# REPORT OF THE ADVISORY GROUP

# OF THE UNITED STATES DISTRICT COURT

# FOR THE WESTERN DISTRICT OF OKLAHOMA

# APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

OCTOBER 21, 1991

# ADVISORY GROUP

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Clerk of Court

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## EXECUTIVE SUMMARY

In February of 1991, Chief Judge Ralph G. Thompson appointed a thirteen person advisory Group pursuant to The Civil Justice Reform Act of 1990, 12 U.S.C. § 478. The Group members represent a broad spectrum of practice areas within the District and a corporate officer from a local utility company. Included, as required by the Act, is the United States Attorney for the Western District, Timothy D. Leonard, who also made available Warren D. "Tom" Majors, his chief civil assistant. The Chairman is a long time federal Court practitioner and a Fellow of the American College of Trial Lawyers. The Vice Chairman is an experienced commercial litigator with many years of trial experience in the District. In addition, Group members include an Assistant Attorney General of the State who handles federal Court matters involving state interests, a lawyer from Legal Aid of Western Oklahoma who represents indigent persons, distinguished plaintiff and defense lawyers who are engaged in personal injury litigation, a former state bar president from a rural area who is engaged in civil matters in the Court, and other lawyers with specialized backgrounds and practices.

They met as a whole on four occasions and worked separately in subcommittees. Fortunately, the Group had the tireless assistance of Ann Marshall, the lawyer clerk for the Court and the services of Robert Dennis and Grant Price, the Court Clerk and Chief Deputy for the District. The Group expresses special gratitude to Carrie McKee, Mr. Dennis' secretary for her work.

The Group's conclusion is that the Western District of Oklahoma and its judges and staff personnel are delivering efficient and timely judicial services. The

Group has made a few suggestions and recommendations for changes, including the adoption of a mediation program, the adoption of voluntary discovery, some scheduling changes and a few additional items that may reduce costs.

The opportunity for lawyers and litigants of the District to review and comment on the workings of the Court is seen as a worthwhile, healthy exercise. The Advisory Group believes that the administration of justice can and should be examined periodically by the people affected.

The Advisory Group anticipates that this report will be of assistance to the Court in preparing its plan pursuant to the Act.

## INTRODUCTION AND BASIS FOR RECOMMENDATIONS

Section 472(b)(2) requires the Advisory Group to include in its report the basis for its recommendations that the District Court develop a plan or select a model plan. The recommendations of the Advisory Group for the Western District of Oklahoma are based not only upon the varied experience of its members, but also upon knowledge obtained from the information it gathered during the process of developing its recommendations.

The Group was fortunate in that the members selected by the Chief Judge for the United States District Court for the Western District of Oklahoma brought to the Group process a variety of experiences. Thus, even without input from the outside, the Advisory Group brought to the process a wide variety of viewpoints, as well as a number of unique perspectives on the costs and delay of litigation.

The Advisory Group began by surveying its own membership for their views on the particular matters which the Group is mandated by the CJRA to consider. In addition, Advisory Group members were encouraged to and did informally talk with numerous other attorneys, party litigants and judges about their views on the various issues the Group was to consider. Finally, the Advisory Group undertook a more formalized survey of 200 lawyers and party litigants who had been involved in federal court litigation that had been resolved during statistical year 1990 to determine their views on a variety of subjects relevant to the inquiry at hand. The detailed results of this survey are provided in Appendix 4.

Further, as discussed above, with input and assistance from the Judges of the United States District Court for the Western District of Oklahoma and the office of the Court Clerk, the Advisory Group was provided with a considerable amount of data assessing the Court's civil and criminal dockets. See discussion in Part One, infra.

As a result of its review and assimilation of this information, it is fair to say that the Advisory Group commends the Court for the procedures already in place in the Western District of Oklahoma and makes recommendations that "fine tune" the existing program. The report does not suggest any significant change in the manner in which criminal dockets are handled because as can be seen from the information on the assessment of the Court's criminal dockets, a significant problem does not currently exist.

With respect to the civil docket, the Advisory Group's recommendations emanate from certain recurring themes in the information it accumulated. First, although discovery abuses have been considerably ameliorated in this District by the imposition of local rules and the Court's enforcement of those rules, there continues to be concern that discovery abuses do contribute to excessive cost of litigation. Thus, the committee has made recommendations to help alleviate that problem. A further recurring theme is the unnecessary costs that can be incurred by party litigants due to the interaction between the Court's enforcement of its scheduling orders and the time necessary to consider dispositive motions. For example, if a case is scheduled for trial and unresolved dispositive motions are pending, the parties may nevertheless have to expend the funds necessary to complete discovery and finish preparation for trial of a case that

may be resolved or substantially changed by the pending motions. The Group has made some recommendations as a way to avoid this unnecessary cost.

Finally, a most compelling and recurring theme considered by the Advisory Group as a basis for its recommendations is the concept of earlier alternative dispute resolution techniques. Several alternative dispute resolution techniques are already effectively utilized by the Court. The Advisory Group received a great deal of input indicating the appreciation of the attorneys who practice in the Western District of Oklahoma for the efforts of Magistrate Judge Irwin who conducts settlement conferences very successfully. However, these settlement conferences are typically conducted on the eve of trial after substantial litigation costs have been expended. The other techniques available in this District also often occur after substantial costs have already been incurred. Therefore, the committee has recommended adding mediation which, hopefully, would occur much earlier in the case. The Advisory Group also suggests more specific discussions at the initial Rule 17 status conference of the possibility of earlier settlement conferences as a way to hopefully achieve the benefits of alternative dispute resolution earlier in the case, and thereby avoiding unnecessary costs.

In the final analysis, it is the success this District has already had in the past with various methods suggested by the CJRA that is a principal basis for this Advisory Group's recommendation that these efforts be continued with the improvements or "fine tuning" suggested.

## PART ONE: BACKGROUND AND ASSESSMENT

The Civil Justice Reform Act requires that in developing its

recommendations each Advisory Group "shall promptly complete a thorough assessment of the state of the Court's civil and criminal dockets." 28 U.S.C. § 472(c)(1). As part of that assessment, it shall identify trends in case filings and describe the principal causes of cost and delay. In addition, the report must "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts." 28 U.S.C. § 472(c)(1)(D).

