REPORT OF

THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF OKLAHOMA

CIVIL JUSTICE REFORM ACT
ADVISORY COMMITTEE

NOVEMBER 1993

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INTRODUCTION

Pursuant to the provisions of the Civil Justice Reform Act of 1990 (CJRA), 28 U.S.C. § 101-106, 471-482, Chief Judge Frank H. Seay appointed a 12-person Advisory Group. The Advisory Group for the United States District Court for the Eastern District of Oklahoma presents its report for consideration by the Court in Development and Implementation of a Civil Expense and Delay Reduction Plan. The Advisory Group is composed of a representative group of federal practitioners and judicial officers who are intimately familiar with trial practice in the district. To supplement the practical knowledge and experience of the group, the Advisory Group used an attorney-litigant questionnaire developed by the Western District of Oklahoma Advisory Group as a basis for surveying more than 500 lawyers and party litigants who have been involved in this district's litigation process during the time period 1991 through May 1993. The purpose of the survey was to assist the Advisory Group in becoming more aware of the needs of those who were most directly affected by the contents of this report.

As a general conclusion, the group determined that the civil litigation process in the Eastern District has been efficient and timely in delivering judicial services, and remains so to date. This conclusion is clearly supported by 1992 Federal Court Management Statistics which reveal that the district, in spite of having the second highest weighted filings per judge in the Tenth Circuit, has maintained an average four-month case processing time from filing to final disposition (See Appendix 1). This ranks the Eastern District of Oklahoma No. 1 in the Tenth Circuit and No. 1 in the nation in civil case disposition time (See Appendix 1).

Therefore, the Advisory Group applauds the work of the judges and clerical staff for compiling such an enviable record, and has only a few suggestions and recommendations which will perhaps help streamline what already seems to be a very efficient disposition of the district's civil workload.

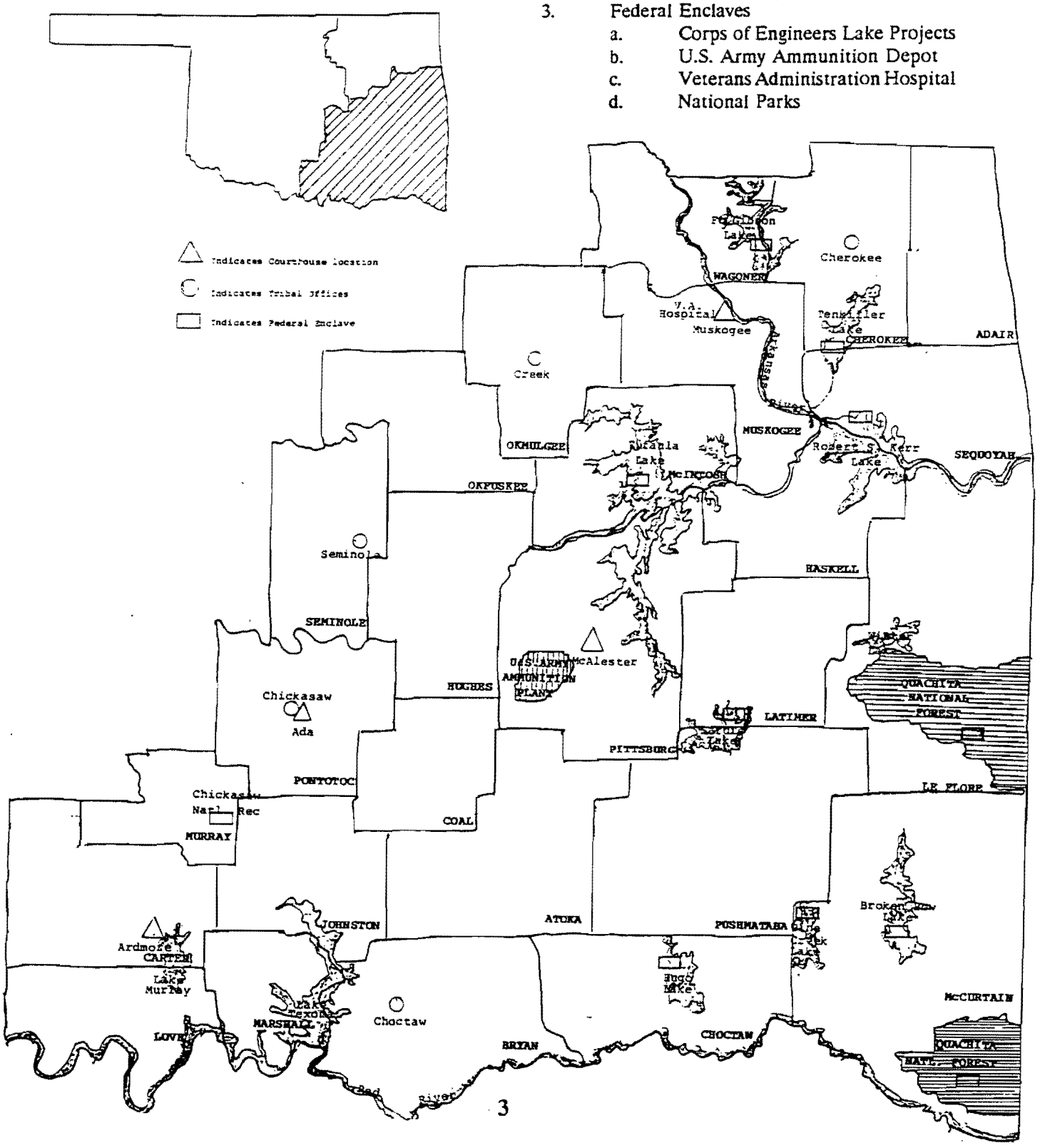
In general, those recommendations include formalizing the Alternative Dispute Resolution (ADR) Program that is now in place, broadening the scope of the Rule 16 scheduling process to include a plan for systematic differential treatment of various civil cases, and expanding and defining use of a magistrate judge for civil consent trials. The goal of these suggestions is to further reduce delay and unnecessary expense of Eastern District civil litigants.

Thus, this report is submitted with the intention of providing assistance to the court for developing a Civil Expense and Delay Reduction Plan.

I. PROFILE OF THE EASTERN DISTRICT OF OKLAHOMA

A. GEOGRAPHICAL OVERVIEW MAP

1. Court Locations
2. Indian Tribal Headquarters
3. Federal Enclaves
   a. Corps of Engineers Lake Projects
   b. U.S. Army Ammunition Depot
   c. Veterans Administration Hospital
   d. National Parks



B. HISTORY AND BACKGROUND

It is impossible to analyze the present court without being aware of the historical development of the court system in the Eastern District of Oklahoma. The 26 counties which now compose the district were apportioned and assigned to the Cherokee Nation, Choctaw Nation, Chickasaw Nation, Creek Nation, and Seminole Nation during the early 1800's. The assignment to the Indian Nations came as a result of the United States' forcible removal of these nations from their tribal lands in the eastern part of the United States. The Eastern District has a unique jurisdictional twist. As reported in "Federal District Court Judges and the History of Their Federal Courts," 40 F.R.D. 139, 263 (1963):

> In the treaties with these Indian tribes, the Indian Nations were given jurisdiction of all problems arising between the Indians of their tribes. Thus, the first courts in the area which is now Oklahoma were the Indian tribal courts. The Federal Government reserved jurisdiction over all problems arising in the Indian territory between the white man and the Indian or between other white men. This was the only example within this country where jurisdiction was based on the nationality or the race of the parties.

By the Act of March 3, 1889, 25 Stat. 783, Congress established the first federal court in Indian Territory in Muskogee. The court was granted jurisdiction over all offenses against the laws of the United States except those punishable by death or imprisonment at hard labor. See History of Federal Courts, supra. 40 F.R.D. 139 at 263. Thereafter, in 1890, by the Act of May 2, 1890, 26 Stat. 720, Congress organized that part of Oklahoma, not included

in Indian Territory, as the Territory of Oklahoma. Thus, began the organization of federal courts in what was to later be the State of Oklahoma.

It is significant to note that on June 28, 1898, Congress enacted the Curtis Act, which provided for forced allotments [to individual tribal members], and the eventual termination of the vast majority of the various tribes' ownership of land within the Indian Territory. See Harjo v. Kleppe, 420 F. Supp. 1110 (D.D.C. 1976). However, Indian ownership of land in the Eastern District of Oklahoma still causes unique jurisdictional issues. 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).

The Eastern District of Oklahoma, and particularly the federal court system operating in this district, has a unique relationship and a potentially alarming responsibility to several tribes located in the district. Perhaps no other part of the United States is affected more strongly by the disputes associated with ownership and use of the Indian lands. This federal court, as evidenced by the foregoing related information, is still dealing with the concept of the federal government being in a guardian-ward relationship with members of the Five Civilized Tribes, first established by the Supreme Court in Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831). Tulsa Law Journal, supra.

Not until 18 years after statehood, in 1925, was the state divided into three judicial districts, that is the Northern, Eastern, and Western Districts. Act of Feb. 16, 1925, 43 Stat. 946. None of the three districts has ever been subdivided into divisions.

The Eastern District serves the 26 counties which combine and represent the southeastern one-third of the State of Oklahoma. The population of the entire district is 640,000, covering the area of approximately 21,252 square miles. Muskogee, which was the location of the first federal court in Oklahoma, remains the principal headquarters for the U.S. District Court for the Eastern District of Oklahoma. Muskogee, with a population of approximately 45,000, is the largest city in the district and the tenth largest city

in the state. Although there are courtroom facilities available in Ada, Okmulgee, McAlester, and Ardmore, the vast majority of all criminal and civil cases are tried at the headquarters of the court in Muskogee. However, the bankruptcy judge and staff occupy the federal courthouse in Okmulgee and all bankruptcy matters, except bankruptcy appeals, are dealt with at the federal court facility there.

The economy of eastern Oklahoma is based on agriculture, but is strongly influenced by manufacturing, oil and gas production, and industries associated with the navigable Arkansas River, which is a part of the Kerr-McClellan Waterway that gives access to the Mississippi River. International barge traffic on the Arkansas River gives the Eastern District exposure to admiralty litigation.

II. ASSESSMENT OF COURT WORKLOAD AND RESOURCES

A. PERSONNEL/WORKLOAD/RESOURCES

1. Judicial Officers

a. Article III Judges

The district is currently authorized 1.33 Article III Judges. Since 1937, the Eastern District has been served by one full-time Article III Judge and by non-resident roving judges assigned to assist with the district workload. Historically, the work of the partial judgeship position allotted to this district has been done by two roving judges. The Judgeship Act of 1990, 28

U.S.C. §133 turned one of the roving judge positions (presently held by Judge David Russell) into a full-time judge for the Western District. With only one roving judge, who took 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.

In an attempt to understand the time/expense pressures associated with management of the Eastern District's expanding workload, the Advisory Group reviewed the Federal Court Management Statistics from 1976 through 1993. The statistics reveal that from 1976 thru 1981, the Eastern District was assigned 1.7 judges with weighted case filings ranging from a low of 234 to a high of 293 cases during the years 1976 through 1981 (See Appendix 2). The most recent statistical data available for weighted filings (1988-1993) reflects for the past 5 years the judge or judges of the district have had as high as 549 cases in 1989 and ended with 515 cases in 1993. The Eastern District judgeship assignments ranged from 1.35 in 1988 to 1.33 in 1993 (See Appendix 3). The district was ranked 80th

nationally in 1981 for weighted case filings per judgeship, and in 1993 ranked 15th. Even to a casual observer, it is obvious that these statistics indicate that for the past 5 years the Eastern District has been called on to do more with less judge support than most any other district in the nation. The Tenth Circuit Council has authority to adjust the percentage of the roving judges' time that is spent assisting the Eastern District. As reflected herein, records over the past 15 years indicate that the roving judge support has varied between 33% and 66% of a full-time judge. In theory, the percentage of full-time support is determined by the needs of the three districts served by the roving judge. In addition to the 1.33 assigned Article III Judges, the district also has the services of Senior Judge H. Dale Cook, however, Judge Cook chose to locate his permanent headquarters in the Northern District of Oklahoma, which is located in Tulsa, some 60 miles away from Muskogee. Therefore, he is not available to assist with the daily on-going work of the Eastern District. The roving judge position has been vacant since December 1991 when the Honorable H. Dale Cook took senior status. Currently the Eastern District has the following assigned Article III Judges:

Honorable Frank H. Seay

Date of Entry on Service: Nov. 5, 1979
Duty Station: Muskogee

Roving Judge position

Unfilled
Duty Station: Tulsa

b. Magistrate Judges

The district is presently authorized one full-time magistrate judge position and one part-time magistrate judge position.

