UNITED STATES DISTRICT COURT

DISTRICT OF COLORADO

CIVIL JUSTICE REFORM ACT

ADVISORY GROUP REPORT

APRIL 1993

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INTRODUCTION

The Statutory Scheme

The Judicial Improvements Act of 1990, Public Law 101-650, also known as the Biden Bill, became effective December 1, 1990. Title I of the statute consists of the "Civil Justice Reform Act of 1990" (the "Act"), requiring all United States District Courts to develop and implement a civil justice expense and delay reduction plan by December 1, 1993.

The stated purpose of the legislation is to ensure just, speedy, and inexpensive resolution of civil disputes in federal courts. By improving the quality of the process of civil litigation, the legislation will contribute to the improvement of the quality of justice delivered by the civil justice system.

The chief judge of each district court is required to appoint an advisory group of attorneys and other participants in the civil litigation process to serve for terms no longer than four years, with the exception of one permanent member, the United States Attorney for the district.

The advisory group must issue a report to the court that includes assessing the state of the court's civil and criminal docket, determining the condition of the docket, identifying trends in case filings and demands on the court's resources, identifying the principal causes of cost and delay in civil litigation, and determining to what extent cost and delays could be reduced by better assessment of the impact of new legislation on the courts. In the report's recommendations, the advisory group must include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay.

Chief Judge Sherman G. Finesilver appointed the District of Colorado's fifteen member

Civil Justice Reform Act Advisory Group, representing the major categories of litigants, in February 1991. The Advisory Group was chaired by Chief Judge Finesilver from its inception until the group's work began to focus on specific recommendations. Chief Judge Finesilver then appointed Thomas C. Seawell, Esq. as co-chair and Mr. Seawell chaired the Advisory Group for the development of the recommendations and drafting of the report.

Meeting frequently and participating in three subgroups devoted to the topics of Business of the Court, Local Rules and Alternative Dispute Resolution, the Advisory Group has gathered, analyzed, and evaluated information. The Advisory Group has examined the demands of various kinds of litigation, the common causes of cost and delay in litigation and dispute resolution including methods other than by trial.

After receiving the report, the Court will create, in consultation with the Advisory Group, its own plan for expense and delay reduction, including an implementation schedule. Consideration must be given, by the Advisory Group and the Court, to specific litigation management principles and to cost and delay reduction techniques set forth in the Act. The plan must be implemented by December 1, 1993.

At least two levels of review of the district court's report and plan will be conducted. First, a committee composed of the chief judges of each district court in the circuit, or another judge designated by the chief judge, and the chief judge of the court of appeals for the circuit, will review each report and plan and make suggestions for additional actions or modifications as the committee considers appropriate.

Following the circuit committee's examination, the Judicial Conference of the United States will review each report and plan submitted by the district courts. The Judicial

Conference may request a district court to take additional action if it determines the district court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the Advisory Group.

The CJRA process does not end with the Court developing and implementing its plan. Annually, each district court, in consultation with its advisory group, must evaluate the condition of its civil and criminal dockets to determine appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management techniques of the court. The requirements of the Act regarding the report, plan, advisory group, and review process continue until December 1, 1997.

Organization of the Report

The introduction to the report provides the legislative background and the task presented to the Advisory Group followed by the summary of the report. The recommendations are grouped together as a convenience to the reader. The numbering of the recommendations is in the sequence in which they appear in the text of the report and should not be construed as representing any ranking or order of priority. The section of the report describing internal and external factors contributing to delay is also accompanied by the recommendations.

SUMMARY OF THE REPORT

The Advisory Group's primary conclusion is that the overall condition of the civil docket in the District of Colorado is good. The Advisory Group further believes that the presently discernable trends, most notably the dramatic increase in the burden of criminal cases, will place extraordinary demands on the Court's resources in the very near future. For the most part, controlling these trends is beyond the Court's control but strategies must be developed to respond in the most effective manner.

The Advisory Group believes that there are significant areas in which the Court can effect cost-saving and time-reduction techniques. These steps can be grouped in three main categories:

- improved case management by the Court;
- enhancement of awareness and utilization of alternative dispute resolution methods;
- better litigation practices of attorneys and litigants.

The areas of case management which can be improved by the Court include more extensive utilization of magistrate judges and more rapid disposition of motions.

The Court and the attorneys are called by several forces to bring recognized alternative dispute resolution techniques into the litigation arena. ADR must not be offered as a substitute for the traditional judicial process, but as a supplement. The Court's role should consist of recognition and support of ADR techniques and leadership in the education of the legal community.

The Advisory Group believes that the Court can continue to improve the practices of

attorneys and litigants to reduce the extent and cost of discovery and to reduce substantially unnecessary motion practice. The mechanics of dealing with cases moving from the bankruptcy court to the district court can be streamlined and better defined, with a concomitant reduction in cost and delay.

The Advisory Group recommends to the Court the establishment of a federal practice group of lawyers who are interested in practicing before the Court. This group could provide the framework for sharpening of federal practice skills and the inspiration of enhanced levels of professionalism.

Lastly, the Advisory Group recommends seeking additional judgeships to alleviate the impact of the sharp increase in the general criminal workload as well as the increase in complex civil cases which the Court is experiencing.

CJRA ADVISORY GROUP RECOMMENDATIONS

RECOMMENDATION NUMBER 1

The Court should broaden the scope of matters referred to a magistrate judge to include the trial of cases with consent of the parties and reference of dispositive motions for recommended findings and ruling in selected cases.

RECOMMENDATION NUMBER 2

The Court's district judges should each review their administrative procedures for disposition of pending motions to determine whether speedier rulings can be attained. The resources available in the Clerk's office should be used in developing and implementing any review process or implementing changes in administrative procedures.

RECOMMENDATION NUMBER 3

The Local Rules of the District of Colorado should be modified to provide that a final pretrial conference be held not more than 60 days and not less than 30 days prior to trial. All motions, except evidentiary motions in limine, must be filed at least thirty (30) days before the date of the final pretrial conference and must be ruled on before or at the final pretrial conference.

RECOMMENDATION NUMBER 4

The Local Rules of the District of Colorado should be modified to provide that the Court rule on all non-dispositive motions within 60 days after they are at issue. All dispositive motions should be ruled upon no later than 90 days after they are at issue.

RECOMMENDATION NUMBER 5

The Court should expand its public access to information to include the Public Access to Court Electronic Records (PACER) system.

RECOMMENDATION NUMBER 6

The Court should adopt a policy statement expressing the Court's support for litigants seeking ways to resolve their disputes outside the judicial system, but reinforcing the public's confidence that the Court is accessible and available for all who properly choose to use its resources.

RECOMMENDATION NUMBER 7

The Local Rules of the District of Colorado should be modified to require that the parties file, no later than the first Rule 16 conference, stipulations or individual written statements as to their plan for use of alternative dispute resolution (ADR) techniques or the reasons why they believe such techniques are inappropriate in their case.

RECOMMENDATION NUMBER 8

The Court should use a Differentiated Case Manager from within existing staff to develop and implement a pilot program with one or more judges and magistrate judges to recommend to the judges methods by which cases might be focused or streamlined and whether a case is suitable for disposition through ADR techniques. The pilot program should include procedures to measure its effectiveness and a sunset provision.

RECOMMENDATION NUMBER 9

The Court should include the subject of alternative dispute resolution (ADR) in seminars and other educational programs presented for the attorneys practicing before the Court.

RECOMMENDATION NUMBER 10

The Court should provide opportunities for the judges and magistrate judges to learn more about available alternative dispute resolution (ADR) processes.

RECOMMENDATION NUMBER 11

The Court should establish a systematic procedure for monitoring the effectiveness of new local rules created to curb discovery abuse.

RECOMMENDATION NUMBER 12

The Court should assume the leadership role in establishing a practice resource group with the goal of providing attorneys additional training, mentoring, and practice in developing the skills, competence, and professionalism necessary to practice in the Court.

RECOMMENDATION NUMBER 13

The Court should continue to assume early and ongoing control of the pretrial process through the involvement of a judicial officer in setting deadlines for filing motions, at the earliest practicable time.

RECOMMENDATION NUMBER 14

The Local Rules of the District of Colorado (D.C.COLO LR 29.1) should be modified to provide that each party, including state and federal governmental agencies, must be represented by a person with the authority to bind such party as to all issues previously identified for discussion at each hearing or conference.

RECOMMENDATION NUMBER 15

The Local Rules of the District of Colorado (D.C.COLO. LR 53.2) should be modified to provide that (additions in capital letters), "At any stage of the proceedings, on a district judge's motion or pursuant to motion or stipulation of counsel, a district judge may direct the parties to a suit to engage in an EARLY NEUTRAL EVALUATION, AN early settlement conference or other alternative dispute resolution proceeding. To facilitate settlement or resolution of the suit, the judge may stay the action in whole or in part during a time certain or until further order. Relief from an order under this section may be had upon motion showing good cause."

RECOMMENDATION NUMBER 16

The Local Rules of the District of Colorado should be modified to provide that the Court shall require the presence of the parties at any settlement conference conducted under the auspices of the Court. The only exception to this requirement shall permit parties who reside outside the District of Colorado to participate in the settlement conference by telephone if, at least ten days prior to such conference, such party has made a showing that presence at the conference would create an undue financial hardship for such party. If the party is a corporation, governmental agency, association or other entity, such party shall be represented at the settlement conference by a person with the authority to bind such party to a settlement agreement.

RECOMMENDATION NUMBER 17

The Court should adopt and place rules pertaining to bankruptcy matters in a separate Article or Appendix of the Local Rules. At a minimum, these rules should address withdrawal of reference, findings of fact and conclusions of law in non-core proceedings, bankruptcy appeals, and general administrative procedures. The Local Rules should reflect a systematic method of handling matters between the District Court and Bankruptcy Court.

