding to parties who, with their counsel, make factual assertions without the slightest evidence to back them up. Similarly, it deters counsel from making legal arguments that have no reasonable basis.

The Advisory Group recognizes that Rule 11 has been the subject of substantial criticism from the Bar. The criticisms focus on three factors: (1) uneven application of the Rule in different courts; (2) unfair and disproportionate application of the Rule to certain classes of litigants, such as civil rights plaintiffs; and (3) waste of judicial resources and attorney time in litigating so-called "satellite" issues focused on sanctions rather than the merits of the case.

The Advisory Group certainly is not capable of addressing all of these criticisms. Other appropriate groups are currently studying these issues, and amendments to the Rule are now in process. The Advisory Group believes, however, that no matter how the Rule is changed by amendment, the Central District on an institutional basis must address the question of uneven application of the Rule.

Although the evidence before the Advisory Group is largely anecdotal, it is widely believed that some Judges in the Central District impose sanctions under Rule 11 on a regular basis, while others with the same type of caseload rarely make use of it. Accordingly, whether Rule 11 is invoked in a particular case may depend largely on the "luck of the draw" when

the case is initially assigned by the Clerk. While the Advisory Group recognizes that each Judge can and should exercise discretion within the context of the litigation before the Court, the lack of uniform application has detrimental effects. Not only does the lack of uniformity give rise to the perception of inequity in application, the Rule's non-use in many cases means that a principal device now available to combat the high cost of litigation is simply not being used.39/

Some institutional, Court-wide response is needed. Accordingly, the Advisory Group respectfully submits that the Court should commit itself to a more uniform application of the Rule and should investigate in depth various mechanisms by which uniformity can be achieved.

3. The Court Should Consider the Continuing Problem of Frivolous Pleadings.

The Advisory Group believes that some claims included in pleadings -- perhaps an increasing number -- are made without any real basis in fact and without any basis for concluding that discovery will yield evidence to substantiate the claim. While the Advisory Group cannot empirically demonstrate this conclusion, the anecdotal evidence of its members and of other

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39/ The Group discussed several possible recommendations. For example, the Court might issue a general order outlining a set of uniform principles on how Rule 11 will be applied. Perhaps, as part of that effort, it would adopt the principle that a document filed in substantial contravention of a Court rule is presumptively subject to sanctions under Rule 11, and that the burden is on the filing party to demonstrate to the Court that sanctions are unwarranted. Another possibility is that, in each case in which the Court either grants or denies sanctions, it issue some sort of explanation for its ruling.

attorneys is quite extensive. Such claims in complaints and answers, of course, ultimately result in unnecessary costs and delay, as the parties expend resources on what are non-issues.

The difficulty lies in determining what steps might be appropriate responses to the problem. As discussed above, Federal Rule of Civil Procedure 11 provides that the signature of an attorney or party on any document filed with the Court constitutes a certificate that the document is "well grounded in fact." The rule points up a fact that is often overlooked in the age of "notice pleading": a minimum factual basis is required before a plaintiff or defendant should be allowed to litigate an issue. If that minimum foundation is not present but the case proceeds anyway, the opposing party -- whether plaintiff or defendant -- is unfairly subjected to litigation costs that it should not bear. In the most egregious cases, the very existence of the lawsuit and the costs of defending it may impel settlement even if the underlying claim lacks merit.

More often than not, however, it is impossible to determine whether factual assertions are baseless until the case has concluded. By that time, the cost and delay associated with defending groundless factual allegations have taken a substantial toll on the Court and the parties. Moreover, even if the claim ultimately is found to be baseless, that conclusion seldom receives the attention it deserves. If the case is settled, as most are, the settlement agreement likely will preclude any subsequent claims that any allegation was baseless. Alternatively, if the case goes to judgment, in most instances

the parties will be in no mood to spend further amounts of money litigating a Rule 11 proceeding. In fact, application of Rule 11 at the very end of a case may not be legally possible.

The Advisory Group debated what procedure could be used to test a factual claim or defense before the party alleging it is entitled to full discovery and before the opposing party incurs the attendant costs of litigating it. The Group considered suggesting a rule under which the Court could require a party to make a minimal showing of the facts underlying a doubtful claim or defense before being allowed to proceed. Ultimately, however, it concluded that such a procedure was not feasible.40/

Accordingly, the Advisory Group concluded that while this Report would make no recommendation on this issue, the problem merits attention of the Court.41/

VI. CONCLUSION.

Unquestionably, insufficient judicial resources are available to process the ever-increasing criminal cases within the confines of the Speedy Trial Act and still provide justice in civil disputes. Judges are stretched too thin over too many

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40/ See, e.g., Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 61 Law Week 4205 (Mar. 2, 1983) (rejecting any requirement of "heightened pleadings" under 42 U.S.C. § 1983 as inconsistent with the "notice pleading" system of the Federal Rules of Civil Procedure).

41/ Some members believe the Advisory Group should recommend a rule requiring parties to make a minimal showing of the factual basis for a claim or defense in any case where the Court concludes there is reason to doubt it can be supported.

cases, and civil litigants cannot expect expedient resolution of legitimate disputes.

Before developing the solutions in this Report, the Advisory Group looked at many procedures used in other courts and discussed potential solutions from the viewpoints of different Court users. The Advisory Group proposes recommendations which are significant departures from the "comfort zone" of existing procedures.

Some members of the Court may view the Report's recommendations as impractical or unworkable. However, the Court as an institution sees and experiences only one side of the litigation equation -- what is said in the pleadings and heard in the courtroom. In contrast, litigants and their lawyers spend hundreds of hours and thousands of dollars outside of the courtroom for every minute they spend inside. This Report has addressed problems of cost and delay from the additional perspectives of the attorneys and parties who find it increasingly difficult to obtain justice because of the existing costs and delays attendant to litigation.

Public institutions -- and the Court is no exception -- are not easily moved off the status quo. Now, however, the winds of change are stirring. Through the passage of the Civil Justice Reform Act, Congress has indicated its intention to intervene unless the judiciary moves in a positive fashion to meet the criticisms leveled at its procedures and at the actions of lawyers who practice before it. It is in the spirit of reform

for the sake of improvement that this Report and its recommendations and conclusions are submitted.

In compliance with the requirements of the Civil Justice Reform Act, the Advisory Group hereby submits its Report to the Chief Judge of the United States District Court for the Central District of California for consideration by the Court. The members of the Advisory Group are grateful for the opportunity to participate in this effort. They remain willing to aid the Court's consideration of the Report's conclusions in any way that the Court deems helpful.

Respectfully submitted,

/s/ Don Smaltz

Donald C. Smaltz,
Chair

March 19, 1993

VII. MINORITY STATEMENT SUPPORTING LEGISLATION AUTHORIZING THE PREVAILING PARTY TO RECOVER ATTORNEY'S FEES

The undersigned members of the Advisory Group strongly urge that the full Committee recommend to the Court that it support legislation to change the current rule on attorney's fees. Specifically, they recommend support of legislation providing that the prevailing party in cases litigated in the federal courts recover its reasonable attorney's fees in addition to costs and expenses presently recoverable.

Although opponents of such a change argue that its implementation would deter assertion of meritorious claims, particularly in cases where the defendant possesses significant wealth, there is already broad use and acceptance of permitting either litigant to recover attorney's fees. In our view, the benefits of so doing far exceed any perceived detriments.

In an article in the June 1990 issue of Claims Magazine entitled "The Litigation Explosion: Fee Shifting and Rule," Walter K. Olsen advocates that a prevailing litigant recover its reasonable attorney's fees. Olsen argues that, among the world's civilized countries, the United States is almost alone in permitting such recovery in limited instances for plaintiffs but not at all for successful defendants. He succinctly describes the benefits, logic, and equity of permitting equal opportunity for recovery of those fees.

The recovery of attorney's fees by the prevailing litigant, beyond statutory entitlement for plaintiffs in certain cases, is a common provision in commercial contracts in the

United States. It is always addressed and often provided for in private and commercial arbitration agreements, as well as in other alternate dispute resolution procedures. Accordingly, the recommendation does not call for the adoption of a novel, untried, or unaccepted monetary recovery; rather, it is an extension and expansion to all litigation in the federal judicial system. In doing so, it provides equal opportunity for recovery by defendants as well as plaintiffs.

In evaluating the pros and cons of such a rule, it must be conceded that prospective plaintiffs would have to consider a potential incremental monetary exposure in the event of loss of the litigation. It should be stressed that, to the extent it is a deterrent, such exposure would only be incremental, and it would only be suffered in the event of a loss. A plaintiff who is confident that his or her claim is valid would not be deterred; rather, that plaintiff should be encouraged to seek vindication or relief -- particularly equitable relief -- because of the reasonable expectation of obtaining a judgment or decree at little or no cost.

A plaintiff asserting a doubtful or speculative claim of course would be expected to consider the monetary exposure of possibly paying the defendant's attorney's fees. That exposure, however, would be in addition to those potentially significant costs and expenses currently recoverable by the defendant. To the extent currently recoverable costs deter the plaintiff from asserting claims, exposure to the cost of the defendant's attorney's fees may be a further deterrent, but only an

incremental one. And that incremental deterrent would only affect litigation of doubtful or speculative claims.

In the context of today's litigious society whose courts have burgeoning dockets, such an incremental deterrent may be both desirable and beneficial. The plaintiff's exposure would exist only in the event of a loss at trial or on appeal, giving impetus to settlements and relieving trial calendars and dockets. As far as the impact on contingent fee representation is concerned, the defendant's recovery of attorney's fees in such cases will impose on plaintiffs' single -- not double -- exposure to attorney's fees. Finally, in cases where plaintiffs are now entitled by statute to recovery of their attorney's fees, permitting the defendant to recover fees results in true equality of risk and exposure in the litigation.

/s/ George Babikian, Howard A. Boltz, William B. Campbell, Bruce Hochman, Gavin Shallenberger, Donald C. Smaltz

In general, I agree with the above-stated position on attorneys' fees, with the exception that I do not believe the rules should apply in contingent-fee cases. The fact that an attorney will not recover unless he or she wins is a sufficient deterrent to filing frivolous lawsuits.

/s/ Richard M. Coleman

SUMMARY AND ANALYSIS OF SURVEY RESULTS

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

PURSUANT TO THE CIVIL JUSTICE REFORM ACT OF 1990

prepared by

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Central District of California

March 1993

EXECUTIVE SUMMARY

This report describes the methodology employed to obtain responses from a broad range of individuals and attorneys with experience in Federal U.S. District Court for the Central District of California as to the causes of delays and costs in civil litigation. Then, conclusions and recommendations derived from the survey are summarized. Here are the highlights of the report:

1. **Methodology.** The purpose of the survey, questionnaire construction, respondent contact, field work and analysis are described. While some improvements could be made in methodological efficiency, the procedure described adequately supports the conclusions and recommendations derived from it.

2. **Patterns of Response.** The causes of delay and costs are summarized in terms of responses of attorneys and of judges. Litigants' responses were too few and too biased to be reported. The patterns of responses were very clear, and very consistent, across respondent groups.

3. **Causes of Delays and Costs.** The authors group these causes into five categories: (1) judicial systems issues, (2) attorney/practice issues, (3) judicial administration issues, (4) political/legislation issues, and (5) other issues. Specific responses are tabulated for efficient reader comprehension.

4. **Recommendations.** Recommendations essentially track the categories noted above. A number of specific recommendations, ranging from dividing the criminal or civil calendars of judges to the mandatory use of telephone conferences in lieu of personal appearance, were offered by respondents.

SUMMARY AND ANALYSIS OF SURVEY RESULTS

REPORT TO THE ADVISORY GROUP

FOR THE CENTRAL DISTRICT OF CALIFORNIA

PURSUANT TO THE CIVIL JUSTICE REFORM ACT OF 1990

This report describes the methodology employed by the Civil Justice Advisory Group of the Central District of California pursuant to the Civil Justice Reform Act of 1990. Advisory Group Chair, Donald C. Smaltz, Esq., commissioned Ben M. Enis, Professor of Marketing at the University of Southern California and Research Director for JurEcon Inc., and William V. Trefethen, Principal of Schaffer, Trefethen & Company, Consultants to Management and Counsel to prepare this report. Contents are the sole responsibility of Messrs. Enis and Trefethen.

The report consists of two parts: survey methodology review, and conclusions and recommendations. Appended are copies of the questionnaires employed, and a compilation of all of the data generated by the survey.

Survey Methodology

The section reviews the methodology employed to conduct the survey. The methodology is described and discussed, in terms of purpose, questionnaire construction, response plan, field work, and analysis.

Purpose of the Survey

The Civil Justice Advisory Group consists of twenty-three members of the California Bar who practice before the Judges of the Central District, the Court Clerk and the Chief Judge in an ex officio capacity.

Members of the Advisory Group are experienced in a wide variety of litigation typically heard in the Central District. To augment this experience, the advisory group sought information from other sources. Specifically, the purpose of the survey was to seek input, from non-committee members with experience in Federal Courts, as to the causes of delays and excess costs in civil litigation.

The survey was designed to obtain the widest possible information in the most efficient way. Accordingly, information was sought from six interested groups: Judges of the Central District, Magistrate Judges of the District, various Bar Associations, and Federal practitioners; additionally, the views of a representative group of litigants and their attorneys were sought.

Questionnaire Construction

Questionnaires were constructed for each of the six groups listed above. The Advisory Group began with questionnaires prepared by advisory groups in other districts. These questionnaires were tailored via group discussion to the needs of the Central District of California.