Honorable James H. Payne

Full-Time Position
Date of Entry on Service: October 1, 1988
Duty Station: Muskogee, OK

Honorable Richard P. Cornish

Part-Time Position
Date of Entry on Service: February 27, 1976
Duty Station: McAlester, OK

The full-time magistrate judge is assigned a wide variety of duties which include consent civil trials and all alternative dispute resolution responsibilities. In addition, the full-time magistrate judge oversees the prisoner litigation matters for this district, and manages the vacant roving judge's civil case assignments through pretrial.

The part-time magistrate judge located in McAlester, is responsible for the petty offense docket associated with offenses occurring at Platt National Park in Sulphur, the Army Ammunition Depot in McAlester, Veterans Administration Hospital facility in Muskogee, and the various Corps of Engineers Lake projects located within the Eastern District.

c. Judicial Staff

The chief judge, as well as the prospective roving judge and senior judge, each have, or will have, a staff consisting of one secretary and two full-time law clerks. In addition, because of the heavy prisoner litigation workload, the district has been authorized a temporary full-time pro se law clerk. The term of the current pro se law clerk commenced as a temporary on the 3rd day of August, 1992, and was converted to a permanent position August 4, 1993.

The full-time magistrate judge has a staff consisting of a secretary and one full-time law clerk. In addition, the court clerk has designated one member of the clerk's staff to assist the magistrate judge with management of the consent trial

docket and other civil and criminal case management responsibilities which have been assigned to him.

2. Clerk of the Court

The Clerk of the District Court, William Bruce Guthrie, was appointed September 1, 1989. Prior to becoming Clerk, he served 14 years as Chief Deputy Clerk. The Clerk has 12 authorized staff positions, all of which have been assigned to the Muskogee Office. The staff consists of the Chief Deputy Clerk, Financial Administrator, Systems Manager, Pro Se Law Clerk, three Courtroom Deputies and five Deputy Clerks. At the present time, there is one temporary analyst position justified by CJRA. It is apparent the task of implementing the Expense and Delay Reduction Plan will require additional Court Clerk's office staff. Thus, it appears reasonable to anticipate there will be need to convert the present CJRA temporary position to a permanent position and request authority for an additional temporary clerical position to fully implement the Expense and Delay Plan mandated by CJRA.

3. Probation

The Probation Office for the Eastern District of Oklahoma is made up of two offices serving 26 counties. The district is authorized, as of December 31, 1992, 15 positions for both the Muskogee and Durant offices. However, because of budget restraints, only 13 of the 15 positions have been funded. The active positions are made up of one Chief U.S. Probation Officer, one Supervising U.S. Probation Officer, one Senior U.S. Probation Officer and five line officers. Support staff consists of an Administrative Analyst, a Chief U.S. Probation Clerk, and three Probation Clerks.

Located in the Muskogee Office are the Chief U.S. Probation Officer, whose primary duties are administrative; the Supervising U.S. Probation Officer, who is in charge of contracting the drug/alcohol aftercare services, and supervising the line officers who have supervision caseloads; the Senior U.S. Probation Officer, who is in charge of electronic monitoring and has a supervision caseload; the three remaining line officers include one officer who is responsible for supervising a caseload exclusively, and two who are assigned to the Presentence Report and Pretrial Services Units.

The field office located in Durant, consists of two line officers and a probation clerk. One of the officers has a supervision caseload and the other has a supervision caseload but also assists in writing presentence reports.

For many years the personnel for the district consisted of four probation officers and two clerks. Beginning in 1980, one additional probation officer was added based primarily on growth within the district. Commencing in 1982, due to the passage and implementation of the Pretrial Services Act, and in 1987 with the implementation of the Sentencing Reform Act, additional positions were added to the probation office staff. Both legislative actions have expanded the duties of the probation office and placed additional time burdens on the individual line officers. While the actual caseload of the probation office has not increased dramatically, the additional burdens placed on the offices has necessitated increased staffing.

As of December 31, 1992, there were 190 active supervision cases in the district. This is an average of 31 cases per officer. During this same period of time, 64 presentence reports were prepared for an average of 10 reports per officer. Also, 79 Pretrial Services Reports were prepared during this time period for an average of 13 per officer.

The district has 8 substance abuse contracts in place. Six of the contractors provide day-to-day counseling and urine collection services for those individuals requiring drug and/or alcohol treatment. Two of the contractors provide inpatient services. The average inpatient client resides in these contract facilities for 30 days. Contractors also provide drug and/or alcohol treatment services for those individuals who are placed on pretrial supervision.

On October 1, 1992, electronic monitoring was implemented for the Eastern District. Services are provided to individuals under probation/supervised release/parole supervision, in addition to being available for pretrial services clients.

TABLE 1
CASELOAD - SUPERVISION

DIVISION	CASES Dec 31, 1991	CASES Dec 31, 1992
Muskogee	124	120
Durant	64	70

TABLE 2
PRESENTENCE REPORTS PREPARED

QUARTER	1991	1992
Jan-Mar	30	16
Apr-June	26	28
July-Sept	11	3
Oct-Dec	25	17
TOTALS	92	64

Table 1 reflects the total number of individuals, both on a district-wide and division office basis, under the probation office's supervision for the calendar years 1991 and 1992. The totals do not reflect the commonplace utilization of personnel on an inter-division basis to meet varying monthly demand throughout the district.

Table 2 reflects the actual number of presentence reports prepared by the probation office during the calendar years 1991 and 1992.

4. Facilities

The United States District Court and the Office of the Clerk of the Court are located on the second floor of the United States Courthouse, 101 North Fifth Street, Muskogee. The court has two courtrooms, a full-service library, space for two law clerks, court clerk personnel, and a court reporter on the second floor. The chief judge and his staff make use of one of the second floor courtrooms. The other courtroom, known as the ceremonial courtroom, and office space attached is reserved for the roving judge assigned to the Eastern District.

On the fourth floor of the courthouse in Muskogee, there is an additional courtroom and office space that is used by the Magistrate Judge and his staff.

The Office of the Chief Probation Officer and the U.S. Marshal and their staffs occupy space on the first floor of the courthouse in Muskogee.

The U.S. Attorney and staff, as well as the resident agents of the Federal Bureau of Investigation are located on the third floor of the U.S. Courthouse in Muskogee. The part-time magistrate judge is located in McAlester, approximately 60 miles south of Muskogee, and he has access to a courtroom located at the Carl Albert Federal Building, in McAlester.

The United States Bankruptcy Judge for the past 20 years has been permanently stationed in Okmulgee, approximately 45 miles west of Muskogee, and makes use of the offices and courtroom facilities located in the U.S. Post Office Building, in Okmulgee.

Ardmore and Ada also have court facilities consisting of judge's chambers, courtroom and accommodations for jury deliberation.

5. Automation

On September 1, 1992, the Court Clerk's Office went on-line with the civil part of the Integrated Case Management System -

CIVIL/CRIMINAL (ICMS) for use in tracking dockets and case management of the civil cases. Prior to September 1, 1992, all records were maintained through a manual docketing system.

ICMS CIVIL/CRIMINAL is an electronic docketing and case management system that replaces and integrates with the previous manual systems. Developed specifically for the U.S. Courts, Civil provides a number of useful and helpful capabilities, including:

- Automates the maintenance of case record, parties and attorneys
- Produces a consistently formatted docket sheet
- Provides the users with deadline tracking, case status and document information
- Supplies up-to-date information throughout the court wherever a terminal or PC is connected to the system
- Can automatically produce notices, minute orders and other standard correspondence as well as case and party indexes and the JS-5 and JS-6 reports
- Provides more standardized reporting for case management
- Allows courts to develop customized reports for our specific needs

Also, the Court Clerk's Office is in the initial stage of implementing the PACER System (Public Access to Court Electronic Records) which will allow public access to information in the ICMS system computer

terminal. The Court Clerk's Office anticipates going on-line with the criminal records on ICMS in early 1994.

The Eastern District has been a "test site" for the MAGS Program. This program automates the reporting of the Magistrate Judge's Monthly JS-43 Report.

B. DISTRICT WORKLOAD ANALYSIS

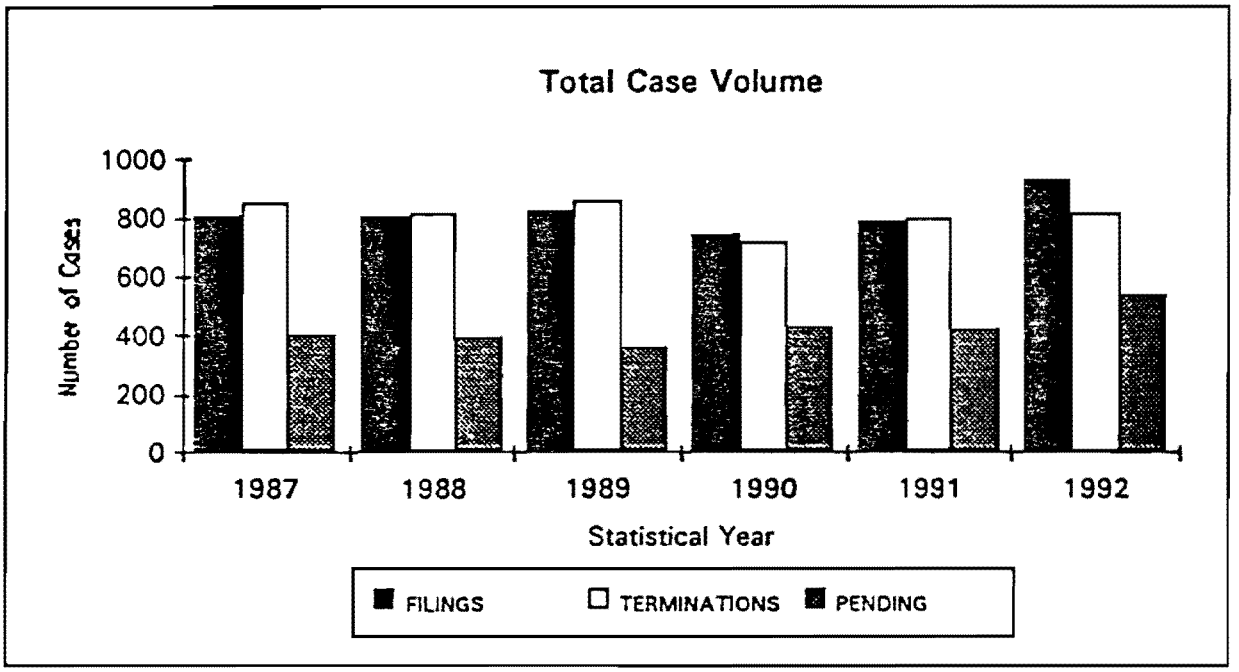
1. Overview of Total Docket

Docket activity reflected in this analysis is based on total district case volume statistics for the years 1987 through 1992. For statistical year 1992, a total of 927 cases were filed representing a 14.98% increase from 1987 to 1992. This increase represents an overall acceleration of the number of filings in the district. The 1992 total filings are indicative of a continuing increased workload. The total case volume for the district over the past 6 years is summarized in Table 3.

TABLE 3

DISTRICT
TOTAL CASE
VOLUME

STATISTICAL YEAR	FILINGS	TERMINATIONS	PENDING
1987	808	849	406
1988	802	813	395
1989	825	856	361
1990	746	716	432
1991	790	800	419
1992	929	815	534
% Chg. 1987-92	14.98%	-4.00%	31.53%



In an attempt to satisfy the directions of Section 472(c)(1)(D) of the CJRA, the Advisory Group makes the following observations. There is no empirical evidence in the form of statistics or survey information that suggests costs or delays have been significantly impacted by any specific legislation. However, practical knowledge and common sense suggest the Sentencing Guidelines, which have been in place since 1987, require a much greater expenditure of time and effort on the part of the court, and attorneys associated with felony criminal litigation. Although not verified by statistical data, the Advisory Group is also of the general opinion that the Sentencing Guidelines have, to a great extent, done away with plea bargaining, and therefore there is a tendency for more defendants to take advantage of their right to jury trials. Thus, it is not difficult to conclude that if the criminal workload increases even slightly, there will be a major reduction of court resources available to dispose of civil litigation.

Moreover, sentencing determinations are the subject of an increasing number of appeals since the dawn of the Sentencing Guidelines. Presentencing pleadings, presentence data assimilation, and sentencing hearings are now more complex and time-consuming. Guideline impact must now be assessed at the inception of the adversarial

process. Accordingly, the criminal caseload today is far more demanding than past years' numerically larger caseloads.

