

THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF OKLAHOMA

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN



NOVEMBER 1993

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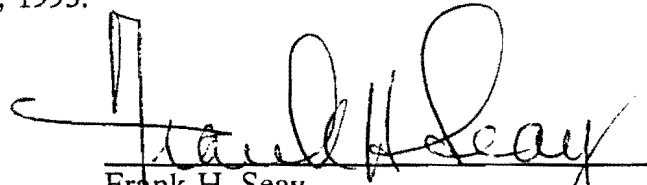
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INTRODUCTION

As reflected in the Report of the Civil Justice Reform Act Advisory Group, the United States District Court for the Eastern District of Oklahoma serves 26 counties with a diverse economy and population of multi-cultured people. The court is pleased that the Advisory Group identified the unique pressures associated with managing the Eastern District court docket. The CJRA Report correctly identifies difficulties associated with managing a higher than average per judge caseload with only one resident judge. The Report also properly credits the work of the magistrate judge as a primary ingredient in maintaining the civil docket on an even keel since the loss of the active roving judge position in December 1991.

It is apparent from the Report that the Eastern District of Oklahoma has for the past ten years embraced many of the concepts now outlined in the Civil Justice Reform Act Report. The favorable civil disposition record is the direct result of this court's early initiative. The formal Report submitted by the Advisory Group states that the past management practices have worked well in disposing of the work of the civil docket. However, because of budget limitations and increasing workloads associated with new legislation, it is mandatory that we seek even more efficient methods of disposing of our civil docket.

Thus, this court adopts and embraces the recommendations of the Advisory Group and submits the following Civil Justice Expense and Delay Reduction Plan which shall be effective the 1st day of December, 1993.



Frank H. Seay
Chief United States District Judge

**EXPENSE AND DELAY REDUCTION PLAN
FOR THE U.S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

The court approves the following Expense and Delay Reduction Plan for the United States District Court for the Eastern District of Oklahoma, effective December 1, 1993.

I. SYSTEMATIC DIFFERENTIAL TREATMENT OF CIVIL CASES

A. Case Management Track

Each civil case will be assigned to one of the following tracks:

1. Prisoner Litigation
2. Social Security Appeals
3. Bankruptcy Appeals
4. Standard Management
5. Special Management

B. Tracks Defined

1. **Prisoner Litigation.** Prisoner petitions for writs of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254, motions/complaints pursuant to 28 U.S.C. §§ 1331 and 2255, motions pursuant to Fed.R.Crm.P. 35 and civil rights complaints pursuant to 42 U.S.C. §1983.

2. **Social Security Appeals.** Cases seeking review of a denial of Social Security benefits by the Secretary of Health and Human Services.
3. **Bankruptcy Appeals.** Appeals to the District Court from the U.S. Bankruptcy Court for the Eastern District of Oklahoma.
4. **Standard Management.** All cases not designated at the Status/Scheduling Conference as requiring assignment to any other track, shall be handled in accordance with the standard practices and procedures of the court as governed by Fed.R.Civ.P. 16 and the local rules of this court.
5. **Special Management.** Cases designated at the Case Management Conference as requiring specialized and more intense management because of their complexity, urgency, number of parties, extensive discovery, volume and commonality, or otherwise in the court's discretion.

C. Assignment of Tracks

1. Cases falling within tracks A(1), A(2), and A(3) will be assigned to the appropriate track by the court based on the initial pleading. A(4) and A(5) will be assigned by the court at the Status/Scheduling Conference.

2. Counsel may request assignment or reassignment of a case to a particular track. The request for assignment must be made not less than three working days prior to the Status/Scheduling Conference.
3. The court in its discretion may reassign any case to a different track at any time.

D. Management Procedures

1. **Prisoner Litigation.** The court may in its discretion assign or refer these matters to a magistrate judge. Scheduling/Status Conferences will not be conducted in prisoner cases unless otherwise ordered by the court or magistrate judge. The magistrate judge will enter such orders as are necessary for the efficient management of the case and, at the option of the assigned district court judge, will either enter a Report and Recommendation for the court, pursuant to 28 U.S.C. § 636(b), or prepare a proposed order for the court's signature.
2. **Social Security Appeals.** These appeals are to be routinely referred to the magistrate judge upon filing, pursuant to 28 U.S.C. § 646(b). The magistrate judge will prepare a Report and Recommendation for the court unless otherwise ordered by the court or the magistrate judge. Social Security Appeals will

not be set for Status/Scheduling Conferences.

3. **Bankruptcy Appeals.** Bankruptcy appeals will be referred to an Article III judge for final disposition. However, a magistrate judge may enter administrative orders necessitated for the efficient management of the appeal.
4. **Standard Management.** Cases assigned to the Standard Track shall be managed in accordance with the standard practice and procedures of this court pursuant to Fed.R.Civ.P. 16 and the local rules of this court.
5. **Special Management.** All requirements of Fed.R.Civ.P. 16 and the local rules of this court shall apply. In addition, counsel shall at the Status/Scheduling Conference be required to present a memorandum to the court five days in advance of the Status/Scheduling Conference outlining what areas of complexity require the case to undergo special case management. The memorandum should contain information as to the number of parties, number of claims or defenses, complexity of discovery, availability and location of witness problems, or other matters requiring extensive pretrial management.