This process resulted in questionnaires designed specifically to elicit the information sought by the advisory group. As is the case with all committee work, however, the resulting questionnaires were more lengthy than optimal methodological efficiency might have desired. Moreover, the questionnaires were tailored specifically to the vocabularies and concerns of each separate population from whom information was sought. Therefore there are some discrepancies across questionnaires in question format and wording.

While questionnaire construction could have been a bit tighter, in a methodological sense, the questionnaires as designed were more than adequate to the task of soliciting useful information from the various populations. Copies of the final questionnaires are separately attached as Appendix B.

Respondent Census/Sampling Plan

As noted above, information was sought from six different groups.

Those contacted, number of questionnaires sent, and responses received were as follows:

Group	Number Sent	Responses Received
District Judges	29	22
Magistrate Judges	11	9
Bar Groups	72	27
Practitioners	908	190
Litigants (clients)	1000	62
Litigants' attorneys	800	182

For the first four populations, a census was attempted. That is, questionnaires were sent to every member of these four groups. District Judges and Magistrates were contacted directly. Questionnaires were sent to each of the seventy-two Bar Groups in the Central District, and to every member of the Los Angeles and Orange County Chapters of the Federal Bar Association.

To supplement information from the above groups, the office of Clerk of the Court, Leonard Brosnan, was asked to draw a representative sample of litigants. Under the supervision of Laura Enciso, one thousand cases which had gone to trial were identified. From this list, Ms. Enciso and her staff randomly selected three hundred cases. Questionnaires were sent to attorneys of record in each case. In addition, those attorneys were asked to forward a separate questionnaire to their clients.

This approach to response solicitation is, for the most part, methodologically sound. Censuses of the four groups removed all possibility of sampling error. Responses from litigants' attorneys were substantially similar to those of other practitioners.

Responses of litigants themselves, however, were limited, and probably were not representative. First, the two-step sampling procedure may have reduced the number of clients who actually obtained questionnaires. Second, and more important, the pattern of responses obtained is similar to that obtained from restaurant or hotel comment cards: only the most dissatisfied generally take the time and effort to respond. The authors of this report concluded, therefore, that litigant responses were too limited and perhaps too biased to constitute valid information. These responses were ignored in the analysis of results.

Data Collection

Lists of respondents, prepared as discussed above, were forwarded to Christopher H. Benbow, Esq., a lawyer working with the Advisory Group Chair, for distribution to the various groups. Mr. Benbow supervised the mailing of questionnaires to each individual on each of the lists. Questionnaires were attached to a cover letter from the Advisory Group, and contained a postage-free return envelope. The envelope bore the seal of the United States Government, and postage was franked. This procedure underscored the importance of the survey to prospective respondents.

Respondents returned questionnaires to Mr. Benbow. He then removed all identification from the questionnaires, and assigned an identification code to each one. Thus, in the analysis stage discussed below, complete respondent anonymity was preserved. Once the anonymous questionnaires had been forwarded to Mr. Trefethen for analysis, the codes were shredded. Subsequently, the original questionnaires were also destroyed. While contrary to typical research practice, destruction of original documents was deemed necessary to insure the confidentiality commitment made to respondents.

Survey Analysis

William Trefethen, co-author of this report, prepared the initial data analyses. He first coded and tabulated the individual questionnaires and thus achieved a concise compilation of all of the data obtained in this survey.

Next, the data were summarized. Open-ended questions were summarized by inspection. The authors read the original responses, and grouped them into logical and reasonable categories. The objective questions were scaled: strongly agree, agree, neutral/no answer, disagree, strongly disagree, quantified as +2, +1, 0, -1, -2, respectively. A weighted average response was then calculated by multiplying the number of responses in each category by their appropriate weights, then summing and dividing by total responses.

For example, consider the following hypothetical responses: 10 strongly agree, 15 agree, 12 neutral/no response, 17 disagree, 31 strongly disagree. The calculation is as follows: (10 x 2) + (15 x 1) + (12 x 0) + (17 x -1) + (31 x -2) = 20 + 15 + 0 - 17 - 62 = -44. Dividing by the total of 126 responses (-44/126) = -.35, indicating disagreement with the statement scaled. The scale ranges from -2.0 to +2.0. In general, the authors consider scores lower than -0.4 to represent strong disagreement; scores between -0.4 and zero to represent disagreement; scores between zero and +0.4 to represent agreement; and scores above +0.4 to represent strong agreement.

Because most of the data were obtained from population censuses, and the sample data were substantially similar to that obtained from the population censuses or were deemed invalid, no statistical calculations beyond these simple weighted averages were attempted.

Methodological Summary

While the methodology employed is in some ways less than optimally efficient, it is more than adequate to support the conclusions presented below. The information obtained is so clear, and so strong, that the only tangible result of increasing methodological sophistication would be somewhat more precision in the quantification of the information obtained. The results are so clear-cut that additional precision is superfluous. The data speak for themselves.

Conclusions and Recommendations

There is no question that all respondents in the survey agree that there are delays/excess costs in the civil justice system of the Central District of California. This section summarizes conclusions and recommendations derived from the survey.

Causes of Delay and Excess Costs

Exhibit 1.0 summarizes responses on the causes of delay and excess costs. As noted above, practitioner responses obtained from a census of the Los Angeles and Orange County Federal Bar Associations track closely with the attorney responses from the random sample drawn from Federal Court cases. These responses were aggregated. Moreover, the responses of individual attorneys closely parallel those of the Bar Group.

As Exhibit 1.0 indicates, the most frequent causes of delay and excess costs, in order of mention, are as follows: the heavy criminal case load upon the civil justice system, the backlog of cases, excessive uncontrolled discovery practices, judicial mismanagement, inability to maintain firm trial dates, and various other attorney and judicial practices. These responses are very clear and consistent across all groups of attorney respondents.

The responses of the Judiciary and the Magistrates indicate similar unanimity. As might be expected, the judges place somewhat more emphasis on attorney practices as causes of delay and excess costs, and somewhat less emphasis upon judicial shortcomings, although these also are mentioned. Again, the data are clear and consistent across judges, and track fairly closely with attorney responses. Finally, as noted above, litigant responses were not deemed valid, and so were not tabulated. An even clearer picture of responses across groups of respondents is given in Exhibit 1.1: Graphs of Responses. The graphs highlight conclusions discussed in this section.

In the authors' judgment, these causes of delay and excess costs can be summarized in five categories: (1) rules of procedure/judicial systems issues, (2) attorney/practice issues, procedure/judicial systems issues, (3) judicial/administrative issues, (4) political legislative issues, and (5) other issues. Each is briefly discussed below.

Rules and Procedures/Judicial Systems Issues. The system, by its very nature, creates delays and excess costs. Foremost here is the necessity that criminal matters take precedence over civil matters. Although respondents do not quarrel with this philosophical point, the inevitable result is delays in the system's handling of civil cases. Second, as noted above, there are not enough judges in the system to handle the case load.

Attorney/Practice Issues. Judges were particularly emphatic in pointing out that a major cause of delays and costs in the civil justice system was the practices of certain attorneys. Too often, in the view of most judges (and many attorneys), too much time, effort, and expense are devoted to uncontrolled discovery and other dilatory tactics. Moreover, lack of attorney experience and/or preparation as well as poor cooperation between attorneys on opposite sides of the same case contribute significantly to delays and excess costs in the civil system.

Judicial/Administrative Issues. A reflection of the judges' complaints about lawyers practices is attorney complaints about the way judges administer the system: judges do not maintain firm trial and discovery dates, are inadequately involved in settlement negotiations, and are not willing to use such expeditious procedures as telephone conferences. Attorneys, and some magistrates, complain that the judiciary make insufficient use of magistrates, clerks, and/or special masters.

Political/Legislation Issues. A number of causes of delay/excess costs in the civil justice system can be traced to politics and the legislative process. For example, in the opinion of many respondents, Congress has been less than prompt in creating new judgeships, and in confirming Presidential appointments to presently vacant benches. Second, Congress has passed a number of laws "federalizing" criminal cases. Thus, there are more cases in the system and insufficient judge power to promptly and expeditiously handle them.

Other Issues. Finally, there are a number of other issues which contribute to delay and excess costs. Perhaps foremost among these are the threat of malpractice, with the concomitant need for excessive due diligence, as well as the increasing complexity of civil cases, particularly in the area of anti-trust litigation.

Recommendations to Reduce Delay and Excess Costs

Exhibit 2.0 summarizes responses offering recommendations to reduce delays and excess costs. This Exhibit first summarizes responses to selected open-ended questions related to recommendations to reduce delay and excess costs. These recommendations are continued onto the second page of Exhibit 2.0; then responses to selected objective questions related to recommendations to reduce delay and excess costs are summarized.

Open-ended responses are summarized for practitioners/attorney and for the judiciary. Responses of the Bar Groups and magistrates were captured in the objective questions. The reader is invited to examine closely the detailed and thoughtful responses summarized in Exhibit 2.0. A graphic sense of these recommendations is depicted in Exhibit 2.1.

In general, the recommendations can be summarized as tracking the five categories of delay and excess costs mentioned above: (1) judicial systems, (2) attorney/practice, (3) judicial administration, (4) political/legislation issues, and (5) other issues. A brief discussion of each follows.

Rules and Procedures/Judicial System Issues. Perhaps the clearest and most forceful conclusion to be drawn from the survey is the need to increase the number of judges, by both creating new judgeships and filling vacant benches via Presidential appointments. Second, and more controversial, there is strong support for assigning judges to try criminal or civil cases, but not both, during the same calendar period. Cases might also be designated, e.g., simple, standard, and complex, with differing rules and procedures for each.

Attorney/Practice Issues. The basic recommendation here is to improve the professionalism of attorneys. This would involve more thorough preparation on the part of attorneys, closer cooperation between them, and less use of tactics designed specifically to delay the process.

Judicial/Administrative Issues. Judges can help improve attorney professionalism by proposing discovery limits and cut off dates, and maintaining a firm trial calendar. More effective use of magistrates, clerks and special masters, as well as more efficient management of judges' offices were recommended.

Political/Legal Issues. Many respondents recommend that the United States Congress act more diligently to create new judgeships and fill existing vacancies. And there is support for Congressional restraint in passing legislation which adds additional cases to the present system.

Other Issues. There are other recommendations to reduce delay and excess costs. These are specific to the issues involved. The authors believe that the above comments briefly summarize the general nature of survey recommendations to reduce delays and excess costs. The reader is invited to examine the actual responses, both as summarized in the Exhibits, and as presented in their entirety in Appendix B.

Summary of Recommendations to Reduce Delays and Excess Costs

No doubt some of the survey responses as to the causes of delays and excess costs, and recommendations for mitigating them, will be controversial. It is the task of the Advisory Group to address such issues. It is the task of this report to validate the survey responses which will be used by the Advisory Group.

This the authors do. Causes of delay and excess costs in the civil justice of the Central District of California, in the opinion of survey respondents, come through loudly and clearly. While some improvements might have been made in the methodology employed, the survey without question supports the recommendations and conclusions summarized herein.

Civil Justice Advisory Group

Summary of Attorney/Practitioner Responses To Objective Questions

Causes of Delay and Excess Cost

Issue	Question	Response
Cause: Vacancies	Recent congressional legislation is a substantial cause of congestion in Federal courts. (q 14)	
Cause: Vacancies	Delay is caused by the failure of the President to fill promptly judicial vacancies in the Central District. (Q 18)	
Cause: Vacancies	Delay is caused by the failure of Congress to consider confirmation of presidential nominations to the federal bench in a timely manner. (Q 19)	
Cause/Rec: Rules	Delay is caused by the use of different rules in Central District courtrooms, and uniform adherence to the Local Rules would reduce delay. (Q 20)	

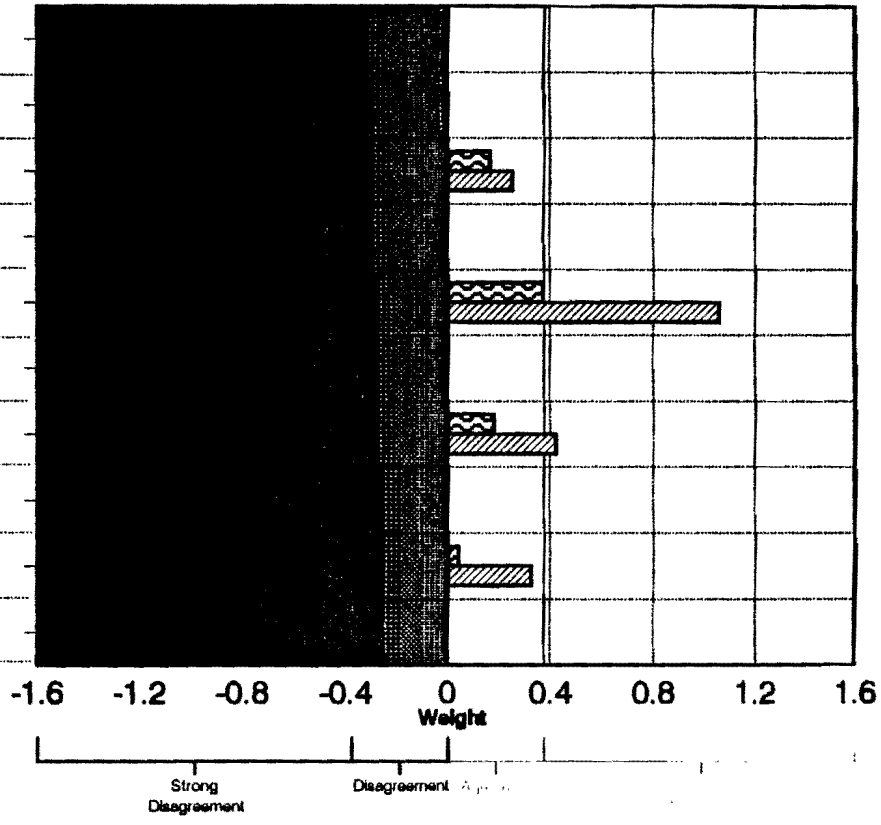

Exhibit 1.1, page 1/2

Civil Justice Advisory Group

Summary of Attorney/Practitioner Responses To Objective Questions

Causes of Delay and Excess Cost

Issue	Question	Response
	The following is a frequent source of judge-caused delay in the trial of civil actions in the Central District.	
Cause: Judiciary	Judges holding motions under submission without decisions in excess of 30 days. (Q 21.A.)	
Cause: Judiciary	Civil trials postponed shortly before scheduled trial date upon the court's order. (Q21.B)	
Cause: Judiciary	Judges allowing unrealistically long periods of discovery or the filing of dispositive motions. (Q21.C)	
Cause: Judiciary	Judges not requiring a discovery plan. (Q21.D)	
Cause: Judiciary	Judges not rendering decisions on a motion immediately after argument. (Q21.F)	
Cause: Judiciary	Judges declining to consider seriously dispositive motions. (Q21.G)	
Cause: Judiciary	Judges not actively case managing the matter. (Q21.H)	