In regard to the pending criminal legislation, the Advisory Group views the *Child Support Recovery Act of 1992,* Pub.L.No. 102-521, the proposed *Comprehensive Violent Crime Control Act of 1993, HR 2321*, and the *Violence Against Women Act of 1993, HR 1133*, to be a potential avenue of vastly increasing federal criminal jurisdiction in areas that have traditionally been administered by state courts. The obvious result is that federal judges in this district, as well as all districts, will have a significant increase in their criminal dockets, and therefore less time available for disposition of civil matters.

Because of the strong Indian tribal influence present in the Eastern District, the *Indian Country Crimes Act*, 18 U.S.C. § 1152, the *Indian Gaming Regulation Act*, 25 U.S.C. §§ 2701, et seq., and the *Indian Child Protection and Family Violence Act of 1990*, 25 U.S.C.A. §§ 3201-3210, are examples of legislation that uniquely impacts its criminal workload.

On the civil front, Congress has enacted the *Americans with Disabilities Act of 1990*, 29 U.S.C. §§ 1201, et seq., and the *Civil Rights Act of 1991*,

Pub.L.No. 102-166, 105 Stat. 1071 (1991), both of which could bring about staggering increases in the workload of federal courts. The U.S. Attorney reported the Department of Justice and Congress are in the process of finalizing legislation to facilitate the filing of between 600-800 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).

The Advisory Group acknowledges there is often obvious need for new legislation, however, it is incumbent on Congress to become more aware that broadening the range of possible cases has a major impact on the federal court's ability to dispose of civil caseloads in a timely manner.

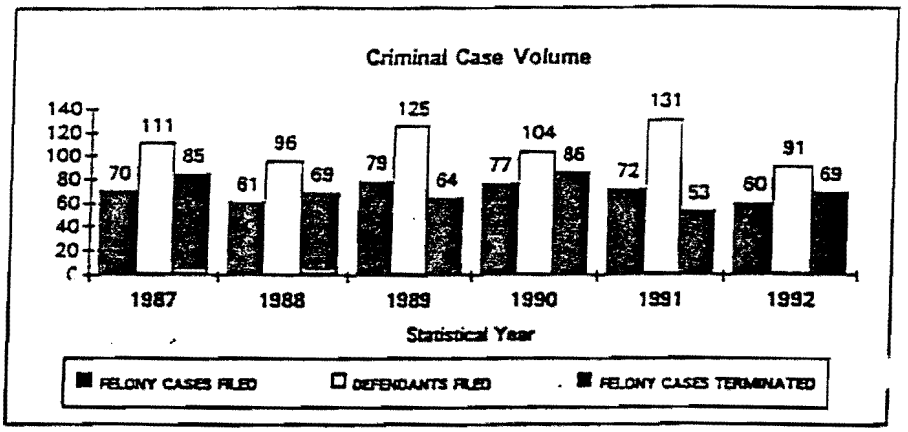
The Advisory Group also notes that Congress' failure to specifically address the issue of retroactivity in the Civil Rights Act of 1991 has not only hindered implementation of the statute, but has also caused delays and additional cost to litigants waiting for appellate court resolution of the issue of retroactivity.

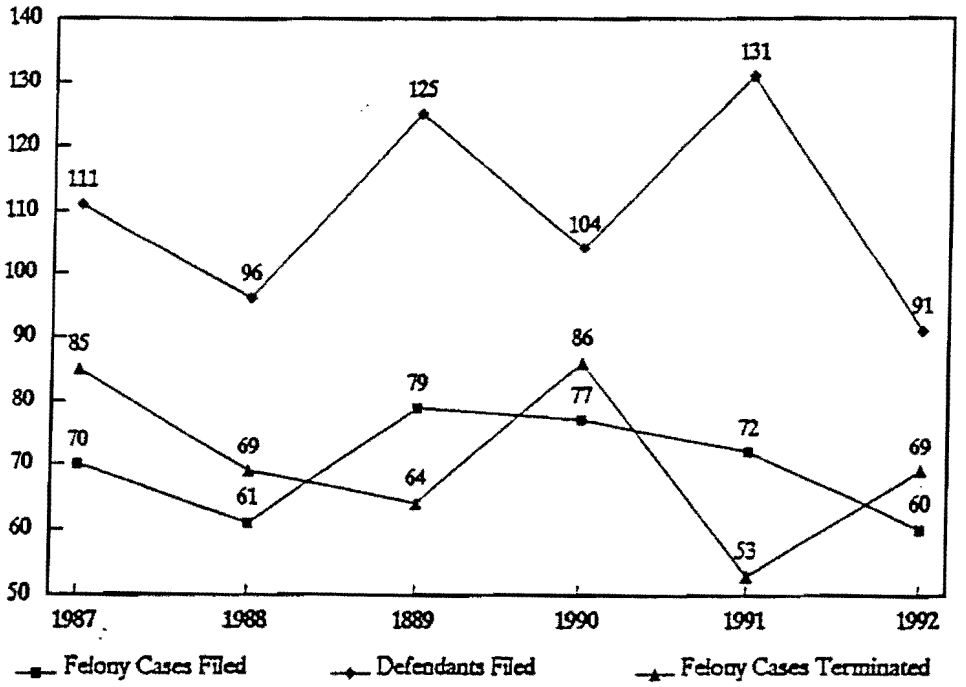
2. Criminal Docket

TABLE 4

CRIMINAL CASE VOLUME

STATISTICAL YEAR	FELONY CASES FILED	DEFENDANTS FILED	FELONY CASES TERMINATED
1987	70	111	85
1988	61	96	69
1989	79	125	64
1990	77	104	86
1991	72	131	53
1992	60	91	69
% Chg. 1987-92	-14.28%	-18.01%	-18.82%





The criminal felony case statistics as reflected in Table 4 above indicate there has been a decrease of 10.14% in criminal case filings since 1987. The 6-year statistical data reflects limited decreases in criminal felony filings and 18.1% fewer criminal defendants processed between 1987 and 1992. Contrary to the apparent trend of the raw statistics, the workload for the U.S. Attorney's Office has increased substantially in the past several years due to the increased complexity of criminal cases and litigation. For example in U.S. v. Hutching, Molina, McCullah and Sanchez, CR 92-032, the trial itself began in January 1993 and ended in March 1993. The investigation, grand jury inquiry, and pretrial litigation spanned 18 months prior to trial. Hundreds of witnesses were identified and thousands of exhibits and documents were reviewed, receipted, and discovered. The case was economized, but still required the testimony of more than 100 witnesses and some 600 exhibits. In addition, extensive forfeiture proceedings were pursued. In short, a case of this magnitude cannot be fairly said to be equivalent to the substantially less complex cases common in years past.

Numerous other complex cases of major proportion have been increasingly commonplace in the past three years, including several substantial financial institution fraud cases. U.S. v. Udoupka, CR 91-046, an international fraud conspiracy, required the pursuit of foreign

evidence and witnesses. Each of two pending major fraud prosecutions (e.g., U.S. v. Merrick, CR 93-039), require a separate conference room for document identity, custody and disclosure. Evolving discovery procedures have also placed increasing demands upon AUSAs and the staff. Consistent herewith, workload in the U.S. Attorney office, as reflected in the monthly overtime reports (USA-5), has dramatically and correspondingly increased.

The Sentencing Guidelines have significantly expanded the workload of the prosecution. Determinations as to relevant conduct, role in the offense, victim impact, acceptance of responsibility, as well as considerations concerning departure propriety and extent, are regularly challenged at the trial and appellate levels. There has been a dramatic and corresponding increase in the number of criminal appeals directed to such Sentencing Guidelines issues.

3. Civil Docket

TABLE 5

DISTRICT CIVIL
CASE VOLUME

STATISTICAL YEAR	FILINGS	TERMINATIONS	PENDING
1987	702	781	363
1988	789	741	411
1989	698	740	369
1990	681	640	410
1991	722	748	384
1992	872	752	504
% Chg. 1987-92	24.22%	-3.71%	38.85%

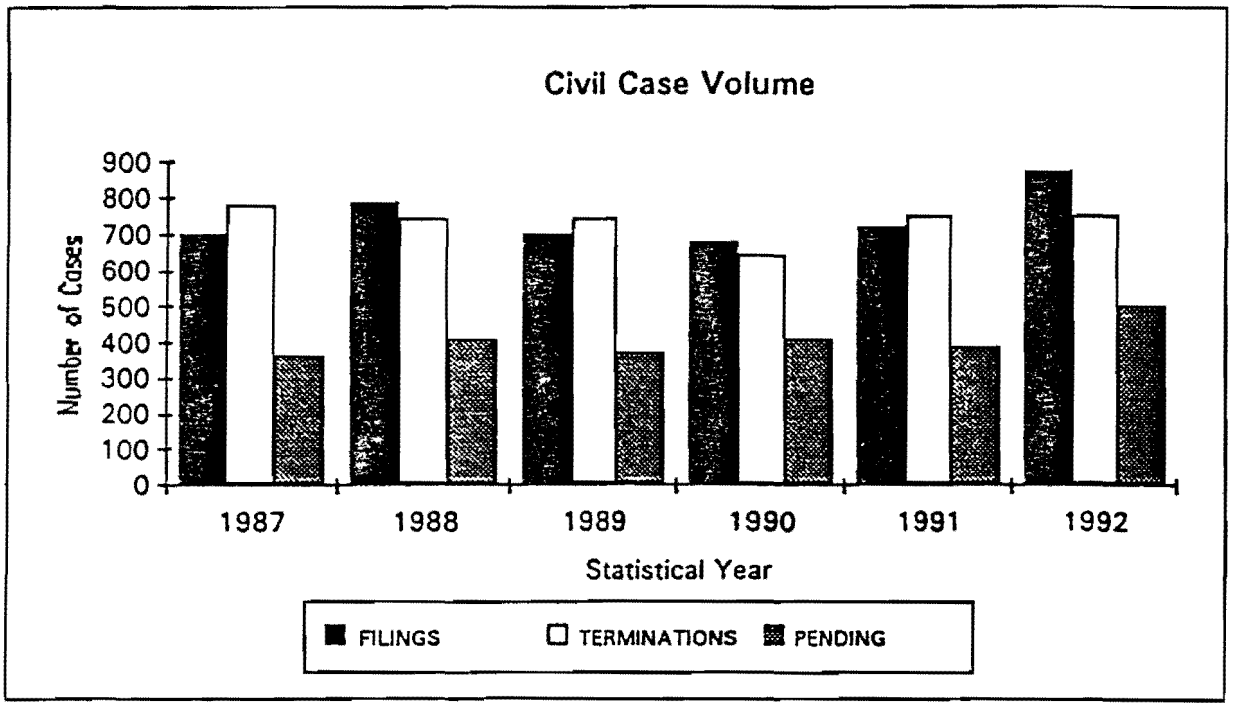
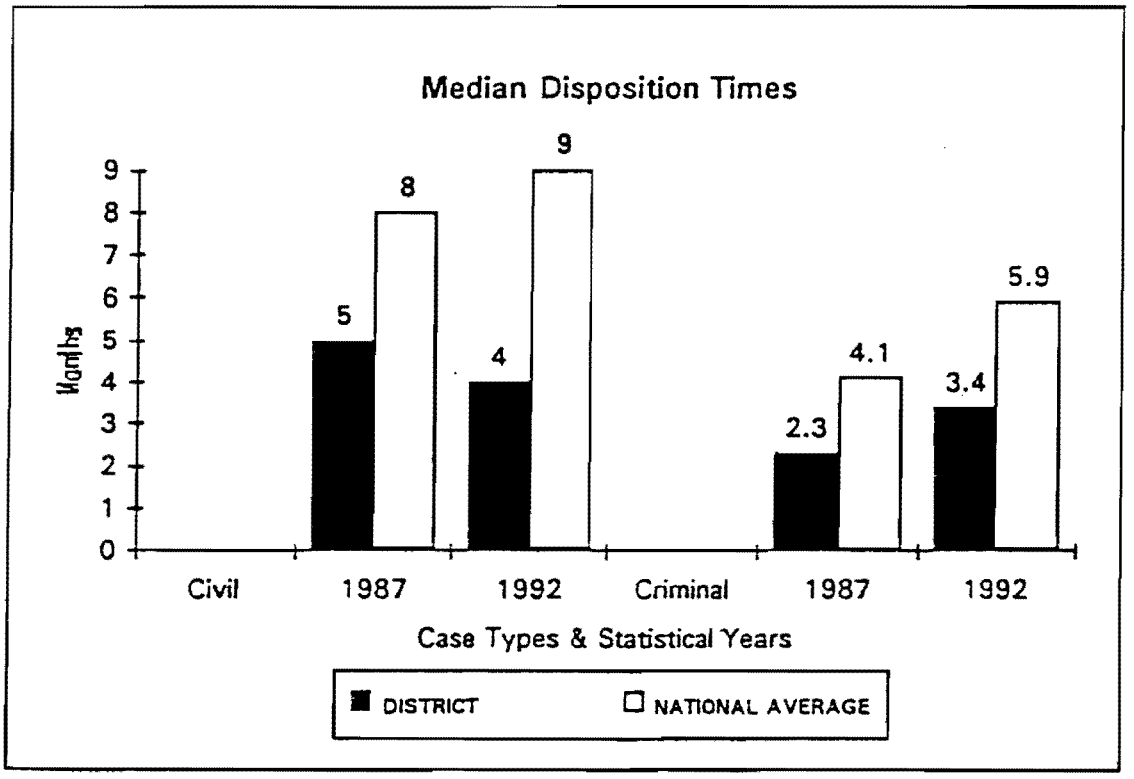


Table 5 above demonstrates an overall 24.22% increase in civil case filings between statistical year 1987 and statistical year 1992.