RECOMMENDATION NUMBER 18

The Local Rules of the District of Colorado should be modified to provide that the Court hold a status conference, if requested by one or more parties, for any bankruptcy matter brought to the District Court from the Bankruptcy Court (whether on appeal or otherwise) within fifteen days of receipt of the Bankruptcy Court file, to determine the nature of the matter and its potential impact on the underlying case or other proceedings still before the Bankruptcy Court.

RECOMMENDATION NUMBER 19

Congress should draft legislation with more precision to avoid litigation-causing errors or omissions. Statutory ambiguity, and failure to address threshold issues such as retroactivity, statutes of limitations, or jurisdictional limits, spawn unnecessary litigation.

RECOMMENDATION NUMBER 20

Congress should expand resources available to the judiciary when creating additional areas of federal jurisdiction that will increase the workload of the federal courts.

RECOMMENDATION NUMBER 21

The executive branch should evaluate the effectiveness of and work towards further implementation of the executive order encouraging use of expeditious dispute resolution methods in cases involving the United States.

RECOMMENDATION NUMBER 22

The executive branch should nominate candidates for judicial vacancies in a timely manner and the Senate should act promptly on such nominations.

RECOMMENDATION NUMBER 23

The Court should request additional judgeships to meet the demands created by the sharp increase of complex civil and criminal cases.

SECTION 1. DESCRIPTION OF THE COURT

A. GEOGRAPHIC AND DEMOGRAPHIC OVERVIEW

The District of Colorado is the entire state of Colorado, consisting of 104,247 square miles, divided into sixty-three counties. The "seat" of the United States District Court for the District of Colorado ("the Court") is located in the state's capitol, Denver.

As the third fastest growing state in the nation, Colorado is experiencing a higher than anticipated population growth, representing the state's highest growth in a decade (1983-1992).[1] Population figures for 1992 are estimated at 3,470,216.

The diversity of the state is reflected in the population growth of the racial and ethnic minorities, exceeding the rate of increase for the population as a whole. Over the past ten years, the state's black population has increased 30.9% to become 4% of the state's residents. The percentage of Hispanic residents grew by 24.9% to reach 12.9% of the state population. Nationally, the black population grew at a rate of 13.2% to become 12.1% of the nation's residents and the Hispanic community increased by 53% to become 9.1% of the population.

Colorado is a regional center for the federal government, including the Department of Justice. A Drug Task Force, a Financial Institutions Task Force, and a special White Collar Crime Unit are located in the District. Florence, Colorado is the site of a new federal correctional center presently under construction that will have all levels of security. Upon completion in 1994, the facility will include a section with security tighter than the maximum security facility at Marion, Illinois. Although the new facility has not been completed, the

[1]Reynolds, R. (1992, December) New State Population Estimate. Denver, CO: State Demographer, State of Colorado.

first pro se prisoner filing has already been received by the Court.

Several military installations are located in Colorado. The apparent trend toward a reduction in military expenditures may create dramatic changes in the uses of defense facilities and personnel in Colorado.

B. PLACES OF DOING BUSINESS

The eight district judges,[2] three magistrate judges, the Clerk's Office, and Pretrial Services are located in the United States Courthouse, 1929 Stout Street, Denver, Colorado. The Bankruptcy Court is housed directly across Stout Street in the United States Custom House. The Probation department is located seven blocks from the courthouse in leased space at 475 - 17th Street, Denver.

The Court's fourth full-time magistrate judge is assigned to Colorado Springs. Chambers, courtroom, and support staff is provided in leased space at 212 N. Wahsatch Avenue, #101. The Court maintains a courtroom and chambers at 5th and Main Streets in Pueblo. The facility is used by the magistrate judge from Colorado Springs, the district judges, and the Bankruptcy Court. Coordination of its use is maintained by the Clerk's Office.

A full-service facility is located in Grand Junction, Colorado. A courtroom with a twelve-person jury box, district judge and magistrate judge chambers, a mini law library, and district support staff is provided. A part-time magistrate judge, a satellite office of the Probation department, and a full-time Deputy Marshal are housed in the complex. The

[2]Eight district judges includes one senior judge.

clerical staff of the Probation Department have been authorized to act as deputy clerks of the Court for the limited purpose of accepting filings. The Grand Junction facility is located in the Wayne Aspinall Federal Building at 4th and Rood Avenue.

A mini-courtroom and chambers are located in Durango at the Federal Building, 701 Camino Del Rio. The space is assigned to the part-time magistrate judge and is used by the district judges for hearings and trials to the Court. When jury trials are held in Durango, state court facilities are used.

C. OVERVIEW OF COURT RESOURCES

1. JUDICIAL RESOURCES

a. ARTICLE III JUDGESHIPS

The Court has seven authorized district judgeships. The number has remained unchanged since 1985.[3] A discussion of the number of judgeships in the District of Colorado must also include the number of vacant judgeship months experienced by the Court.[4] The Court has not had a full bench in six of the past ten years because of vacancies. Currently, the District of Colorado has one senior and seven active district court judges. The Court recently lost the valued service of senior judge Alfred A. Arraj, who remained very active until shortly before his death late in 1992.

The number of Article III judges authorized for each court is dependent on several

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[3]Statistical year, July 1 to June 30.

[4]Vacant judgeship months occur when a district judge has been authorized for the district court, but the vacancy has not been filled, either because the President has not designated a candidate or Congress has not acted on the nomination.

factors. One of the key criteria on which a request for additional judgeships is evaluated is the number of weighted filings per judgeship. "Weighted filings per judgeship" incorporates not only the number of cases assigned to each judge, but also the complexity of the different types of cases. Some types of cases consistently demand more work of the judiciary than others. The theory is that the "average" is worth one case, so every case is worth more than, equal to or less than the number depending on the amount of judicial time needed.[5]

b. MAGISTRATE JUDGESHIPS

The District of Colorado has four full-time magistrate judges and two part-time magistrate judges. Of the full time magistrate judges, three sit in Denver and one newly created full-time position primarily serves in Colorado Springs, Pueblo and southern Colorado. Part-time magistrate judges sit in Durango and Grand Junction.

2. HISTORY OF JUDICIAL VACANCIES

Prior to statistical year 1991,[6] the District of Colorado experienced vacant judgeship months[7] every year for six years. During the years 1985 through 1990 there were 131.6 vacant judgeship months. Table 1 illustrates the history of judicial vacancies experienced by the District of Colorado over a ten year period.

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[5]Administrative Office of the United States Courts. (1980). Annual Report of the Director (629-752/6004. page 104). Washington, DC: U.S. Government Printing Office.

[6]The "statistical year" for 1991 was July 1, 1990 to June 30, 1991. Federal Court Management Statistics, published annually by the Administrative Office of the United States Courts, is the main source of judicial workload statistics used in this report.

[7]Vacant judgeship months are used to describe the situation in which an additional judge (or judges) has been authorized by Congress, or in which a death or resignation has occurred but the vacancy not yet filled. Perhaps, the judge has not been nominated by the President or if nominated, the nomination not acted on by the Senate.

Table 1

HISTORY OF JUDICIAL VACANCIES
U.S. DISTRICT COURT
DISTRICT OF COLORADO
1983 - 1992

Year[8]	Authorized Number of Judgeships	Vacant Judgeship Months	Actual Number of Judges
1992	7	0	7
1991	7	0	7
1990	7	15.1	5.7
1989	7	28.7	4.6
1988	7	26.7	4.8
1987	7	24.0	5
1986	7	24.0	5
1985	7	13.1	5.9
1984	6	0	6
1983	6	0	6

[8]Year refers to statistical year, July 1 to June 30.

D. DATA GATHERING METHODOLOGY

The Advisory Group used several sources and techniques to gather information used in this report. Statistics, questionnaires, interviews, public testimony, miscellaneous written statements, and the experience and expertise of the members of the Advisory Group are the main sources of the information used in the report. A public hearing was held by the Court[9] before the new local rules were adopted in June 1992[10] and written statements accepted from the legal community regarding modifications of the local rules. The Advisory Group was very active in the process used to develop the new local rules. In addition to conducting a thorough review and analysis of the Court's proposed rules when they were first announced, the Advisory Group's Local Rules Sub-group submitted extensive comments and recommendations relative to the proposals. Many of the recommendations were adopted. Additionally, the Local Rules Sub-group provided to the Court an ongoing source of opinion and comment on the impact of changes under consideration and adopted. Attorneys with a wide variety of federal litigation experience reviewed all proposed changes for purposes of providing suggestions and comments on proposed local rules.

Questionnaires from the Advisory Group were distributed to district court judges, magistrate judges, the staff of the Clerk's office, attorneys, and litigants. Members of the legal community were invited to participate in sub-group meetings.

The experience and expertise of the Advisory Group itself were drawn on through extensive meetings. Statistics, professional articles, and other CJRA reports and plans were

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[9]August 22, 1991, 2:00 p.m., Courtroom C-201, United States Courthouse, Denver, Colorado.

[10]Effective June 1, 1992.

reviewed. Other district courts were contacted for additional information about their special programs or methods for reducing cost and delay. Information was collected from resource people in Colorado and around the country for additional detail regarding their publications or perspective. Requests for additional information were, without exception, met with responses that were helpful, generous in time, and beneficial to the Advisory Group.

SECTION II. ASSESSMENT OF THE DOCKET

A. ASSESSMENTS OF THE CONDITION OF THE CIVIL AND CRIMINAL DOCKETS

1. NARRATIVE AND ANALYSIS

The condition of the civil and criminal dockets in the District of Colorado is good. Civil cases take about eight months from filing to disposition; the Court is ranked 15th out of all 94 districts in this category. The number and percentage of civil cases over three years old continued to decline to a low of 107 cases (4.9%) of the civil docket. Disposition of the older cases keeps the filing to disposition time higher because the older cases are included in the median times reported for filing to disposition of cases. The Court's percentage of civil cases over three years old (4.9%) is much lower than the percentage of civil cases over three years old for all district courts (8.7%).