II. ASSERTIVE JUDICIAL PRETRIAL MANAGEMENT

A. Status/Scheduling Conference

1. A judicial officer will timely convene and conduct a status/scheduling conference as contemplated by Fed.R.Civ.P. 16.
2. During the status/scheduling conference, the plan for accomplishment of discovery and final disposition will be implemented by the judicial officer after consultation with counsel for the litigants.
3. Deadlines will be set for amendments, adding of additional parties, discovery, and disposition motions. Firm dates will be set for pretrial conferences and jury dockets.
4. The judicial officer will also be required to acquaint counsel for the litigants with the court's policy of requiring a settlement conference in all standard and special management track cases.

B. Voluntary Disclosure of Discovery

1. Each party shall, without awaiting a discovery request, disclose in writing to every opposing party, to the full extent known to the disclosing party, the following information:

- a. the factual basis of every claim or defense advanced by the disclosing party. In the event of multiple claims or defenses, the factual basis for each claim or defense;
 - b. the legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.
2. Every motion or other application relating to discovery made under the Federal Rules of Civil Procedure or local court rules or under this Plan must include certification by counsel that the parties have made a reasonable effort to resolve the discovery dispute to which the motion or application pertains.

III. ASSIGNMENT OF DISTRICT CASE WORKLOAD

As recommended by the Advisory Group, the court will implement an amended general order of the court to replace the December 12, 1979 order that is now in place. The December 12, 1979 order is out of date, and does not address the available judicial resources or current workload problems. When the 1979 order was implemented, the district had the services of two roving district judges and three part-time magistrates. The district is now served by the chief judge, one roving district judge, one full-time magistrate

judge, and one part-time magistrate judge. Therefore, the court will implement an amended caseload work assignment order similar to the one set forth in Appendix 1 as soon as the current roving judge vacancy is filled.

IV. ALTERNATIVE DISPUTE RESOLUTION

A. Settlement Conferences

1. A settlement conference shall be held within 60 days after the Rule 16 Conference for all cases assigned to the standard and special management tracks. See para I(B)(4)(5), supra.
2. In addition to counsel, each party or court-approved representative of each party with authority to participate in settlement negotiations and effect a complete solution of the case shall be required to personally attend settlement conference (See Appendix 2, Settlement Conference Order).
3. Any judicial officer of the three federal judicial districts within the State of Oklahoma may preside over a settlement conference convened by the court.

B. Summary Jury Trial

1. The assigned judicial officer may convene a summary jury trial:

- (a) With the agreement of all parties, either by written motion or oral motion in court entered upon the record, or
 - (b) Upon the judicial officer's determination that a summary jury trial would be appropriate, even in the absence of the agreement of all parties (See Appendix 3, Order Regarding Rules of Procedure for Summary Jury Trial).
- 2. There shall be six (6) jurors on the panel, and the case will, unless otherwise ordered by the judicial officer assigned, conclude in one working day.
- 3. The panel may issue an advisory opinion regarding:
 - (a) The respective liability of the parties, or
 - (b) The damages of the parties, or
 - (c) Both the respective liability and damages of the parties.
- 4. Neither the panel's advisory opinion nor its verdict, nor the presentation of the parties, shall be admissible as evidence in any subsequent proceeding, unless otherwise admissible under the rules of evidence.

5. After the conclusion of the summary jury trial, the presiding judicial officer shall reconvene the settlement conference to determine the impact of the summary jury verdict on any previous settlement negotiations.

V. PERSONNEL RECOMMENDATIONS

A. Article III Judgeships

By letter dated October 6, 1993, this court through the 1994 Biennial Survey, has submitted justification for an additional permanent judgeship for this district (See Appendix 4).

B. Magistrate Judges

By letter and attachments dated July 13, 1993, this court submitted a request for an additional magistrate judge position for fiscal year 1995. The additional magistrate judge is needed to support the ADR Program and to assist with the increasing demands of pro se prisoner litigation (See Appendix 5).

C. Clerical

By letter and attachments dated July 13, 1993, this court requested an additional law clerk (JSP-15) for fiscal year 1995, and additional clerical personnel (JSP-11) for fiscal year 1995. The additional law clerk position is needed to implement case management tracking dictated by this court's Civil Justice Reform Act Plan. Additional clerical assistant

is needed to monitor the expanded ADR Program implemented by this court's CJRA Plan (See Appendix 5).

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

APPENDIX

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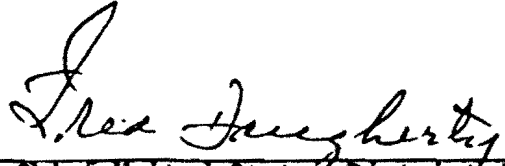
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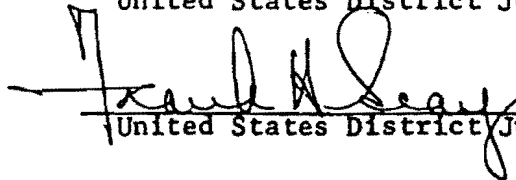
APPENDIX 1

**ORDER ON DIVISION OF CASES (1979)
REVISED CASE ASSIGNMENT ORDER (1993)**

with the other Judges of this District assistance in the trial of criminal cases set on the jury trial docket.


Chief United States District Judge


United States District Judge


United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

CASE ASSIGNMENT ORDER

The previous order of this Court dated December 12, 1979, concerning case assignment is hereby amended as follows:

Civil Cases

The civil case assignments, effective January 3, 1994, or on the date the vacant roving judge position for this district is filled, shall be as follows:

Chief Judge Frank H. Seay	shall be assigned 2/3 of the civil docket, and
Assigned Roving Judge	shall receive 1/3 of the civil cases

Criminal Cases

Criminal cases shall be assigned as follows:

Chief Judge Frank H. Seay	50%
Assigned Roving Judge	50%

Chief Judge Frank H. Seay will continue to be responsible for calling all Grand Jury sessions and the magistrate judge will be responsible for conducting all initial appearances and arraignments.