TABLE 6

MEDIAN DISPOSITION TIMES (MONTHS)

CASE TYPE	DISTRICT	NATIONAL AVERAGE	STANDING (94 Districts)
Civil			
1987	5	8	3
1992	4	9	1
Criminal			
1987	2.3	4.1	2
1992	3.4	5.9	4



On the positive side, however, Table 6 reveals in 1992, the median disposition time in the district for civil cases was four months, which compares favorably to the national average of 9 months. Table 6 further reflects that the Eastern District was No. 1 out of 94 districts nationwide in regard to median time for disposition of civil cases. There has, however, been a significant increase in pending cases as reflected by Table 6. The increase appears to be directly associated with this district's December 1991 loss of Article III judicial resources when Judge Cook took senior status. In statistical year 1991, the statistics in Table 6 clearly exhibit that pending cases began a significant increase between 1991 and 1992. Although this district has had an enviable record for median disposition time, the increase in pending cases since 1991 reflects a critical need to have the roving, vacant judgeship filled at the earliest possible date.

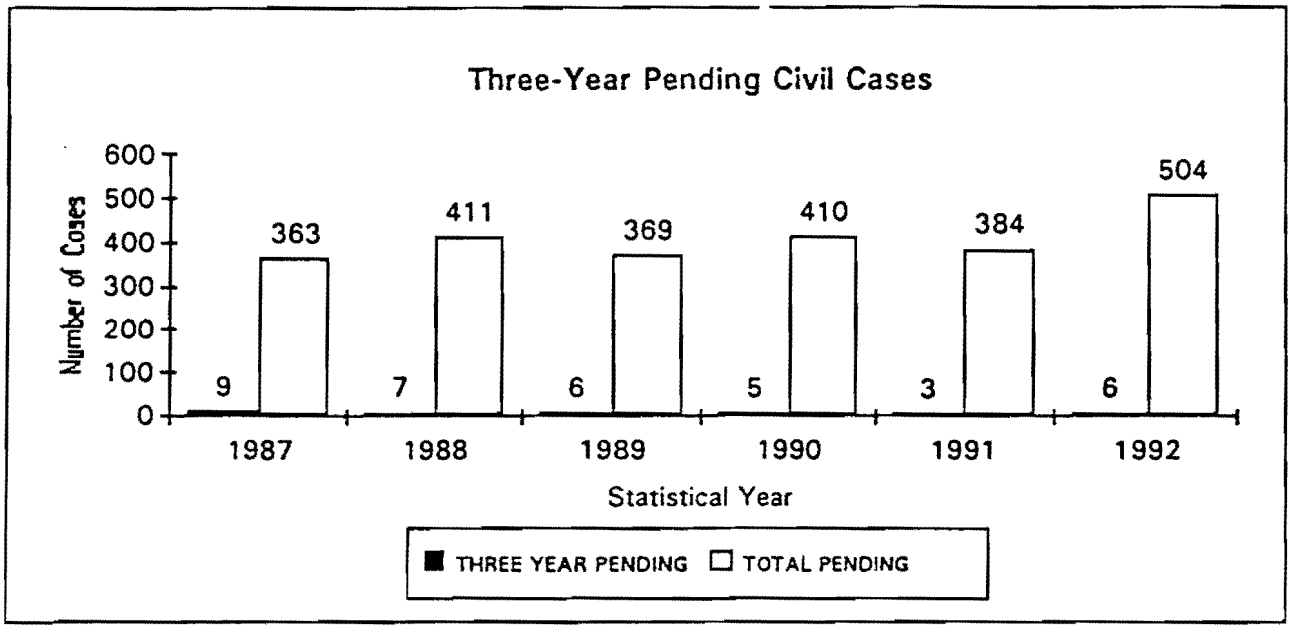
The number of trials in 1989, 1990, 1991, and 1992 declined significantly from 1987 and 1988 levels. The reduction of jury trials occurred in spite of increased civil filings. The reduction of trials corresponds to ADR efforts initiated by the Chief Judge of the Eastern District in mid-1989. The informal ADR Program devised by the chief judge required all parties in civil cases that survive Rule 16 hearings to participate in a mandatory settlement conference. The ADR policy further requires all civil cases not settled at settlement conference, which are scheduled for more than five trial days, to be referred

to the magistrate judge for a summary jury trial as part of the ADR process.

TABLE 7

THREE-YEAR
OLD CASES

STATISTICAL YEAR	THREE YEAR PENDING	TOTAL PENDING	PERCENT OF TOTAL PENDING CIVIL CASES
1987	9	363	2.3
1988	7	411	1.7
1989	6	369	1.6
1990	5	410	1.2
1991	3	384	0.8
1992	6	504	1.2
% Chg. 1987-92	-33.33%	38.85%	-47.82%



Statistical data reflected in Table 7 illustrates that this district does not have a problem with "3-year" pending civil cases. Between statistical years 1987 and 1992, the district has never had more than 9 cases in the 3-year pending category. For statistical year 1992, there were 6 pending cases which computes to 1.2% of the total cases pending in this district.

Thus, there has been a reduction of 33.3% in 3-year pending cases, and a reduction of 47.82% in total percentage of cases pending between 1987 and 1992. However, there is a point of concern reflected in Table 6 under the category of "Total Pending Cases." The overall statistics between 1987 and 1992 demonstrate that there has been a 59.89% increase in total pending cases between the years 1987 and 1992 with the greatest increase being between statistical years 1991 and 1992. This apparent increase in pending cases is a reflection of the judgeship vacancy mentioned herein as well as an overall increase of case filings over the past 6 years.

III. CIVIL MANAGEMENT PROCEDURES

A. ASSIGNMENT/CASE MONITORING

The assignment of cases in the Eastern District is accomplished pursuant to a miscellaneous order entered December 12, 1979. Essentially, the order results in one-third of the civil cases being assigned to the roving judge assigned to this district, and the remaining two-thirds of the civil cases assigned

to the Chief Judge of the Eastern District. The miscellaneous order also calls for the chief judge to handle 100% of the criminal cases filed in the Eastern District. The Advisory Group notes that the records of the court reflect that since late 1989 the magistrate judge has been assigned 198 civil consent cases which have resulted in 30 jury trials and 6 non-jury trials.

The Court Clerk's Office monitors civil cases to insure the integrity of the scheduling orders entered pursuant to Rule 16 and to insure compliance with service of process requirements, Fed.R.Civ.P. 4. The scheduling order deadlines are monitored by way of bi-monthly status reports which set forth the pending motions that affect critical deadlines of each pending case. The status report notes the type of case, all pending dispositive motions, as well as non-dispositive motions. In addition, the civil caseload of each judge is also monitored by the immediate staff, with particular emphasis being placed on dispositive motions which have been submitted to the court for final determination.

B. PRETRIAL PROCEDURE

The Eastern District has a superb record in regard to disposition of civil cases. As mentioned herein, the accomplishment of this court's commendable record starts with strict adherence to Fed.R.Civ.P. 16. The trial judges of the district, as contemplated by Fed.R.Civ.P. 16, have implemented early scheduling and

close monitoring of every stage of civil litigation. On average, Rule 16 scheduling conferences are held within 40 days after filing of the complaint. The early scheduling conferences are possible because the court clerk is under direction from the chief judge to monitor service of process and to contact plaintiff's counsel when there appears to be some unjustified delay in accomplishing service. The purpose of the early scheduling conference is to facilitate the goal of efficient disposition of civil cases through early intervention of judicial management. The chief judge, roving judge, and magistrate judge in this district consistently hold prompt Rule 16 hearings from which they receive input from trial counsel and then in every case establish firm deadlines for amendments, discovery, motions, final pretrial, and trial date. Each of the judges consistently requires the parties to abide by the scheduling order. By maintaining the integrity of the scheduling order, the Eastern District has been able to establish a uniform and expeditious disposition of the civil trial docket. This is due in large part to the court's strict adherence to the scheduling order timetable, which promotes early completion of discovery with a firm trial date, and flexible opportunities for alternative dispute resolution. In the past 10 statistical years, the Eastern District consistently has been in the top three districts in the nation with an average disposition time from filing to disposition of 6 months or less.

There appears to be a great deal of uncertainty among the Advisory Group as to what extent the cost of litigation is affected by delay. However, the statistical data reflects, there is no delay problem in the Eastern District civil docket, and the attorney questionnaire (Appendix 4) indicates that the vast majority of the attorneys who practice in the Eastern District do not find delay of disposition of civil cases to be a problem associated with the cost of litigation. The attorneys surveyed tended to indicate that perhaps the docket in some instances moved too quickly. Most of the complaints about cost noted in the survey referred to issues associated with discovery. Thus, the Advisory Group concludes the delay in the civil docket is not a problem in the Eastern District.

C. DISCOVERY CONTROL

The only local rule that attempts to limit discovery procedures is Fed.R.Civ.P. 19(b), which prevents parties from serving more than "30 interrogatories in the aggregate without leave of court." In addition, the court attempts to control discovery by requiring counsel to diligently follow the discovery deadlines in the scheduling order and holding prompt hearings when the parties fail to resolve problems through informal resolution efforts. The court generally reserves use of Fed.R.Civ.P. 26(f) conferences to dispose of difficult or complex discovery deadline problems. Because of limited Article III Judge resources, these responsibilities are frequently delegated to the U.S.

Magistrate Judge. Use of sanctions as described in Fed.R.Civ.P. 37 has in some instances been used effectively by the court, but in general, disciplined, consistent, adherence to the scheduling order, and closely monitoring motions addressing discovery conflicts, have caused the litigation in the Eastern District to move forward without unnecessary expense or delay.

As stated earlier, the attorney questionnaire indicated that in the opinion of some attorneys, discovery disputes cause excessive cost. However, close review of the questionnaire reveals that only 22 of the 122 responses received made negative comments about the cost of discovery.

D. ALTERNATIVE DISPUTE RESOLUTION

In mid-1989, the Chief Judge for the Eastern District directed that an Alternative Dispute Resolution Program be instituted. Specifically, the U.S. Magistrate Judge was assigned responsibilities for implementing a Settlement Conference Program. As a part of the Settlement Conference Program, the chief judge, perhaps unique to the Eastern District, directed that all civil cases except social security appeals, pro-se prisoner cases, and bankruptcy appeals be set for mandatory settlement conferences (See Appendix 5). The court solicits scheduling information from litigants' counsel at the Rule 16 hearing so the setting of the settlement conference, if possible, can be set in a time frame that allows the parties to avoid excessive litigation expense.

Additionally, the court directed all cases scheduled for more than 5 trial days, and which do not settle at settlement conference, be set for summary jury trial approximately 30 days before trial date.

The full-time Magistrate Judge is assigned all of the settlement conferences, except for magistrate consent cases. All consent case settlement conferences are referred to one of the magistrate judges serving in the Northern District. Approximately two-thirds of all cases assigned for settlement conferences, settle either at the settlement conference or through follow-up telephone conferences conducted by the settlement judge. Since 1991, the magistrate judge has conducted 12 summary jury trials. Nine of the 12 cases settled as a result of summary jury trial efforts. Eleven additional cases that were referred for summary jury trial settled before the summary jury trial proceedings were initiated. The summary jury trial appears to be a useful alternative dispute resolution tool in the Eastern District.