Criminal felony cases take a median time of 4.2 months from filing to disposition compared to a median time 5.9 months for all 94 districts, a ranking of tenth when compared to all district courts.

The Court has a heavy concentration of complex civil and criminal cases. The types of complex civil cases include non-prisoner civil rights, contract actions (other than student

loan, veterans' benefits), and torts.[11] The types of complex criminal cases include drug-related cases, many with multiple defendants and multiple counts, and a high number of banking-related and stock fraud cases.[12] The number of complex cases (civil and criminal) filed in the District of Colorado has increased 28.3% in 1992[13] over the previous year, placing the Court ninth in the nation per judgeship when compared to all 94 district courts.

As the number of complex cases per judgeship increases, the number of pending cases may also rise unless the Court takes unusual measures to compensate for the escalating cases. In the past when the number of cases per judge has risen dramatically and there were vacancies on the bench, the Court has requested through the state and local bar associations that cases be directed to the state courts, if possible, in an effort to alleviate the situation.

Despite the Advisory Group's generally positive impression of the Court's docket, there is some deterioration in the areas of the number of cases terminated and the number of pending cases compared to previous years. In statistical year 1992[14] the number of pending cases increased 21% over the previous year, from 2,030 to 2,461. During the same time period, the number of terminations decreased by eight percent, from 2,670 to 2,450.

Table 2[15] illustrates the number of cases terminated in 1992 in the District of Colorado compared to other district courts. The Court ranked 69th out of 94 courts for the number

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[11]Appendix B-2, Civil Filings by Nature of Suit.

[12]Appendix B-3, Criminal Felony Filings by Nature of Offense.

[13]Administrative Office of the United States Courts, Judicial Workload Profile for the U.S. District Court, District of Colorado. See Appendix B-1 for "U.S. District Court--Judicial Workload Profile."

[14]July 1, 1991 to June 30, 1992 is statistical year '92.

[15]Table 2 is developed from Appendix B-1, U.S. District Court--Judicial Workload Profile, published by the Administrative Office of the United States Courts.

of cases terminated; the Court ranked sixth out of eight district courts within the Tenth Circuit.

Table 2 also compares the Court's number of pending cases per judgeship to a national ranking of the 94 district courts and a ranking within the eight district courts of the Tenth Circuit, 59th and fourth, respectively.

The Court compares favorably and above average to other district courts when examining most aspects of the civil and criminal docket. The Court is better than the norm of the 94 district courts in all areas examined except two: the time for civil cases to go from issue to trial, and the number of terminations for the time period July 1, 1991 to June 30, 1992. A civil case from issue to trial required fifteen months[16] in the District of Colorado, while the average of all district courts was fourteen months. The number of terminations per judgeship for the Court was 350 compared to an average of 416 for other district courts. Further assessment of Table 2 indicates that even though there was a 28% increase in weighted filings and a 21% increase in overall filings, the Court continued to lower its percentage of cases over three years old.

[16]Less than five percent of the civil cases go to trial.

Table 2

DISTRICT OF COLORADO COMPARED TO OTHER U.S. DISTRICT COURTS
July 1, 1991 to June 30, 1992

	U.S. District Court District of Colorado	All District Courts	Ranking U.S.	Ranking Tenth Circuit
Time From Filing to Disposition:[17]				
Civil	8 Months	9 Months	15th[18]	3rd
Criminal Felony	4.2 Months	5.9 Months	10th	3rd
Issue to Trial (Civil) (Median Times)	15 Months	14 Months	40th	6th
Total Filings Per Judgeship	414 Cases	403 Cases	35th	3rd
Terminations Per Judgeship	350 Cases	416 Cases	69th	6th
Pending Cases Per Judgeship	352 Cases	402 Cases	59th	4th
Weighted Filings Per Judgeship	476 Cases	405 Cases	9th	1st
Civil Cases Over 3 Years Old (Number/Percent)	107 Cases 4.9%	19,423 Cases 8.7%	35th	6th

[17]Time for Filing to Disposition and Issue to Trial are given in median times.

[18]Ranking is used to compare the Court to other district courts. For example, in the civil case category, Time from Filing to Disposition, the Court ranks 15th when included with all district courts and 3rd within the Tenth Circuit. In other words, fourteen of the 93 district courts take less time than the District of Colorado. Within the eight district courts of the Tenth Circuit, two courts take less time from filing to disposition than the District of Colorado.

B. TRENDS IN FILINGS AND DEMANDS ON RESOURCES

1. NARRATIVE AND ANALYSIS

The District of Colorado faces the following trends which will significantly impact the Court's civil docket:

- a rapidly escalating amount of time consumed in dealing with criminal matters;
- a growing number of civil case filings, with an associated increase in complex civil cases;
- a rising number of pro se litigants, both prisoner and non-prisoner;
- an increasing number of requests for information and services from within the judicial branch and outside the court system.

The demand on the Court's resources generated by criminal matters is, in the view of the Advisory Group, the single most significant factor which will impact civil litigation into the foreseeable future. The component parts include at least the apparently insatiable Congressional appetite for federalization of traditional state law crimes; the imposition of sentencing guidelines and the attendant increase in time required for sentencing and the right to appeal criminal sentences; and the increasing number and complexity of felony filings. Table 3 illustrates the increase for the past ten years on the number of felony filings per judgeship as well as the percentage increase the criminal cases are becoming of all cases filed. Since 1983, narcotic-related criminal filings have increased by 660% and criminal fraud cases have increased by 315% compared to a 32% increase in felony filings generally. Increasing the numbers of investigators and prosecutors to wage the war on crime must be met with at least commensurate increases in the judicial resources.

Some judges of the Court estimate that the amount of time spent on criminal cases has increased from ten to fifty percent over the last two or three years. The Advisory Group is confident that by the time the Court adopts its Plan, there will be more federal crimes than when this Report is being written. While commentary on the policy decisions behind these trends is beyond the scope of this Report, the impact of these trends on the civil docket cannot be understated.

Civil case filings continued an upward trend in 1992 by jumping 21.8%.[19] Table 4 illustrates the docket trends over the past ten years. Weighted filings (complex civil and criminal cases) increased 28.3%. The number of pro se litigants now represents 27% of the civil docket. Of the 688 pro se litigants in calendar year 1992, 254 were filings by non-prisoner litigants. Overall, the civil pro se (prisoner and non-prisoner) filings increased almost four percent over calendar year 1991 (662).[20] The number of prisoner cases, most of which will be pro se, is expected to rise significantly with the housing of inmates in the three new prisons under construction, including two state prisons and the new federal facility at Florence.

Currently, the Court has a systematic, well defined method of handling the pro se filings. With a new ruling handed down from the Tenth Circuit Court of Appeals, the Court may be required to appoint more attorneys for pro se litigants in non-prisoner cases.

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[19]Appendix B-1, U.S. District Court--Judicial Workload Profile for the District of Colorado.

[20]Statistics collected by the District of Colorado.

Table 3

CRIMINAL FELONY DOCKET TRENDS
PER JUDGESHIP • PERCENT OF TOTAL FILINGS
DISTRICT OF COLORADO
1983 - 1992

Year	Total Case Filings	Number of Felony Filings Per Judgeship	Felony Filings As Percent of Total Filings (Civil and Criminal)[21]	Time From Filing to Disposition (Criminal Felony)[22]
1992	2900	51	12.3%	4.2 Months
1991	2397	44	12.8%	4.2 Months
1990	2667	45	11.8%	3.8 Months
1989	2630	44	11.7%	3.7 Months
1988	2471	41	11.6%	3.7 Months
1987	2517	39	10.8%	3.5 Months
1986	2844	33	8.12%	3.3 Months
1985	3066	36	8.2%	3.3 Months
1984	2959	38	7.7%	3.6 Months
1983	2653	46	10.4%	3.1 Months

During the past five years the number of felony filings per judgeship has increased over 24%.

[21]Calculated using the number of criminal felony filings per judge, multiplied by the number of authorized judgeships, and divided by the total number of filings (civil and criminal) for the statistical year.

[22]Median times.

Table 4

CIVIL DOCKET TRENDS
U.S. DISTRICT COURT
DISTRICT OF COLORADO
1983 - 1992

Year	Civil Filings	Percentage of Total Filings	Actual Number of Judges	Number of Civil Filings Per Judgeship	Time From Civil Filing to Disposition	Time From Issue to Trial (Civil Only)	Number and Percent of Civil Cases Over 3 Years
1992	2538	88%	7	363	8 Months	15 Months	107 4.9%
1991	2083	87%	7	298	8 Months	18 Months	108 6%
1990	2355	88%	5.7	336	9 Months	17 Months	138 6.5%
1989	2322	88%	4.6	332	8 Months	20 Months	152 7.2%
1988	2181	88%	4.8	312	8 Months	16 Months	141 7.1%
1987	2249	89%	5	321	9 Months	16 Months	117 5.9%
1986	2610	92%	5	373	8 Months	16 Months	117 5.1%
1985	2812	92%	5.9	402	8 Months	13 Months	133 5.8%
1984	2732	92%	6	455	7 Months	15 Months	121 5.3%
1983	2372	89%	6	396	8 Months	13 Months	80 3.5%

Supporting district court personnel are asked to provide more services internally though the Administrative Office of the United States Courts and externally from the public as well as other branches of government. The Administrative Office of the United States Courts requests additional surveys, participation on work and policy committees, and changes in methods of service delivery, often involving additional training, time and frequently delay of existing service methods. Automation, financial and other technical support systems are under going a great deal of change, requiring an immense amount of staff time and support. Such a commitment of time, without additional supporting personnel, distracts from the delivery of basic case management services to the Court.