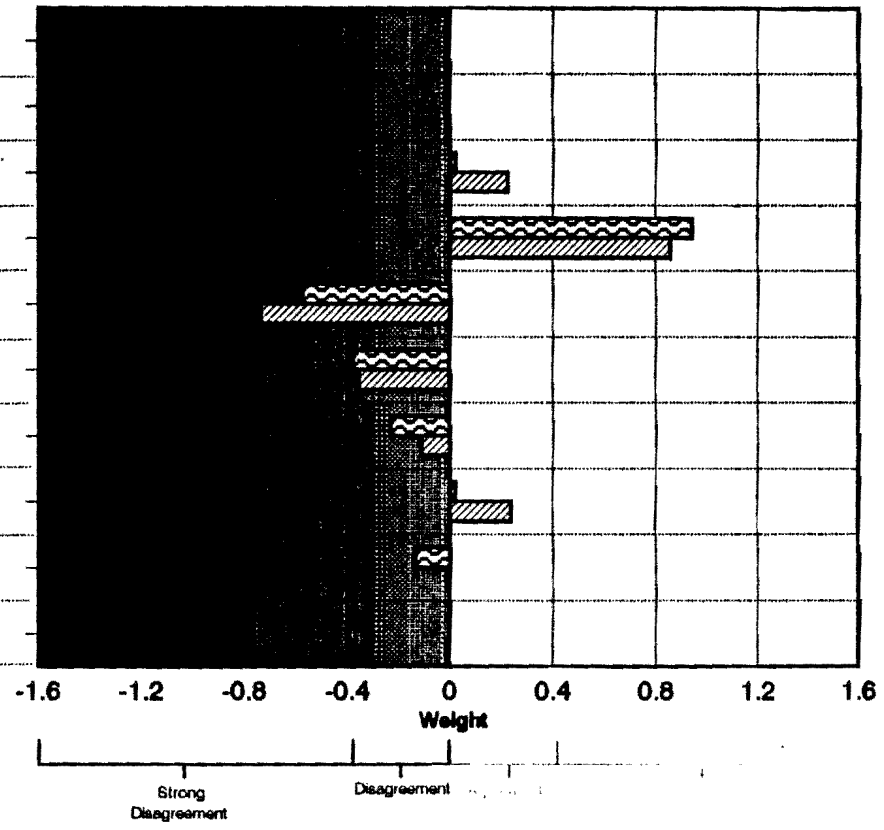

Exhibit 1.1, page 2/2

Exhibit 2.0
Civil Justice Advisory Group
Summary of Responses
Recommendations to Reduce Delay and Excess Cost

Issue	Practitioner/Attorney (190/182 resp.)	Bar Group (27 resp.)	Judiciary (22 resp.)	Magistrate (9 resp.)

Summary of responses to selected open-ended questions related to recommendations to reduce delay and excess expense.

Notes:

1. Examples apply to accross all categories. Not all examples apply to each category.

2. Includes multiple responses.

Recommendations to reduce delay: (Attorney question 6)

		Resp.
1.	Increase the number of judges	11
2.	Reduction in the number of cases, esp. criminal (e.g., splitting the court into criminal/civil divisions)	11
3.	More effective judicial management (e.g., more efficient, competent judges)	9
4.	Maintaining firm motion, discovery and trial dates	8
5.	Reduction and/or control of discovery	7
6.	Grant more, and rule promptly, on dispositive motions	5
7.	More judicial involvement in settlement process (early in case)	5
8.	Increased use of magistrates and other court personnel	
9.	Early mediation/settlement conferences or alternative dispute resolution	3

Recommendations to reduce cost: (Attorney question 10)

		Resp.
1.	Reduction and/or control of discovery	19
2.	Elimination of the need for oral argument and appearance (e.g., use of telephonic appearance)	12
3.	Maintaining firm motion, discovery and trial dates	11
4.	More effective judicial management (e.g., more efficient, competent judges)	8
5.	Raise standards or sanction attorneys who employ frivolous or dilatory tactics or are uncooperative	6
6.	More judicial involvement in settlement process (early in case)	4
7.	Simplify rules and filing procedures, reduce paperwork	

Recommendations to assist with time consuming tasks: (question 59)

		Resp.
1.	Reduction in the number of cases, esp. criminal	4
2.	Raise standards or sanction attorneys who employ frivolous or dilatory tactics or are uncooperative	3
3.	Increase the number of judges	1
4.	Reduction and/or control of discovery	1
5.	Increased use of Magistrates and other court personnel	1
6.	Reduce the "Federalization of crimes"	1
7.	Automatic recording of the transcript	1
8.	Changes in the law	1
9.	New Local Rule requiring counsel to meet and confer prior to embarking on a motion	

Exhibit 2.0
Civil Justice Advisory Group
Summary of Responses
Recommendations to Reduce Delay and Excess Cost

Issue	Practitioner/Attorney (190/182 resp.)	Bar Group (27 resp.)	Judiciary (22 resp.)	Magistrate (9 resp.)
Legislation:		Congress should address in legislation certain procedural issues which are a substantial cause of congestion. (question 4)		
Rules:	Mandatory settlement conferences would reduce delay or cost. (question 14-6 24-6)	Mandatory settlement conferences would reduce delay or cost. (question 12-6)	Rule 16 conferences are considered to be an effective case management tool and particular cases should not be exempt from the requirement of a Rule 16 conference. (question 7.8)	
	Voluntary settlement conferences would reduce delay or cost. (question 14-7 24-7)	Voluntary settlement conferences would reduce delay or cost. (question 12-7)		
	The Federal District Courts should adopt a "three track civil litigation docket", classifying a case on a track by degree of complexity. (question 19 29)	The Federal District Courts should adopt a "three track civil litigation docket", classifying a case on a track by degree of complexity. (question 17)	The courts should, when appropriate, encourage parties to cross move for summary judgment. (question 30)	The courts should, when appropriate encourage parties to cross move for summary judgment. (question 40)
	The Federal District Courts should adopt procedures which encourage and increase the usage of telephone conference calls for routine appearance in lieu of court hearings attended by counsel. (question 20 30)	The Federal District Courts should adopt procedures which encourage and increase the usage of telephone conference calls for routine appearance in lieu of court hearings attended by counsel. (question 18)		It would be sometimes helpful to place all "ready" cases on a central trial list for the next available district judge. (question 45a)
	Banning contingency fees for expert witnesses (question 14-15 24-15)	Banning contingency fees for expert witnesses (question 12-15)		If a district judge cannot try a case when ready, there should be a procedure to refer the case to another district judge who is available. (question 44)
	Rule 11 should be amended to establish clearer standards for sanctions and powers available under Rule 11. (question 16 26)	Rule 11 should be amended to establish clearer standards for sanctions and powers available under Rule 11. (question 15)		
	Rule 11 should be amended to empower Federal district courts to penalize those responsible for making unfounded assertions in filings, not merely the attorney who signs it. (question 18 28)	Rule 11 should be amended to empower Federal district courts to penalize those responsible for making unfounded assertions in filings, not merely the attorney who signs it. (question 16)		
Alternative Dispute Resolution:	In Federal District Court, reference of civil cases to alternative dispute resolution (ADR) before trial should be at the discretion of the parties. In other words, not mandatory. (question	In Federal District Court, reference of civil cases to alternative dispute resolution (ADR) before trial should be at the discretion of the parties. In other words, not mandatory. (question		

Civil Justice Advisory Group

Summary of Attorney/Practitioner Responses

Recommendations to Reduce Delay and Excess Cost

Issue	Question	Response
	The following procedures would reduce cost or delay in the civil litigation process: (Q 24)	
	Mandatory pre-discovery disclosures to be furnished before either party files discovery, including: (Q24-1)	
Rec: Discovery	Identifies all persons known or believed to have substantial discoverable information about the claims or defenses; (Q 24-1.A)	
Rec: Discovery	Description and location of all documents that are reasonably likely to bear substantially on the claims or defenses; (Q 24-1. B)	
Rec: Discovery	Computation of damages claimed; (Q 24-1.C)	
Rec: Discovery	Substance of any insurance agreement that may cover any resulting judgement.; (Q 24-1.D)	
Rec: Discovery	Any report of an expert who may be called at trial. (Q 24-1.E)	

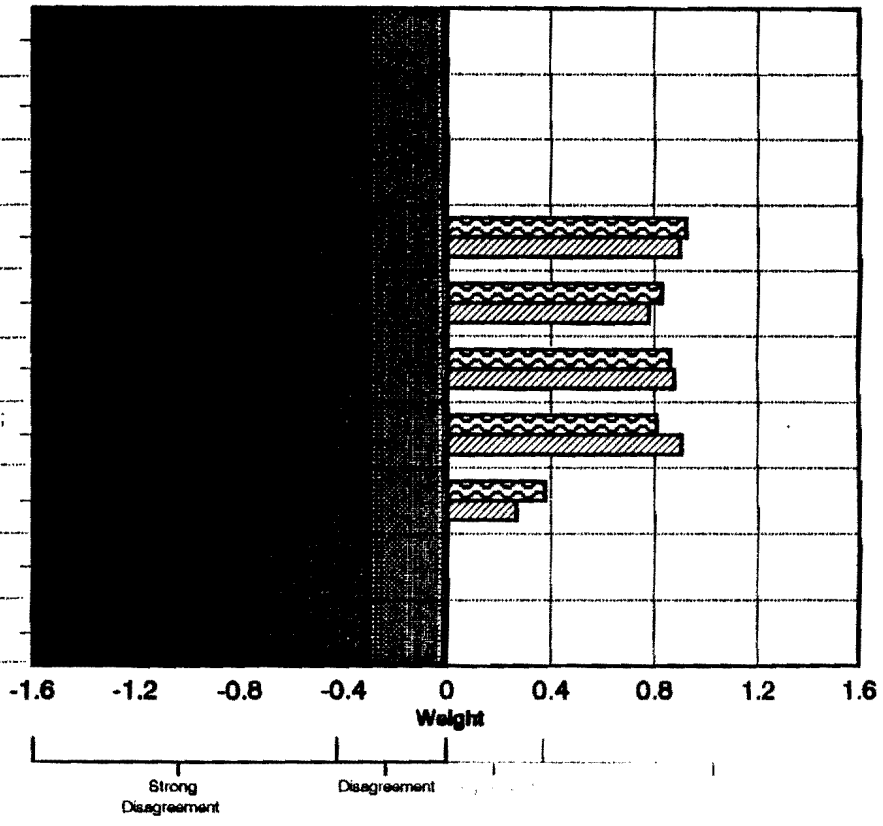

Exhibit 2.1, page 1/4

Civil Justice Advisory Group

Summary of Attorney/Practitioner Responses

Recommendations to Reduce Delay and Excess Cost

Issue	Question	Response
Rec: Discovery	The following procedures would reduce cost or delay in the civil litigation process: (Q 24)	
Rec: Rules	Elimination of the meet and confer requirements (Q24-5)	
Rec: Rules	Mandatory settlement conferences (Q24-6)	
Rec: Rules	Voluntary settlement conferences (Q24-7)	
Rec: Rules	Use of magistrate judges for all non-dispositive matters (Q24-8)	
Rec: Discovery	Right to depose experts with advance submission of proposed expert testimony (Q24-9)	
Rec: Rules	Remand of all pendant claims (Q24-10)	
Rec: Rules	Stricter standards for admission to the Federal Bar. (24-11)	
Rec: Rules	Increased disciplinary proceedings of the Federal Bar (Q24-12)	