Following arraignment, 50% of the criminal cases shall be assigned by lot to Chief Judge Seay and 50% shall be assigned to the assigned roving judge.

IT IS HEREBY ORDERED this _____ day of November, 1993.

FRANK H. SEAY
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX 2
SETTLEMENT CONFERENCE ORDER

2. FULL SETTLEMENT AUTHORITY REQUIRED

In addition to counsel who will try the case being present, a person with full settlement authority must likewise be present for the conference. This requires the presence of your client and the following persons:

1. A representative of the liability insurance carrier, if appropriate;
2. All individually named parties;
3. A corporate officer with full settlement authority;
4. All individual members of any school board, city council, or board of county commissioners;
5. Any driver of a vehicle involved in a personal injury accident.

For a defendant, such representative must have final settlement authority to commit the company to pay, in the representative's discretion, a settlement amount recommended by the settlement judge up to the plaintiff's prayer (excluding punitive damage prayers in excess of \$100,000.00) or up to the plaintiff's last demand, whichever is lower.

For a plaintiff, such representative must have final authority, in the representative's discretion, to authorize dismissal of the case with prejudice, or to accept a settlement amount recommended by the settlement judge down to the defendant's last offer.

The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior. A governmental entity may be granted permission to proceed with a representative with limited authority upon proper application.

Where the Workmen's Compensation carrier is not a named party, plaintiff's counsel is required to notify the Workmen's Compensation insurance carrier of all settlement conferences and request a representative be present with full settlement authority.

3. EXCEPTION WHERE BOARD APPROVAL REQUIRED

If approval by the Board of Directors of a corporation is required to authorize settlement, attendance of the entire Board is requested. The attendance of at least one sitting member of the Board (preferably the Chairman) is absolutely required.

4. **APPEARANCE WITHOUT CLIENT PROHIBITED**

Counsel appearing without their clients (whether or not you have been given settlement authority) will cause the conference to be canceled and rescheduled. Counsel for a government entity may be excused from this requirement upon proper application.

5. **AUTHORIZED INSURANCE REPRESENTATIVE(S) REQUIRED**

Any insurance company that (1) is a party, (2) can assert that it is contractually entitled to indemnity or subrogation out of settlement proceeds, or (3) has received notice or a demand pursuant to an alleged contractual requirement that it defend or pay damages, if any, assessed within its policy limits in this case must have a fully authorized settlement representative present at the conference. Such representative must have final settlement authority to commit the company to pay, in the representative's discretion, an amount recommended by the settlement judge within the policy limits.

The purpose of this requirement is to have an insurance representative present who can settle the outstanding claim or claims during the course of the conference without consulting a superior. An insurance representative authorized to pay, in his or her discretion, up to the plaintiff's last demand will also satisfy this requirement.

6. **ADVICE TO NON-PARTY INSURANCE COMPANIES REQUIRED**

Counsel of record will be responsible for timely advising any involved non-party insurance company of the requirements of this order.

7. **PRE-CONFERENCE DISCUSSIONS REQUIRED**

Prior to the settlement conference, the attorneys are directed to discuss settlement with their respective clients and insurance representatives, and opposing parties are directed to discuss settlement so the parameters of settlement have been explored well in advance of the settlement conference. This means the following:

Twenty-five days prior to Settlement Conference, plaintiff must tender a written settlement offer to defendant and the assigned settlement judge.

Fifteen days prior to Settlement Conference, each defendant must make and deliver a written response to plaintiff and the assigned settlement judge. That response may either take the form of a written substantive offer, or a written communication that a Defendant declines to make any offer.

Silence or failure to communicate as required is not itself a form of communication which satisfies these requirements.

8. SETTLEMENT CONFERENCE STATEMENT REQUIRED

One copy of each party's settlement conference statement of each party must be submitted directly to the judge(s) checked below:

Magistrate Judge JAMES H. PAYNE
450 U.S. Courthouse
5th & Okmulgee Streets
Muskogee, Oklahoma 74401

Settlement Conference Statements must be directly submitted no later than _____ . They must not be filed.

Your statement should set forth the relevant positions of the parties concerning factual issues, issues of law, damages, and the settlement negotiation history of the case, including a recitation of any specific demands and offers that may have been conveyed. Copies of your settlement conference statement are to be promptly transmitted to all counsel of record.

The settlement conference statement may not exceed five (5) pages in length and will not be made a part of the case file. Lengthy appendices should not be submitted. Pertinent evidence to be offered at trial should be brought to the settlement conference for presentation to the settlement judge if thought particularly relevant.

9. **CONFIDENTIALITY STRICTLY ENFORCED**

Neither the settlement conference statements nor communications of any kind occurring during the settlement conference can be used by any party with regard to any aspect of the litigation or trial of the case. Strict confidentiality shall be maintained with regard to such communications by both the settlement judge and the parties.

10. **CONTINUANCES**

Applications for continuance of the settlement conference will not be entertained unless such application is submitted to the settlement conference judge in writing at least **seven (7)** days prior to the scheduled conference. Any such application must contain both a statement setting forth good cause for a continuance and a recitation of whether or not the continuance is opposed by any other party.

11. **SETTING**

The settlement conference is set on the _____ day of _____, 1993, at _____, 450 U.S.Courthouse, Fifth & Okmulgee Streets, Muskogee, Oklahoma.

12. **NOTIFICATION OF PRIOR SETTLEMENT REQUIRED**

In the event a settlement between the parties is reached before the settlement conference date, parties are to notify the settlement judge immediately.