Outside the court system, requests for court-based information are mushrooming. The Civil Justice Reform Act itself requires a significant amount of supporting personnel time from the Clerk's office. The cooperative attitude of the Clerk's staff, which is essential for the Advisory Group's ability to perform its statutory duties, draws time from its official duties. The Act itself requires district courts to have additional case management statistical reports available to the public. Each district court is also required to perform annual assessments of the docket to determine additional appropriate actions that may be taken by the Court to reduce cost and delay in civil litigation.

SECTION III. COST AND DELAY

A. INTERNAL FACTORS CONTRIBUTING TO COST AND DELAY

The Advisory Group has determined that the District of Colorado is doing well in most areas of court-wide procedures that impact cost and delay.

The Advisory Group, however, is mindful of the Court's opportunity to improve in some areas and believes that the pace of litigation and access to the Court could be improved by changes in the following areas:

- expanding the systematic method of screening cases;
- broadening the scope of matters referred to magistrate judges;
- motion practice by attorneys and handling of motions by judicial officers;
- electronic public access to court information;
- the use of alternative dispute resolution techniques;
- use of discovery;
- lawyer competence and professionalism;
- clarification of procedures governing cases from bankruptcy court to district court.

1. CASE MANAGEMENT

a. ORGANIZATION

The Court uses a decentralized docket: once cases are assigned, each judge has sole responsibility for managing his or her cases. The administration of each case within the judge's chambers, including the setting of hearing and trial dates, the utilization of magistrate

judges, and even the minutiae of courtroom protocols are determined by each district judge. The only significant practice which is uniformly employed is a standard form of pretrial order, mandated by local rule. Most, but not all, of the district judges conduct a final pretrial conference 30-45 days before trial.

Pro se cases are the only cases systematically screened in the Clerk's office before the file is delivered to the district judge or magistrate judge. The Court has developed, with the pro se staff attorney, a method of prioritizing the pro se cases to maximize the use of judicial time and resources. The Advisory Group believes the methods used could be adapted to other types of cases for screening to recommend to the assigned judicial officer what may be the most effective treatment of the particular case.

Whatever systems for initial screening and subsequent monitoring are employed when a case reaches the judge's chambers are designed and maintained solely by each judge. While the details of this process, such as the roles played by law clerks and other support staff, are not fully known to the Advisory Group, it is clear that these practices vary widely and have differing levels of efficiency and success. The administration/handling of the paper flow is a critical task which will become increasingly more burdensome.

b. MAGISTRATE JUDGES

The three full-time magistrate judges sitting in Denver and the one in Colorado Springs/Pueblo are paired with district judges. Each district judge refers all of his or her referred matters to only one magistrate judge. There is no formal procedure in place for the selection of the pairs or the duration of the pairing assignments.

The district judges use the services of the magistrate judges in differing ways and to differing degrees. Most district judges prefer to conduct their own Rule 16 conferences and most refer almost all of their cases to a magistrate judge for monitoring the discovery process and resolution of discovery disputes. About half the district judges refer all non-dispositive motions to a magistrate judge, but only a few dispositive motions are referred. About half of the district judges delegate the responsibility for developing a pretrial order to a magistrate judge. Most district judges refer most cases to a magistrate judge for the purpose of conducting a settlement conference or conferences.

The Advisory Group believes that the Court should broaden the scope of matters referred to magistrate judges to include the trial of cases with consent of the parties and reference of dispositive motions for recommended findings and ruling in selected cases. The District of Colorado is presently the only district in the country which does not allow magistrate judges to conduct civil trials with the consent of the parties. The Advisory Group believes that it is time to expand the responsibilities of the magistrate judges but any changes should be made in conjunction with a review of the magistrate judge's overall role in the judicial process. It appears to the Advisory Group that the Court does not have a clear focus on the role(s) of the magistrate judges nor on the skills or experience necessary or useful to the magistrate judges. The ability to conduct settlement conferences is quite different from the ability to manage discovery programs, handle pro se prisoner matters or deal with various criminal docket responsibilities. The selection of magistrate judges does not appear to reflect a conscious selection of particular skills or experience.

With the broadening of the workload of magistrate judges recommended herein, the

practice of paring each district judge with one magistrate judge may need to be modified. For example, if a case is referred to a magistrate judge for a settlement conference, that same magistrate judge cannot rule on a dispositive motion or preside at a trial in that same case. The Court should consider organizing the reference of particular matters to a particular magistrate judge rather than an entire case to one magistrate judge.

c. DISPOSITION OF MOTIONS

In their responses to the questionnaire, the lawyers identified the failure of the district judges to rule promptly on motions as the most significant cause of delay. There is little doubt that slow rulings on motions contribute to unnecessary cost and delay, but it is difficult to assess the extent of the problem. Available statistics are not sufficiently precise for this purpose but they do indicate that the problem is much greater with some judges than with others.[23] Indeed, in some courtrooms the problem does not exist at all. This fact suggests that the delay, where it exists, is probably due to administrative difficulties rather than workload.

To some extent, the question of prompt rulings on motions is intertwined with the utilization of magistrate judges as a method of dealing with increasing demands on the time of the district judges. The great majority of pending motions are probably not dispositive motions and, if referred to a magistrate judge, could be dealt with more rapidly. The Advisory Group also believes that the reference of dispositive motions to magistrate judges for recommended findings and ruling would, in many cases, reduce cost and delay.

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[23]"Civil Justice Reform Act of 1990, Report of Motions Pending Over Six Months, Bench Trials Submitted Over Six Months, Cases Pending over Three Years on March 31, 1992," prepared by the Administrative Office of the U.S. Courts.

d. TRIAL DATES

The Act (§ 473(a)(2)(3)) requires the consideration of "setting early, firm trial dates." Of course, early trial dates are always desirable, but they represent the result of effective docket management rather than a means to achieve it. Firm trial dates are extremely important tools to minimize the cost of litigation. Trailing calendars which do not permit advance planning of time and reduced travel expense by lawyers, litigants, and witnesses add significantly to the cost of trial. To the extent one interprets the statutory language to mean the early setting of trial dates (whether firm or not) the Advisory Group believes this point is not as important as the firmness of the date.

e. ELECTRONIC PUBLIC ACCESS TO INFORMATION

The ability to provide people outside the court easier and better access to court information should be a goal of the Court. The time of lawyers and litigants could be saved if the Court implemented the electronic public access system called PACER (Public Access to Court Electronic Records). PACER is the system designed by the federal judiciary to allow a law firm or an individual with a personal computer or word processor with a modem, to dial into the court, using standard telephone lines, to obtain court data from a special public information computer, and request information about a case. The PACER system, currently used in some district courts, can provide a full listing of all parties and participants (including judge and magistrate judge assignments), a full listing of all participating attorneys, including firm's address, telephone numbers, and attorney designations (such as lead attorney, recipient of noticing), and an extensive compilation of case-related and

demographic information (such as cause of action, nature of suit, dollar demand, filing and termination dates, and jury demand). In addition, the Court should work toward the goal of having the entire docket sheets for a case available online. A similar system, already available in the Bankruptcy Court, is considerable help to lawyers and litigants.

RECOMMENDATION NUMBER 1

The Court should broaden the scope of matters referred to a magistrate judge to include the trial of cases with consent of the parties and reference of dispositive motions for recommended findings and ruling in selected cases.

RECOMMENDATION NUMBER 2

The Court's district judges should each review their administrative procedures for disposition of pending motions to determine whether speedier rulings can be attained. The resources available in the Clerk's office should be used in developing and implementing any review process or implementing changes in administrative procedures.

RECOMMENDATION NUMBER 3

The Local Rules of the District of Colorado should be modified to provide that a final pretrial conference be held not more than 60 days and not less than 30 days prior to trial. All motions, except evidentiary motions in limine, must be filed at least thirty (30) days before the date of the final pretrial conference and must be ruled on before or at the final pretrial conference.

RECOMMENDATION NUMBER 4

The Local Rules for the District of Colorado should be modified to provide that the Court rule on all non-dispositive motions within 60 days after they are at issue. All dispositive motions must be ruled upon no later than 90 days after they are at issue.

RECOMMENDATION NUMBER 5

The Court should expand its public access to information to include the Public Access to Court Electronic Records (PACER) system.

2. ALTERNATIVE DISPUTE RESOLUTION

Our judicial system has developed over hundreds of years for the purpose of resolving disputes by a deliberative process culminating in a trial. In the main, it performs this function remarkably well.

An equally ancient tradition has been the voluntary resolution of disputes by agreement. Sometimes the views of third persons have been sought, either formally or informally. In certain industries, the desire for rapid resolution by neutral but substantively knowledgeable people has led to arbitration's becoming the norm. As society evolves the forms of non-traditional dispute resolution will undoubtedly multiply and change.

Americans are generally demanding alternatives to the traditional judicial resolution of disputes. "Alternative dispute resolution" ("ADR") techniques are riding a popular wave of great strength. The Colorado Supreme Court has recently adopted the following provision

in its Rules of Professional Conduct: "In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought" Rule 2.1 This provision, of course, is adopted as part of this Court's standards of professional responsibility under D.C.COLO.L.R. 83.6. Thus the profession's obligation to learn about and advise clients concerning these techniques is clear.

The question raised by the Act and a great deal of current thinking is to what extent and in what ways the judicial system should be involved in non-traditional ADR techniques. The roots of many organizations, representing the commercial offering of dispute-resolving services, are already firmly embedded in the soil of Colorado and the nation. Apart from the traditional judicial rule that "settlements" are to be fostered by recognition and enforcement by the courts, the relationship between the judicial system and this ever-growing and largely unsupervised industry needs to be explored.

There are now several different, fairly well defined techniques which are generally recognized as alternative dispute resolution techniques: early neutral evaluation; mediation; settlement conference; mini-trial; summary jury trial; and arbitration. A recently completed study by the Colorado Bar Association defines these techniques and the Advisory Group adopts these definitions which are contained in Appendix C.