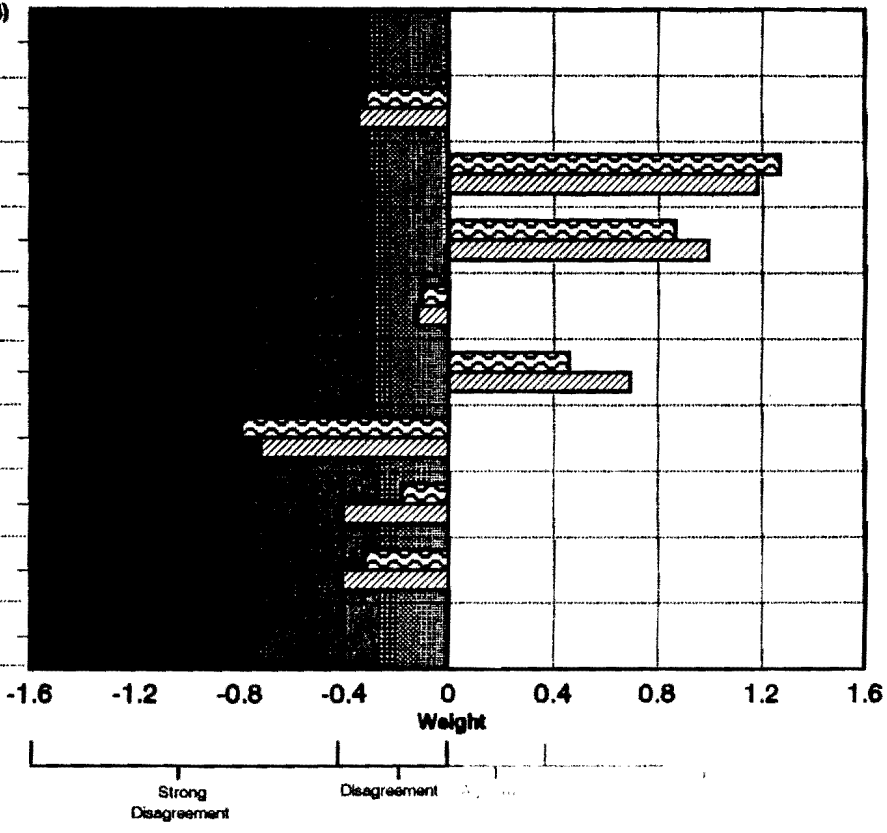

Exhibit 2.1, page 2/4

Civil Justice Advisory Group

Summary of Attorney/Practitioner Responses

Recommendations to Reduce Delay and Excess Cost

Issue	Question	Response
Rec: Rules	The Federal District Courts should adopt a "three track civil litigation docket", classifying a case on a track by degree of complexity (e.g., most complex, somewhat complex, and not complex) and limiting time of discovery accordingly. (Q 29)	
	The Federal District Courts should adopt procedures which encourage and increase the usage of telephone conference calls for routine appearance in lieu of court hearings attended by counsel for the following: (Q 30)	
Rec: Tele. conf.	Law and motion calendar appearances where no oral argument is anticipated (Q 30.A.)	
Rec: Tele. conf.	Orders to show cause re: dismissal for failure to submit an early meeting report (Q 30. B.)	
Rec: Tele. conf.	Orders to show cause re: dismissal for failure to submit an early meeting report (Q 30.C.)	
Rec: Tele. conf.	Pre-trial conferences (Q 30.D.)	
Rec: ADR	**In Federal District Court, reference of civil cases to alternative dispute resolution (e.g., arbitration, mediation) before trial should be mandatory. (Q 33)**	
Rec: ADR	**If civil cases in Federal Court are deferred to alternative dispute resolution, the outcome of the ADR process should be binding upon the parties. (Q 34)**	
Rec: ADR	In Federal District Court, reference of civil cases to alternative dispute resolution before trial should be at the discretion of the parties. (Q 35)	

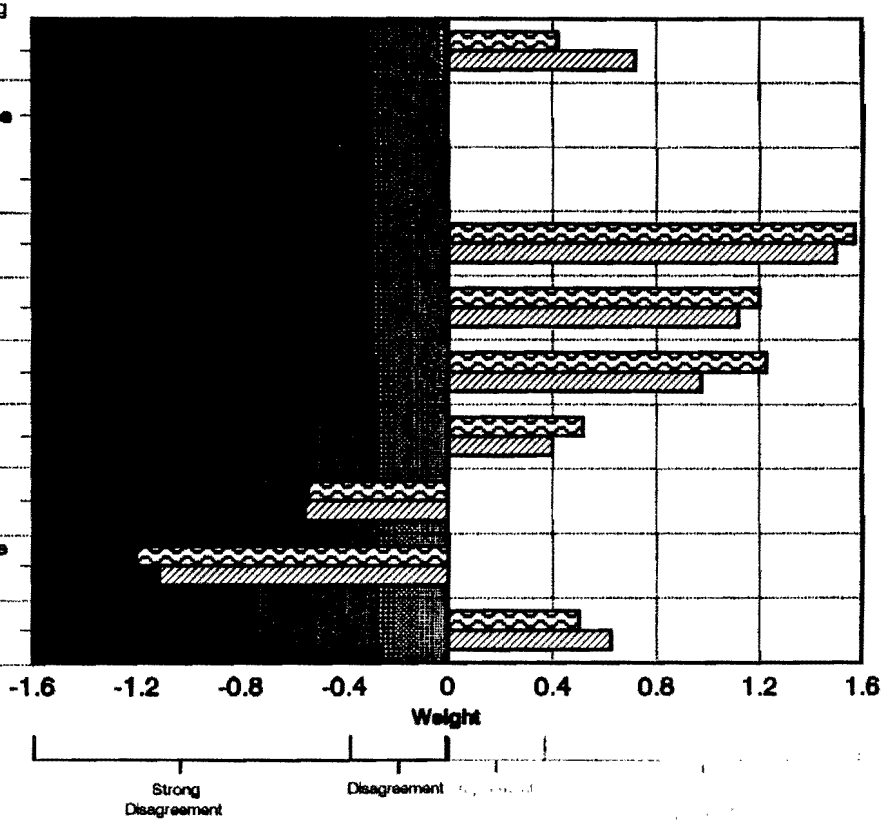

Exhibit 2.1, page 4/4

d. What reason? _____

_____

_____

e. Have these reasons had any impact to date on diminishing the degree to which Guidelines issues consume your time?

_____

_____

_____

62. a. What other types of legislation have caused delay in your handling of your civil docket?

_____

_____

_____

b. How do you cope with such an impact?

_____

_____

_____

_____

c. What suggestions do you have for reducing the impact of such legislation?

_____

_____

_____

_____

h. On the average, how many days does it take you to issue your written findings and conclusions? |_____|

59. a. What is the most time consuming aspect of your docket?

_____

_____

_____

b. What would assist you in handling this aspect of your docket?

_____

_____

_____

60. Has the necessity of continuing civil trials in order to accommodate criminal trials contributed significantly to delay in your handling of your civil docket?

Yes ☐ No ☐

Comments, if any: _____

_____

_____

61. a. Have the Sentencing Guidelines contributed to delay in your handling of your civil docket?

Yes ☐ No ☐

b. In what way? _____

_____

_____

c. Do you anticipate that the delay caused by the Guidelines will be reduced for any reason?

Yes ☐ No ☐

58. Typically, when presiding over a jury trial, what is your practice with respect to:

a. The number of days per week that the trial is convened? |_____|

b. Hearing motions in other cases while the trial is underway?

_____

_____

_____

c. Holding conferences in other cases while the trial is underway?

_____

_____

_____

d. Sitting consecutive days? _____

_____

_____

e. Sitting full days? _____

_____

_____

f. Interruptions of several days or weeks to handle other trials or matters?

_____

_____

_____

g. Ruling from the bench? _____

_____

_____

55. Please indicate what aspects of each of the cases listed above in response to Question 54 signify complexity.

Case Reference No. →	1	2	3	4	5
Parties.	[ ]	[ ]	[ ]	[ ]	[ ]
Complex facts.	[ ]	[ ]	[ ]	[ ]	[ ]
Discovery.	[ ]	[ ]	[ ]	[ ]	[ ]
Motion practice.	[ ]	[ ]	[ ]	[ ]	[ ]
Legal issues.	[ ]	[ ]	[ ]	[ ]	[ ]
Attorney conduct.	[ ]	[ ]	[ ]	[ ]	[ ]
Other, please describe.	[ ]	[ ]	[ ]	[ ]	[ ]

Additional comments:

56. In your view, what are the principal causes of expense in the conduct of civil litigation?

_____

_____

_____

_____

57. a. Are there any trends with respect to the types of cases that are before you that are factors in causing expense?

_____

_____

_____

b. What are those trends?

_____

_____

_____

[ ] Potential effectiveness of judicial intervention.

[ ] Potential role of Magistrate Judges.

[ ] Potential need for case-management conferences.

[ ] Jury trial.

[ ] Bench trial.

[ ] _____.

[ ] _____.

53. Utilizing the foregoing criteria or any other you may deem appropriate, approximately how many cases presently listed on your civil docket, excluding MDL and the asbestos cases, would you consider to be complex? (Please refer to a written list, rather than trying to recall.) ____

54. Please identify by name and case number five (5) of the most complex cases presently listed on your civil docket.

	Case Name	Case No.
1.		
2.		
3.		
4.		
5.		

49. Other than the designations of cases already used by the court for statistical purposes, can you suggest any means you think would be useful for differentiating cases on your docket for the purpose of analyzing delay or expense?

_____

_____

_____

_____

50. Do you believe that particular categories of cases would benefit from judicial non-interference, in other words, by leaving the parties alone?

Yes ☐ No ☐

51. a. If you answered yes to question 50, in what categories of cases should the courts adopt this hands-off approach? (You may wish to refer to the categories on page 2.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

b. Please indicate if you believe this should be the rule in <u>all</u> cases.

Yes ☐ No ☐

52. What criteria would you employ to determine that a civil case is complex? In the course of identifying such criteria, if you deem it appropriate, please use the following categories as examples of factors which may lead to complexity.

[ ] Type of action (e.g., class action, derivative action).

[ ] Nature and number of parties.

[ ] Type of claim or claims.

[ ] Substance of the questions presented (e.g., tax, patent, RICO, takeover).

[ ] Potential discovery necessary.

[ ] Pretrial motion practice.

[ ] Susceptibility to alternative dispute resolution.

[ ] Susceptibility to settlement. [list continues on next page]

44. What procedures do you follow to identify pro se cases in which counsel should be appointed?

_____

_____

_____

PRISONER CASES

45. Do you think it would be useful to hold hearings in prisoner cases at prisons?

Yes ☐ No ☐

46. If you answered **yes** to question 45, would you be willing to travel to prisons to conduct such hearings?

Yes ☐ No ☐

47. Do you think it would be useful for the court, together with the pro se clerk, to develop a standard set of interrogatories to be used in prisoner cases?

Yes ☐ No ☐

* * * * *

48. Identify by category any specific causes of delay or expense that you believe are more likely to become a problem with respect to some of the listed categories than others.

_____

_____

_____

_____

38. If you answered **yes** to question 37, in what particular categories of cases would you suggest this be done. (You may wish to refer to the categories on page 2.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____
(please specify)

BIFURCATED TRIALS

39. Do you routinely **bifurcate trials** (e.g., separating liability and damage issues)?

Yes ☐ No ☐

40. Do you believe it would be more useful to require bifurcation in certain categories of cases rather than in others?

Yes ☐ No ☐

41. In what categories of cases would required bifurcation be useful? (You may wish to refer to the list on page 2.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____
(please specify)

PRO SE CASES

42. Do you [as opposed to the court as an institution] employ any special procedures for screening pro se cases to identify ones not likely to be meritorious?

Yes ☐ No ☐

43. If you answered **yes** to question 42, what are the special procedures you employ?

_____

_____

_____

NOTE OF ISSUE

32. Do you believe that parties should file a note of issue when their case is ready to be placed on the trial calendar?

Yes ☐ No ☐

33. Would that device be more useful in some types of cases than others?

Yes ☐ No ☐

34. If you answered yes to question 33, in what categories of cases do you think that a note of issue would be useful? (You may wish to refer to the categories on page 2.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

"READY" JUDGES

35. If you cannot try a case when it is ready, do you routinely ask that it be assigned to a "ready" judge for trial?

Yes ☐ No ☐

36. a. Do you think it would be helpful to place all "ready" cases on a central trial list for the next available judge?

Always ☐ Sometimes ☐ Never ☐

b. Why, or why not?

_____

_____

_____

37. Do you think this technique would be more useful in particular categories of cases than in others?

Yes ☐ No ☐

27. If you answered **yes** to question 26, in what categories of cases should discovery be bifurcated? (You may wish to refer to the categories on page 2.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____
(please specify)

STANDARD INTERROGATORIES

28. Do you think that the use of **standard interrogatories** in particular categories of cases would be useful (e.g., some courts require asbestos plaintiffs to answer standard exposure and injury interrogatories at the outset of the case; RICO case statements)?

Yes ☐ No ☐

29. In what particular categories of cases do you think such a device would be useful? (You may wish to refer to the categories on page 2.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____
(please specify)

CROSS MOTIONS FOR SUMMARY JUDGMENT

30. Do you believe that courts should, when appropriate, encourage parties to cross move for summary judgment?

Yes ☐ No ☐

31. When might it be appropriate to cross move for summary judgment?

_____
_____
_____

DEPOSITIONS

24. Should the number of depositions be restricted in particular categories of cases?

Yes ☐ No ☐

25. a. If you answered yes to question 24, in what categories of cases should the number of depositions be restricted? (You may wish to refer to the categories on page 2.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

b. If you answered yes to question 24, state why you believe the number of depositions should be restricted in the categories you list.

_____

_____

_____

_____

c. Please indicate if you believe the number of depositions should be restricted in <u>all</u> cases.

Yes ☐ No ☐

BIFURCATED DISCOVERY

26. Should discovery be "<u>bifurcated</u>" in particular categories of cases? (No damages discovery)

Yes ☐ No ☐

19. Should discovery motions be prohibited and replaced initially by a letter to a Magistrate Judge?

Yes ☐ No ☐

20. Should the range of discovery devices available to litigants be limited by the particular type of case?

Yes ☐ No ☐

21. a. If you answered yes to question 20, in what categories of cases should the number of interrogatory questions be restricted? (You may wish to refer to the categories on page 2.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

b. Please indicate if you believe the number of interrogatory questions should be restricted in <u>all</u> cases.