The summary jury trial involves a process first developed by District Judge Thomas Lambros of the Northern District of Ohio, and brought to Oklahoma by District Judge Lee R. West, of the Western District of Oklahoma. The trials are designed to consume one full 8-hour day. Special rules that were first developed in the Western District of Oklahoma have been adopted by the Eastern District to guide counsel in making their summary jury trial

presentations (Appendix 6). Both parties are confined to a 1 hour and 15 minute presentation to an advisory jury. Experience indicates it usually takes the jury an average of no more than 2 to 3 hours to render a verdict. After the verdict is rendered, the parties are granted court-supervised opportunities to interview jurors about the strengths and weaknesses of their respective cases. After the informal questioning period, the jurors are dismissed and the parties reinitiate settlement discussions with the additional information and perspectives gained from the summary jury trial process.

To date, this court has not found it necessary to consider use of any other alternative dispute resolution techniques other than settlement conferences and summary jury trials. In this regard, the group believes that the alternative dispute resolution program being used by the court is adequate for the size of the civil caseload administered by the court in this district. In the future, there may be need for mandatory mediation independent of the court's direct control. However, because of the success experienced in the past three years with court-ordered and controlled ADR, there is little justification to require parties to increase the cost of litigation by making use of private mediators/arbitrators.

The success of the Eastern District ADR Program is unequivocally demonstrated by the 1992 statistical data received from the Administrative

Office set forth in Appendix 1. As can be seen from the statistical data, case filings have steadily increased since 1987, while the number of jury trials conducted by the Eastern District has steadily decreased from 72 in 1987 to 32 in 1992. There may be other undetected statistical factors which have contributed to the reduced number of trials, but the most significant change in procedure by the court since 1987, was the 1989 implementation of Alternative Dispute Resolution Program. Thus, it appears the ADR Program is largely responsible for the reduction of civil trials.

Also, logic dictates that the reduction of trials leads to reduced expense for civil litigants. Therefore, the Advisory Group is convinced the Eastern District's ADR Program should be continued and used as an integral part of the Expense and Delay Reduction Plan.

IV. ANALYSIS OF CJRA LITIGATION MANAGEMENT TECHNIQUES

The Advisory Group, in making this analysis, has been sensitive to the information discerned from assessment of the Eastern District civil workload statistics, survey of attorneys/litigants, and the 6 Guidelines of Litigation Management outlined in 28 U.S.C. §473(a) as follows:

> "(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 18 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 filings 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 Procedures;

(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 the 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 in 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 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 district court; or

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

The Advisory Group carefully considered the 6 directives contained in Section 473(a) in evaluating civil litigation procedures being used by the Eastern District. From the overwhelming evidence compiled in developing this report, it is obvious that the Eastern District has implemented many of the management tools described in Section 473(a). The commendable civil disposition record exhibits that this court has embraced the intent and spirit of reducing cost and delay for many years.

From the general perspective, the statistical data contained in the report establishes that the current rules, policies, and customary practices of the court have achieved the goals contemplated in Management Techniques (2) through (6). 28 U.S.C. § 473 supra. Management Technique (1), defined as "Systematic differential treatment of civil cases," 28 U.S.C. § 473(a)(1) supra. has not been formally adopted by the Eastern District. However, the court's long-practiced internal policy of segregating prisoner litigation, social security appeals, bankruptcy appeals, and real estate foreclosure actions from other civil matters for the purpose of Rule 16 scheduling is in effect a systematic method of case management. Generally, the classes of cases mentioned herein are separated from the normal docket processing because these cases do not require as much court time or on-hands court management as other civil cases. This court's long history of establishing disciplined discovery deadlines with firm trial dockets is ample evidence that the Eastern District civil docket does not suffer from the abuses which Management Technique (1) attempts to abate.

Specifically, this district shows no history of discovery management or docket delay problems. To the contrary, the Eastern District has a consistent record of conducting Rule 16 scheduling conferences and developing disposition plans which show little indication of abuse by litigants or attorneys. Also described in detail herein, the Eastern District, beginning in 1989, developed and makes use of a very successful alternative dispute resolution program.

Further, the Advisory Group has in addition reviewed the 5 delay reduction techniques described in Section 473(b). The Eastern District procedures which are now in place encompass suggested Management Techniques (2) and (5). The Advisory Group is of the unanimous opinion that suggested Management Technique (1) [Requirement of Case Management Discovery Planned in Advance of Rule 16 Hearing] and (3) [Requirement for Extensions of Deadlines be Signed by Attorney and Client] are not necessary for correction of any current observable problems. The Advisory Group has ascertained that the court's current 40-day median timeframe for conducting scheduling conferences, which develops timely pretrial orders and firm trial dates, is ample evidence that the Eastern District civil docket does not suffer from the abuses Management Techniques (1) and (3) address. Likewise, a Neutral Evaluation Program, as described in Management Technique (4), would not appear to improve the Eastern District management scheme. In fact, the Neutral Evaluation step would delay the early scheduling conference program that is now in place.

V. RECOMMENDATIONS FOR EXPENSE AND DELAY REDUCTION PLAN

First, the Advisory Group acknowledges the civil docket for the Eastern District has been aggressively managed for more than 10 years, and as a result has one of the most efficient civil disposition records in the nation. This court embraced the precepts of efficiency and delay reduction long before codification of the Civil Justice Reform Act of 1990. It is worthy of note to observe the court's outstanding record has been maintained even though there have been increased case filings and reduced Article III judge support. The assertive, disciplined, management style of the court has proven to be successful in keeping the Eastern District among the courts recognized as having a deep, dedicated interest in eliminating all unnecessary cost and delay.

Therefore, the following recommendations should be viewed by the court as an effort on the part of the Advisory Group to only refine what already appears to be a very efficiently managed civil docket. The Advisory Group makes the following recommendations:

1. Amend Miscellaneous Case Assignment Order of December 12, 1979 to require the assigned roving judge to assist with both the criminal and civil dockets, and allow provisions for the full-time magistrate judge to continue to assist with a percentage of the civil trial docket through a more structured consent trial policy as contemplated by 28 U.S.C. §636(c)(2).

2. Suggest the court take steps to request the temporary clerical position, which was made available to the Court Clerk's Office through the Civil Justice Reform Act, be converted to a permanent position in which would assume clerical responsibility for the ADR Program.

3. Require voluntary disclosure of discovery information as suggested in 28 U.S.C. §473(a)(4).

4. Adoption of a general order or local rule formalizing the district's Alternative Dispute Resolution Program.

5. Adoption of a general order or local rule providing for a formal method of systematic differential treatment of civil cases.

6. Request an additional resident judge for the Eastern District of Oklahoma through the 1994 Biennial Judgeship Survey.

7. Request the Tenth Circuit Judicial Council increase the Eastern District's .33 roving judgeship percentage as a method of giving immediate assistance to this court's increasing workload.

8. Court Clerk develop a brochure describing the court's ADR Program and that the brochure be distributed to all counsel with the requirement that information contained in the brochure be passed on and discussed with litigants they represent.

CIVIL JUSTICE REFORM ACT ADVISORY COMMITTEE

EASTERN DISTRICT OF OKLAHOMA

APPENDIX

APPENDIX INDEX

TO THE REPORT OF THE ADVISORY GROUP OF THE UNITED STATES COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

APPENDIX 1

ADMINISTRATIVE OFFICE STATISTICS
1987-1992 JUDICIAL WORKLOAD PROFILE

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

OKLAHOMA EASTERN

			TWELVE MONTH PERIOD ENDED SEPTEMBER 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		929	790	746	774	842	771		
	Terminations		815	800	716	803	836	844		
	Pending		534	419	432	399	427	420		
	Percent Change In Total Filings Current Year	Over Last Year. . .	17.6						18	3
		Over Earlier Years. . .			24.5	20.0	10.3	20.5	15	1
	Number of Judgeships		1.33	1.33	1.33	1.35	1.35	1.35		
	Vacant Judgeship Months**		3.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	698	594	561	573	624	571	1	1
		Civil	656	546	511	518	587	523	1	1
		Criminal Felony	42	48	50	55	37	48	63	5
	Pending Cases		402	315	325	296	316	311	38	2
	Weighted Filings**		478	442	505	489	519	443	15	2
	Terminations		613	602	538	595	619	625	3	1
	Trials Completed		32	39	42	32	74	72	47	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	3.4	3.4	3.0	2.6	3.0	2.2	4	1
		Civil**	4	5	6	6	6	6	1	1
	From Issue to Trial (Civil Only)		5	7	7	8	8	12	1	1
OTHER	Number (and %) of Civil Cases Over 3 Years Old		6 1.2	3 .8	5 1.2	6 1.6	7 1.7	9 2.3	7	1
	Average Number of Felony Defendants Filed per Case		1.5	1.9	1.4	1.6	1.7	1.6		
	Jurors	Avg. Present for Jury Selection**	17.50	14.02	11.49	15.72	12.28	11.80	2	1
		Percent Not Selected or Challenged**	14.6	13.9	6.7	11.7	6.6	9.5	9	2

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	872	76	27	259	29	162	10	80	122	4	67	-	36
Criminal*	57	3	4	12	3	-	15	2	-	10	1	1	6

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

APPENDIX 2

ADMINISTRATIVE OFFICE STATISTICS
1976-1981 JUDICIAL WORKLOAD PROFILE

U.S. DISTRICT COURT
JUDICIAL WORKLOAD PROFILE

		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. Circ	
		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
	FILINGS Civil	296	301	266	260	243	226	70	6
	FILINGS 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	2.9	2.4	2.6	1.6	2.3	2.7	15	3
	From Filing to Disposition 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

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	494	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.

APPENDIX 3

ADMINISTRATIVE OFFICE STATISTICS
1988-1993 JUDICIAL WORKLOAD PROFILE

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						13	4
		Over Earlier Years			27.4	27.4	18.3	21.7	11	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	61	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

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

APPENDIX 4

ATTORNEY QUESTIONNAIRE

SUBJECTIVE RESPONSES
and
122 RESPONSES

ATTORNEY QUESTIONNAIRE - SUBJECTIVE RESPONSES

I. BACKGROUND

C. Describe the nature of your practice in Federal Court:

Out of the 122 questionnaires that were returned, 2 were incomplete on this question. Of the 120 responses, most have multiple areas of practice. The following summarizes this information:

12	personal liability
39	product liability
19	employment discrimination
4	employment law
2	labor
1	securities
11	debtor/creditor
4	criminal
17	insurance defense
12	civil rights
18	commercial litigation
4	contract disputes
49	personal injury
1	sexual harassment
2	toxic tort
3	bankruptcy
3	tax
7	general civil
4	medical malpractice
1	county government
1	banking
1	regulatory
2	corporate litigation
1	fraud
1	ERISA
2	foreclosures
1	environmental
5	U. S. government
1	RICO
1	defamation
1	oil and gas
1	1983 claims
1	declaratory judgment actions
1	American Indian law

III. COST OF LITIGATION

B. The cost of litigation in the referenced case could have been improved by:

72 Not Applicable/None/No Response
4 Could not have been improved
1 Cost was beyond judicial control
1 Telephone communication with Magistrate
2 Scheduling Conferences and Pretrials being performed by telephone
3 Limiting number of scheduled trips necessary to Court
5 Discovery Conferences,more efficient discovery, enforcing discovery disputes, longer discovery deadlines
2 More realistic deadlines
4 Ruling on motions quicker
3 Utilizing fewer witnesses/expert witnesses/out of state witnesses
3 Limit depositions, duplication of depositions, requiring party requesting depositions to pay for same
4 Willingness of both parties to negotiate and try to settle out of Court
1 Not requiring summary jury trial
1 Setting Status and Scheduling Conferences after each defendant has been served
5 Earlier settlement conferences
1 Mandatory Settlement Conferences
1 Determining if Settlement Conference necessary instead of scheduling automatically
1 Reducing unnecessary paperwork
3 More knowledgeable counsel as to facts of case
1 Automatic consolidation of like cases
2 Proper investigation before filing of case occurs
1 Counsel foregoing Rule 11 motions
1 Plaintiff not filing case

C. In the referenced case one or more lawyers in the action conducted procedures which contributed to excessive costs. Those actions were:

95 Not Applicable/None/No Response
5 Opposing counsel caused difficulty in scheduling depositions
2 Obstructive discovery tactics by counsel
1 Too many out of state depositions scheduled
1 Duplication of depositions
1 Enforcing discovery disputes
1 Demands for irrelevant documents and records

1 Failure to negotiate in good faith
1 Failure of counsel to adhere to scheduling order
1 Filing of separate cases by plaintiffs counsel
1 Filing case in improper venue, filed to have counsel disqualified as a witness
1 Not prepared for settlement conference
2 Delay in executing and concluding settlement
1 Excessive dispositive motions filed
2 Contesting issues, objecting to everything possible, being unfamiliar with rules of procedure and evidence
1 Counsel misrepresenting facts of case
1 Raising defense theories subsequent to denial of claims
1 Insisting too much money on issues
1 Counsel foregoing Rule 11 motions
2 Case should not have been filed, either discharged voluntarily or plaintiff was sanctioned by court