13. CONSEQUENCES OF NON-COMPLIANCE

Upon certification by the Settlement Judge or Adjunct Settlement Judge of circumstances showing non-compliance with this order, the assigned trial judge may take any corrective action permitted by law. Such action may include contempt proceedings and/or assessment of costs, expenses and attorney fees, together with any additional measures deemed by the court to be appropriate under the circumstances.

Dated this _____ day of _____, 1993.

WILLIAM B. GUTHRIE, CLERK
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

By: _____
Deputy Clerk

cc: ALL COUNSEL OF RECORD.
(Revised 4-3-91)

APPENDIX 3

ORDER REGARDING RULES OF PROCEDURE
FOR SUMMARY JURY TRIAL

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

Plaintiff,)
)
vs.) No.
)
)
Defendant.)

ORDER REGARDING RULES OF PROCEDURE FOR SUMMARY JURY TRIAL

Please be advised that the above case has been set for Summary Jury Trial on _____ at _____ o'clock ____ .m.

1. This Order is entered pursuant to Rule 16 of the Federal Rules of Civil Procedure and the inherent power of the Court to control the docket.

2. This action shall be heard before a six-member jury, to be selected from a venire specially summoned for that purpose. Counsel will be permitted challenges to the venire--normally two challenges each. Counsel will be assisted in the exercise of challenges by a brief voir dire examination to be conducted by the presiding judicial officer.

3. Unless excused by order of court, counsel shall submit an agreed summary jury pre-trial order, summary jury voir dire, summary jury instructions, and settlement conference statement (if not previously submitted) on or before _____, 1993.

4. Unless excused by order of court, clients or client representatives shall be in attendance at the summary jury trial. If trial counsel does not have complete settlement authority, a party with actual settlement authority must be present. A person with limited settlement authority does not meet this requirement.

5. All evidence shall be presented through the attorneys for the parties. A time frame of 1 hour and 15 minutes will be allotted to each party. The attorneys may incorporate arguments on such evidence in their presentations. Only evidence that would be admissible at trial upon the merits may be presented. Counsel may only present factual representations supportable by reference to discovery materials, to a signed statement of a witness, to a stipulation, to a document, or by a professional representation that counsel personally spoke with the witness and is repeating what the witness stated. Statements, reports, and depositions may be read from, but not at undue length. Physical exhibits, including documents, may be exhibited during presentation and submitted for the jury's consideration. In addition, the parties may choose one live witness so long as the parties stay within the time restraints stated herein. Please note there will be no cross-examination of live witnesses, however, opposing party may present the jury with previously taken deposition cross-examination of live witnesses.

6. Prior to trial, counsel shall confer with regard to physical exhibits, including documents and reports, and reach such agreement as is possible as to the use of such exhibits.

7. Objections will be received if in the course of a presentation counsel goes beyond the limits of propriety in presenting statements as to evidence or argument thereon.

8. After counsel's presentations, the jury will be given an abbreviated charge on the applicable law.

9. The jury may return either a consensus verdict or a special verdict consisting of an anonymous statement of each juror's findings on liability and/or damages (each known as the jury's advisory opinion). The jury will be encouraged to return a consensus verdict.

10. Unless specifically ordered by the Court, the proceedings will not be recorded. Counsel may, if so desired, arrange for a court reporter.

11. Counsel may stipulate that a consensus verdict by the jury will be deemed a final determination on the merits and that judgment be entered thereon by the Court, or may stipulate to any other use of the verdict that will aid in the resolution of the case.

12. These rules shall be construed to secure the just, speedy and inexpensive conclusion of the summary jury trial procedure.

In addition, the Court has attached proposed Rules of the Court for Summary Jury Trial and Handbook that have been considered by the Court but not yet adopted. These are submitted for your guidance only.

IT IS SO ORDERED this _____ day of _____, 1993.

JAMES H. PAYNE
U.S. Magistrate Judge

APPENDIX 4
1994 BIENNIAL SURVEY REPORT

U.S. District Courts
Questionnaire for the 1994 Biennial
Survey of Judgeship Needs

Please complete the questionnaire and send it along with any additional supporting material by October 6, 1993 to the address shown on page 9.

1. District Eastern District of Oklahoma
2. Total number of additional judgeships you are requesting (include any requested - but not authorized - in prior surveys that you believe are still required):

permanent judgeships
 temporary judgeships
 conversion of one-third roving judgeship to full resident judgeship

In preparing your responses to the following questions, please justify all additional judgeships over and above the number currently authorized for your court.

If you are not requesting additional judgeships, respond only to Questions 7 through 10.

3. a. Explain all caseload factors (shown in the statistical profile) of your court that justify your request for additional judgeships. Include information on your criminal caseload (including trials) here.

As Chief Judge for the Eastern District of Oklahoma I am requesting an additional judgeship so there will be two full time resident judges to serve our district. Currently we have 1.33 judgeships assigned to the Eastern District of Oklahoma. Historically, the work of the partial judgeship position allotted to this district has been done by two roving judges; one residing in the Western District, and the other residing in the Northern District. The Judgeship Act of 1990, 28 U.S.C. §133 eliminated the Western District Roving Judge from further responsibilities in this district. With only one roving judge from the Northern District, who has taken senior status as of December 31, 1991, this court's problems are further complicated. The roving judge position in this district has now been vacant for almost two years. The single roving judge gives this court little or no flexibility to resolve case assignment problems.