Yes ☐ No ☐

22. Should the parties be required to choose between interrogatories and depositions in particular categories of cases? (You may wish to refer to the categories on page 2.)

Yes ☐ No ☐

23. a. If you answered yes to question 22, in what categories of cases should the parties be required to make such a choice?

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

b. Please indicate if you believe the parties should be required to choose between interrogatories and depositions in <u>all</u> cases.

Yes ☐ No ☐

f) In what categories of cases do you believe a **final pretrial order** is <u>most useful</u>? (You may wish to refer to the categories on page 2.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____ (please specify)

g) In what categories of cases are **pretrial orders** clearly unnecessary? (You may wish to refer to the categories on page 2.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____ (please specify)

DISCOVERY

16. What categories of cases, if any, generate a disproportionate number of discovery disputes? (You may wish to refer to the categories on page 2.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____ (please specify)

17. Should the Court's method of handling discovery disputes differ depending on the category of case?

Yes ☐ No ☐

18. If you answered yes to question 17, in what way should the method of handling discovery disputes differ by the type of case?

_____

_____

_____

PRETRIAL CONFERENCES

15. a) How frequently do you hold pretrial conferences? (check one)

Always ☐ Sometimes ☐

Often ☐ Seldom ☐

Other: _____

b) What criteria do you apply in deciding to hold a pretrial conference?

_____

_____

_____

c) Can you identify particular types of cases that are particularly amenable to disposition at or about the time of a pretrial conference? (You may wish to refer to the categories on page 2.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

FINAL PRETRIAL ORDERS

d) Do you use a standard final pretrial order in every civil case?

Yes ☐ No ☐

e) Do you believe that a final pretrial order is useful in every category of civil cases?

Yes ☐ No ☐

9. If you answered yes to question 8, what types of cases should be exempt?

_____

_____

_____

10. Should the Judge always hold the **Rule 16 conference**?

Yes ☐ No ☐

11. When should a Magistrate Judge be assigned to handle the **Rule 16 conference**?

_____

_____

_____

CASE MANAGEMENT ORDERS

12. Do you find that **case management orders** are an effective case management device?

Always ☐ Sometimes ☐ Never ☐

13. **Are case management orders** more effective in particular types of litigation than in others?

Yes ☐ No ☐

14. If you answered yes to question 13, in what types of cases do you believe such orders are useful?

_____

_____

_____

c. If you answered yes to question 4.b. above, do you have any suggestions as to what that standard should be?

_____

_____

_____

_____

5. For which of the following purposes do you assign the case?

a) Discovery ☐

b) Pretrial matters other than discovery ☐

c) Settlement ☐

d) Jury selection ☐

e) All purposes ☐

f) Other _____
(please specify)

6. Do you think **the related-case rule** should be expanded to increase the potential for consolidation of pretrial proceedings?

Yes ☐ No ☐

FRCP 16 (PRETRIAL SCHEDULING & PLANNING) CONFERENCES

N.B.: Rule 16, FRCP provides for status conferences related to discovery and other pre-trial matters. Such conferences are not to be confused with the final pre-trial conference provided for by Local Rule 9.

7. Do you find **Rule 16 conferences** to be an effective case management tool?

Yes ☐ No ☐

8. Should particular types of cases be exempt from the requirement of a **Rule 16 conference**?

Yes ☐ No ☐

3. Do you assign civil cases on your docket to a Magistrate Judge?

Always	☐	Sometimes	☐
Often	☐	Seldom	☐
		Never	☐

4. If your answer to question 3 was **anything other than "never"**, how do you determine <u>which</u> cases to send to the Magistrate Judge, i.e., do you have <u>a standard</u>?

_____

_____

_____

_____

a. Do you encourage counsel to consent to trial before a Magistrate Judge? **If yes,** <u>at what stage</u> in the proceeding do you first encourage counsel to assent to a Magistrate Judge?

_____

_____

_____

_____

b. In your view, would the existence of uniform, district-wide standards for the referral of work to Magistrate Judges assist in reducing delay and expense in the conduct of civil litigation?

Yes ☐ No ☐

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

We are attempting to determine whether there are categories of cases that are more likely than others to engender significant delay or expense. Specific rules or guidelines might be developed by category to attack the problems identified.

We are focusing our analysis on the categories of cases listed below. We solicit your views; however, on other possible categories for analysis. In answering the following questions, please make use of the following categories (you may add others if you wish):

1. Asbestos
2. Bankruptcy
3. Banks and Banking
4. Civil Rights
5. Commerce: ICC Rates, etc.
6. Contract
7. Copyright, Patent, Trademark
8. ERISA
9. Forfeiture and Penalty
10. Fraud, Truth in Lending
11. Labor
12. Land Condemnation, Foreclosure
13. Personal Injury
14. Prisoner
15. RICO
16. Securities, Commodities
17. Social Security
18. Student Loan and Veterans
19. Tax
20. _____
21. _____

1. Are there particular categories of cases which cause the most significant delays in your calendar?

_____

_____

_____

2. When a typical civil case is ready for trial, how long does it take you to reach that case for trial? (check one below, and comment if you wish).

a) A matter of weeks ☐

b) More than a few weeks, but less than three months ☐

c) Three to six months ☐

d) More than six months ☐

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

QUESTIONNAIRE

TO THE

JUDICIARY

CENTRAL DISTRICT OF CALIFORNIA

68. a. What is the most time consuming aspect of your docket?

b. What would assist you in handling this aspect of your docket?

69. a. What types of legislation have caused delay in your handling of your civil docket?

b. How do you cope with such an impact?

c. What suggestions do you have for reducing the impact of such legislation?

b. Hearing motions in other cases while the trial is underway?

c. Holding conferences in other cases while the trial is underway?

d. Sitting consecutive days?

e. Sitting full days?

f. Interruptions of several days or weeks to handle other trials or matters?

g. Ruling from the bench?

h. On the average, how many days does it take you to issue your written findings and conclusions? ____

64. Please indicate what aspects of each of the cases listed above in response to Question 56 signify complexity.

Case Reference No. →	1	2	3	4	5
Parties.	[ ]	[ ]	[ ]	[ ]	[ ]
Complex facts.	[ ]	[ ]	[ ]	[ ]	[ ]
Discovery.	[ ]	[ ]	[ ]	[ ]	[ ]
Motion practice.	[ ]	[ ]	[ ]	[ ]	[ ]
Legal issues.	[ ]	[ ]	[ ]	[ ]	[ ]
Attorney conduct.	[ ]	[ ]	[ ]	[ ]	[ ]
Other, please describe.	[ ]	[ ]	[ ]	[ ]	[ ]

Additional comments:

65. In your view, what are the principal causes of expense in the conduct of civil litigation?

_____

_____

_____

_____

66. a. Are there any trends with respect to the types of cases that are before you that are factors in causing expense?

_____

_____

_____

b. What are those trends?

_____

_____

_____

67. Typically, when presiding over a jury trial, what is your practice with respect to:

a. The number of days per week that the trial is convened? [ ]

61. What criteria would you employ to determine that a civil case is complex? In the course of identifying such criteria, if you deem it appropriate, please use the following categories as examples of factors which may lead to complexity.

[ ] Type of action (e.g., class action, derivative action).

[ ] Nature and number of parties.

[ ] Type of claim or claims.

[ ] Substance of the questions presented (e.g., tax, patent, RICO, takeover).

[ ] Potential discovery necessary.

[ ] Pretrial motion practice.

[ ] Susceptibility to alternative dispute resolution.

[ ] Susceptibility to settlement.

[ ] Potential effectiveness of judicial intervention.

[ ] Potential role of Magistrate Judges.

[ ] Potential need for case-management conferences.

[ ] Jury trial.

[ ] Bench trial.

[ ] _____.

[ ] _____.

62. Utilizing the foregoing criteria or any other you may deem appropriate, approximately how many cases presently listed on your civil docket would you consider to be complex? (Please refer to a written list, rather than trying to recall.)

|___|

63. Please identify by name and case number five (5) of the most complex cases presently listed on your civil docket.

Case Name	Case No.
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

56. Do you think it would be useful for the court, together with the pro se clerk, to develop a standard set of interrogatories to be used in prisoner cases?

Yes ☐ No ☐

* * * * *

57. Identify by category any specific causes of delay or expense that you believe are more likely to become a problem with respect to some of the listed categories than others.

_____

_____

_____

_____

58. Other than the designations of cases already used by the court for statistical purposes, can you suggest any means you think would be useful for differentiating cases on your docket for the purpose of analyzing delay or expense?

_____

_____

_____

_____

59. Do you believe that particular categories of cases would benefit from judicial non-interference, in other words, by leaving the parties alone?

Yes ☐ No ☐

60. a. If you answered **yes** to question 59, in what categories of cases should the courts adopt this hands-off approach? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

b. Please indicate if you believe this should be the rule in <u>all</u> cases.

Yes ☐ No ☐

50. In what categories of cases would required bifurcation be useful? (You may wish to refer to the list on page 1.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

PRO SE CASES

51. Should any special procedures be employed for screening pro se cases to identify ones not likely to be meritorious?

Yes ☐ No ☐

52. If you answered yes to question 51, what special procedures should be employed?

_____

_____

_____

53. What procedures should be followed to identify pro se cases in which counsel should be appointed?

_____

_____

_____

PRISONER CASES

54. Do you think it would be useful to hold hearings in prisoner cases at prisons?

Yes ☐ No ☐

55. If you answered yes to question 54, would you be willing to travel to prisons to conduct such hearings?

Yes ☐ No ☐

REFERRAL TO ANOTHER DISTRICT JUDGE

44. If a district judge cannot try a case when it is ready, do you think that there should be a procedure to refer the case to another district judge who is available to try the matter?

Yes ☐ No ☐

45. a. Do you think it would be helpful to place all "ready" cases on a central trial list for the next available district judge?

Always ☐ Sometimes ☐ Never ☐

b. Why, or why not?

_____

_____

46. Do you think this technique would be more useful in particular categories of cases than in others?

Yes ☐ No ☐

47. If you answered **yes** to question 46, in what particular categories of cases would you suggest this be done? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

BIFURCATED TRIALS

48. Should trials be **bifurcated** (e.g., separating liability and damage issues)?

Yes ☐ No ☐

49. Do you believe it would be more useful to require bifurcation in certain categories of cases rather than in others?

Yes ☐ No ☐

50. In what categories of cases would required bifurcation be useful? (You may wish to refer to the list on page 1.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

PRO SE CASES

51. Should any special procedures be employed for screening pro se cases to identify ones not likely to be meritorious?

Yes ☐ No ☐

52. If you answered yes to question 51, what special procedures should be employed?

_____

_____

_____

53. What procedures should be followed to identify pro se cases in which counsel should be appointed?

_____

_____

_____

PRISONER CASES

54. Do you think it would be useful to hold hearings in prisoner cases at prisons?

Yes ☐ No ☐

55. If you answered yes to question 54, would you be willing to travel to prisons to conduct such hearings?

Yes ☐ No ☐

REFERRAL TO ANOTHER DISTRICT JUDGE

44. If a district judge cannot try a case when it is ready, do you think that there should be a procedure to refer the case to another district judge who is available to try the matter?

Yes ☐ No ☐

45. a. Do you think it would be helpful to place all "ready" cases on a central trial list for the next available district judge?

Always ☐ Sometimes ☐ Never ☐

b. Why, or why not?

_____

_____

46. Do you think this technique would be more useful in particular categories of cases than in others?

Yes ☐ No ☐

47. If you answered **yes** to question 46, in what particular categories of cases would you suggest this be done? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

BIFURCATED TRIALS

48. Should trials be **bifurcated** (e.g., separating liability and damage issues)?

Yes ☐ No ☐

49. Do you believe it would be more useful to require **bifurcation** in certain categories of cases rather than in others?

Yes ☐ No ☐

STANDARD INTERROGATORIES

38. Do you think that the use of standard interrogatories in particular categories of cases would be useful (e.g., some courts require asbestos plaintiffs to answer standard exposure and injury interrogatories at the outset of the case; RICO case statements)?

Yes ☐ No ☐

39. In what particular categories of cases do you think such a device would be useful? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____
(please specify)

CROSS MOTIONS FOR SUMMARY JUDGMENT

40. Do you believe that courts should, when appropriate, encourage parties to cross move for summary judgment?

Yes ☐ No ☐

AT-ISSUE NOTICE

41. Do you believe that parties should file an at-issue notice when their case is ready to be placed on the trial calendar?

Yes ☐ No ☐

42. Would that device be more useful in some types of cases than others?

Yes ☐ No ☐

43. If you answered yes to question 42, in what categories of cases do you think that an at-issue notice would be useful? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____
(please specify)

35. a. If you answered **yes** to question 34, in what categories of cases should the number of depositions be restricted? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____
(please specify)

b. If you answered **yes** to question 3y4, state why you believe the number of depositions should be restricted in the categories you list.

_____

_____

_____

_____

c. Please indicate if you believe the number of depositions should be restricted in <u>all</u> cases.

Yes ☐ No ☐

BIFURCATED DISCOVERY

36. Should discovery be "<u>bifurcated</u>" in particular categories of cases? (No damages discovery)

Yes ☐ No ☐

37. If you answered **yes** to question 36, in what categories of cases should discovery be bifurcated? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____
(please specify)

30. Should the range of discovery devices available to litigants be limited by the particular type of case?

Yes ☐ No ☐

31. a. If you answered **yes** to question 30, in what categories of cases should the number of interrogatory questions be restricted? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____ (please specify)

b. Please indicate if you believe the number of interrogatory questions should be restricted in <u>all</u> cases.

Yes ☐ No ☐

32. Should the parties be required to choose between interrogatories and depositions in particular categories of cases? (You may wish to refer to the categories on page 1.)