The Advisory Group, in developing its recommendations, is also obligated to "take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys." 28 U.S.C. § 472(c)(2). Finally, it "shall ensure that its recommended actions include significant contributions" by the various participants in the system. 28 U.S.C. § 472(c)(3). This part of the report has been prepared to satisfy those requirements.

This report uses pre-1991 statistics, i.e. statistical year 1990 information provided by the Administrative Office of the U.C. Courts. However, in the preparation of this report, the 1991 information became available, was reviewed and final assessments were made that assured the Group that there had been no significant changes that would modify in any way our findings, conclusions and recommendations.

## I. DESCRIPTION OF THE COURT

### A. THE WESTERN DISTRICT OF OKLAHOMA

The Western District of Oklahoma is a mid-sized district court serving forty counties which constitute the western half of the state of Oklahoma. The population of the entire Western District is about 1.6 million covering an area of approximately

40,000 square miles. Oklahoma City, the "seat" of the Western District, is its largest city and the largest in the state with a population in the metroplex of over 800,000.

Western Oklahoma is primarily an agricultural and fuel (oil and gas) producing area. Additionally, service industries and manufacturing are an important element of the economy. Oklahoma City's location, not only in the middle of the state, but also midway between the East and West coasts and almost half-way between the northern and southern boundaries of the United States make this city with the junction of Interstate 35 and Interstate 40 just a few blocks from the Federal Courthouse, one of the busiest and most important "intersections" in the United States for transportation, communication and distribution.

Today the Court sits almost exclusively in Oklahoma City. However, on occasion, trials are held in other locations within the district. Bankruptcy Court hearings are often held in Lawton and Enid, each approximately 80 miles from Oklahoma City. When Oklahoma was admitted to statehood in 1907, Indian Territory (Eastern) and Oklahoma Territory (Western) combined to form the state. Oklahoma was the only state to join the Union in which Federal Courts were already organized in two judicial districts upon admission. In 1925 Oklahoma was divided into three judicial districts now known as the Western, Eastern and Northern Districts. Erwin C. Surrency, " Federal District Court Judges and the History of Their Courts," 40 F.R.D. 139, at 265 (1967). The districts have never been divided into divisions.

Currently the Court consists of five active U.S. District Judges, two senior U.S. District Judges, four full-time U.S. Magistrate Judges (three traditional and one settlement magistrate judge) sitting in Oklahoma City, and three part-time Magistrate Judges sitting in Enid, Lawton and at Tinker Air Force Base. The Court's sixth U.S. District Judgeship was created by the Federal Judgeship Act of 1990. Judge Robin J. Cauthron was sworn-in to this position April 5, 1991. Judge Layn R. Phillips resigned from the bench on June 22, 1991, leaving the Court with one vacancy. Timothy D. Leonard, United States Attorney for the Western District of Oklahoma, has been recommended by United States Senator Don Nickles as Judge Phillips' successor. Senior Judges Fred Daugherty and Luther Bohanon are actively handling some cases.

**B. PILOT COURT STATUS UNDER THE CIVIL JUSTICE REFORM ACT**

At its March 12, 1991 biannual meeting, the Judicial Conference of the United States designated the Western District of Oklahoma, a court of the Tenth Circuit, as one of the ten pilot courts as required by Section 105 of the Civil Justice Reform Act of 1990. The Act requires that the Conference conduct pilot programs in ten districts. Thus, as a pilot court, this District must have its civil expense and delay reduction plan implemented by December 31, 1991. The District is required to include in its plan the six principles of litigation management and cost and delay reduction set fourth in Section 473(a) of the Act.

Our mid-sized court from mid America, representing both a rural and urban mix of litigants, entertains a variety of types of litigation, an oft-times heavy civil docket, but with excellent dispute resolution procedures. The District has demonstrated

success at disposing of civil cases expeditiously and is an appropriate choice as a pilot court. Its plan for expense and delay reduction for civil matters should provide an example for others to study and utilize.

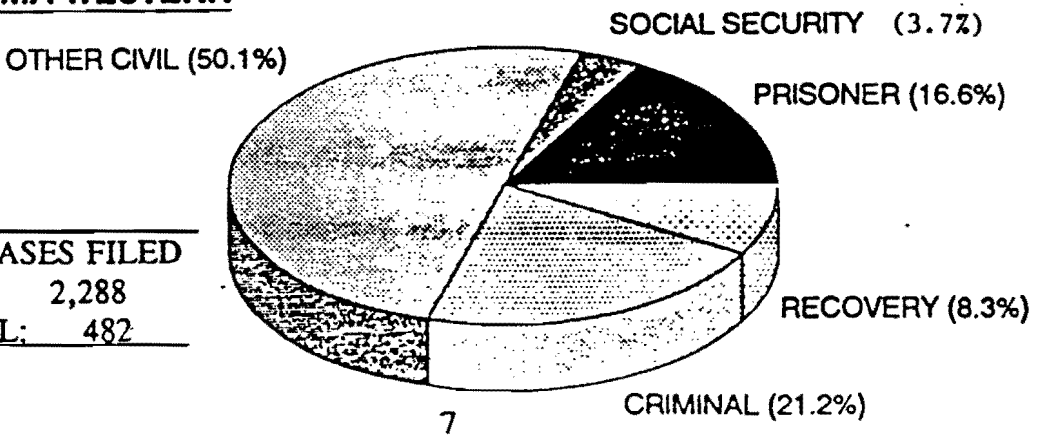
## II. ASSESSMENT OF CONDITIONS IN THE DISTRICT

### A. CONDITION OF THE DOCKET - THE PRESENT STATE OF THE DOCKET

From the outlaw trials of the Doolin and Dalton gangs and civil cases concerning "Boomers" and "Sooners," through the "Machine Gun Kelly era," to the complex world of major product liability litigation, complicated oil and gas lawsuits, multi-million dollar fraudulent financial deals, and the profusion of bank failures with their attendant litigation through the decade of the 1980's, the demand on the federal judiciary in the Western District of Oklahoma has been significant. (See Hoverson, "History-United States District Court, Western District of Oklahoma," prepared for Chief Judge Ralph G. Thompson as a special project for the Centennial Celebration of the 1889 Land Run, April, 1989) Today is no exception.