During the 13 years I have been Chief Judge for the Eastern District, use of the roving judge concept has become more burdensome to me and to the Northern District

Roving Judge who is continuously forced to juggle a demanding trial schedule in an attempt to meet the needs of both the Northern District and the Eastern District.

In an attempt to understand the growing pressure associated with the daily management of our district's expanding workload, I reviewed the Federal Court Management statistics available for our district for the past several years. The management statistics for the Eastern District beginning in 1976 through 1981 reveal our district was assigned 1.7 judges with weighted case filings ranging from as low as 234 cases in 1976 to a high of 293 in 1981. (See Attachment 1) The most recent statistical data available for weighted filings (1988-1993) reflects that for the past 5 years our district has had as high as 549 in 1989 and ended with 515 in 1993. Our judgeship assignments ranged from 1.35 in 1988 to 1.33 in 1993. (See Attachment 2) This district was ranked 80th in 1981 for weighted case filings per judgeship and in 1993 we are ranked 15th. Even to a casual observer, it is obvious that these statistics indicate for the past 5 years our district has been called on to do more with less judge support than we had in statistical year 1981. This historical data, along with my 13 years experience as chief judge for this district, makes it apparent to me that the roving judge concept does not equate to the chief judge being totally relieved of the civil and criminal caseload assigned to the roving judge.

Before the Sentencing Guidelines and the Civil Justice Reform Act, the chief judge in this district had the luxury of being able to extend the resources of this court to fill in the gaps created by using a non-resident roving judge to assist with this court's workload. Since full implementation of the Sentencing Guidelines, it has been this court's experience that the Sentencing Guidelines have tripled the time necessary to dispose of a criminal case. Further, from my study of the Civil Justice Reform Act, it is clear that trial judges will be required to spend more out of court time managing civil cases. In this district, where I am the primary criminal-civil trial judge and have added administrative responsibilities which go with being chief judge, it will be impossible for this court to continue managing its workload in a timely manner.

In the past, I have not felt it necessary to consider chief judge responsibilities when determining whether or not I could carry a full caseload. However, at this point, with my actual experience in dealing with the Sentencing Guidelines and the anticipated need for

greatly increased time commitment to implement the Civil Justice Reform Act, it does not appear reasonable to assume that as principal trial judge and chief judge for this district that it will be possible to continue to dispose of the criminal and civil case workloads in an expeditious manner. Even without considering the practical problems associated with a roving judge process, the Eastern District's weighted caseload justifies an additional judgeship for this district. This conclusion is supported by the fact that in 1993 our district has 37% less judgeship than we had in 1981, and a weighted caseload of at least 75% more in 1993 than we had in 1981. (See Attachments 1 & 2)

In summary, data available simply indicates that as Chief Judge of this district, I am being called on to manage a heavier weighted caseload with less judge support than was available to this district in 1981. In addition to less judgeships and a heavier caseload, the legislative embodiment in the Sentencing Guidelines and the Civil Justice Reform Act have greatly expanded the time requirement necessary to fulfill the trial and administrative duties of my chief judgeship for the Eastern District of Oklahoma. It appears the only logical solution to our present and future needs is to request an additional full judgeship for the Eastern District of Oklahoma.

- b. Explain any factors not included in the statistical profile that justify a request for additional judgeships.

Our current United States Attorney, who was appointed on July 17, 1990, and reappointed on September 28, 1993, has created a Drug Task Force, and doubled the number of attorneys in the criminal division of his office. In addition, the Department of Justice has assigned two Special Assistants for the purpose of investigating bank fraud matters in the Eastern District of Oklahoma. The U.S. Attorney has publicly indicated that the drug task force was necessary because our 26 county district is one of the nation's leading areas of production and distribution of marijuana.

Although the appellate case law is not fully developed, there is at least a strong possibility that the U.S. Attorney in the future may be required to prosecute all felony crimes which are committed in "Indian Country". U.S. v. Sands, 968 F.2d 1058 (10th Cir. 1992), cert. denied, 113 S.Ct. 987 (1993), and 18 U.S.C. § 1153. A large portion of the 26 counties within this district fall within the appellate court description of Indian

Country. In the past, all major felonies occurring in these areas involving Indian citizens were prosecuted in our state court system. It should be noted that the Eastern District of Oklahoma is the recognized center of activity for the Five Civilized Indian Tribes that make up the majority of Oklahoma's Indian population. The full complexity of the potential problems associated with the Indian Tribes is a court workload source that cannot be overlooked. A recent law journal article, "Fatally Flawed": State Court Approval of Conveyances by Indians of the Five Civilized Tribes-Time for Legislative Reform, 25 Tulsa L.J. 1,3 (1989), supports this conclusion by reminding the federal courts, "Today, approximately 20,000 tracts of allotted Indian land held by members of the Five Tribes in eastern Oklahoma - covering over 400,000 acres - remain subject to federal statutory restrictions on their alienation." The author focuses on, "(T)he contemporary case of Austin Walker, an Indian landowner whose property interests were not properly protected at an oil and gas lease sale in Creek County District Court." Walker v. United States, 663 F.Supp. 258 (E.D. Okla. 1987). Even more recently, the court was faced with a jurisdictional dispute between the Creek Nation and the State of Oklahoma, In the Matter of the Petition of Eastman Richard, Jr., for a Writ of Habeas Corpus, CIV-93-749-S, filed on September 27, 1993. Also, the United States Attorney recently advised that the Department of Justice and Congress are in the process of finalizing legislation to facilitate the filing of between 700-750 quiet title suits on behalf of the Cherokee and Choctaw Nations to resolve title disputes arising out of the Arkansas Riverbed litigation. Choctaw Nation, et al. v. Oklahoma, et al., 397 U.S. 620 (1970).