Except for settlement conferences, the relationship between the judiciary and ADR in the District of Colorado has been largely one of arms-length separation. Processes similar to recognized ADR techniques, such as the appointment of special settlement masters, are occasionally utilized by a judge in a specific case, but strictly on an ad hoc basis and not

according to any rule or other structured methodology.

Most (but not all) judges in this district routinely refer all cases to a magistrate judge for a settlement conference(s). There are, however, no rules governing such references or the process to be employed by the magistrate judge. In practice, the parties are typically required to furnish a confidential statement of their settlement position to the magistrate judge who then conducts separate or joint conferences in an effort to obtain a settlement agreement. The magistrate judge has a great deal of discretion in choosing the particular techniques that are employed and in deciding whether multiple conferences should be held. If the representatives of the parties at the conferences do not have authority to commit to settlement agreements, the chances for success of the process are substantially diminished.

Although there is a divergence of views among the judges as to the precise relationship between the court and ADR, none of the judges is opposed to at least suggesting that the parties utilize some ADR technique. Most lawyers, responding to the requests of clients and their new ethical mandate, support the use of these techniques as alternatives to the full litigation process. All agree that successful utilization of most ADR techniques is speedier and less costly than formal litigation.

It must be recognized that the reference of a case to a magistrate judge for the purpose of holding a settlement conference is, conceptually, simply requiring the parties to engage in mediation. Utilizing the magistrate judges has one significant benefit over utilizing private mediators: there is no charge to the litigants for the mediator's services. There are, however, several other factors which can be beneficial or detrimental in any given case: the "authority" of the magistrate judges, as perceived by litigants, increases the intimidation

factor; the availability and scheduling problems of the magistrate judges render them much less accessible; their skills as mediators are largely unknown before their selection as a magistrate judge; they are often perceived as being pressured by the district judge to achieve some kind of settlement and that pressure is sometimes felt by the parties. The essence of mediation is not intimidation but finding common ground for agreement, and district judges and magistrate judges need to be sensitive to this fact. Indeed, unsuccessful attempts at settlement, whether by means of conferences with a magistrate judge or some other ADR technique, almost always add to the cost of litigation.

Without a formal, systematized plan for the recognition and possible invocation of ADR techniques, a plan that is uniform in its design and application and based on published rules, the possibilities for employing speedy, less costly dispute resolution are not maximized and cloaked in suspicion and myth. While involvement of judges on an ad hoc basis in urging settlement or requiring settlement conferences as trial approaches can sometimes be helpful, it can also be regarded by litigants as distasteful and inappropriate pressure.

The Advisory Group believes that the court should require the parties to present a definite plan for settlement efforts, or demonstrate to the court why such efforts are not acceptable, but leave the choice and the timing of the settlement technique to the litigants and attorneys. It is assumed that most litigants will continue to prefer magistrate settlement conferences, but that should be their decision and not the court's.

The Advisory Group's recommends that the Court use the system created for handling pro se cases as a model to develop and implement a Differentiated Case Management (DCM) pilot program. The purpose of the DCM program would be to provide front-end

screening by a member of the Clerk's office and furnishing recommendations to the judge with respect to possible suggestions for ADR or adoption of different discovery and motion tracks. The Advisory Group is not in complete agreement over the concept. Some members believe it represents an opportunity to have a screening function performed by a person whose skills and experience could be devoted primarily to this one task, rather than by law clerks or other in-chambers personnel who may be less specialized. Most members have concerns over the addition of what could become another layer of bureaucracy. The consensus solution was to experiment with a pilot program which might be employed by a few district judges. The Advisory Group considers the use of a DCM pilot project, using existing staff for a specific period of time, with evaluation methods included in the program, a valuable way to determine if such a technique reduces delay in the Court.

RECOMMENDATION NUMBER 6

The Court should adopt a policy statement expressing the Court's support for litigants seeking ways to resolve their disputes outside the judicial system, but reinforcing the public's confidence that the Court is accessible and available for all who choose to utilize its resources.

RECOMMENDATION NUMBER 7

The Local Rules of the District of Colorado should be modified to require that the parties file, no later than the first Rule 16 conference, stipulations or individual written statements as to their plan for use of ADR techniques or the reasons why they believe such techniques are inappropriate in their case.

RECOMMENDATION NUMBER 8

The Court should use a Differentiated Case Manager from within existing staff to develop and implement a pilot program with one or more judges and magistrate judges to recommend to the judges methods by which cases might be focused or streamlined and whether a case is suitable for disposition through ADR techniques. The pilot program should include procedures to measure its effectiveness and a sunset provision.

RECOMMENDATION NUMBER 9

The Court should include the subject of alternative dispute resolution (ADR) in seminars and other educational programs presented for the attorneys practicing before the Court.

RECOMMENDATION NUMBER 10

The Court should provide opportunities for the judges and magistrate judges to learn more about available alternative dispute resolution (ADR) processes.

3. PRACTICES OF ATTORNEYS AND LITIGANTS

a. DISCOVERY

All district judges, all magistrate judges, and most lawyers agree that discovery is a major cause of excess cost and delay. Excessive numbers of depositions, excessive length of depositions, excessively broad document requests and excessively broad interrogatories are

all identified as significant problems. Many judges and lawyers see excessive discovery as abuse, pointing to the use of discovery devices primarily as weapons employed as part of a "battle plan" approach to litigation; some attribute the excessive use to self-protection efforts designed by attorneys to avoid malpractice claims by clients and others identify lawyer incompetence as the reason behind the abuse. When comparing written discovery to depositions, only a few judges and lawyers see written discovery as reducing delay; about half view written discovery as cost-reducing.

The Advisory Group firmly believes that excessive discovery is one of the most significant causes of cost and delay. The Advisory Group recommended changes in the Court's local rules, many of which were promptly adopted. Under the new local rules, the judge has the discretion to limit the number of depositions, interrogatories, requests for admissions, and requests for production. The new local rules referring to the control of discovery, including provisions for strong sanctions for abuse of depositions during discovery, are as follows:

D.C.COLO.LR 16.1
D.C.COLO.LR 16.2A
D.C.COLO.LR 29.1
D.C.COLO.LR 30.1A
D.C.COLO.LR 30.1B
D.C.COLO.LR 30.1C
D.C.COLO.LR 37.2

The Advisory Group believes close scrutiny should be given to the effect of these local rule changes over the coming months.

RECOMMENDATION NUMBER 11

The Court should establish a systematic procedure for monitoring the effectiveness of new local rules created to curb discovery abuse.

b. MOTION PRACTICE

The district judges and magistrate judges are divided on the question of whether motions for summary judgment add to or reduce the cost and time involved in civil cases. Some judges believe that too many of these motions are filed and that most consume lawyer and court time without aiding case resolution. Others argue that these motions sometimes help litigants to avoid trials altogether, and, even when not broadly successful, can be used as a vehicle to narrow issues. This latter group also believes that these motions often force lawyers to evaluate their evidence and legal authorities early in the process.

Most judges and lawyers agree that apart from summary judgment motions, too many motions, in general, are filed. Most of these motions involve discovery disputes, but a material portion appear to consist of motions in limine. Many attorneys believe that delay in ruling on motions inevitably generates the filing of more motions. A frequently cited cliche is "motions breed motions."

The filing of inappropriate or unnecessary motions clearly reflects a lack of professionalism on the part of the attorney and the failure to rule promptly on all motions often makes the Court an unwitting participant in delaying and cost-increasing tactics.

c. LAWYER COMPETENCE AND PROFESSIONALISM

Some judges identify lawyer incompetence as a major cause of excess cost and delay. They see this incompetence as resulting in inappropriate or unnecessary motions being filed (with the incompetence causing either the filing or opposing of the motions); too much time being taken in writing briefs that are of little or no assistance to the Court; too much time being taken during hearings or trials; too much time being spent in researching fundamental questions of law or trial practice; inability to evaluate a case for settlement purposes; and inability to negotiate settlement agreements. Causes of the perceived incompetence include deficiencies in law school curricula, lack of mentoring/training in the early years of practice and the result of an extraordinary number of lawyers competing for clients' business.

Most judges agree that professionalism among lawyers has declined steadily over the last many years. Some attribute that decline to the increase in the number of lawyers and the resulting competition among lawyers. Almost all of the judges report that they sometimes must introduce adversaries to each other because the attorneys have not done so themselves. The failure of lawyers to confer among themselves to try to resolve some problem in the case, rather than filing a motion, is cited as a cause of excess cost and delay by about half the judges.

The use of client resources to overwhelm a less affluent adversary is cited by some judges as a lack of professionalism which directly affects the cost and delay of a case. At least one judge points out that the present system generally rewards such strategies with success.

Some judges point to lawyers' billing practices as inconsistent with high standards of professionalism; they describe lawyers as greedy and overcompensated with respect to society in general. Almost all judges are sure that there is "churning" by some lawyers in billing clients; some believe that the economic pressures inherent in large firm practices result in padding of time. One judge faults the practice of billing almost exclusively on the basis of hourly rates, preferring instead to see more emphasis on the nature of and amount involved in the case, the client's ability to pay and the results achieved.

The litigant survey conducted by the Advisory Group included questions regarding fee arrangements between the litigant and the attorney. "Lawyer fees were unreasonable" was the fourth most frequent reason given for the important causes of unreasonable costs.

The Advisory Group believes that attorneys need additional training, mentoring, and practice in developing the skill, competence, and professionalism necessary to practice in the Court. The extent of the deficiency is impossible to measure in any given lawyer or in any set of lawyers as a group. No matter how great or small the deficiency may be, however, all sensible efforts must be made to reduce or eliminate it. Clearly, these efforts must primarily be the responsibility of the law schools and professional organizations, but, to some extent, the courts can and should assist in this effort.