At the present time, this Court's civil docket is 78.8 % of the total caseload leaving the criminal docket at 21.2 % of total. The following diagram reflects this statistic.

***OKLAHOMA WESTERN***




TOTAL CASES FILED
CIVIL: 2,288
CRIMINAL: 482

This relationship of the civil and criminal docket in this Court has remained generally the same for the past decade or longer although specific percentages have changed. Due to the large civil caseload in comparison to our criminal caseload, the Advisory Group began with an assessment of the criminal docket to understand better the impact it does have in our Court.

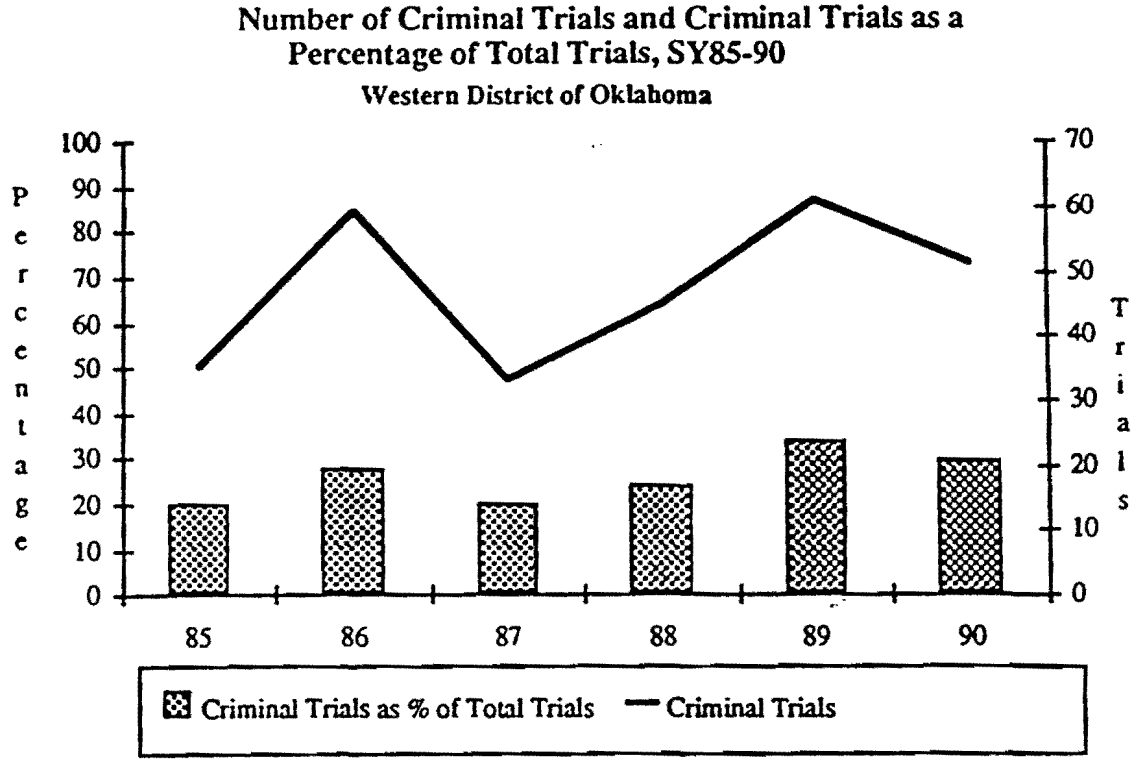
1. The Criminal Docket

It is important to recognize that the Speedy Trial Act (18 U.S.C. § 3161 et seq.) mandates that criminal proceedings occur within specified time limits which may interfere with the prompt disposition of civil matters. Therefore, it is obvious that a heavy criminal caseload will limit the resources available for the Court's civil cases.

Due to these statutory time requirements, Western District Rule 38 (the Court's plan for achieving prompt disposition of criminal cases) was enacted some time ago. It sets time limitations, including trial dates, and describes procedures for all matters affecting criminal defendants. Use of the Court's Uniform Reciprocal Discovery Order in criminal cases has been effective in reducing motion and discovery problems in criminal practice. It could be called a "disclosure" order requiring a substantial degree of information sharing by both the government and the defendants. Both the government and defendants are required to make mutual disclosure of basic information, consistent with due process and criminal Rule 16, without the necessity for pretrial motions, briefs and hearings.

a. Criminal Case Management. The 1990 Federal Court Management Statistics reported the Western District of Oklahoma as fifth nationwide in

the prompt disposition of criminal felony cases, with an average time of 3.5 months from filing to disposition. Our Court had a decrease in the number of criminal trials in 1990 to 51 from 59 in 1989, with an average of 10.2 trials per judge. The following graph indicates the demand on resources by criminal trials for the past several years:



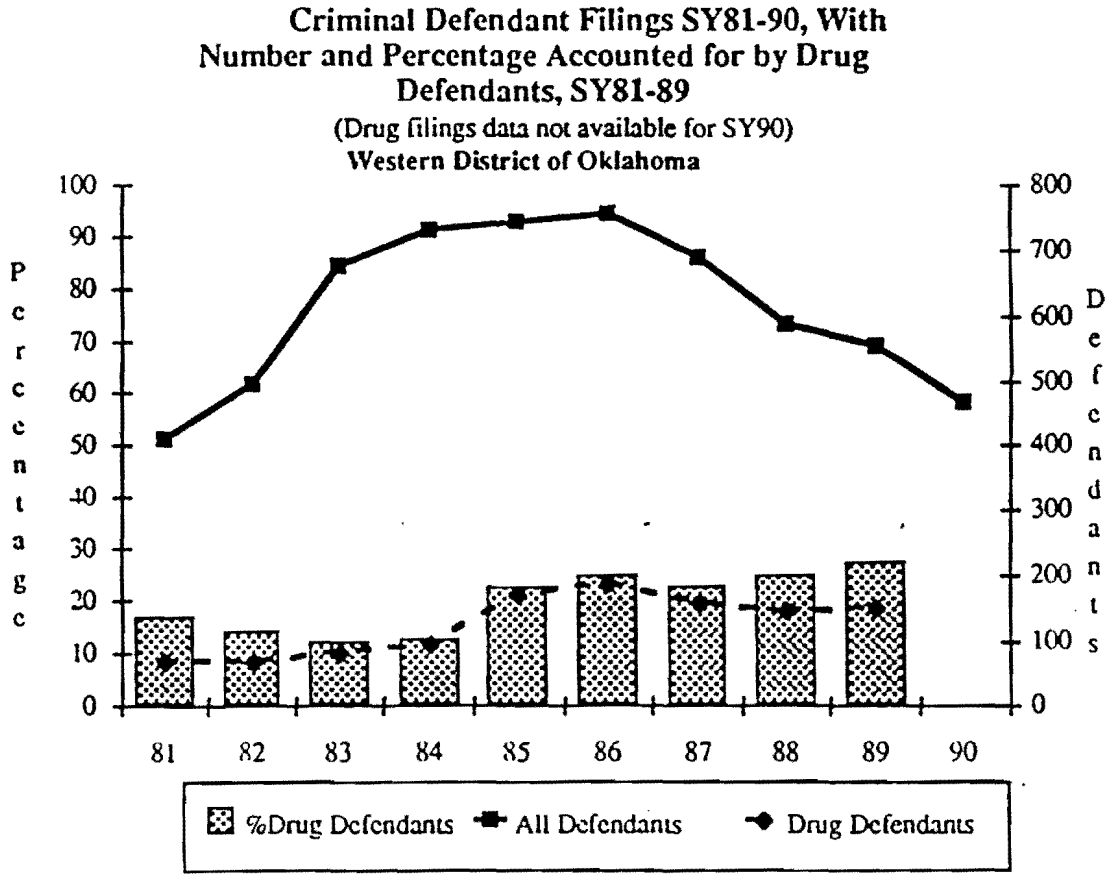

(graph, "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990, page 19, prepared by the Administrative Office of the Courts and the Federal Judicial Center, dated 2-28-91)

b. Criminal Workload and Trends. As earlier stated, the criminal workload was 21.2 % of the total workload in statistical year 1990.

There were 228 criminal felony cases involving 289 felony defendants. Multiple defendant cases increase the burden on court resources. Felony drug offenses

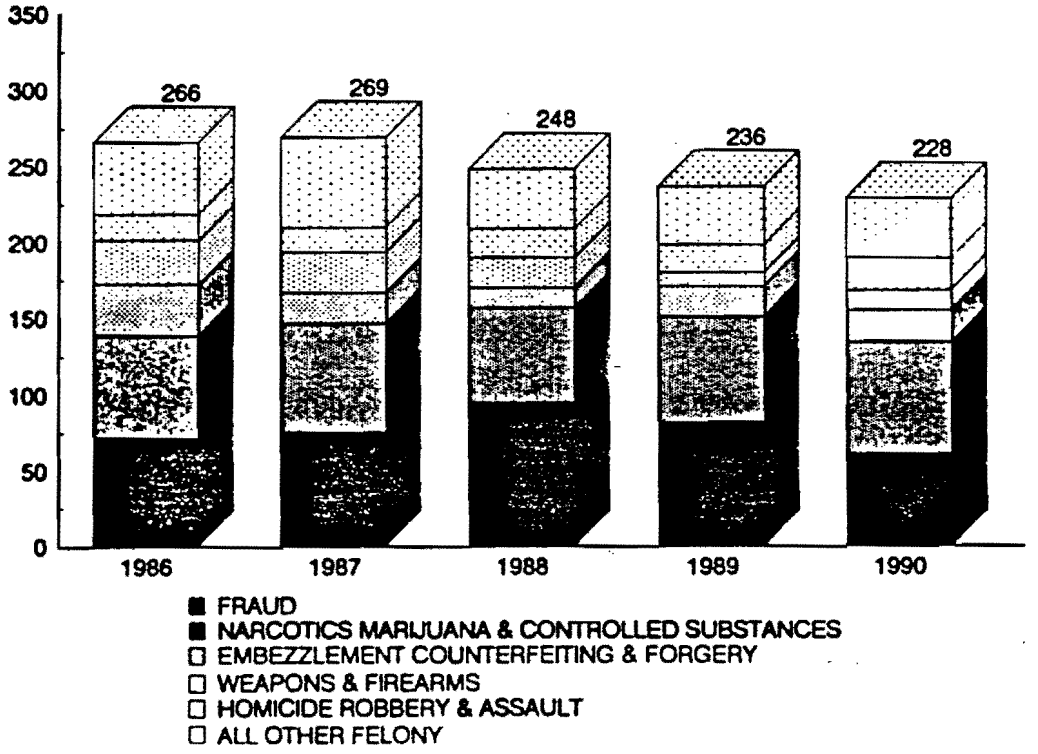
in the District steadily increased to the second largest category with 57 filings in 1990. With the continued emphasis on drug interdiction in our District and elsewhere and the use of drug task forces, the drug related cases with multiple defendants could continue to increase our criminal docket well into the 1990's. However, statistics for our Court indicate that felony defendants decreased from 415 in 1989 to 289 in 1990. (see the 1989 and 1990 Annual Reports of the Western District of Oklahoma prepared by Robert D. Dennis, Clerk of Court.)

The following chart demonstrates this Court's criminal defendant filings with specific information concerning drug defendants:



(graph, "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990," p. 18, prepared by the Administrative Office of the Courts and the Federal Judicial Center, dated, 2-28-91)

The largest category of criminal filings was fraud, as evidenced by the growing number of complex financial fraud cases with multiple defendants. A third grand jury was empaneled in March of 1990 as a result of the growth of such fraud and drug related cases. Additional indictments, particularly of more complex financial fraud cases could add greatly to judicial time required. The following graph reflects criminal felony filings by offense for statistical years 1986 - 1990:




Sentencing guidelines as mandated by the Sentencing Reform Act of 1984 have placed additional demands on the resources of the Court. Application of these

guidelines has added to the judge's time in consultation with probation officers as well as time spent on contested matters arising from sentencing hearings.

c. Conclusion. Due to law enforcement efforts and possible new legislation, our Court could well join the nationwide trend indicated in the 1990 Annual Report of the Director of the Administrative Office of the Courts for increased drug and drug-related filings with multiple defendants. An additional magistrate judge could assist the Court with the expected increase in judicial time required in criminal matters. This also could forecast a need for additional Criminal Justice Act appointments for the local bar.