- c. Discuss the impact of any recent legislation that you think will affect your court more severely than it will affect others.

The Civil Justice Reform Act of 1990 will cause a double burden for the chief judge because he will be time burdened with additional duties both as a civil trial judge and as a presiding judge responsible for developing and implementing a plan to carry out the mandate of the Civil Justice Reform Act.

The expanded amount of time necessary to dispose of criminal sentencing has greatly diminished the time left available to the chief judge to oversee the administrative matters critical to an efficient management of this court's caseload.

Avenues of vastly increasing federal criminal jurisdiction in areas that have traditionally been administered by state court, are the proposed Comprehensive Violent Crime Control Act of 1993, HR 2321 and the Violence Against Women Act of 1993, HR 1133. Because of the strong Indian influence described herein, it is appropriate to mention the Indian Child Protection and Family Violence Act of 1990, 25 U.S.C.A. §§ 3201-3210. In addition, the Indian Gaming Regulation Act of 1988 has required an increasing share of prosecution attention and appears ripe for litigation.

On the civil front, Congress has enacted the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991, both of which could bring about staggering increases in the workload of federal courts.

- d. Discuss geographical problems within your district that affect your need for additional judgeships. (Estimate the number of times per month travel is required, the amount of time needed to travel between places of holding court each month, the number of cases/trials held at locations where no judge sits regularly and any other factors you wish the Subcommittee to consider.)

Our one active roving judge position assigned to this district is located in Tulsa, which is approximately 60 miles from the primary courthouse facility used in the Eastern District of Oklahoma. Thus, the roving judge is not available to assist with the daily on-going work in the Eastern District. Before the roving judge took senior status the many demands that have been placed on our roving judge, made it impossible for him to stretch his schedule to be available on a daily basis to assist me with the details of managing this district's criminal trial docket.

- e. Explain the effect of present or past vacancies or long term medical difficulties of active judges on your court's ability to handle the current workload.

We presently have no medical problems that affect this court's ability to handle the current workload. However, our roving judge took senior status effective December 31, 1991. The position remains vacant at this time causing more responsibilities to be placed on the Chief Judge as well as the Magistrate Judge.

- f. Does the chief judge take a full caseload? If not, what percentage of a full caseload is assigned to the chief judge?

The chief judge, in addition to all administrative duties, is responsible for the entire civil and criminal caseload since the roving judge took senior status. Our current statistical data justifies the assignment of an additional judgeship to this district. An average of the past five year historical filings also support the need for an additional judgeship for this district. The actual and anticipated impact of the Sentencing Guidelines and additional time requirements mandated by the Civil Justice Reform Act further support the need for the additional judgeship for this district.

- g. Is the situation that requires you to seek additional judgeships temporary or long term? Explain.

Our district has a long-term need which cannot be resolved with use of a temporary judgeship. In the past, this district has been forced to rely upon a roving judge to assist in administering the caseload. With the increased complexity of the civil and criminal trial dockets and the increased need for additional time to dispose of the criminal docket, it is no longer reasonably possible to anticipate that our district will be able to function efficiently without a second full-time resident judge. Statistical data compiled since 1987 reflects a continued increase in civil case filings which has resulted in a much heavier workload for the one resident judge assigned to the Eastern District.

- h. Discuss any additional factors that the Subcommittee should consider in evaluating the need for additional judgeships in your court.

Again, it is important to note at this point that in 1981 when the district workload was less, our district had 70 percent of a roving judgeship to assist the chief judge with the dockets; now, 13 years later, with a much greater workload (75% increase), this district finds roving judgeship percentage has eroded to the point that we presently have only 33 percent of a judgeship to address a much more complex workload.

4. Could your need for additional judicial resources be met by the appointment of additional magistrate judges rather than additional judgeships? If not, why?

I do not think that an additional magistrate judge would relieve this district's need for a second full-time resident district judge. Perhaps the most pressing area of need from the chief judge's point of view is the

criminal caseload. The criminal trial caseload can only be addressed by an Article III Judge. For example, during January, February and March of 1993, this court's Article III resources were consumed by the demands of a complex drug conspiracy trial, U.S. v. Hutching, Molina, and Sanchez, CR 93-032. During this three-month period of time, the single resident judge, who is also the chief judge, was involved in 10-12 hour trial days and thus there was no Article III Judge available to address other criminal matters. Further, it should be noted the full-time magistrate judge assigned to this district is currently managing the roving judge's civil docket from status conference through pretrial. The magistrate judge also has an active settlement conference and summary jury trial program which assists this court in managing the civil docket. In short, this district is making maximum use of the present full time magistrate judge, but clearly needs additional support from an Article III Judge to assist with full management of the civil and criminal caseloads.

5. What specific caseload or other factors might indicate that your court does not need any additional judgeships? Why should the Subcommittee ignore them when reviewing the judgeship needs of your court?

The specific weighted caseload factor is short of the 400 weighted filings per judgeship standard. However, based on the 1993 weighted case filings, the Eastern District of Oklahoma, with the assignment of 1.33 judges has a weighted caseload of 515 cases per judge. This indication of workload is consistent with statistical data for the past 5 years. More specifically, the statistics for the past 5 years reflect that there has been an average weighted caseload requirement of 513 cases per judge in the Eastern District. This raw statistical data does not take into consideration that the chief judge has managed a full caseload and addressed the administrative duties of the court without assistance from any resident judge. Further, if the 400 weighted filings standard is applied to the Eastern District's 5 year total average weighted filings of 685, this computes to the Eastern District being entitled to 1.7 judgeships. Therefore, because the Eastern District has one assigned resident judge who, by necessity, is required to fulfill the duties of chief judge, it does not appear unreasonable to request that the Eastern District be granted an additional resident judge to deal with the expanding workload of the Eastern District. As described herein, this court is convinced that the roving judge's part-time assistance does not near meet this district's need for another resident judge.