The Advisory Group believes that the Court should establish a framework for attorneys interested in practicing before the Court, helping the attorneys to obtain ongoing education in the topics uniquely involved in federal practice. The Court should consider using the Advisory Group, the current committee on professional conduct and the Criminal Justice Act Committee for assistance in implementing such a federal practice resource group.

The seminar held in 1992 by the Court and the Advisory Group met a growing need for information and guidance from the district court. Many of the attorneys (28%) attending the seminar were in practice five years or less. Not only had they been in practice for a relatively short period of time, but most of the attorneys attending were from small firms, with 40% from firms of five members or less. Strong interest for establishing a federal practice group was expressed on the written evaluations from the conference. Additional seminars were requested by 73% of the participants, with the most frequent topic suggested for future seminars, "practical litigation techniques."

Many Advisory Group members have expressed a willingness to help the Court establish a federal practice group, citing the need to help with the mentoring process by working with less experienced attorneys to improve their federal practice skills.

RECOMMENDATION NUMBER 12

The Court should assume the leadership role in establishing a practice resource group with the goal of providing attorneys additional training, mentoring, and practice in developing the skills, competence, and professionalism necessary to practice in the Court.

4. MODIFICATIONS TO THE LOCAL RULES TO ENHANCE CASE MANAGEMENT

In an effort to further enhance the opportunity for improving access to the judicial system and reducing cost and delay in the litigation process, the Advisory Group reviewed

the Court's Local Rules of Practice (D.C.COLO.LR)[24] using the principles and guidelines of litigation management and cost and delay reduction techniques outlined in the Act.

The Court's Local Rules of Practice include many of the principles and techniques recommended in the Act. The rules were designed to strengthen the case management responsibility of the district judge, mandate greater cooperation among attorneys in pretrial fact finding and motions, and create a positive settlement atmosphere early in the litigation, and permit the judge to facilitate settlement discussions by calling a "time-out period" that is dedicated exclusively to exploring settlement options. The rules also provide strong sanctions for abuse of the deposition process.

The objectives of the Court in developing the new local rules were to reduce the costs of litigation, bring cases to trial sooner, and provide an earlier opportunity to explore settlement options. The Advisory Group believes the new local rules are an important step toward realizing the goals of the Act.

Comparing the local rules to the principles and guidelines of litigation management stated in the Act also produced recommendations from the Advisory Group to the Court, for areas in which the particular needs of the District of Colorado could be better met. Following each principle and guideline are specific references to the local rules that support the concept from the Act or the recommendation made by the Advisory Group if additional changes are needed.

[24]Effective June 1, 1992.

a. PRINCIPLES AND GUIDELINES OF LITIGATION MANAGEMENT[25]

1. Systematic and differential treatment of cases tailored to case complexity and judicial resources available (473(a)(1)).

D.C.COLO.LR 16.1	D.C.COLO.LR 40.3
D.C.COLO.LR 16.2	D.C.COLO.LR 72.1
D.C.COLO.LR 29.1	D.C.COLO.LR 72.4
D.C.COLO.LR 40.1	

RECOMMENDATION NUMBER 8

The Court should use a Differentiated Case Manager from within existing staff to develop and implement a pilot program with one or more judges and magistrate judges to recommend to the judges methods by which cases might be focused or streamlined and whether a case is suitable for disposition through ADR techniques. The pilot program should include measures by which to determine its effectiveness and a sunset provision.

2. Early and ongoing judicial intervention (473(a)(2)(A)).

D.C.COLO.LR 7.1A	D.C.COLO.LR 30.1C
D.C.COLO.LR 7.1M	D.C.COLO.LR 40.3
D.C.COLO.LR 16.1	D.C.COLO.LR 72.1
D.C.COLO.LR 16.2A	

RECOMMENDATION NUMBER 3

The Local Rules of the District of Colorado should be modified to provide that a final pretrial conference be held not more than 60 days and not less than 30 days prior to trial. All motions, except evidentiary motions in limine, must be filed at least thirty (30) days before the date of the final pretrial conference and must be ruled on before or at the final pretrial conference.

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[25]Recommendations listed out of numerical sequence have appeared earlier in the report.

RECOMMENDATION NUMBER 13

The Court should continue to assume early and ongoing control of the pretrial process through the involvement of a judicial officer in setting deadlines for filing motions, at the earliest practicable time.

3. Setting early and firm trial dates. Careful case management by a judicial officer, including preparation of a discovery schedule and exploration of bifurcation of issues of discovery (473(a)(2)(B)).

D.C.COLO.LR 16.1	D.C.COLO.LR 29.1
D.C.COLO.LR 16.2A	D.C.COLO.LR 40.3

4. Control of discovery (473(a)(2)(C)).

D.C.COLO.LR 16.1	D.C.COLO.LR 30.1B
D.C.COLO.LR 16.2A	D.C.COLO.LR 30.1C
D.C.COLO.LR 29.1	D.C.COLO.LR 37.2
D.C.COLO.LR 30.1A	

5. Controlling motion practice. Motions should be filed only after counsel have certified a good faith effort to resolve the issue (473(a)(2)(D),(3)(D)).

D.C.COLO.LR 7.1 [ALL]	D.C.COLO.LR 7.1A [SPECIFICALLY]

6. Alternative means of dispute resolution, including settlement (473(a)(3)(A)), (473(a)(6)), (473(b)(4)).

D.C.COLO.LR 16.1	D.C.COLO.LR 53.2

RECOMMENDATION NUMBER 7

The Local Rules of the District of Colorado should be modified to require that the parties file, no later than the first Rule 16 conference, stipulations or individual written statements as to their plan for use of alternative dispute resolution (ADR) techniques or the reasons why they believe such techniques are inappropriate in their case.

RECOMMENDATION NUMBER 14

The Local Rules of the District of Colorado (D.C.COLO LR 29.1) should be modified to provide that each party, including state and federal governmental agencies, must be represented by a person with the authority to bind such party as to all issues previously identified for discussion at each hearing or conference.

7. Final pretrial conferences.
D.C.COLO.LR 16.1 D.C.COLO.LR 16.2

RECOMMENDATION NUMBER 3

The Local Rules of the District of Colorado should be modified to provide that a final pretrial conference be held not more than 60 days and not less than 30 days prior to trial. All motions, except evidentiary motions in limine, must be filed at least thirty (30) days before the date of the final pretrial conference and must be ruled on before or at the final pretrial conference.

b. LITIGATION MANAGEMENT TECHNIQUES AND COST AND DELAY REDUCTION TECHNIQUES (§ 473(b))

1. Joint discovery plans presented at the initial pretrial conference.
D.C.COLO.LR 16.1 D.C.COLO.LR 29.1
D.C.COLO.LR 16.2A D.C.COLO.LR Appendix A

2. Each party must be represented by an attorney who has the authority to bind them as to all issues previously identified for discussion at each conference.

RECOMMENDATION NUMBER 14

The Local Rules of the District of Colorado (D.C.COLO LR 29.1) should be modified to provide that each party, including state and federal governmental agencies, must be represented by a person with the authority to bind such party as to all issues previously identified for discussion at each hearing or conference.

3. All requests for extensions of time must by signed by the party and his or her attorney.

   The Advisory Group believes the goal of client involvement in the request for an extension of time has been met by D.C.COLO.LR 7.1C, "...proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all pro se litigants".

4. A neutral evaluation program at a nonbinding conference conducted early in the litigation.

RECOMMENDATION NUMBER 15

The Local Rules of the District of Colorado (D.C.COLO. LR 53.2) should be modified to provide that (additions in capital letters), "At any stage of the proceedings, on a district judge's motion or pursuant to motion or stipulation of counsel, a district judge may direct the parties to a suit to engage in an EARLY NEUTRAL EVALUATION, AN early settlement conference or other alternative dispute resolution proceeding. To facilitate settlement or resolution of the suit, the judge may stay the action in whole or in part during a time certain or until further order. Relief from an order under this section may be had upon motion showing good cause."

5. Presence of decision makers at settlement conference.

RECOMMENDATION NUMBER 16[26]

The Local Rules of the District of Colorado should be modified to provide that the Court shall require the presence of the parties at any settlement conference conducted under the auspices of the Court. The only exception to this requirement shall permit parties who reside outside the District of Colorado to participate in the settlement conference by telephone if, at least ten days prior to such conference, such party has made a showing that presence at the conference would create an undue financial hardship for such party. If the party is a corporation, governmental agency, association or other entity, such party shall be represented at the settlement conference by a person with the authority to bind such party to a settlement agreement.

5. CLARIFICATION OF PROCEDURES GOVERNING CASES FROM BANKRUPTCY COURT TO DISTRICT COURT

The complex relationship between the bankruptcy courts and the district courts, coupled with the dramatic increase in bankruptcy case filings and proceedings in recent years, creates the need for clearly articulated procedures governing the submission of bankruptcy matters to the district judges.

All but the most experienced bankruptcy practitioners are confused by the lack of procedural guidelines for submitting motions for withdrawal of reference, requests for review

[26]The United States Attorney has asked that his strong objection to making this rule applicable to the United States be recorded.

of findings of facts and conclusions of law in non-core matters, review of contempt orders, and other matters which draw the district court into the bankruptcy process.

At the present time, the minimal guidance which does exist is scattered among several procedural orders of the Court, is difficult to find, and is incomplete. Consultations by Advisory Group members with the bankruptcy judges, the Clerk of the Bankruptcy Court, and members of the bankruptcy subcommittee of the Colorado Bar Association, all indicate strong support for additional local rules of the Court which could serve as a "road map" to practitioners. Such additional rules could help assure that bankruptcy litigants seeking to exercise their rights before the district court are not subject to undue delay or unnecessary cost due to procedural uncertainties. Included as Appendix D to this report are proposed local rules recommended for adoption by the Court.

Bankruptcy cases frequently involve and include numerous administrative and adversary proceedings on different issues. Appeals of such proceedings, as well as motions to withdraw reference, to review certain types of orders and other matters, often are brought before the district court while the underlying cases and other proceedings continue before the bankruptcy court.