Further, the complexity of drug and criminal fraud cases and the length of their trials has had some effect on the timing of civil trials, although not serious to date. Due to the problems other districts are currently experiencing with heavy criminal dockets, this is definitely an important area for future Advisory Groups to monitor.

2. The Civil Docket

a. Recent Developments in Civil Case Management. Beginning in 1980, this District was literally inundated with litigation generated by the boom-bust period of Oklahoma's economy including the famous Penn Square Bank cases. Between 1982 and 1986, this Court had, at times, the heaviest or second heaviest weighted caseload per judge of any federal court in the nation.[1] Bolstered by the 1983 amendments to Federal Rule 16 and in an effort to cope with the demands of these

[1] "Weighted" case filings take into account the complexity of the case and the amount of judge time involved.

caseloads, the Court initiated new and somewhat innovative methods of case management and alternative methods of resolving disputes. They worked.

During the years of the heaviest civil caseloads, the Court nevertheless, ranked very high nationally in the prompt disposition of those cases. For instance, in 1984, when the Western District had the second heaviest caseload in the nation, it was eighth in the nation in prompt disposition with a five month median time from case filing to termination. The District was a pioneer and a "pilot court" in some of these techniques. Although such heavy caseloads have diminished to some extent, the Court continues to employ proven procedures successfully. In 1990, the Western District ranked sixth in the nation in the prompt disposition of cases. Those techniques are described as follows:

## Early Judicial Intervention in the Pretrial Process

As soon as a civil case is at issue, it is scheduled for a status/scheduling conference before the assigned district judge and a complete scheduling order is filed within 120 days from the filing of the complaint. The parties are required to submit a joint status report containing stipulations, list of contentions, exhibits and witnesses to the extent known, estimated trial time, possibility of arbitration and other matters. At the status/scheduling conference deadlines are established for every pretrial event and the case is actually set for trial on the Court's trial docket, for a given month or week. The actual date for trial is determined at a later date. The schedule sets deadlines for motions, exchange of witnesses, exchange of exhibits, filing of final contentions, discovery completion date and other pretrial events such as the filing of requested jury

instructions and the tendering of a final proposed pretrial order. A date for the initiation of settlement discussions is established as well as dates for reporting on the status of such settlement efforts to the Court.

In addition to this early court control of the management of the civil trial process, alternative dispute resolution programs were initiated, as follows:

Alternative Dispute Resolution Programs

The Settlement Conference. In 1982 judicially conducted settlement conferences were instituted. They are now held before a full-time "settlement" magistrate judge who acts as a mediator/facilitator to promote negotiation among the parties. They are normally held at the end of the litigation process when the case is set on a trial docket. Conferences last approximately two hours. All cases set on trial dockets are set for settlement conferences. Frequently counsel request early conferences before great cost is invested. It is a low-cost procedure that has been quite successful.

Magistrate Judge Pat Irwin held 546 settlement conferences in calendar year 1990, and 4,880 conferences since 1984. (Report on the Disposition of Cases Covering the Period Beginning January 1, 1984 and Ending June 30, 1991, prepared by Magistrate Judge Pat Irwin, August, 1991.) His caseload is directly related to the number of cases that are set on trial dockets. In complex cases, more than one conference may be held. His chambers estimates that of those settlement conferences held, approximately 3 out of 5 settle at the conference, and a large number settle several days later due largely to the continued efforts of the judge.

The Summary Jury Trial. With the advice and assistance of District Judge Thomas Lambros of the Northern District of Ohio, Judge Lee R. West of this Court and Judge Lambros held the first summary jury trial in 1983. Although generally used on an infrequent basis, at the discretion of the assigned judge, certain trial-ready cases are referred to a magistrate judge for summary jury trial. Such proceedings consist of a presentation by counsel to an advisory jury. Litigants are offered the insights and reactions of actual jurors which creates the opportunity for a realistic perspective of the case. The procedure is intended to last only one to two days and the jury result is non-binding. This process is utilized for both simple and complex cases when liability, and particularly damages, are at issue.

In 1990, the district judges referred 46 cases to magistrate judges for summary jury trials. Twenty-five summary jury trials were actually held. The statistics show seventeen cases settled after referral, but before summary jury trial. Thirteen cases settled after summary jury trial and before jury trial. Ten cases went to civil trial after summary jury trial. Five referrals were stricken and one case settled during summary jury trial. This District has held a total of 155 summary jury trials since use of this procedure began in 1983. (see Report of Magistrate Judge Pat Irwin, supra - an additional six summary trials were held in 1983 according to Court statistics that were not covered in his report) This procedure is considerably more expensive than settlement conferences and adds to the cost of litigation, the Group believes.

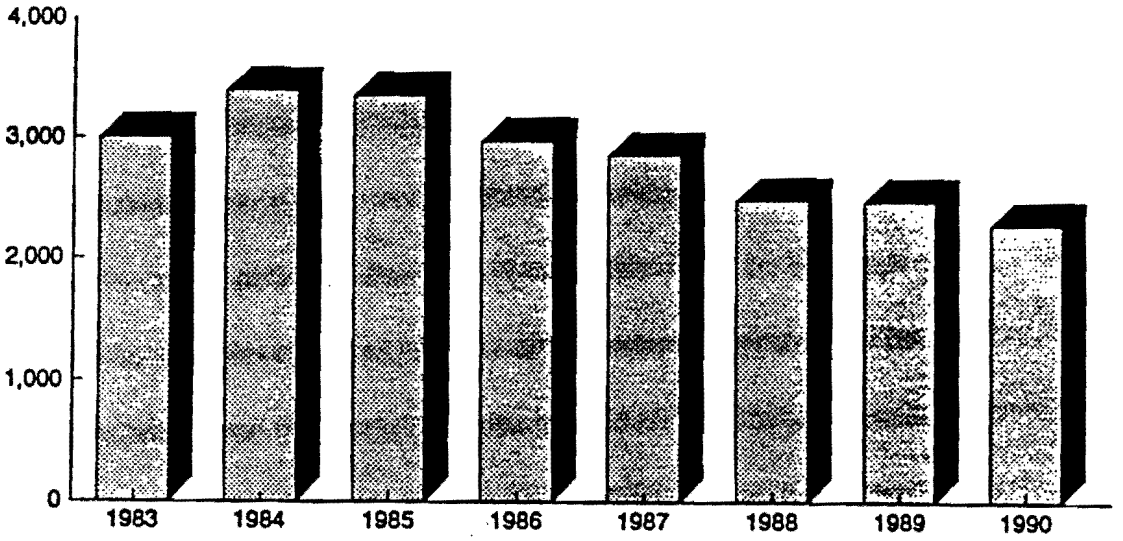
Court-Annexed Arbitration. The Court adopted Local Rule 43 for mandatory, non-binding arbitration in May, 1985. Cases selected for the court-annexed