6. If you do not receive the additional judgeship(s) requested, what procedures would you use to handle the workload?

The only possible alternative to assist with the workload of this court would be to request that the Tenth Circuit Judicial Council assign a larger percentage of the roving judge to the Eastern District. In addition, the court would be required to encourage litigants to make more use of the magistrate judge consent provisions outlined in 28 U.S.C. §§ 636 et seq.

7. If your court shares a judgeship(s) position by statute with another district, provide an estimate of the percentage of the position's time devoted to your district's workload.

For the past 4 years, this court has been assigned .33 percentage of a roving judge. The roving judge position is shared with the Northern and Western Districts of Oklahoma. This court is convinced that it is important to the administration of the federal courts in Oklahoma that the roving judgeship remain available to all districts so that future fluctuating workloads can be equitably addressed.

8. a. How many senior judges does your court have who regularly take cases?

0

- b. What percentage of a full caseload does each senior judge take?

0

- c. Has the presence of senior judges regularly taking cases affected your request for additional judgeships?

N/A

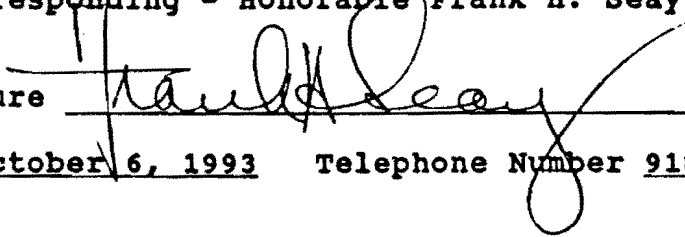
9. If your court is not requesting as many additional positions as the workload statistics would appear to justify, please provide the Subcommittee with some indication of the factors which influenced your decision. For example: are the contributions of senior judges sufficient to offset the excess workload? Do the workload statistics overstate the true workload burdens of your court? Are you opposed to increasing the size of the court in spite of the current workload? Any other factors?

10. The response to this questionnaire represents the views of the:

 x majority of the members of the court
 responding judge only

Judge responding - Honorable Frank H. Seay

Signature



Date October 6, 1993 Telephone Number 918-687-2437

Please send the completed questionnaire and any additional supporting material by October 6, 1993 to:

Mr. David L. Cook
Statistics Division
Administrative Office of the U. S. Courts
Washington, D. C. 20544

Attention: Judgeship Survey

U.S. DISTRICT COURT
JUDICIAL WORKLOAD PROFILE

OKLAHOMA EAST

		TWELVE MONTH PERIOD ENDED JUNE 30								
		1981	1980	1979	1978	1977	1976			
OVERALL WORKLOAD STATISTICS	Filings*	554	581	541	527	495	442			
	Terminations	579	549	521	493	480	424			
	Pending	347	372	344	323	289	274			
	Percent Change in Total Filings -- Current Year	Over Last Year ▶		-4.7					77	7
		Over Earlier Years ▶			2.4	5.1	11.9	25.3	52	5
Number of Judgeships		1.7	1.7	1.7	1.7	1.7	1.7			
Vacant Judgeship Months		.0	4.2	11.0	.0	.0	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	332	349	324	316	298	266	71	6
		Civil	296	301	266	260	243	226	70	6
		Criminal	36	48	58	56	55	40	48	6
	Pending Cases		208	223	206	193	174	165	90	8
	Weighted Filings**		293	277	234	292	273	254	80	8
	Terminations		347	329	312	295	289	255	57	5
	Trials Completed		53	35	45	49	51	43	20	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.5	2.4	2.6	1.6	2.3	2.7	15	3
		Civil	9	4	5	6	7	7	51	7
	From Issue to Trial (Civil Only)		12	-	-	8	7	12	24	5
OTHER	Number (and %) of Civil Cases Over 3 Years Old		5 (1.7)	10 (3.0)	7 (2.3)	3 (1.0)	1 (.4)	3 (1.1)		
	Triable Defendants** in Pending Criminal Cases Number (and %)		11 (31.4)	5 (18.5)	6 (54.5)	42 (100.0)	8 (34.8)	2 (25.0)		
	Juror Usage Index		12.44	13.54	16.01	18.59	14.69	14.80	3	3
	% of Jurors Not Serving		28.0	20.5	30.4	39.3	31.2	31.1	13	2

NUMERICAL
STANDINGS
WITHIN
U.S. CIRTS

↓ ↓

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

1981 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	454	16	15	128	10	104	5	86	89	1	23	2	15
Criminal*	59	-	1	7	8	-	7	16	1	2	9	2	6

*Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.
*See Page 129.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