Yes ☐ No ☐

33. a. If you answered **yes** to question 32, in what categories of cases should the parties be required to make such a choice?

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____ (please specify)

b. Please indicate if you believe the parties should be required to choose between interrogatories and depositions in <u>all</u> cases.

Yes ☐ No ☐

DEPOSITIONS

34. Should the number of depositions be restricted in particular categories of cases?

Yes ☐ No ☐

c. In what categories of cases do you believe a **final pretrial order** is most useful? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____ (please specify)

d. In what categories of cases are **pretrial orders** clearly unnecessary? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____ (please specify)

DISCOVERY

26. What categories of cases, if any, generate a disproportionate number of discovery disputes? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____
2. _____ 5. _____
3. _____ Other: _____ (please specify)

27. Should the Court's method of handling discovery disputes differ depending on the category of case?

Yes ☐ No ☐

28. If you answered **yes** to question 27, in what way should the method of handling discovery disputes differ by the type of case?

_____

_____

_____

29. Should discovery motions be prohibited and replaced initially by a letter to a Magistrate Judge?

Yes ☐ No ☐

PRETRIAL CONFERENCES

24. a. How frequently are **pretrial conferences** assigned to you by a district judge? (check one)

Always ☐ Sometimes ☐

Often ☐ Seldom ☐

Other: _____

b. What criteria do you apply in deciding to hold a **pretrial conference**?

_____

_____

_____

c. Can you identify particular types of cases that are particularly amenable to disposition at or about the time of a **pretrial conference**? (You may wish to refer to the categories on page 1.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ Other: _____
(please specify)

d. How many times in the past three years have you held **pretrial conferences** in cases other than those assigned to you for all purposes?

|___|

FINAL PRETRIAL ORDERS

25. a. Do you use a standard **final pretrial order** in every civil case assigned to you for trial?

Yes ☐ No ☐

b. Do you believe that a **final pretrial order** is useful in every category of civil cases?

Yes ☐ No ☐

17. Should particular types of cases be exempt from the requirement of a **Rule 16 conference**?

Yes ☐ No ☐

18. If you answered **yes** to question 17, what types of cases should be exempt?

_____

_____

_____

19. Should the Magistrate Judge always hold the **Rule 16 conference**?

Yes ☐ No ☐

20. When should a Magistrate Judge be assigned to handle the **Rule 16 conference**?

_____

_____

_____

CASE MANAGEMENT ORDERS

21. Do you find that **case management orders** are an effective case management device?

Always ☐ Sometimes ☐ Never ☐

22. Are **case management orders** more effective in particular types of litigation than in others?

Yes ☐ No ☐

23. If you answered **yes** to question 15, in what types of cases do you believe such orders are useful?

_____

_____

_____

13. Do you think **the related-case rule** should be expanded to increase the potential for consolidation of pretrial proceedings?

Yes ☐ No ☐

DUTIES OF MAGISTRATE JUDGES

14. In your view, what additional duties should Magistrate Judges assume under existing law? (Use additional sheet if necessary.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

15. In what ways, if any, should new legislation provide for additional duties for Magistrate Judges? (Use additional sheet if necessary.)

_____

_____

_____

_____

_____

_____

FRCP 16 (PRETRIAL SCHEDULING & PLANNING) CONFERENCES

N.B.: Rule 16, FRCP provides for status conferences related to discovery and other pre-trial matters. Such conferences are not to be confused with the final pre-trial conference provided for by Local Rule 9.

16. In your view, are **Rule 16 conferences** an effective case management tool?

Yes ☐ No ☐

10. Are case assignments sometimes made for which no method of assignment is specified?

Yes ☐ No ☐

11. How is the work equalized among the magistrates?

_____

_____

_____

12.a. In your view, would the existence of uniform, district-wide standards for the referral of work to Magistrate Judges assist in reducing delay and expense in the conduct of civil litigation?

Yes ☐ No ☐

b. If you answered **yes** to question 5.a. above, do you have any suggestions as to what that standard should be?

_____

_____

_____

_____

6.a. Over the past three years, how many civil cases have been assigned to you for all purposes?

|____|

b. Identify by category and number of cases per category the civil cases assigned to you for all purposes over the past three years. (You may wish to refer to the categories on page 1.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ 6. _____

7. Over the past two years, for which three of the following purposes are civil cases most often assigned to you?

a. Discovery ☐

b. Pretrial matters other than discovery ☐

c. Settlement ☐

d. Jury selection ☐

e. All purposes ☐

f. Other _____
(please specify)

8. What method is presently used to assign matters to magistrate judges?

_____

_____

_____

9. Does the assignment method vary with the type of case assignment?

Yes ☐ No ☐

Comments: _____

_____

h. performing other duties (please specify):

_____

|____| %

_____

|____| %

_____

|____| %

_____

|____| %

ASSIGNMENTS AND REFERRALS

5.a. Over the past three years, how many civil cases have been assigned to you only for trial?

|____|

b. Identify by category and number of cases per category the civil cases assigned to you only for trial over the past three years. (You may wish to refer to the categories on page 1.)

1. _____ 4. _____

2. _____ 5. _____

3. _____ 6. _____

c. reviewing prisoner litigation, conducting evidentiary hearings in such cases, and submitting proposed finding of fact and recommended dispositions to the district judge;

|____| %

d. conducting calendar calls, pretrial conferences, and settlement conferences;

|____| %

e. serving as a special master pursuant to Fed.R.Civ.P. 53;

|____| %

f. working on initial proceedings in criminal cases (e.g., issuing search and arrest warrants and summonses, conducting initial appearances in criminal cases);

|____| %

g. conducting trial of criminal misdemeanor cases;

|____| %

REPORTS AND RECOMMENDATIONS

3. What percent of matters that you handle require you to write a **Report and Recommendation**?

|____| %

a. Approximately what percent of your time do you spend writing **Reports and Recommendations**?

|____| %

b. Do you believe that preparation of **Reports and Recommendations** is an efficient utilization of your time?

/__/ Yes /__/ No /__/ Perhaps

c. If your answer is **no**, briefly summarize your reasons and identify any alternatives you believe appropriate for alleviating this problem.

_____

_____

_____

_____

4. Over the past three years, what percentage of your time has been spent:

a. hearing and determining non-case dispositive motions;

|____| %

b. hearing case-dispositive motions and submitting proposed findings of fact and recommended dispositions to the district judge;

|____| %

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

We are attempting to determine whether there are categories of cases that are more likely than others to engender significant delay or expense. Specific rules or guidelines might be developed by category to attack the problems identified.

We are focusing our analysis on the categories of cases listed below. We solicit your views; however, on other possible categories for analysis. In answering the following questions, please make use of the following categories (you may add others if you wish):

1. Asbestos
2. Bankruptcy
3. Banks and Banking
4. Civil Rights
   (i) Prisoner
   (ii) Other
5. Commerce: ICC Rates, etc.
6. Contract
7. Copyright, Patent, Trademark
8. ERISA
9. Forfeiture and Penalty
10. Fraud, Truth in Lending
11. Labor
12. Land Condemnation, Foreclosure
13. Personal Injury
    (i) Federal Torts Claims
    (ii) Diversity
    (iii) Other
14. Prisoner
15. RICO
16. Securities, Commodities
17. Social Security
18. Student Loan and Veterans
19. Tax
20. Freedom of Information Act
21. Title VII Employment Discrimination
22. Pro Per Matters
23. _____

1. What three categories of cases are assigned to you most often?

   1. _____
   2. _____
   3. _____

2. Are there particular categories of cases which cause the most significant delays in your calendar?

   _____

   _____

   _____

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

QUESTIONNAIRE

TO THE

MAGISTRATE JUDGES OF THE

CENTRAL DISTRICT OF CALIFORNIA

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

QUESTIONNAIRE FOR ATTORNEYS

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

NOTE: If you have any questions, please call Christopher Benbow at (213) 612-2646.

QUESTIONS FOR ATTORNEYS

A. MANAGEMENT OF THIS LITIGATION

1. "Case management" refers to oversight and supervision of litigation by a judge or magistrate or by routine court procedures such as standard scheduling orders. Some civil cases are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motions practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left to counsel and with court intervention only when requested.

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

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

2. Listed below are several case management actions that could have been taken by the court in the litigation of this case. For each listed action, please circle one number to indicate whether or not the court took such action in this case.

		Was Taken	Was Not Taken	Not Sure	Not Applicable
a.	Hold pretrial activities to a firm schedule.	1	2	3	4
b.	Set and enforce time limits on allowable discovery.	1	2	3	4

		Was Taken	Was Not Taken	Not Sure	Not Applicable
c.	Narrow issues through conferences or other methods.	1	2	3	4
d.	Rule promptly on pretrial motions.	1	2	3	4
e.	Refer the case to alternative dispute resolution, such as mediation or arbitration.	1	2	3	4
f.	Set an early and firm trial date.	1	2	3	4
g.	Conduct or facilitate settlement discussions.	1	2	3	4
h.	Exert firm control over trial.	1	2	3	4
i.	Other (please specify): _____	1	2	3	4

B. TIMELINESS OF LITIGATION IN THIS CASE

3. a. Please indicate the approximate number of months this case took from filing date to disposition date. _____

   b. Please indicate the approximate number of months your client was in this case. _____

4. How long should this case have taken from filing to disposition under circumstances in which the court, all counsel, and all parties acted reasonably and expeditiously, and there were not obstacles such as a backlog of cases in the court? _____

5. If the case actually took longer than you believed reasonable, please indicate what factors contributed to the delay: (circle one or more)

a. Excessive case management by the court.
b. Inadequate case management by the court.
c. Dilatory actions by counsel.
d. Dilatory actions by the litigants.
e. Court's failure to rule promptly on motions.
f. Backlog of cases on court's calendar.
g. Other. (please specify)

6. If delay is a problem in this district for disposing of civil cases, what suggestions or comments do you have for reducing those delays?

_____

_____

_____

_____

_____

_____

_____

C. COSTS OF LITIGATION IN THIS CASE

7. a. Please estimate the amount of money at stake in this case.
$_____.

b. Please indicate any other type(s) of relief sought in this case (e.g., injunctive relief).

_____

_____

_____

c. Were punitive damages sought in this case? Yes ☐ No ☐

d. If your answer to question 7.c. was Yes, what was the amount of punitive damages sought? $_____.

8. What type of fee arrangement did you have in this case? (circle one)

a. Hourly rate.
b. Hourly rate with a maximum.
c. Set fee.
d. Contingency.
e. Other. (please describe)

9. Were the fees and costs incurred in this case by your client (circle one)

a. much too high.
b. slightly too high.
c. about right.
d. slightly too low.
e. much too low.

10. If costs associated with civil litigation in this district are too high, what suggestions or comments do you have for reducing the costs?

_____

_____

11. Approximately how many **appearances** have you made in the Central District since January 1, 1986, as to

(a) Motions ☐

(b) Trials begun but not completed due to settlement, mistrial or otherwise ☐

(c) Trials to verdict/judgment ☐

12. Generally, what percentage of your legal fees are attributable to discovery, motion practice and trial?

Discovery	_____%
Motion practice	_____%
Trial	_____%
Total	100%

CAUSES OF DELAY IN LITIGATION

13. What do you believe to be the most important cause of delay in getting to trial in civil matters pending before the Central District?

CONGRESSIONAL LEGISLATION

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
14. Recent Congressional legislation is a substantial cause of congestion in federal district courts (e.g., RICO, 18 U.S.C. §§ 1961-1968).	☐	☐	☐	☐	☐

Comments, if any: _____

15. Specific legislation which contributes most heavily to congestion in federal district courts includes (use space to the right to respond): _____

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
16. Congress should address in legislation certain procedural issues (e.g., standing, private rights of action, statutes of limitation, etc.) which are a substantial cause of congestion.	☐	☐	☐	☐	☐

Comments, if any: _____

17. Specific procedural issues which would be most helpful to have Congress address when considering new legislation include (use space to the right to respond):

APPOINTMENTS PROCESS	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
18. Delay is caused by the failure of the President to fill promptly judicial vacancies in the Central District.	☐	☐	☐	☐	☐
19. Delay is caused by the failure of Congress to consider confirmation of Presidential nominations to the federal bench in a timely manner.	☐	☐	☐	☐	☐

Comments, if any: _____

Comments, if any: _____

UNIFORMITY OF RULES	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
20. Delay is caused by the use of different rules in different Central District courtrooms, and uniform adherence to the Local Rules would reduce delay.	☐	☐	☐	☐	☐

Comments, if any: _____

_____

_____

JUDGE-CAUSED DELAY

21. The following is a frequent source of **judge-caused delay** in the trial of civil actions in the Central District:

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(a) Judges holding motions under submission without decisions in excess of 30 days;	☐	☐	☐	☐	☐
(b) Civil trials postponed shortly before scheduled trial date upon the court's order;	☐	☐	☐	☐	☐
(c) Judges allowing unrealistically long periods of discovery or the filing of dispositive motions;	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(d)	Judges not requiring a discovery plan;	☐	☐	☐	☐	☐
(e)	Judges not setting and adhering to a firm trial date;	☐	☐	☐	☐	☐
(f)	Judges not rendering decisions on a motion immediately after argument;	☐	☐	☐	☐	☐
(g)	Judges declining to consider seriously dispositive motions;	☐	☐	☐	☐	☐
(h)	Judges not actively case managing the matter; and	☐	☐	☐	☐	☐
(i)	Other reasons (please specify using space on the right):					

PRACTICES OF ADVERSARY COUNSEL

22. What do you believe to be the three most common causes of trial delay attributable to practices of adversary counsel?