D. In the referenced case one or more lawyers took actions which contributed to the reduction of excessive costs in the action as follows:

88 Not Applicable/None/No Response
1 Grouping depositions to save travel time
2 Depositions scheduled without delay, no trouble out of opposing counsel in getting depositions scheduled
1 Most deadlines met
5 Cooperation between parties in discovery needs
8 Counsel limited use of depositions as to expert witnesses
8 Counsel participated early on in settlement negotiations
2 Both attorneys made every effort to keep costs at a minimum
1 Motion for summary judgment
1 Magistrate conducted helpful hearings on legal issues
1 Case settled upon submission of relevant material and allowing settlement conference to be successful
2 Realistic and early assessment of liability and damage issued by all parties and their counsel
1 Followed existing rules
1 Prolonged pretrial and attorney withdrew as counsel six months after complaint filed

IV. DELAY

B. The actions taken by the above parties which caused delay in the referenced action were as follows:

105 No Delay/Not Applicable/None/No Response. Of those with comments, a few had multiple responses, as summarized below.

1 Better docket control
1 Litigants not available for depositions for long periods of time
1 Duplication of depositions
5 Discovery complaints, ranging from delays, extensions, harassment in the discovery process, and inability to produce documents
3 Attorney caused delays, such as withdrawing as counsel after six months into the case, failure to file motions in timely fashion and not adhering to scheduling orders
1 Case filed in improper venue, and filed to have counsel disqualified as a witness
1 Litigants totally unwilling to negotiate
1 Value placed on case by Magistrate hindered settlement
2 Final signing of documents and executing and conducting settlement
1 Moving to Federal Court
1 Misrepresentations which were discovered only through depositions
1 Contesting the application of ERISA
3 Dishonesty of plaintiff as to claim and/or no real evidence
1 Motions and arguments
1 Motion for Summary Judgment denied. After 4 days of trial, judgment granted to the defendants on same basis as motion
1 Plaintiff missed some independent medical examinations, an attorney missed a court appearance, and the Judge dismissed case and it had to be refiled

C. Delay in the referenced action could have been reduced by the following practices or procedures:

107 No Delay/Not Applicable/None/No Response. Of the questionnaires received with responses, a few had multiple comments, as summarized below:

1 No delay, largely due to experience of counsel and the procedures of this court.

1 Delays were beyond judicial control
1 Imposition of severe penalty of dismissal
1 Imposition of sanctions by the Court
1 Oral argument on motion for summary judgment
2 Complete investigation and early assessment of damages
1 Motion practice to enforce scheduling order
1 Requiring litigants to be available for depositions
1 Attorney being more candid about clients potential liability
1 Reducing pretrial, paper work and court appearances
1 Change IRS policy to make litigation prohibitively expensive
1 Compliance with rules by counsel
1 Common sense and discretion on part of settlement judge
2 Quicker rulings on motions
2 Earlier settlement conferences
1 Pretrial mid-way through case
1 Formal deadline from announcement of settlement to time final documents are filed

V. ALTERNATIVE DISPUTE RESOLUTION

D. What other forms of alternative dispute resolution would have reduced costs of litigation of the referenced case or reduced delay in the referenced case?

There were only 19 responses to this question out of 122 questionnaires received.

11 Mediation/Arbitration
1 Establishing required deposition limitations
1 Assign case to Judge Payne, if not Judge Payne, then Rothman and Associates
2 Settlement conference
1 Summary jury trial
2 Earlier settlement conference and earlier pretrial
1 A period without Court deadlines to evaluate the case

VI. DISCOVERY

A. In the Eastern District of Oklahoma, have you been involved in other actions in which you believe excessive discovery occurred? If so, what types of actions and what forms of excessive discovery occurred?

Out of 122 responses received, the 22 noted comments received are summarized below:

- 4 - Too many experts in some products liability cases
- 1 - Involving IRS and involving motions and depositions which were excessive
- 17 - Dealt with Discovery as follows:
  - 5 - Too many requests for documents and depositions which went into totally irrelevant matters
  - 1 - Extended discovery
  - 7 - Attorneys have taken excessive depositions of witnesses who have no relevant information on the case just to pad attorney fees under 42 USC 1988. This stifles a possible settlement.
  - 1 - Duplication of information and request for interrogatories, motions to produce and depositions
  - 2 - Excessive number of depositions
  - 1 - Excessive discovery is normally caused by unrealistic early deadlines imposed by the Court

VIII. RECOMMENDATIONS AND COMMENTS

A. If you believe excessive litigation costs occurred in any case in the Eastern District of Oklahoma in the last five years, list three factors you believe contributed most to that situation.

Out of 122 questionnaires received, 77 were noted not applicable, none, or left blank. Most of the responses received had multiple comments.

- 6 Short discovery time
- 5 Discovery disputes between attorneys
- 11 Excessive and frivolous discovery demands for production of documents
- 7 Excessive depositions
- 1 Allow video depositions to occur after discovery cut-off

1 Court's failure to address discovery disputes in a timely fashion
7 Excessive expert witness cost
1 Excessive charges by physicians for depositions
1 Frivolous pleadings
2 Excessive motion filings
3 Mandatory attendance by attorneys at certain proceedings
1 Requirement that all parties and counsel be present on first day of jury docket
1 Excessive Court hearings
1 Unreasonable litigants
10 Unreasonable and uncooperative attorneys
7 Allowance of attorney fees without relation to size of award to party
3 Travel expenses
1 Invocation of arbitration
1 Unrealistic early or short deadlines imposed by the Court
1 The Courts rigid and inflexible schedule and refusal to accommodate conflict of scheduling
1 Court's emphasis is on avoiding trial rather than preparing for it
1 Court generally too lenient with respect to "junk science"
1 Improper removal to Federal Court from State Court
1 Delay in remand
1 Legal positions not classified until pretrial
1 Filing of unmerited lawsuits
1 Unreasonable time restrictions that push cases to trial, not to settlement
1 IRS/Justice Department instructions to attorney
1 Recognition by Justice Department of prohibitive plaintiffs costs
1 Lack of preparation by IRS prior to assessment
1 The shift from oral presentation to written presentation of problems has contributed to the cost of litigation

B. List, in order of priority, three improvements you believe would successfully reduce the cost of litigation.

45 questionnaires were marked not applicable, none, or were left blank. Of the responses received, some noted only one or two suggested improvements.

First Priority:

5 Individual scheduling conferences by telephone or mail

2 Magistrate discovery conference if needed upon request
2 Limit discovery/depositions
3 Strict rules on discovery sanctions
2 Settlement conference
2 Earlier settlement conferences
1 Earlier status conferences
1 Less motions to respond to
1 Quicker rulings on dispositive motions
1 Hold the attorneys to shorter schedules
1 Reserving settlement conferences for certain types of cases
3 Greater use of summary judgment
1 Do not schedule pre-trial to be held prior to ruling on motions for summary judgment
1 Earlier and meaningful pre-trial conference
1 Immediate resolution of summary judgment motions in civil rights litigation
1 Plaintiff being required to pay costs and attorney fees on losing cases
1 Prevailing party recovering costs of all discovery and reasonable expenses and fees
4 Opportunity to conduct proceedings and file pleadings in south central Oklahoma
6 More realistic scheduling, allowing more effective development of the case
1 Utilize the English approach and eliminate discovery
2 Court ordered mediation/arbitration
1 Better performance by the judiciary
1 Early involvement of the Judge
5 Require disclosure of expert's identity and delivery of exhibits when case is filed
2 Lawyer efficiency
1 The Court's improved cooperation and working with attorneys for the litigants
1 Require the use of special reports in all lawsuits against a government unit
1 More leniency in amending pretrial order
1 Meaningful requirements as a predicate to "expert" testimony so as to eliminate "junk science"
1 Sanctions to attorneys
1 Early and meaningful pretrial conference

Second Priority:

1 Making trial briefs, requested jury instructions and requested voir dire due later, closer to trial
2 Mediation
1 Quicker scheduling of settlement conferences
1 More realistic scheduling conference cutoff dates
1 Determining feasibility of settlement conference rather that requiring one in each case

3 Telephone scheduling conference
1 Curtailing last minute changes in issues and evidence
1 Maintain current time frame (re: trial track)
1 Setting cases on date certain for trial
1 Increased number of settlement conferences
1 Allowing settlement conferences to be held in Tulsa
1 Involvement in the discovery process by a reasonable, firm, knowledgeable judge or magistrate in these situations where the parties will not behave on their own
1 Better performance by the bar
1 Use of Magistrate as Judge
1 Reduce costs of depositions
1 Limits on deposition time
1 Limits on experts
5 Require some type of demand or notice of claim by plaintiff to defendant prior to suit so suit does not come as a surprise to defendant
1 If case is frivolous as determined by trier of fact, then all costs, fees and expenses could be assessed against losing party and his/her attorney
1 Treating attorney as officers of the Court, not as an adversary
1 More leniency in listing witnesses and exhibits nearer to time of trial
2 Require high level of cooperation and agreement
1 Periodic status conferences
1 Accessing costs/fee for discovery disputes

Third Priority:

2 Scheduling conferences by phone
1 Settlement conferences or summary jury trials but not both
1 Punitive damages should go to state, or federal government or other entity, not plaintiff/attorneys
1 Court being more active in not allowing motions to dismiss and for summary judgment to be filed that have no merit or where fact issued are present
1 Have attorneys sign a "civility" contract among each other at the beginning of the case
1 More realistic attitudes by clients
1 Shorten litigation time span
3 Limit number and length of depositions
1 Greater use of summary judgments early in proceedings
1 Court ordered mediation
1 Sanction parties for patently frivolous motions
2 Limits on discovery

C. List, in order of priority, three factors which you believe contribute most to the cost of litigation in the Eastern District of Oklahoma.

Of the 122 questionnaires received, 60 were received marked not applicable, none, or were left blank. Of the responses received, some noted only one or two suggested improvements.

First Priority:

2 Assessment costs for discovery disputes
2 Lack of time to coordinate efficient discovery
18 Excessive discovery
1 Expert witnesses
6 Excessive depositions
9 Inflexible/fast schedules
1 Lack of planned scheduling orders with court and attorney input
2 Branch Courthouses around the state for filing, conferences, etc
3 Distance to courthouse/distance from major airport
1 Paperwork
2 Excessive pleading/motion filing
1 Preparation for pretrial prior to motion cut-off date
1 Delay tactics by opposing counsel
1 Lack of cooperation between counsel
2 Unprepared counsel
1 The Court's improved cooperation and working with attorneys for the litigants
1 Inability of litigants and/or counsel to analyze their case
1 Delays in ruling on dispositive motions
1 Normal requirements of litigation
1 Docket disposition/status conferences
1 Schedule settlement conference and summary jury trial both
4 No excessive costs/no different than in any other district/very well run courthouse

Second Priority:

6 Expert/witness fees
4 Excessive depositions
2 Obstructive tactics in discovery
1 Short schedules
3 Paperwork
1 Excessive pleading/motion filing
1 Motion responding
2 Unable to conduct scheduling conferences by phone
1 Number of court appearances
2 Travel to courthouse/distance from major airport

2 Lack of use of summary judgments
1 Unprepared attorneys
1 Not treating attorneys as officers of the court, but as adversary
1 Inability of litigants and/or counsel to value their case
1 Pretrial motion practice
1 Fax charges
1 Delay
1 Failure to enforce disclosure rules in a meaningful way

Third Priority:

1 Frivolous litigation
1 Excessive dispositions
3 Expert/witness fees
3 Excessive discovery/disputes
1 Paperwork
3 Excessive pleading filing
1 Waiting for trial to start, need a day certain
1 Unable to have telephone scheduling conferences
1 Unnecessary sanction motions
1 Stonewalling
1 Courtroom demeanor of some counsel
1 Cost of trial
1 Refusal of parties involved to reasonably negotiate until the last minute

D. List, in order of priority, three improvements you believe would effectively shorten the duration of litigation from filing to resolution.

Of the 122 questionnaires received, 66 were marked not applicable, none, or were left blank. Of those responses that were received, some have only one or two suggested improvements listed.