OKLAHOMA EASTERN		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT		
		1993	1992	1991	1990	1989	1988			
OVERALL WORKLOAD STATISTICS	Filings*	976	877	766	766	825	802			
	Terminations	737	787	797	714	856	813			
	Pending	708	472	382	413	361	395			
	Percent Change In Total Filings Current Year	Over Last Year . . .	11.3	27.4	27.4	18.3	21.7	[13] [11]	[4] [2]	
Number of Judgeships		1.33	1.33	1.33	1.33	1.35	1.35			
Vacant Judgeship Months		4.0	.0	.0	.0	.0	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	734	659	576	576	611	594	[3]	[1]
		Civil	692	619	534	514	564	541	[3]	[1]
		Criminal Felony	42	40	42	62	47	53	[6]	[5]
	Pending Cases		532	355	287	311	267	293	[15]	[1]
	Weighted Filings**		515	478	491	536	549	-	[15]	[3]
	Terminations		554	592	599	537	634	602	[6]	[1]
	Trials Completed		20	35	41	37	41	77	[83]	[6]
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	3.6	3.4	3.5	2.9	2.6	2.4	[4]	[2]
		Civil**	5	4	6	6	6	6	[2]	[1]
	From Issue to Trial (Civil Only)		5	6	7	7	8	9	[1]	[1]
OTHER	Number (and %) of Civil Cases Over 3 Years Old		7 1.0	7 1.5	5 1.4	6 1.6	7 2.1	6 1.6	[2]	[1]
	Average Number of Felony Defendants Filed per Case		1.4	1.6	2.0	1.3	1.9	1.5		
	Jurors	Avg. Present for Jury Selection	11.49	16.42	14.11	11.29	14.51	12.28	[2]	[1]
		Percent Not Selected or Challenged	6.7	14.9	13.1	6.3	9.9	6.6	[1]	[1]

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

1993 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	921	97	8	390	24	84	15	56	142	5	60	2	38
Criminal*	54	3	3	15	-	1	9	1	1	10	1	3	7

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

APPENDIX 5
REQUEST FOR ADDITIONAL CJRA POSITIONS

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
Eastern District of Oklahoma
MUSKOGEE, OKLAHOMA 74402-0607

WILLIAM B. GUTHRIE
Clerk

TELEPHONE
(918) 687-2471

July 13, 1993

Duane R. Lee
Chief, Court Administration Division
Administrative Office of the U.S. Courts
Washington, D.C. 20544

RE: Projected Civil Justice Reform Act Requirements
for Fiscal Year 1995

Dear Mr. Lee:

At the request of the Honorable Frank H. Seay, Chief U.S.
District Judge, I am submitting the enclosed for your
consideration.

Respectfully,


WILLIAM B. GUTHRIE, Clerk

WBG:sw

enclosed

ADDITIONAL CJRA POSITION(S) REQUIRED IN FISCAL YEAR 1995
JUSTIFICATION FORMAT

UNITED STATES DISTRICT COURT: EASTERN DISTRICT OF OKLAHOMA

Position Type: (classification) Full Time Magistrate Judge

Number of Positions: One

Target Grade: _____

JUSTIFICATION:

A. Purpose:

To co-ordinate Alternative Dispute Resolution with our one full time Magistrate Judge and to participate in our plan as so directed by the judges of our district

B. Specify to which section of your program the position relates:

Primarily Alternative Dispute Resolution, discovery hearings, pretrials and status and scheduling conferences

C. Functions to be performed:

To hold settlement conferences, summary jury trials, pretrials, status and scheduling conferences, hearings on discovery, prisoner cases, social security cases, and assists the judges in the district any other way possible

D. Impact should the position(s) not be approved:

Tremendous burden on Magistrate now employed in our district

E. Continuing need for this position beyond FY95:

The need will be even greater by 1995 due to an increase in case filings.

ADDITIONAL CJRA POSITION(S) REQUIRED IN FISCAL YEAR 1995
JUSTIFICATION FORMAT

UNITED STATES DISTRICT COURT: EASTERN DISTRICT OF OKLAHOMA

Position Type: (classification) Law Clerk

Number of Positions: One

Target Grade: JSP 15

JUSTIFICATION:

A. Purpose:

Case Management Tracking for implementation of Civil Justice Reform Act Plan

B. Specify to which section of your program the position relates:

Initial case analysis for purposes of track assignment

C. Functions to be performed:

Analyze, assign, and monitor initial case filings

D. Impact should the position(s) not be approved:

Hamper efficient case management and case disposition

E. Continuing need for this position beyond FY95:

As the civil case load increases each year and new programs are implemented, more technical help will be needed.

ADDITIONAL CJRA POSITION(S) REQUIRED IN FISCAL YEAR 1995
JUSTIFICATION FORMAT

UNITED STATES DISTRICT COURT: EASTERN DISTRICT OF OKLAHOMA

Position Type: (classification) Clerical

Number of Positions: One - (Convert present temporary
to permanent)

Target Grade: JSP 11

JUSTIFICATION:

A. Purpose:

To assist with clerical responsibilities

B. Specify to which section of your program the position
relates:

Clerk's office with use of computers to monitor and
track case filings

C. Functions to be performed:

Deputy Clerk's position as generalist and to help
support the other two positions asked for

D. Impact should the position(s) not be approved:

Delays in case management and disposition

E. Continuing need for this position beyond FY95:

More technical help will be needed as the civil case
load increases and any new programs are implemented.

FISCAL YEAR 1995 CJRA POSITION REQUIREMENTS SUMMARY

CJRA Positions Authorized as of May 31, 1993:

<u>No.</u>	<u>Classification</u>	<u>Target Grade</u>
1.*	Clerical	JSP 11

Additional CJRA Positions Requested for Fiscal Year 1995:

<u>No.</u>	<u>Classification</u>	<u>Target Grade</u>
1.	Law Clerk	JSP 15
2.	Magistrate Judge	

Summary:

*Total CJRA Positions Authorized as of May 31, 1993:	<u>1</u>
Total Additional CJRA Positions Requested for FY 1995:	<u>2</u>
Sum:	<u>3</u>

* Presently a temporary position which would convert to a permanent position.