arbitration program are either mandatory or voluntary. They are mandatorily submitted for arbitration if the money damages do not exceed $100,000 (certain other cases are excepted from mandatory arbitration including civil rights cases). The parties may consent to submit any civil case to voluntary arbitration and utilize the administrative procedures set forth under the local rule. Arbitration is an early disposition program for the "lower dollar", less complex case which is evaluated by an impartial third party attorney arbitrator. After evaluation, the arbitrator makes a non-binding decision/award which is filed under seal. The right to trial is preserved by a timely request for a trial de novo. Normally, money damage cases of a tort or contract nature that are considered straight forward and less complex have best utilized this procedure. Again, it is an abbreviated, summary procedure intended to take no more than 2 1/2 hours. (Western District Rule 43)

Currently 16% of the caseload has been assigned to the arbitration track, down from 18% in the mid-1980's. In calendar year 1990, only 119 hearings were conducted due to earlier settlements or dispositions of the majority of cases in this track. For the total program, only 1.3% of all cases assigned to the arbitration track have proceeded through full trial. There have been 700 Arbitration Hearings held since program inception (see Report of Magistrate Judge Pat Irwin, supra) and, of cases that went as far as the hearing stage, only 36 or 5.1% went on to trial. Generally, statistics kept by the Court reflect that this program does what it was designed to do, settle or resolve disputes at a early stage in the life of the litigation.

Since the Western District of Oklahoma began utilizing the settlement conference in 1982, the summary jury trial in 1983, and arbitration in 1985, the settlement rate has increased from 84%, one of the lowest rates in the country to close to nearly 96%, above the national norm. The District has fully incorporated these case management techniques and cost reduction tools into the Court's regular procedures.

b. Civil Caseload Volume. 3,392 civil cases were filed in the Court in 1984. By 1990 this figure decreased by approximately 30% to 2,288. The following graph demonstrates this trend.




**Civil Case Filings for Statistical Years 1983-1990**

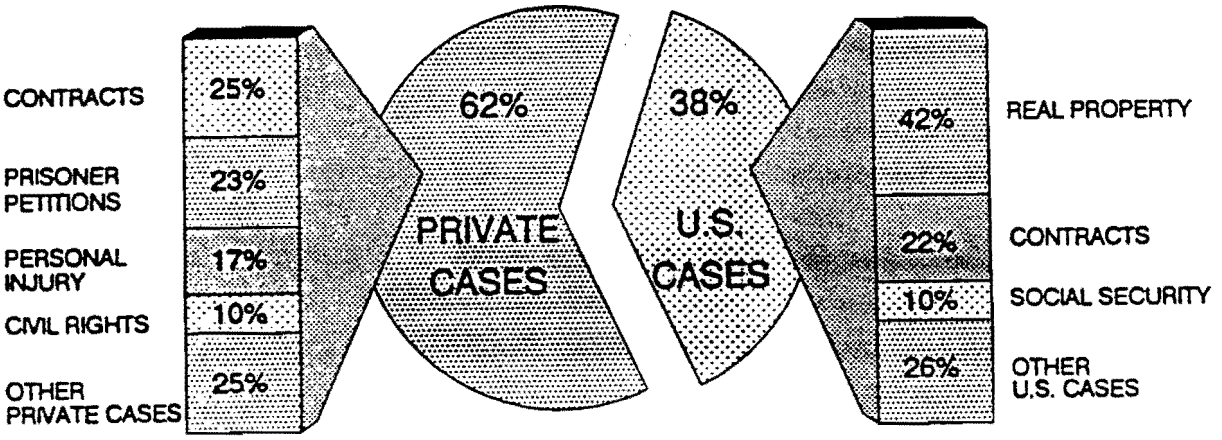
In 1990, each of the district judges was assigned an average of 457.6 cases, while terminating an average or 494.4. Hence the civil pending caseload decreased by 11.9% from 1,526 in 1989 to 1,344 in 1990. The Court averaged 268 pending cases per judge for statistical year 1990.

c. Type of Cases and Filing Trends. The civil docket for the Western District of Oklahoma reflects generally the national trend on civil caseloads. Civil filings increased from 1980 to 1985 and decreased every year thereafter. This downward trend can be attributed to a number of factors: decreased economic activity in the state, fewer filings by the government for recovery of overpayment of veteran's benefits and defaulted student loans, and a reduction in the number of claims for social security benefits filed against the government. In addition, the Judicial Improvements and Access to Justice Act of 1988 increased the jurisdictional amount for diversity cases to $50,000. These factors may account for fewer filings in the Court. Nevertheless, the District ranked 35th nationally in the number of weighted case filings per judge.