First Priority:

24 Suggesting that duration of litigation is short enough now/dockets handled expeditiously/needs to be lengthened, not shortened/cases handled in a timely manner in this district/it could not be done faster
1 Reduction of case load by creation of an additional Judgeship
1 Required mediation, not a settlement conference

1 Rulings on all meaningful motions (excluding evidentiary) substantially before trial briefs, jury instructions, etc. are done
2 Prompt resolution of dispositive motions with the basis for denial or sustaining stated
1 Speedier rulings on motions
4 Allowing defense attorneys more time to adequately prepare a defense
1 Earlier listing of witnesses
1 More lenient and realistic deadlines/schedules
1 Assessment of costs
2 Reduced discovery
1 Extend discovery time
1 Discovery conference
1 Full disclosure rule in discovery
2 Strict rules on discovery sanctions
1 Limit number of depositions
1 Mail status conference scheduling orders
2 Earlier status conference/scheduling order availability
3 Earlier settlement conferences
1 Abolish summary judgments
1 Early Judge involvement
1 Send smaller cases to dispute resolution
1 Have court occasionally in perimeter counties such as Ardmore
1 Limit paperwork/pleadings/motions

Second Priority:

3 Earlier settlement conference
1 Earlier motion cut-off
1 Summary judgment on issues that are truly undisputed
1 Initial pretrial conference with Judge
1 Court rulings on motions sooner to avoid discovery on issues that are dismissed
2 Limitations on discovery
1 Reduction of unnecessary pretrial motions
1 Sanctions imposed more readily for parties failure to cooperate in discovery
1 Restrictions for experts fees

Third Priority:

1 Earlier motion cut-off
1 Early settlement conference
1 More realistic discovery deadlines
1 Decriminalize drug cases
1 Reduction or elimination of motions for sanctions
1 Settlement Judge and Court assisting in pinpointing merit, or lack thereof
1 Less Paperwork
1 Set early summary jury trials

E. List, in order of priority, three ways to improve pretrial discovery in the Eastern District of Oklahoma.

Of the 122 questionnaires received, 72 were marked not applicable, none, or were left blank. Of the responses received on this question, some noted only one or two suggested improvements.

First Priority:

- 3 Limit discovery time
- 1 Limit discovery document production
- 13 Increase discovery time
- 2 Strict rules on discovery sanctions
- 1 Full disclosure rule on discovery
- 1 End routine use of protective orders on discovery
- 1 Informal discovery required of all documents, reports and germane business records
- 3 Limit number of depositions
- 11 Court ordered exchange of information early (ie., witnesses, exhibits, experts) with rigid cut-off dates followed
- 1 Limit issues early
- 3 More flexibility with regard to schedules and extensions, due to attorney and court caseload
- 1 Early settlement conferences
- 2 Allow attorneys/litigants to control the pace of their discovery
- 1 Stricter treatment of recalcitrant lawyers
- 1 Lawyer cooperation
- 1 Rule 17 like the Western District uses
- 2 Adhere to scheduling order
- 1 Uniformity between Courts as to application of rules
- 1 Murphy's Law - if it work's, don't fix it!

Second Priority:

- 1 Limiting interrogation to 25 questions
- 1 Stronger remedies for violations of discovery
- 1 Close supervision of discovery
- 7 Limit number and length of depositions
- 2 Extend discovery time (much waste in haste)
- 1 Impose costs on party desiring discovery
- 3 Limit expert testimony
- 1 Quick access to magistrate on telephone regarding expedited hearings
- 1 Do not set motion cut-off for the day after discovery
- 1 Schedule it in a logically sequential way
- 2 Prompt rulings on discovery motions

1 Reasonable use of "calculated to lead to relevant evidence"
1 Requesting party to advance and pay costs of reproduction

Third Priority:

1 Strict enforcement of scheduling order
1 Add more judges to take pressure off Judge Seay
1 Enforce rules intended to require full and complete disclosure
6 Early discovery conference for setting of dates for depositions and for production of known exhibits to all counsel in case
1 Each side bear the travel expenses for their own experts
1 Periodic status conferences
1 Limit of one hearing for dispositive pretrial motions
1 Place ceiling on costs

F. List, in order of priority, three ways to improve status conferences in the Eastern District of Oklahoma.

Of the 122 questionnaires received, 68 were marked not applicable, none, or were left blank. Of those received with comments, some had only one or two suggestions as noted below.

First Priority:

19 Conduct by telephone or mail copy of scheduling order as no input is required or accepted by counsel and trip is unnecessary
1 Require written discovery plans
1 Full disclosure rule on discovery
5 Do not schedule conference before all parties have been served and answers filed, so that they may have some input into scheduling
7 Some cases do not require a schedule and this is not being considered at present
7 Allow flexibility in scheduling orders according to the needs of each case
3 Hold individual conferences for each case
3 Listen to needs of parties and counsel when determining discovery cut-off date
2 Determine exact facts of case from plaintiff
1 Hold more than one status conference, possibly one at beginning of trial and one midway through

1 Eliminate it
1 Enforce lawyers arriving on time
1 Opportunity to meet in south central Oklahoma
1 Judges involvement
1 Currently seems to be too much initial paperwork

Second Priority:

1 Telephone status conferences
2 Mail scheduling order instead of conducting status conference
1 Handle each case individually
1 Do not schedule conferences before all defendants have been served
1 Reduce number of cases at each conference
1 Court getting more involved with the merit of each case
1 If attorneys can agree, then submission could be done in writing
1 Case should be ordered to mediation within 90 days, depending on complexity of case
2 More flexibility with regard to discovery deadlines
2 Give attorneys more input into scheduling deadlines
1 Candid disclosure by lawyers
1 Earlier settlement conferences
1 Encourage cooperation of counsel
1 Periodic status reports
1 Require plaintiff to itemize damages at the status conference
1 Shorter forms
1 Written requirement by lawyers on all efforts made in scheduling prior to conference

Third Priority:

2 Do not require personal appearance for conference/mail scheduling orders
1 Telephone conferences
1 Individual status conferences for each case
1 Require settlement negotiations to have begun prior to status conference
2 Allow attorney input as to scheduling
1 Limit discovery's scope in the scheduling order
1 Periodic settlement discussion
1 Control over obstructionist pretrial tactics
1 Early identity of legal issues
1 Preclude additional witnesses on evidence with few exceptions

G. List, in order of priority, three ways to improve settlement conferences in the Eastern District of Oklahoma.

Of the 122 questionnaires received, 81 were marked not applicable, none, or were left blank. Of the responsive comments some only noted one or two suggestions.

First Priority:

13 The settlement conferences are excellent/no improvement needed/system working well/Magistrate Payne does an excellent job - cannot be improved
3 Schedule them sooner
4 Get Judge more involved/take more aggressive approach in pinpointing merits, or lack thereof
1 Have settlement conference judge make recommendations (ie. value of case)
1 Require client attendance
1 Be sure defendants arrive to negotiate in good faith
1 Hard to generalize, but mediator is everything
1 Access costs for lack of good faith
2 Convey all offers to plaintiff regardless of difference in numbers
1 Do not put a value on case and reveal it to parties
1 Make them as informal as possible
8 Hold conferences shortly after status conference in those cases where settlement is likely to result
1 Conduct them in Tulsa or Oklahoma City in cases involving counsel/parties from those areas
2 Do not schedule them unless on joint application of the parties
1 We agreed to try the case to Magistrate Payne, that left no one to conduct the settlement conference

Second Priority:

1 Enforce rules for discovery cut-off
1 Shorten the conferences
2 Have a strong Magistrate Judge that does nothing but mediation of settlement conferences
1 Mediator should not put value on case
1 Require plaintiff to itemize damages for the settlement
1 Obtain a firm recommendation from attorneys
1 Allow adequate time
1 Impose sanctions

Third Priority:

1 Require filing of confidential settlement statements
1 Give parties statistics on jury trial results for the 6 months before the conference
2 Magistrate should not offer opinion on liability in front of both parties
1 Procedure should be more like a mediation

H. List, in order of priority, three ways to improve summary jury trials in the Eastern District of Oklahoma.

Of the 122 questionnaires received, 106 were marked not applicable, no experience with summary jury trials, or were left blank. Of the responses received on this question, some noted only one or two suggested improvements.

First Priority:

1 Summary Jury trial is now too easily manipulated to be useful unless rule is "points not raised can not be raised at trial"
13 Eliminate the use of summary jury trial
1 Have more summary jury trials
1 Make it binding

Second Priority:

1 Have it in one day
1 Limit them to extremely complex cases

Third Priority:

1 Use them only after other methods are unsuccessful
1 Eliminate all witnesses

IX. List any additional recommendations you have that would have resulted in a less costly resolution of the dispute in the referenced case.

Of the 122 questionnaires received, 101 were marked not applicable, none, or left blank. Those which suggested improvements are listed below:

1 The cost of this case was the result of the incompetence of the plaintiffs counsel. The efforts of the Court could not have prevented the expenses that occurred.

7 A discovery conference early on for setting of dates for depositions and for production of known exhibits to all counsel in case. Plaintiff should be required to get parties served as quickly as possible. I have had very visible clients not served for 45-60 days after filing with scheduling order in place. This hurts the defendants and is an unnecessary delay by plaintiffs counsel.

1 Try cases on a day certain - no setting around with experts waiting for trial to start. Bad practice and costly.

1 Give more time between filing and trial

1 Too often, quick resolution is equated with success. While it may be good for a Judge, it may be unjust to parties who pay too little or receive too much because attorneys are unable to evaluate a case and prepare for trial in the given time.

1 Court should not tolerate repeated unprofessional courtroom behavior.

1 The Courts have opened discovery to the great benefit of all litigants. The efforts to avoid delay and expense should be encouraged however, these procedures are subject to widespread abuse when they are utilized only as an additional discovery tool with no intent to consider reasonable settlement. Clearly this practice always works to the detriment of the party which holds the burden of proof.

1 Early settlement conferences would be helpful. Court ordered arbitration might be helpful.

1 If the losing party's attorney (or the party) had to pay attorney's fees to the winner, I think everyone's costs would drop.

1 Adequate time for discovery, filing motions. Adequate time for taking trial videos. Mercy of court when mistakes happen. Fax filing. East in extending deadlines.

1 Any "reforms" proposed should be flexible so as not to impose delay and additional expense upon cases which can be tried in 1-3 days.

1 Settlement system in Eastern/Northern Districts of Oklahoma best in the nation. I try cases all over US and always recommend adoption of yours. It works. Don't mess with it!

1 Cases move quite well, from start to finish in the Eastern District.

1 In this particular case, I believe the matter was efficiently handled by all concerned without significant unnecessary costs.

1 More competent plaintiff's counsel.

ATTORNEY QUESTIONNAIRE - 122 RESPONSES

I. BACKGROUND

A. & B.

Years in Practice	Number	Percentage	Average Percent Practice in Federal Court
0 - 5	14	11%	23%
6 - 10	33	27%	30%
11 - 15	22	18%	41%
16 - 25	35	29%	43%
Over 25	18	15%	33%
TOTAL	122	100%	

C. (See Section _____)

II. ACTIVITIES IN THE REFERENCED CASE — AVERAGE NUMBER

A. How many deposition were taken? 5

B. How many days were spent in deposition? 4

C. How many days were spent in trial? 1

D. How many days were spent in settlement negotiations? 1

E. The time from filing to disposition was:

	Number	Percentage
Too short	19	16%
Too long	4	3%
About right	99	81%
TOTAL	122	100%

III. COST OF LITIGATION

A. Cost of litigation was: (2 of the 122 questionnaires received had no responses on this question)

		Number	Percentage
Not excessive	0	53	44%
	1	14	12%
	2	17	14%
	3	24	20%
	4	9	8%
Greatly excessive	5	3	2%
TOTAL		120	100%

B. (See Section ____)
C. (See Section ____)
D. (See Section ____)

IV. DELAY

A. The action was delayed by: (Of the 122 questionnaires reviewed, 89 were marked none/not applicable/no delay, or were left blank. Some responses had multiple answers)	Number	Percentage
Lawyers	16	41%
The Court	8	21%
Litigants	15	38%
TOTAL	39	100%

B. (See Section ____)
C. (See Section ____)

V. ALTERNATIVE DISPUTE RESOLUTION

(Of the 122 questionnaires reviewed, some had multiple answers, and some were marked not applicable, none, or left blank)

A. Which methods were employed:	Number	Percentage
Summary Jury Trial	5	6%
Court Ordered Settlement Conf.	72	86%
Other	7	8%
TOTAL	84	100%

B. Was this effective:	Number	Percentage
Yes	28	41%
No	41	59%
TOTAL	69	100%

C. Which technique is most effective:

	Number	Percentage
Arbitration	0	0
Settlement Conference	65	89%
Summary Jury Trial	5	7%
Other	3	4%
TOTAL	73	100%

D. (See Section ____)

E. Would court annexed mediation utilizing a panel of trained mediators be an effective tool in reducing costs and delay?