(1) _____

(2) _____

(3) _____

CAUSES OF EXCESSIVE COSTS IN CIVIL LITIGATION

23. What procedure(s) do you believe to be the most common cause(s) of **excessive costs** in getting to trial in civil matters pending before the Central District?

_____

PROPOSALS FOR REDUCTION OF COST AND DELAY

24. **The following procedures would reduce cost or delay in the civil litigation process:**

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(1) **Mandatory pre-discovery disclosures,** i.e., to be furnished before either party files discovery, including:					
(a) Identities of all persons known or believed to have substantial discoverable information about the claims or defenses;	☐	☐	☐	☐	☐
(b) Description and location of all documents that are reasonably likely to bear substantially on the claims or defenses;	☐	☐	☐	☐	☐
(c) Computation of any damages claimed;	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
	(d) Substance of any insurance agreement that may cover any resulting judgment;	☐	☐	☐	☐	☐
	(e) Any report of an expert who may be called at trial.	☐	☐	☐	☐	☐
(2)	Absolute limits to the number of depositions, interrogatories and requests for production.	☐	☐	☐	☐	☐
(3)	An initial round of discovery that would be "free" to the requesting party.	☐	☐	☐	☐	☐
(4)	Stricter enforcement of the meet and confer requirements prior to filing a motion to compel compliance with a discovery request.	☐	☐	☐	☐	☐
(5)	Elimination of the meet and confer requirements.	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(6)	Mandatory settlement conferences.	☐	☐	☐	☐	☐
(7)	Voluntary settlement conferences.	☐	☐	☐	☐	☐
(8)	Use of Magistrate Judges for all non-dispositive matters.	☐	☐	☐	☐	☐
(9)	Right to depose experts with advance submission of proposed expert testimony.	☐	☐	☐	☐	☐
(10)	Remand of all pendent claims.	☐	☐	☐	☐	☐
(11)	Stricter standards for admission to the federal bar.	☐	☐	☐	☐	☐
(12)	Increased disciplinary proceedings of federal bar.	☐	☐	☐	☐	☐
(13)	Requiring the loser of a suit brought in federal district court to pay the costs incurred by the winner (the "loser pays" rule).	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(14)	Requiring expert testimony to be based on "widely accepted" theories.	☐	☐	☐	☐	☐
(15)	Banning contingency fees for expert witnesses.	☐	☐	☐	☐	☐
(16)	Requiring judges to establish an early trial date after the pleadings are completed.	☐	☐	☐	☐	☐
(17)	Conditioning the right to sue on a showing that the parties have attempted, but failed, to resolve their dispute.	☐	☐	☐	☐	☐
(18)	Requiring notice prior to filing a lawsuit.	☐	☐	☐	☐	☐

Comments, if any: _____

RULE 11, FRCP

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
25. Federal district courts should adopt a procedure under **Rule 11, FRCP,** by which the court could require either party to state the facts supporting its claim and defenses at any time after the filing of the complaint.	☐	☐	☐	☐	☐

Comments, if any: _____

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
26. Federal district courts should uniformly and vigorously enforce the sanctions and powers available under **Rule 11, FRCP.**	☐	☐	☐	☐	☐
Comments, if any: _____					
27. **Rule 11, FRCP**, should be amended to establish clearer standards for sanctions upon attorneys who abuse the discovery process.	☐	☐	☐	☐	☐
Comments, if any: _____					

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
28. **Rule 11, FRCP,** should be amended to empower federal district courts to penalize those responsible for making unfounded assertions in filings, not merely the attorney who signs the document.	☐	☐	☐	☐	☐

Comments, if any: _____

THREE TRACK CIVIL LITIGATION DOCKET

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
29. The federal district courts should adopt a **"Three Track Civil Litigation Docket,"** classifying a case on a track by degree of complexity (e.g., most complex, somewhat complex, and not complex) and limiting time of discovery accordingly.	☐	☐	☐	☐	☐

Comments, if any: _____

TELEPHONE CONFERENCE CALLS

30. The federal district courts should adopt procedures which encourage and increase the usage of **telephone conference calls** for routine appearances in lieu of court hearings attended by counsel for the following:

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(a)	Law and motion calendar appearances where no oral argument is anticipated.	☐	☐	☐	☐	☐
(b)	Orders to Show Cause re: dismissal for want of prosecution.	☐	☐	☐	☐	☐
(c)	Orders to Show Cause re: dismissal for failure to submit an early meeting report.	☐	☐	☐	☐	☐
(d)	Pre-trial conferences.	☐	☐	☐	☐	☐

31. Would **telephone conference calls** reduce costs? Yes ☐ No ☐

32. Would **telephone conference calls** reduce delays? Yes ☐ No ☐

Comments, if any: _____

ALTERNATIVE DISPUTE RESOLUTION

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
33. In federal district court, reference of civil cases to **alternative dispute resolution** (e.g., arbitration, mediation) before trial should be mandatory.	☐	☐	☐	☐	☐
34. If civil cases in federal district court are referred to **alternative dispute resolution** (e.g., arbitration, mediation), the outcome of the alternative dispute resolution process should be binding upon the parties.	☐	☐	☐	☐	☐

Comments, if any: _____

Comments, if any: _____

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
35. In federal district court, reference of civil cases to **alternative dispute resolution** (e.g., arbitration, mediation) before trial should be at the discretion of the parties.	☐	☐	☐	☐	☐

Comments, if any: _____

GENERAL ORDERS AND LOCAL RULES

36. What changes do you recommend be made in the General Orders and/or Local Rules to reduce the cost and delay of civil litigation in federal district courts?

37. Please explain the reasons for each change which you recommend to each given General Order or Local Rule.

Thank you for your time and comments.

Please return by June 26, 1992 in the enclosed envelope.

CIVIL JUSTICE ADVISORY GROUP

QUESTIONNAIRE

TO LITIGANTS

IN THE CENTRAL

DISTRICT OF CALIFORNIA

QUESTIONS FOR LITIGANTS

NOTE: If you have any questions concerning this questionnaire, please call Christopher Benbow at (213) 612-2646.

I. Which party were you in the case noted on the cover letter? (circle one)

A. Plaintiff.

B. Defendant.

C. Third party.

II. Were you represented by an attorney or attorneys in the case noted on the cover letter? (circle one)

A. Yes.

B. No, I represented myself or a relative ("pro per").

Note: If your answer to Question II is no, you should not respond to the questions marked by an asterisk ("*").

III. Please estimate the actual amount of money which you believe was at stake in your case. $_____

IV. Was any relief other than monetary sought by any of the parties in your case (e.g., injunctive relief)? (circle one)

A. Yes.

B. No.

C. I don't know.

V. Please indicate the total legal fees and costs you incurred on your case for each of the categories listed below. If you are unable to categorize your costs, please indicate the <u>total</u> cost only.

*A. Attorneys' Fees _____

B. Litigation Expenses (deposition transcripts, photocopying, postage, travel expenses, etc.) _____

C. Consultants _____

D. Expert Witnesses _____

E. Other (please describe) _____ _____

F. Total Cost of Litigation _____

VI. A. How many attorneys worked on your case? _____

* B. What type of fee arrangement did you have with your attorney? (circle one)

1. Hourly rate
2. Hourly rate with a maximum
3. Fixed fee
4. Contingency
5. Other (please describe): _____

_____

*C. If you were charged legal fees on an hourly basis, please indicate whether the charge for the most senior attorney was (circle one):

1. $400 and above.

2. $300 - $399.00.

3. $200 - $299.00.

4. $100 - $199.00.

5. $0 - $99.00.

6. I don't know at this time.

*D. If you were charged legal fees on an hourly basis, please indicate whether the charge for the most junior attorney was (circle one):

1. $200 and above.

2. $150 and above.

3. $100 and above.

4. $50 and above.

5. Less than $50.

VII. Did the fee arrangement in your opinion result in reasonable fees being paid to your attorney? (circle one)

A. Yes.

B. No.

C. I don't know.

Comments: _____

_____

_____

_____

_____

VIII. Do you believe that the legal costs you incurred were (circle one):

A. Much too high.

B. Slightly too high.

C. About right.

Comments: _____

_____

_____

IX. If you believe the cost of litigation was too high, what actions should have been taken to reduce the cost of this matter by:

*A. Your attorney?

_____

_____

_____

_____

_____

_____

B. The court?

_____

_____

_____

_____

_____

_____

C. By you?

X. Was the time that it took to resolve this matter (circle one):

A. Much too long.

B. Slightly too long.

C. About right.

D. Slightly too short.

E. Much too short.

XI. If you believe that it took too long to resolve your case, what actions should have been taken to resolve your case more quickly by:

*A. Your attorney?

B. The court?

C. By you?

XII. A. Was arbitration or mediation suggested to you in your case? (circle one)

1. Yes.

2. No.

3. I don't know.

B. If your answer to question XII.A. was no, would you have engaged in arbitration or mediation if it had been suggested to you? (circle one)

1. Yes.

2. No.

3. I don't know.

XVI. If you would like to receive a copy of the results of this study, please check here _____

XVII. Would you be willing to participate in a telephonic interview to discuss your responses to this questionnaire? (circle one)

A. Yes.

B. No.

Thank you for your time and comments. Please return in the enclosed envelope by June 26, 1992.

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

QUESTIONNAIRE DIRECTED TO

PRACTITIONERS

IN THE CENTRAL DISTRICT

OF CALIFORNIA

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

Questionnaire to Practitioners re: Effect of Existing and Proposed Rules and Procedures on the Speed and Cost Effectiveness of Dispute Resolution in the Central District of California.

Note: If you have any questions, please call Christopher Benbow at (213) 612-2646.

QUESTIONS FOR PRACTITIONERS

1. Approximately how many **appearances** have you made in the Central District since January 1, 1986, as to

   (a) Motions ☐

   (b) Trials begun but not completed due to settlement, mistrial or otherwise ☐

   (c) Trials to verdict/judgment ☐

2. Generally, what percentage of your legal fees are attributable to discovery, motion practice and trial?

   Discovery _____%

   Motion practice _____%

   Trial _____%

   Total 100%

CAUSES OF DELAY IN LITIGATION

3. What do you believe to be the most important cause of delay in getting to trial in civil matters pending before the Central District?

CONGRESSIONAL LEGISLATION

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
4. Recent Congressional legislation is a substantial cause of congestion in federal district courts (e.g., RICO, 18 U.S.C. §§ 1961-1968.)	☐	☐	☐	☐	☐

Comments, if any: _____

_____

_____

5. Specific legislation which contributes most heavily to congestion in federal district courts includes (use space to the right to respond):

_____

_____

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	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
6. Congress should address in legislation certain procedural issues (e.g., standing, private rights of action, statutes of limitation, etc.) which are a substantial cause of congestion.	☐	☐	☐	☐	☐

Comments, if any: _____

_____

_____

7. Specific procedural issues which would be most helpful to have Congress address when considering new legislation include (use space to the right to respond):

APPOINTMENTS PROCESS	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
8. Delay is caused by the failure of the President to fill promptly judicial vacancies in the Central District.	☐	☐	☐	☐	☐
9. Delay is caused by the failure of Congress to consider confirmation of Presidential nominations to the federal bench in a timely manner.	☐	☐	☐	☐	☐

Comments, if any: _____

Comments, if any: _____

UNIFORMITY OF RULES	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
10. Delay is caused by the use of different rules in different Central District courtrooms, and uniform adherence to the Local Rules would reduce delay.	☐	☐	☐	☐	☐
Comments, if any: _____					

JUDGE-CAUSED DELAY	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
11. The following is a frequent source of **judge-caused delay** in the trial of civil actions in the Central District:					
(a) Judges holding motions under submission without decisions in excess of 30 days;	☐	☐	☐	☐	☐
(b) Civil trials postponed shortly before scheduled trial date upon the court's order;	☐	☐	☐	☐	☐
(c) Judges allowing unrealistically long periods of discovery or the filing of dispositive motions;	☐	☐	☐	☐	☐
(d) Judges not requiring a discovery plan;	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(e)	Judges not setting and adhering to a firm trial date;	☐	☐	☐	☐	☐
(f)	Judges not rendering decisions on a motion immediately after argument;	☐	☐	☐	☐	☐
(g)	Judges declining to consider seriously dispositive motions;	☐	☐	☐	☐	☐
(h)	Judges not actively case managing the matter; and	☐	☐	☐	☐	☐
(i)	Other reasons (please specify using space on the right):					

PRACTICES OF ADVERSARY COUNSEL

12. What do you believe to be the three most common causes of trial delay attributable to practices of adversary counsel?

(1) _____

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(2) _____

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(3) _____

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CAUSES OF EXCESSIVE COSTS IN CIVIL LITIGATION

13. What procedure(s) do you believe to be the most common cause(s) of excessive costs in getting to trial in civil matters pending before the Central District?