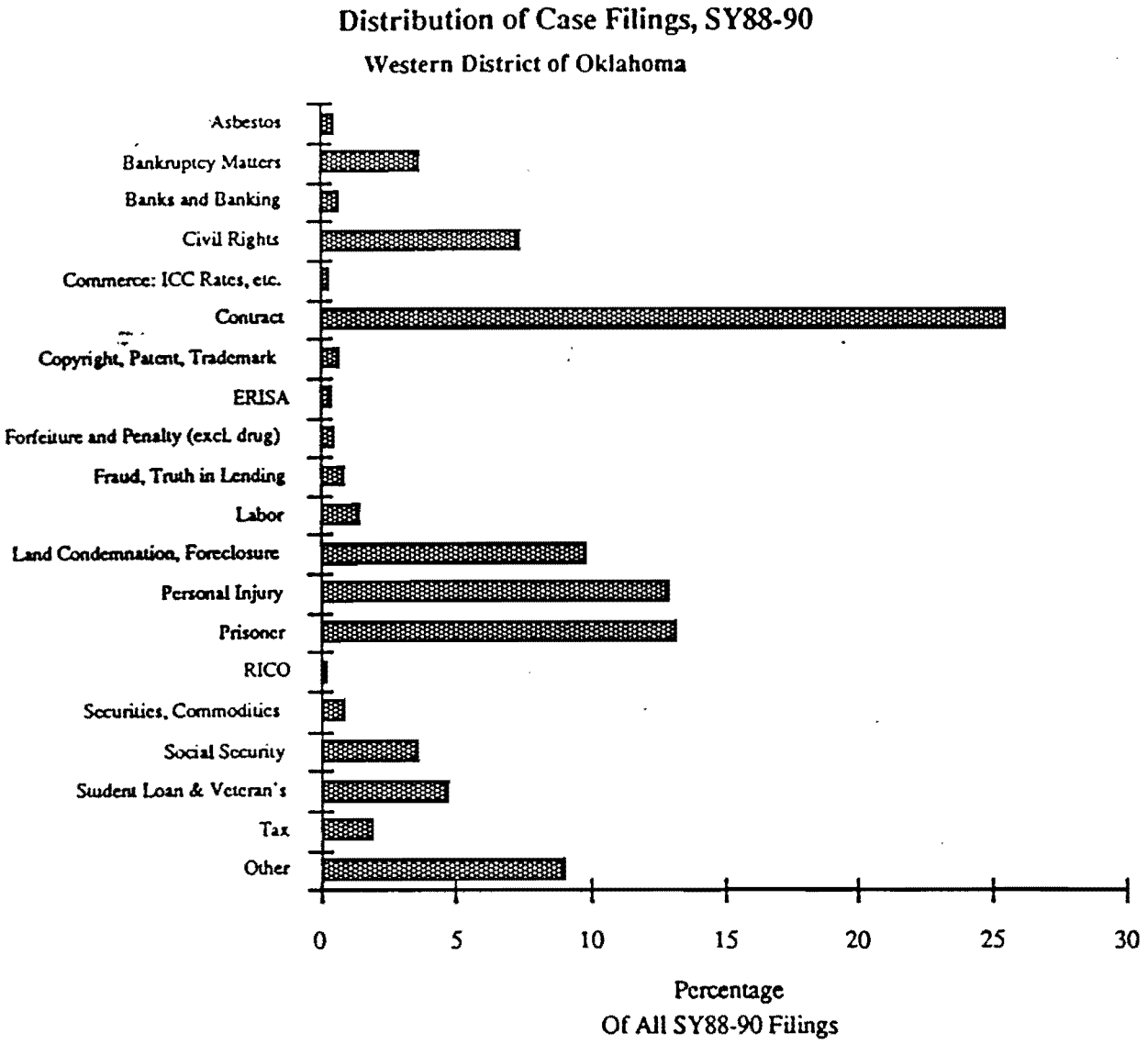
Nationally, asbestos personal injury product liability cases have increased significantly in recent years. Asbestos cases tend to move through the Court system slowly because of their complexity and because often many of the defendants are involved in bankruptcy proceedings. Due to the recent decision of the Judicial Panel on Multidistrict Litigation, the sixteen asbestos cases that were pending in this Court have been transferred to the Eastern District of Pennsylvania. Such transfer should be reflected in the civil dockets of the various district judges of this District before whom they were pending.

Private cases in the Court account for 62% of the civil caseload while cases involving the United States as a party account for 38%. (As will be discussed

later, this Court has categorized certain types of cases for differentiated treatment.) Below is a chart summarizing civil filings in our Court.



The following chart shows the percentage distribution among types of civil cases filed in this District for the past three years.




(graph, "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990," p. 13, prepared by the Administrative Office of the Courts and the Federal Judicial Center, dated 2-28-91).

**d.** <u>Civil Case Management Statistics and Information.</u>

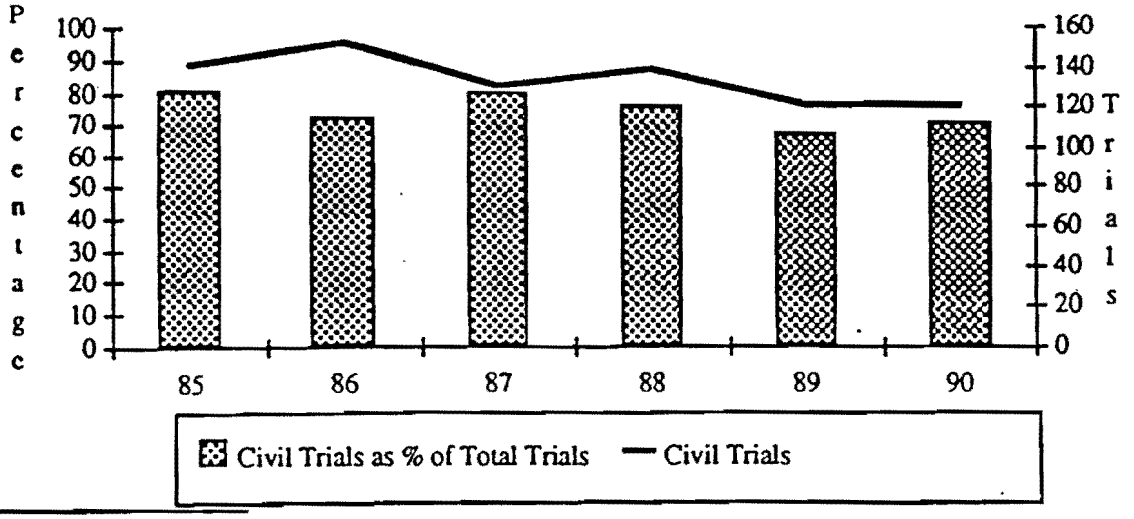
<u>Median Time to Disposition.</u> As stated, the District ranks sixth

nationwide in the prompt disposition of civil cases, measured by the median time from filing to final disposition. The national average is nine months, while this Court averages seven months from filing to disposition.[2] We have remained at 7 to 8 months since 1985.