	Number	Percentage
Yes	59	71%
No	24	29%
TOTAL	83	100%

F. Have you participated in the mediation of any civil litigation dispute in any court?

	Number	Percentage
Yes	82	68%
No	38	32%
TOTAL	120	100%

If so, was the mediation an effective way of reducing costs and delay?

	Number	Percentage
Yes	67	79%
No	18	21%
TOTAL	85	100%

G. How many settlement conferences were held?

	Number	Percentage
0	19	21%
1	56	63%
2	12	14%
3		
4		
5	2	2%
TOTAL	89	100%

H. Was the settlement conference productive?

	Number	Percentage
Yes	36	49%
No	37	51%
TOTAL	73	100%

I. Did settlement of the case result from the court ordered settlement conference?

	Number	Percentage
Yes	19	23%
No	65	77%
TOTAL	84	100%

J. Was the case settled as a result of any alternative dispute resolution programs?

	Number	Percentage
Yes	10	11%
No	80	89%
TOTAL	90	100%

K. Was the time and expense spent in the alternative dispute resolution program worthwhile?

	Number	Percentage
Yes	33	59%
No	23	41%
TOTAL	56	100%

VI. DISCOVERY

A. Have you been involved in other actions in which you believe excessive discovery occurred?

(9 out of 122 responses were marked not applicable, none or left blank)

	Number	Percentage
Yes	22	19%
No	91	81%
TOTAL	113	100%

VII. TRIAL

A. Is the time between filing a complaint and trial of the case too long or too short?

(12 out of 122 responses were marked not applicable, none or left blank)

	Number	Percentage
Too Short-0	25	23%
1	18	16%
2	23	21%
3	43	39%
4	1	1%
Too Long-5	0	
TOTAL	110	100%

APPENDIX 5

SETTLEMENT CONFERENCE ORDER

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

	Plaintiff(s),	
vs.		No.
	Defendant(s),	

SETTLEMENT CONFERENCE ORDER

Judge Frank H. Seay has referred this case for a settlement conference and directed the Clerk to enter this Order. JAMES H. PAYNE, will act as a settlement judge who will not be involved in the actual trial of the case and who will assist in an objective appraisal and evaluation of the lawsuit. The following are mandatory guidelines for the parties in preparing for the settlement conference.

1. PURPOSE OF CONFERENCE

The purpose of the settlement conference is to permit an informal discussion between the attorneys, parties, non-party indemnitors or insurers, and the settlement judge of every aspect of the lawsuit. This educational process provides the advantage of permitting the settlement judge to privately express his or her views concerning the parties' claims. The settlement judge may, in his or her discretion, converse with the lawyers, the parties, the insurance representatives or any one of them outside the hearing of the others. Ordinarily, the settlement conference provides the parties with an enhanced opportunity to settle the case, due to the assistance rendered by the settlement judge.

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 6

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 _____, 199___.**

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

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF OKLAHOMA

	Plaintiffs,	
vs.		No.
	Defendant.	

TO CLERK OF THE COURT:

Please enter the following minute order in the above entitled case.

In accordance with 28 U.S.C. §636 and the Local Court Rule on Magistrates, this matter is hereby referred to:

[ ] Such magistrate judge as shall be assigned by the Magistrate's Assignment Clerk _____.
(Magistrate)

[xx] Magistrate Judge JAMES H. PAYNE
(Specific referral by District Judge)

Purpose of reference: To conduct a Summary Jury Trial

_____

_____

_____.

_____ _____

(Date) UNITED STATES DISTRICT JUDGE

APPENDIX 7

PROFILE OF CIVIL JUSTICE REFORM ACT ADVISORY GROUP

MEMBERS AND EX OFFICIO MEMBERS OF THE ADVISORY GROUP

A. Camp Bonds, Jr. is a partner in the firm of Bonds, Matthews, Bonds & Hayes, Muskogee, Oklahoma, and has been involved in the practice of law since 1968, with emphasis on civil litigation related to F.E.L.A., oil and gas, insurance, equine, and admiralty law. Mr. Bonds received his B.S. (1965) and J.D. (1968) from the University of Oklahoma. He has served as a member of the Oklahoma State Personnel Board (1980-1982) and the Oklahoma Ethics and Merit Commission (1982).

Michael Burrage is a partner in the firm of Stamper & Burrage of Antlers, Oklahoma. He earned his B.S. (1971) from Southeastern State University and J.D. (1974) from the University of Oklahoma. Mr. Burrage is past President of the Oklahoma Bar Association (1990), and member of the Oklahoma Bar Association Board of Governors (1984-1991). He has on two occasions been appointed to serve as Justice on the Temporary Division of the Court of Appeals for the State of Oklahoma. Mr. Burrage was Editor of the Oklahoma Law Review (1973-1974), and served as legal research assistant to Eugene Kuntz, author of Kuntz on Oil & Gas. He is a member of the Choctaw Tribe of Oklahoma, and has served as General Counsel for the Choctaw Nation of Oklahoma.

Clifford Cate is in private practice in Muskogee, Oklahoma. He was formerly a partner in the firm of Wilcoxen & Cate, Muskogee. Mr. Cate has been involved in the practice of law since 1965, with emphasis in banking law, complex commercial litigation, condemnation, oil and gas, and real property. He received his B.A. (1962) and J.D. (1965) from the University of Oklahoma. Mr. Cate previously served as Assistant U.S. Attorney for Eastern District Oklahoma (1968-1970). He served as member of the Board of Editors, Oklahoma Bar Journal (1984-1989), and authored an article for the Oklahoma Bar Journal; Board of Directors (past President) Oklahoma University College of Law Association; and serves as adjunct professor for Connors State College.

Mark Green is a partner in the firm of Green & Edmondson, Muskogee, Oklahoma, and previously a partner in the firm of Green & Green, Muskogee, Oklahoma. He has been involved in the practice of law since 1978, with emphasis in general civil litigation, criminal defense, appellate practice, bankruptcy, personal injury and products liability. He received his B.A. in Finance (1975) and J.D. (1977) from the University of Oklahoma. Mr. Green was formerly an Assistant District Attorney for Muskogee County, Oklahoma (1978), and Assistant U.S. Attorney for Eastern District Oklahoma (1978-1983). He is the CFR Prosecutor for the Chickasaw, Choctaw, Seneca-Cayuga, and Osage Tribes. Mr. Green is a member of the Oklahoma Trial Lawyers Association.

William Bruce Guthrie, an ex-officio member and reporter for the Advisory Group. Mr. Guthrie is the Court Clerk for the Eastern District of Oklahoma. He graduated from Oklahoma State University in 1969, with a B.S. in Accounting. He was then employed in the general accounting section of a large overseas drilling company and was responsible for preparing monthly financial statements for world-wide operations. Following that, he worked as a staff accountant for a C.P.A. firm doing tax returns and audits for profit and non-profit organizations. He then took a position as an in-house bank auditor, reporting directly to the Board of Directors. For the past 18 years he has been employed in the Court Clerk's Office for the Eastern District of Oklahoma, 14 years as Chief Deputy and the last 4 years as Court Clerk.

Eddie Harper is a partner in the firm of Stipe, Gossett, Stipe, Harper, Estes, McCune & Parks, McAlester, Oklahoma, and has been involved in the practice of law since 1963. He earned his B.S. (1960) and LL.B. (1963) from the University of Oklahoma. Mr. Harper served as Assistant U.S. Attorney for the Eastern District Oklahoma (1966-1968), and Assistant District Attorney, Pittsburg County, Oklahoma (1968-1970). Mr. Harper's practice consists of civil litigation, personal injury, workers compensation, probate, real estate, federal employers liability, medical malpractice, and products liability law. He is a member of the Oklahoma Trial Lawyers Association, the Association of Trial Lawyers of America, and Oklahoma Criminal Defense Lawyers Association.

Joe Kennedy, a former partner with the firm of Kennedy, Kennedy, Wright & Stout, Muskogee, Oklahoma, was involved in civil litigation, commercial banking, and personal injury law. Mr. Kennedy received his B.A. (1961) and LL.B. (1963) from the University of Oklahoma. He was Trustee in Bankruptcy (1964-1967). He served as Board Member for the American Red Cross (1965-1967), and as Chairman of the Muskogee County American Citizenship Committee (1964-1967).

Don Ed Payne is a partner in the firm of Payne & Welch, Hugo, Oklahoma. He obtained his B.A. (1959) and LL.B. (1962) from the University of Tulsa. Mr. Payne has been in the active practice of law since 1962, and his practice has consisted almost entirely of criminal trial work in state and federal courts. He also has extensive experience in tort and civil rights matters. Mr. Payne has previously served as county judge and county attorney for McCurtain County, Oklahoma. He is a member of the Oklahoma Trial Lawyers Association (Board of Directors 1983-1988; Chairman Criminal Law Section 1985-1986), the Association of Trial Lawyers of America, Oklahoma Criminal Defense Lawyers Association (Board of Directors 1982-present; President 1984), National Association of Criminal Defense Lawyers, American Civil Liberties Union (General Counsel 1985-1987; Vice-President 1988-1989; President 1989-1993; National Board Representative 1991-1993), and National Lawyers Guild.

James H. Payne was appointed full-time United States Magistrate for the Eastern District of Oklahoma on October 1, 1988. Judge Payne served in the United States Air Force as an Assistant Staff Judge Advocate/Staff Judge Advocate (1966-1970), Assistant United States Attorney for the Eastern District of Oklahoma (1970-1973), and was a partner in the firm of Sandlin & Payne, Muskogee, Oklahoma (1973-1988). He earned his B.S. (1963) and J.D. (1966) from the University of Oklahoma. Judge Payne served as 10th Circuit Court Representative for the Federal Magistrate Judges Association. He implemented the Eastern District's Alternative Dispute Resolution Program, and has been a frequent speaker at Federal Judicial Center sponsored CLE programs on the subject of Alternative Dispute Resolution.

John Raley is the United States Attorney for the Eastern District of Oklahoma. Mr. Raley served as Assistant U.S. Attorney for the Western District of Oklahoma (1961-1969), involved primarily in the prosecution of criminal cases. He was formerly a partner in the law firm of Northcutt, Raley, Clark and Gardner, Ponca City, Oklahoma (1969-1990), specializing in litigation with emphasis on insurance defense matters. He earned his A.B. in History and English (1954) from Oklahoma Baptist University and J.D. (1959) from the University of Oklahoma. Mr. Raley is a retired Navy Captain. He served a three-year term as Mayor, and was selected Outstanding Citizen of the Year for the City of Ponca City, Oklahoma. He also served on the Board of Governors of the Oklahoma Bar Association.

Frank H. Seay, an ex-officio member of the Advisory Group, is Chief United States District Judge for the Eastern District of Oklahoma. Judge Seay was appointed United States District Judge for the Eastern District of Oklahoma in November 1979. He became Chief Judge for this district November 5, 1980. Judge Seay earned his B.A. degree in 1961 and LL.B. degree in 1963 from the University of Oklahoma. He began private practice in Seminole in 1963 and became County Attorney the same year. In 1967, he became First Assistant District Attorney for the 22nd Judicial District. In 1968, he was elected Associate District Judge in Seminole County, and held that position for six years. In 1974, he was elected District Judge for the 22nd Judicial District of Oklahoma, where he served until his appointment to the federal bench. Judge Seay has served as member of the 10th Circuit Judicial Council.

James Wilcoxen is a partner in the firm of Wilcoxen, Wilcoxen & Primomo, Muskogee, Oklahoma. Mr. Wilcoxen earned his B.A. (1976) from the University of Oklahoma and J.D. (1979) from Oklahoma City University. He has been actively practicing law since 1979. Mr. Wilcoxen has extensive experience with civil and criminal litigation in both state and federal courts. He is currently counsel for the Cherokee Nation of Oklahoma. He is a recognized expert in Indian Law matters and has been involved in litigation addressing many issues critical to the Cherokee Nation of Oklahoma. He is a member of the Cherokee Nation Foundation-Higher Education Program, and also a member of the Board of Trustees for Bacone College, and for the First Presbyterian Church, Muskogee.

Betty Williams is a partner in the firm of Robinson, Locke, Gage, Fite & Williams, Muskogee, Oklahoma. Ms. Williams is an experienced federal litigator. She has been in the active practice of law since 1973. She has extensive experience with bankruptcy matters and state and federal civil litigation. She was formerly an Assistant U.S. Attorney (1973-1981) and served as U.S. Attorney (1981-1982) for the Eastern District of Oklahoma. She received her B.A. (1969) from Oklahoma City University and J.D. (1972) from Vanderbilt University. She is a member of the Board of Editors for "Oklahoma Law Enforcement & Operations Bulletin".