Especially in business reorganization cases, a matter which is pending before the district court may have a significant influence on the direction or outcome of the underlying case or other proceedings still before the bankruptcy court. Even "timely" treatment of such a matter before the district court, as measured by ordinary standards, could cause delays in the underlying case which have a profoundly negative impact on the entire bankruptcy estate. An early status conference would enable the district court to be promptly apprised

of the nature of the matter before it and its potential impact on the underlying case. With this information, the district court could better assess the relative urgency of the requested review and to schedule accordingly.

RECOMMENDATION NUMBER 17

The Court should adopt and place rules pertaining to bankruptcy matters in a separate Article or Appendix of the Local Rules. At a minimum, these rules should address withdrawal of reference, findings of fact and conclusions of law in non-core proceedings, bankruptcy appeals, and general administrative procedures. The Local Rules should reflect a systematic method of handling matters between the District Court and Bankruptcy Court.

RECOMMENDATION NUMBER 18

The Local Rules of the District of Colorado should be modified to provide that the Court hold a status conference, if requested by one or more parties, for any bankruptcy matters brought to the District Court from the Bankruptcy Court (whether on appeal or otherwise), within fifteen days of receipt of the Bankruptcy Court file, to determine the nature of the matter and its potential impact on the underlying case or other proceedings still before the Bankruptcy Court.

D. EXTERNAL CAUSES OF EXCESSIVE COST AND DELAY IMPACTING THE DISTRICT OF COLORADO

1. EXAMINING THE IMPACT OF LEGISLATION ON COST AND DELAY

The Act instructs each 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." [Sec. 472 (c)(1)(D)]. It is obvious, of course, that the relationship between legislative actions and judicial burdens is direct and intense. If, for example, the Congress were to abolish diversity of citizenship jurisdiction or to enact any of the numerous proposals to restrict habeas corpus jurisdiction, the caseload in this district would be significantly reduced. If, on the other hand, anything like the recently considered (and rejected) Violent Crime Control Act -- which would have massively increased the federal criminal jurisdiction -- were to become law, the docket of this district would likely become completely unmanageable. It is also true that ambiguity, sometimes even studied ambiguity, has always marked the legislative process. Charles Sumner characterized the fourteenth amendment itself as like a "sign on a highway with different inscriptions on each side, so that those approaching ... from different directions necessarily read it differently." These sorts of continuing interplays between legislative and judicial authority will, no doubt, always be with us. Still, several particular pressures presented by legislative enactments should be highlighted.

First, it is likely that Congress has too infrequently realized the impact that new statutory regimes will visit upon the federal judiciary. On the civil side, relatively recent enactments like the Civil Rights Restoration Act, the Americans with Disabilities Act, the Fair Debt Collection Practices Act, the Immigration Reform and Control Act, are presumably

producing intended substantive consequences, but they will also significantly increase the workload of the federal courts. The practice of criminal law in the federal courts, on the other hand, has been affected in a substantial way by the Sentencing Reform Act of 1984. The implementation of federal sentencing guidelines has required a far more detailed and formalized sentencing determination in criminal cases -- even after the filing of a guilty plea. Under the statute's strictures, criminal defendants have also apparently become less inclined to plea bargain. The judicial time, effort, and energy required to deal with the already substantial criminal docket will, as a result, be augmented. It is not clear that Congress realized the effect that these sorts of policy choices will have on the ability of federal courts to manage their civil caseloads. The information provided by a "better assessment of the impact of new legislation on the courts" will be essential to the proper and efficient functioning of the federal judiciary.

Second, the frequent absence of precision in the drafting of new statutory provisions, statutes of limitation, and limits on jurisdiction works to spawn unnecessary litigation. The courts, for example, have been repeatedly required to determine whether new federal statutory regimes create independent causes of action. Karahalios v. National Federation of Federal Employees, 489 U.S. 527 (1989) and Franklin v. Gwinnett County Public Schools, 60 L.Wk. 4167 (1992) are recent examples of Supreme Court determinations. The appropriate limitations period to be applied in sec. 10(b)(5) securities actions was litigated in the federal courts for years before the question was finally resolved by the Supreme Court in Lampf v. Gilbertson, 115 S.Ct. 321 (1991). And, most pointedly, the Civil Rights Restoration Act of 1990 left intentionally unresolved the important question of retroactive

application. Federal courts have since struggled with the ambiguity, and reached conflicting results. In all these instances, the costs and delay inherent in litigating these issues through the district court and the court of appeals, before resolution by the Supreme Court, are or will be formidable. More straightforward legislative determinations in such instances would obviously ease the burdens placed on the federal courts.

RECOMMENDATION NUMBER 19

Congress should draft legislation with more precision to avoid litigation-causing errors or omissions. Statutory ambiguity, and failure to address threshold issues such as retroactivity, statutes of limitations, or jurisdictional limits, spawn unnecessary litigation.

RECOMMENDATION NUMBER 20

Congress should expand resources available to the judiciary when creating additional areas of federal jurisdiction that will increase the workload of the federal courts.

2. IMPACT OF EXECUTIVE BRANCH ACTION ON EXCESSIVE COST AND DELAY

Focus of the impact of the executive branch is limited to two areas in this report. Factors contributing to cost and delay were judicial vacancies and the ability of executive branch's attorney to make decisions at various stages of litigation.

In 1992, the President issued an executive order[27] implementing "Civil Justice Reform" plan designed to achieve swifter justice and reducing the costs of litigation. A major component of the plan is dispute resolution. Litigation counsel are directed to make reasonable attempts to resolve a dispute expeditiously and properly before proceeding to trial. Other aspects of the executive order include discovery reform and notice of complaint. Under notice of complaint, the parties would be notified, where appropriate, whom the United States intends to sue, informing them of the nature of the dispute, before filing suit.

A recurring problem stated by attorneys and litigants is the lack of authority of the counsel representing the United States government during pre-trial events, such as settlement conferences.

The second area of executive branch involvement is the filling of judicial vacancies. The Advisory Group believes that additional judges are necessary for the District of Colorado to respond adequately to the increasing civil and criminal caseload. The Court's past experience with judicial vacancies (Table 1, page 16) is a pattern that creates concern. For four years, there were two vacancies; one judgeship remained vacant for two additional years. Such a shortage takes a toll on the judges serving on the bench. It is a disadvantage that can be remedied by executive branch action. According to the American Bar Association's ABA Journal, the number of days from vacancy to nomination has averaged more than 300 during the last three years and the average number of days from nomination to confirmation has risen from 30 and 40 in the early 1980s to a high of 139.[28]

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[27]Executive Order No. 12778, 56 Fed. Reg. 55,195 (October 23, 1991).

[28]Reske, H.J. (1993, January). Molding the courts. ABA Journal, p. 20.

RECOMMENDATION NUMBER 21

The executive branch should evaluate the effectiveness of and work towards further implementation of the executive order encouraging use of expeditious dispute resolution methods in cases involving the United States.

RECOMMENDATION NUMBER 22

The executive branch should nominate candidates for judicial vacancies in a timely manner and the Senate should act promptly on such nominations.

After reviewing the increasing number of civil and criminal filings, considering the complexity of the types of cases filed, and understanding the implication of the loss of a senior judge to the management of the case load allocated to the judges of the District of Colorado, the Advisory Group makes the following recommendation to the Court:

RECOMMENDATION NUMBER 23

The Court should request additional judgeships to meet the demands created by the sharp increase of complex civil and criminal cases.

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APPENDIX B-1

1992 FEDERAL COURT MANAGEMENT STATISTICS PROFILE

U.S. District Court-- Judicial Workload Profile

District of Colorado

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

	COLORADO		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		2,900	2,397	2,667	2,630	2,471	2,517		
	Terminations		2,450	2,670	2,643	2,493	2,434	2,837		
	Pending		2,461	2,030	2,318	2,292	2,156	2,119		
	Percent Change in Total Filings Current Year	Over Last Year...		21.0					11	1
		Over Earlier Years...			8.7	10.3	17.4	15.2	15	1
	Number of Judgeships		7	7	7	7	7	7		
	Vacant Judgeship Months		.0	.0	15.1	28.7	26.7	24.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	414	342	381	376	353	360	35	2
		Civil	363	298	336	332	312	321	34	3
		Criminal Felony	51	44	45	44	41	39	45	3
	Pending Cases		352	290	331	327	308	303	59	4
	Weighted Filings**		476	371	423	433	433	405	9	1
	Terminations		350	381	378	356	348	405	69	6
	Trials Completed		38	38	31	38	33	42	25	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	4.2	4.2	3.8	3.7	3.7	3.5	10	3
		Civil**	8	8	9	8	8	9	15	3
	From Issue to Trial (Civil Only)		15	18	17	20	16	16	40	6
OTHER	Number (and %) of Civil Cases Over 3 Years Old		107 4.9	108 6.0	138 6.5	152 7.2	141 7.1	117 5.9	35	6
	Average Number of Felony Defendants Filed per Case		1.5	1.7	1.4	1.3	1.4	1.4		
	Jurors	Avg. Present for Jury Selection	33.49	30.06	26.46	23.82	31.17	23.64	40	5
		Percent Not Selected or Challenged	47.1	39.3	29.4	21.9	35.7	25.9	91	8

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

1992 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2538	34	131	477	98	53	166	359	333	67	411	9	400
Criminal*	343	19	15	27	9	19	31	76	9	83	5	28	22

* Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
**See Page 157

APPENDIX B-2

CIVIL FILINGS BY NATURE OF SUITS
U.S. DISTRICT COURT
DISTRICT OF COLORADO
1983 - 1992

Statistical Year	83	84	85	86	87	88	89	90	91	92
Nature of Suit										
Social Security	69	82	53	33	25	45	34	26	35	34
Recovery of Overpayments/Enforcement of Judgments	94	351	547	262	173	56	139	115	89	131
Prisoner Petitions	250	251	215	244	278	265	299	404	431	477
Forfeitures/Penalties/ Tax Suits	97	114	102	70	71	74	77	74	114	98
Real Property	82	49	55	63	64	47	47	51	25	53
Labor Suits	199	174	119	179	149	175	131	162	114	166
Contracts	568	682	648	518	548	466	512	455	291	359
Torts	355	377	349	444	246	320	316	271	256	333
Copyright/Patent/ Trademark	81	80	69	85	58	89	56	106	61	67
Civil Rights	274	293	292	392	299	304	321	290	295	411
Antitrust	21	27	22	12	10	7	10	13	10	9
All Other Civil	282	252	341	308	328	333	380	388	362	400
Total Civil Filings	**2372**	**2732**	**2818**	**2610**	**2249**	**2181**	**2322**	**2355**	**2083**	**2538**
Total of All Filings	2653	2959	3066	2844	2517	2471	2630	2667	2397	2900

APPENDIX B-3

CRIMINAL FELONY FILINGS BY NATURE OF OFFENSE
U.S. DISTRICT COURT
DISTRICT OF COLORADO
1983 - 1992

Statistical Year	83	84	85	86	87	88	89	90	91	92
Nature of Offense										
Immigration	17	12	8	11	7	2	10	10	11	19
Embezzlement	35	12	14	21	25	13	11	17	14	15
Auto Theft	3	2	2	1	1	1	2	55	39	27
Weapons/ Firearms	14	18	23	20	33	26	32	7	0	9
Escape	5	8	7	2	8	8	8	13	15	19
Burglary/ Larceny	34	22	18	24	14	27	14	21	37	31
Marihuana/ Controlled Substances	10	17	17	12	5	15	21	47	50	76
Narcotics	17	17	28	34	36	53	68	1	6	9
Forgery/ Counterfeiting	20	16	12	10	16	11	10	84	80	83
Fraud	60	42	61	47	62	64	69	1	7	5
Homicide/ Robbery/ Assault	23	18	18	13	25	28	21	16	14	28
All Other Criminal Felony	22	31	34	22	17	30	29	29	26	22
Total Criminal Felony Filings*	**260**	**215**	**242**	**217**	**249**	**278**	**295**	**301**	**299**	**343**
Total of All Filings	2653	2959	3066	2844	2517	2471	2630	2667	2397	2900

*Felony filings do not include criminal felony transfers.

APPENDIX C

ALTERNATIVE DISPUTE RESOLUTION
DESCRIPTION OF TECHNIQUES

NEGOTIATION:

Parties, directly or indirectly, attempt to reach joint settlement.

MEDIATION:

Mediator(s) assist parties in negotiations and facilitate settlement.

SETTLEMENT CONFERENCE:

Neutral(s) perform case evaluation and advise as to probable result; assist in negotiations.

EARLY NEUTRAL EVALUATION:

Evaluator narrows case issues, assists with discovery plan, case management and settlement.

MINI-TRIAL:

Panel hears summary case presentation; neutral panel member may assist parties with settlement negotiations.

SUMMARY JURY TRIAL:

Voluntary or paid jury hears summary case presentations and issues non-binding decision.

ARBITRATION:

Arbitrator(s) with subject matter expertise preside over case presentation and issue a non-binding or binding opinion subject to limited right of court review.

Source: Manual on Alternative Dispute Resolution published by the Alternative Dispute Resolution Committee of the Colorado Bar Association, 1992.

APPENDIX D

PROPOSED LOCAL RULES

OF THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

PERTAINING TO BANKRUPTCY MATTERS

Rule _____ Reference

A. Pursuant to 28 U.S.C. § 157(a), all cases under title 11 United States Code, and all proceedings arising under title 11 or arising in or related to a case under title 11, shall be referred automatically to the bankruptcy judges for this district without further order, and the bankruptcy judges for this district shall exercise jurisdiction in all bankruptcy matters as provided in 28 U.S.C. § 157(b)-(c).

B. The bankruptcy judges of this district are authorized to make and amend rules of practice and procedure in all cases and proceedings before the bankruptcy court, subject to review and approval by this court.

C. All papers in cases and proceedings referred to the bankruptcy judges shall be filed in the bankruptcy court. Any such papers filed in this court shall be transmitted to the bankruptcy court.

Rule _____ Withdrawal of Reference

A. A motion to withdraw the reference of a bankruptcy case or proceeding pursuant to 28 U.S.C. § 157(d) shall use the caption of the bankruptcy court and shall be filed with the clerk of the bankruptcy court. The clerk of the bankruptcy court shall transmit the motion, together with such copies of the record and transcript as the bankruptcy court may order to this court for determination.

B. A motion to withdraw the reference of a bankruptcy proceeding shall contain a statement as to whether the bankruptcy court has made a determination of the core or non-core nature of the proceeding. If the bankruptcy court has made such a determination, the motion to withdraw the reference shall include a copy of the bankruptcy court's order pursuant to 28 U.S.C. § 157(b)(3) as an exhibit. If the bankruptcy court has not made such a determination, the motion to withdraw the reference shall state whether, to the movant's best knowledge and belief, there is any dispute among the parties as to the core or non-core nature of the proceeding.

C. A complaint setting forth a personal injury tort or wrongful death claim arising in or related to a title 11 case filed in this district shall use the bankruptcy court caption and shall be filed with the clerk of the bankruptcy court, but the jurisdictional allegations of such complaint shall include a clear statement that the claim is based on 28 U.S.C. § 157(b)(5). Upon review of the complaint, if the bankruptcy judge believes the claim to be based on 28 U.S.C. § 157(b)(5), the bankruptcy judge shall enter a recommendation for an order that the matter be tried in this court, and the clerk of the bankruptcy court shall transmit such recommendation to this court and mail copies to all parties to the proceeding. If this court approves the bankruptcy court's recommendation, its order shall indicate whether the proceeding is to be tried in this court or in the district court in the district in which the claim arose.

D. Any motion seeking a stay of a case or proceeding pending determination of a motion for withdrawal of reference shall be presented first to the bankruptcy court.

E. The bankruptcy court may, on its own motion, recommend withdrawal of the reference of a case or proceeding before it.

F. Upon entry of an order withdrawing reference, the clerk of this court shall forthwith provide a conformed copy of the order to the clerk of the bankruptcy court.

G. Upon receipt of a copy of an order withdrawing reference of a case or proceeding, the clerk of the bankruptcy court shall transmit the original file of such case or proceeding to the clerk of this court, and shall retain only a copy of the order withdrawing reference and a copy of the docket in the bankruptcy court's file.

H. After entry of an order withdrawing reference of a bankruptcy case or proceeding, all papers filed in the case or proceeding so withdrawn shall be filed in this court. Any such papers filed in the bankruptcy court shall be transmitted to this court.

Rule _____ Proposed Findings of Fact and Conclusions of Law in Non Core Proceedings

A. All proceedings pursuant to 28 U.S.C. § 157(c)(1) shall be conducted in accordance with Rule 9033 of the Federal Rules of Bankruptcy Procedure.

B. After expiration of all applicable periods for filing written objections or responses to objections to the bankruptcy

judge's proposed findings of fact and conclusions of law, the clerk of the bankruptcy court shall promptly transmit the proposed findings and conclusions, objections, responses, and appropriate portions of the record to the clerk of this court. Any subsequent proceedings and filings with regard to the § 157(c)(1) matter shall take place in this court.

Rule _____ Bankruptcy Appeals

A. Procedures for appeals of final judgments, orders, and decrees, and, with leave of this court, from interlocutory orders and decrees, of bankruptcy judges pursuant to 28 U.S.C. § 158(a) are set forth in Part VIII of the Federal Rules of Bankruptcy Procedure and in the local rules of the bankruptcy court.

B. Parties to a bankruptcy appeal shall not designate or include briefs, memoranda, or points of authority in the record on appeal; such items may only be included in the record on appeal by order or directive of this court.

C. Any motion seeking a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal shall be presented first to the bankruptcy court.

Rule _____ Administrative Procedures

A. The chief judge of this court shall assign one or more district judges to preside over bankruptcy administration, and all matters arising under these local rules or under the Bankruptcy Code which pertain to bankruptcy administration shall be referred by the clerk of this court directly to the judge or judges so assigned. If the judge to whom a matter is referred determines that the matter presents an issue which must be tried in this court, the judge may order the assignment of the matter by the clerk in accordance with the local rules of this court.

APPENDIX E

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

CHAPTER 23 - CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

Sec.

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

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

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

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

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

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

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

(3) recommended measures, rules and programs; and

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

(c)(1) In developing its recommendations, the advisory group of a district court shall

promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the trial cannot reasonably be held within such time because of the

complexity of the case or the number or complexity of pending criminal cases;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) a requirement that each party be represented at each pretrial conference by an

attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

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

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

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

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

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

§ 474. Review of district court action

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

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

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

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

(b) The Judicial Conference of the United States--

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

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

§ 475. Periodic district court assessment

After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the

court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

§ 476. Enhancement of judicial information dissemination

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

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

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

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

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

§ 477. Model civil justice expense and delay reduction plan

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

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

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

§ 478. Advisory groups

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 480. Training programs

The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and

training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

§ 481. Automated case information

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

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

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

(B) standards for uniform categorization or characterization of judicial actions in the district court automated systems.

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

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

§ 482. Definitions

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

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

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

(c) EARLY IMPLEMENTATION DISTRICT COURTS.--

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

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

(3) Within 18 months after the date of the enactment of this title, the Judicial

Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

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

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

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

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

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

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

SEC. 104. DEMONSTRATION PROGRAM.

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

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

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

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

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

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

SEC. 105. PILOT PROGRAM.

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

subsection (b).

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

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

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

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

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

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

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

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

SEC. 106. AUTHORIZATION

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

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

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