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PROPOSALS FOR REDUCTION OF COST AND DELAY

14. **The following procedures would reduce cost or delay in the civil litigation process:**

(1) **Mandatory pre-discovery disclosures,** i.e., to be furnished before either party files discovery, including:	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(a) Identities of all persons known or believed to have substantial discoverable information about the claims or defenses;	☐	☐	☐	☐	☐
(b) Description and location of all documents that are reasonably likely to bear substantially on the claims or defenses;	☐	☐	☐	☐	☐
(c) Computation of any damages claimed;	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
	(d) Substance of any insurance agreement that may cover any resulting judgment;	☐	☐	☐	☐	☐
	(e) Any report of an expert who may be called at trial.	☐	☐	☐	☐	☐
(2)	Absolute limits to the number of depositions, interrogatories and requests for production.	☐	☐	☐	☐	☐
(3)	An initial round of discovery that would be "free" to the requesting party.	☐	☐	☐	☐	☐
(4)	Stricter enforcement of the meet and confer requirements prior to filing a motion to compel compliance with a discovery request.	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(5)	Elimination of the meet and confer requirements.	☐	☐	☐	☐	☐
(6)	Mandatory settlement conferences.	☐	☐	☐	☐	☐
(7)	Voluntary settlement conferences.	☐	☐	☐	☐	☐
(8)	Use of Magistrate Judges for all non-dispositive matters.	☐	☐	☐	☐	☐
(9)	Right to depose experts with advance submission of proposed expert testimony.	☐	☐	☐	☐	☐
(10)	Remand of all pendent claims.	☐	☐	☐	☐	☐
(11)	Stricter standards for admission to the federal bar.	☐	☐	☐	☐	☐
(12)	Increased disciplinary proceedings of federal bar.	☐	☐	☐	☐	☐
(13)	Requiring the loser of a suit brought in federal district court to pay the costs incurred by the winner (the "loser pays" rule).	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(14)	Requiring expert testimony to be based on "widely accepted" theories.	☐	☐	☐	☐	☐
(15)	Banning contingency fees for expert witnesses.	☐	☐	☐	☐	☐
(16)	Requiring judges to establish an early trial date after the pleadings are completed.	☐	☐	☐	☐	☐
(17)	Conditioning the right to sue on a showing that the parties have attempted, but failed, to resolve their dispute.	☐	☐	☐	☐	☐
(18)	Requiring notice prior to filing a lawsuit.	☐	☐	☐	☐	☐

Comments, if any: _____

RULE 11, FRCP

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
15. Federal district courts should adopt a procedure under **Rule 11, FRCP,** by which the court or either party to state the facts supporting its claim and defenses at any time after the filing of the complaint.	☐	☐	☐	☐	☐

Comments, if any: _____

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
16. Federal district courts should uniformly and vigorously enforce the sanctions and powers available under **Rule 11, FRCP**.	☐	☐	☐	☐	☐
17. **Rule 11, FRCP**, should be amended to establish clearer standards for sanctions upon attorneys who abuse the discovery process.	☐	☐	☐	☐	☐

Comments, if any: _____

Comments, if any: _____

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
18. **Rule 11, FRCP,** should be amended to empower federal district courts to penalize those responsible for making unfounded assertions in filings, not merely the attorney who signs the document.	☐	☐	☐	☐	☐

Comments, if any: _____

THREE TRACK CIVIL LITIGATION DOCKET

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
19. The federal district courts should adopt a **"Three Track Civil Litigation Docket,"** classifying a case on a track by degree of complexity (e.g., most complex, somewhat complex, and not complex) and limiting time of discovery accordingly.	☐	☐	☐	☐	☐

Comments, if any: _____

TELEPHONE CONFERENCE CALLS

20. The federal district courts should adopt procedures which encourage and increase the usage of **telephone conference calls** for routine appearances in lieu of court hearings attended by counsel for the following:

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(a)	Law and motion calendar appearances where no oral argument is anticipated.	☐	☐	☐	☐	☐
(b)	Orders to Show Cause re: dismissal for want of prosecution.	☐	☐	☐	☐	☐
(c)	Orders to Show Cause re: dismissal for failure to submit an early meeting report.	☐	☐	☐	☐	☐
(d)	Pre-trial conferences.	☐	☐	☐	☐	☐

21. Would **telephone conference calls** reduce costs? Yes ☐ No ☐

22. Would **telephone conference calls** reduce delays? Yes ☐ No ☐

Comments, if any: _____

ALTERNATIVE DISPUTE RESOLUTION

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
23. In federal district court, reference of civil cases to **alternative dispute resolution** (e.g., arbitration, mediation) before trial should be mandatory.	☐	☐	☐	☐	☐

Comments, if any: _____

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
24. If civil cases in federal district court are referred to **alternative dispute resolution** (e.g. arbitration, mediation), the outcome of the alternative dispute resolution process should be binding upon the parties.	☐	☐	☐	☐	☐
25. In federal district court, reference of civil cases to **alternative dispute resolution** (e.g., arbitration, mediation) before trial should be at the discretion of the parties.	☐	☐	☐	☐	☐

Comments, if any: _____

Comments, if any: _____

GENERAL ORDERS AND LOCAL RULES

26. What changes do you recommend be made in the General Orders and/or Local Rules to reduce the cost and delay of civil litigation in federal district courts?

_____

_____

_____

27. Please explain the reasons for each change which you recommend to each given General Order or Local Rule.

Thank you for your time and comments.

Please return by Friday, November 29, 1991 in the enclosed envelope.

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

QUESTIONNAIRE DIRECTED TO

BAR GROUPS

IN THE CENTRAL DISTRICT

OF CALIFORNIA

CIVIL JUSTICE ADVISORY GROUP

CENTRAL DISTRICT OF CALIFORNIA

Questionnaire to Bar Groups re: Effect of Existing and Proposed Rules and Procedures on the Speed and Cost Effectiveness of Dispute Resolution in the Central District of California.

Note: If you have any questions, please call Christopher Benbow at (213) 612-2646.

QUESTIONS FOR BAR GROUPS

CAUSES OF DELAY IN LITIGATION

1. What do you believe to be the most important cause of delay in getting to trial in civil matters pending before the Central District?

CONGRESSIONAL LEGISLATION

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
2.	Recent Congressional legislation is a substantial cause of congestion in federal district courts (e.g., RICO, 18 U.S.C. §§ 1961-1968).	☐	☐	☐	☐	☐

Comments, if any: _____

_____

_____

3. Specific legislation which contributes most heavily to congestion in federal district courts includes (use space to the right to respond):

_____

_____

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_____

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
4.	Congress should address in legislation certain procedural issues (e.g., standing, private rights of action, statutes of limitation, etc.) which are a substantial cause of congestion.	☐	☐	☐	☐	☐

Comments, if any: _____

_____

_____

5. Specific procedural issues which would be most helpful to have Congress address when considering new legislation include (use space to the right to respond):

APPOINTMENTS PROCESS	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
6. Delay is caused by the failure of the President to fill promptly judicial vacancies in the Central District.	☐	☐	☐	☐	☐
7. Delay is caused by the failure of Congress to consider confirmation of Presidential nominations to the federal bench in a timely manner.	☐	☐	☐	☐	☐

Comments, if any: _____

Comments, if any: _____

UNIFORMITY OF RULES	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
8. Delay is caused by the use of different rules in different Central District courtrooms, and uniform adherence to the Local Rules would reduce delay.	☐	☐	☐	☐	☐

Comments, if any: _____

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_____

JUDGE-CAUSED DELAY

9. The following is a frequent source of **judge-caused delay** in the trial of civil actions in the Central District:	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(a) Judges holding motions under submission without decisions in excess of 30 days;	☐	☐	☐	☐	☐
(b) Civil trials postponed shortly before scheduled trial date upon the court's order;	☐	☐	☐	☐	☐
(c) Judges allowing unrealistically long periods of discovery or the filing of dispositive motions;	☐	☐	☐	☐	☐
(d) Judges not requiring a discovery plan;	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(e)	Judges not setting and adhering to a firm trial date;	☐	☐	☐	☐	☐
(f)	Judges not rendering decisions on a motion immediately after argument;	☐	☐	☐	☐	☐
(g)	Judges declining to consider seriously dispositive motions;	☐	☐	☐	☐	☐
(h)	Judges not actively case managing the matter; and	☐	☐	☐	☐	☐
(i)	Other reasons (please specify using space on the right):					

PRACTICES OF ADVERSARY COUNSEL

10. What do you believe to be the three most common causes of trial delay attributable to practices of adversary counsel?

(1) _____

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(2) _____

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CAUSES OF EXCESSIVE COSTS IN CIVIL LITIGATION

11. What procedure(s) do you believe to be the most common cause(s) of excessive costs in getting to trial in civil matters pending before the Central District?

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PROPOSALS FOR REDUCTION OF COST AND DELAY

12. **The following procedures would reduce cost or delay in the civil litigation process:**

(1) **Mandatory pre-discovery disclosures,** i.e., to be furnished before either party files discovery, including:	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(a) Identities of all persons known or believed to have substantial discoverable information about the claims or defenses;	☐	☐	☐	☐	☐
(b) Description and location of all documents that are reasonably likely to bear substantially on the claims or defenses;	☐	☐	☐	☐	☐
(c) Computation of any damages claimed;	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
	(d) Substance of any insurance agreement that may cover any resulting judgment;	☐	☐	☐	☐	☐
	(e) Any report of an expert who may be called at trial.	☐	☐	☐	☐	☐
(2)	Absolute limits to the number of depositions, interrogatories and requests for production.	☐	☐	☐	☐	☐
(3)	An initial round of discovery that would be "free" to the requesting party.	☐	☐	☐	☐	☐
(4)	Stricter enforcement of the meet and confer requirements prior to filing a motion to compel compliance with a discovery request.	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(5)	Elimination of the meet and confer requirements.	☐	☐	☐	☐	☐
(6)	Mandatory settlement conferences.	☐	☐	☐	☐	☐
(7)	Voluntary settlement conferences.	☐	☐	☐	☐	☐
(8)	Use of Magistrate Judges for all non-dispositive matters.	☐	☐	☐	☐	☐
(9)	Right to depose experts with advance submission of proposed expert testimony.	☐	☐	☐	☐	☐
(10)	Remand of all pendent claims.	☐	☐	☐	☐	☐
(11)	Stricter standards for admission to the federal bar.	☐	☐	☐	☐	☐
(12)	Increased disciplinary proceedings of federal bar.	☐	☐	☐	☐	☐
(13)	Requiring the loser of a suit brought in federal district court to pay the costs incurred by the winner (the "loser pays" rule).	☐	☐	☐	☐	☐

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(14)	Requiring expert testimony to be based on "widely accepted" theories.	☐	☐	☐	☐	☐
(15)	Banning contingency fees for expert witnesses.	☐	☐	☐	☐	☐
(16)	Requiring judges to establish an early trial date after the pleadings are completed.	☐	☐	☐	☐	☐
(17)	Conditioning the right to sue on a showing that the parties have attempted, but failed, to resolve their dispute.	☐	☐	☐	☐	☐
(18)	Requiring notice prior to filing a lawsuit.	☐	☐	☐	☐	☐

Comments, if any: _____

RULE 11, FRCP

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
13. Federal district courts should adopt a procedure under **Rule 11, FRCP,** by which the court could require either party to state the facts supporting its claim and defenses at any time after the filing of the complaint.	☐	☐	☐	☐	☐

Comments, if any: _____

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
14. Federal district courts should uniformly and vigorously enforce the sanctions and powers available under **Rule 11, FRCP.**	☐	☐	☐	☐	☐
15. **Rule 11, FRCP**, should be amended to establish clearer standards for sanctions upon attorneys who abuse the discovery process.	☐	☐	☐	☐	☐

Comments, if any: _____

Comments, if any: _____

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
16. **Rule 11, FRCP,** should be amended to empower federal district courts to penalize those responsible for making unfounded assertions in filings, not merely the attorney who signs the document.	☐	☐	☐	☐	☐

Comments, if any: _____

THREE TRACK CIVIL LITIGATION DOCKET

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
17. The federal district courts should adopt a **"Three Track Civil Litigation Docket,"** classifying a case on a track by degree of complexity (e.g., most complex, somewhat complex, and not complex) and limiting time of discovery accordingly.	☐	☐	☐	☐	☐

Comments, if any: _____

TELEPHONE CONFERENCE CALLS

18. The federal district courts should adopt procedures which encourage and increase the usage of **telephone conference calls** for routine appearances in lieu of court hearings attended by counsel for the following:

		Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
(a)	Law and motion calendar appearances where no oral argument is anticipated.	☐	☐	☐	☐	☐
(b)	Orders to Show Cause re: dismissal for want of prosecution	☐	☐	☐	☐	☐
(c)	Orders to Show Cause re: dismissal for failure to submit an early meeting report.	☐	☐	☐	☐	☐
(d)	Pre-trial conferences.	☐	☐	☐	☐	☐

19. Would **telephone conference calls** reduce costs? Yes ☐ No ☐

20. Would **telephone conference calls** reduce delays? Yes ☐ No ☐

Comments, if any: _____

ALTERNATIVE DISPUTE RESOLUTION

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
21. In federal district court, reference of civil cases to **alternative dispute resolution** (e.g., arbitration, mediation) before trial should be mandatory.	☐	☐	☐	☐	☐

Comments, if any: _____

	Agree Strongly	Agree Somewhat	Disagree Somewhat	Disagree Strongly	Uncertain or No Opinion
22. If civil cases in federal district court are referred to **alternative dispute resolution** (e.g. arbitration, mediation), the outcome of the alternative dispute resolution process should be binding upon the parties.	☐	☐	☐	☐	☐

Comments, if any: _____

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23. In federal district court, reference of civil cases to **alternative dispute resolution** (e.g., arbitration, mediation) before trial should be at the discretion of the parties.	☐	☐	☐	☐	☐

Comments, if any: _____

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GENERAL ORDERS AND LOCAL RULES

24. What changes do you recommend be made in the General Orders and/or Local Rules to reduce the cost and delay of civil litigation in federal district courts?

_____

_____

_____

25. Please explain the reasons for each change which you recommend to each give General Order or Local Rule.

Thank you for your time and comments.

Please return by Friday, April 17, 1992 in the enclosed envelope.

CA(C)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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FROM: Sue Brosnan Clerk, USDC CA

Total Number of Pages Transmitted (Includ) 7

COMMENTS: Per Dianes request
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VOICE CONTACT: (213) 894-98-3535

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