Life Expectancy of Civil Cases. As has been noted in the literature reviewed by the Advisory Group and learned from speakers at CJRA conferences attended by our Chairman, the life-span of a case contributes to its burden on the Court. The Western of Oklahoma has a 6.5 month average life expectancy for all civil cases which appears to the lowest of the pilot Districts.

Civil Trials. This Court completed 118 civil trials in 1990, an average of 23.6 trials per judge. The percentage of civil trials compared to all trials over the past 6 years is shown below. This graph shows a high percentage of civil trials compared to criminal trials held in this district.

**Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY85-90**
**Western District of Oklahoma**




[2] This statistic excludes certain types of cases: Land condemnation, prisoner petition, recovery cases, enforcement of judgments and deportation review.

(graph, "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990," p. 14, prepared by the Administrative Office of the Courts and the Federal Judicial Center, dated 2-28-91).

e. Factors Affecting Workload

Consent to Trial Before U.S. Magistrate Judges in Civil Actions. Under federal statutes, the parties to a civil case may consent to trial by magistrate judges. Such practice helps to alleviate docket pressures on the district judges as well as provide a forum for earlier trial than the district judges' dockets might permit. Historically, consent to trial before magistrate judges has been under-utilized; however, with the passage of the 1990 Judicial Improvements Act, ability of the Court to more fully utilize magistrate judges in civil matters has been broadened. Now judges and magistrate judges may advise civil litigants of the option to consent to trial before a magistrate judge. Several such trials have already been held in 1991. A more effective, but non-coercive, method of advising the parties of this option should be a part of our Court's litigation plan. However, as a caveat, it should be noted that magistrate judges' workloads and staffing must be considered as well as courtroom availability with jury facilities when considering this in a plan. With increased trials by magistrate judges, there may need for an additional magistrate judges in the District.

Age of Caseload and Motion Disposition. The Act also requires the Administrative Office of the Courts to prepare a semi-annual report available to the public that discloses for each judicial officer the number of motions and bench trial

submissions pending more than six months and the number of cases that have not terminated within three years of filing. 28 U.S.C. § 476.

In the Western District of Oklahoma, the number of pending cases three years old or more, decreased from 50 in 1989, to 43 in 1990. While the District has a total of 43 such cases court-wide, the national average is 44 per judge. This ranks this District 19th nationwide. These cases all fall within the complex weighted category consisting typically of securities fraud, civil rights, asbestos, FDIC and multidistrict litigation cases. Most all of these cases have multiple parties and claims and several have bankruptcy issues.

Courts have been required to report all matters that have been pending at issue for more than 60 days. Currently in this Court, no judge has any motion or bench trial submission pending six months or more. The Court strives to adhere closely to this "60-day list" requirement. As of the last reporting period (June, 1991) only five motions were pending for over 60 days for all of the judges in this Court.

The motion practice burden may be described as reasonably to moderately heavy. Most cases that proceed to trial have at least two to three motions involved. Rule 11 responsibilities, and the sanctions that may be imposed thereunder, are thought to have reduced the number of frivolous motions. Most discovery disputes are routinely referred to magistrate judges and some attorney's fee hearings are also so referred. These referrals constitute a growing part of a magistrate judges' workload and are considered to be of invaluable benefit to the Court.

Although specific deadlines for every step of the pretrial process are

established very early in the case, there is an average of ten to fifteen motions for extension of various deadlines filed per judge per day.

Pro Se Litigation. Pro se litigation is another factor that should not be overlooked when assessing the civil docket in terms of cost and delay. The problem of frivolous pleadings is a real one. In fairness, and indeed as a matter of law, the Courts are obliged to construe such pleadings liberally, but occasionally such filings constitute a very difficult and burdensome problem. Magistrate judges' time is also involved with review procedures under 28 U.S.C. § 1915(d) -- in forma pauperis proceedings. Although the Court has a designated pro se law clerk position to assist in such cases, that clerk is currently used primarily to assist with prisoner litigation.

Bankruptcy Court and the Civil Docket. A brief note on bankruptcy court statistics and its interrelationship to the district court is relevant. There were 8,679 total bankruptcy filings for the statistical year 1990, up 4.7% over 1989. 926 of those were business filings, down from prior years. Local Rule 45 describes the procedural relationship between district court and bankruptcy court. The bankruptcy appeal caseload is down from previous years. Nationally, bankruptcy filings doubled between 1981 and 1990 and the strain on bankruptcy courts is not expected to ease in the near future. The Civil Justice Reform Act is silent as to whether or not it applies to bankruptcy courts, but the report of the Senate Judiciary Committee states that it does not (Senate Report, p. 51). However, bankruptcy court activity is important to the district's overall picture as the civil docket is affected by parties in bankruptcy and by bankruptcy appeals. Generally, these statistics make a statement about economic

conditions in this district.

Other Factors. The judges of the Court participate in naturalization ceremonies every month and both judges and magistrate judges participate in the training sessions that accompany new attorney admissions days. More significantly, the judges serve on committees of the Judicial Conference of the United States and on other courts. For example, Chief Judge Thompson serves on the Federal-State Jurisdiction Committee of the Judicial Conference and as a judge of the U.S. Foreign Intelligence Surveillance Court which sits in Washington, D.C.; Judge West serves as a member of the Tenth Circuit Judicial Council; Judge Russell is a member of the Judicial Resources Committee of the Judicial Conference of the United States; and Judge Alley serves as Chairman of the Magistrates Committee of the Judicial Conference and has been active in the American Inns of Court Program. Judge Cauthron currently is very active in the Oklahoma Bar Association, is a member of the Board of Directors of the Oklahoma County Bar Association and is President of the American Inns of Court XXIII. Every year, each judge is asked to serve by designation as a member of the U. S. Court of Appeals for the Tenth Circuit to assist that court with its caseload. While the judges consider it a privilege, these are very demanding assignments and are, of course, in addition to their regular caseloads on the district bench.

## B. COURT RESOURCES - JUDICIAL OFFICERS, SUPPORT PERSONNEL, FACILITIES, AUTOMATION

With the sixth district judge position soon to be filled, the Court will be operating at authorized capacity for judicial officers: six federal judges plus two senior judges, four full-time magistrate judges (three traditional and one settlement magistrate

judge) and three part-time magistrates in other cities. An additional magistrate judge could be utilized in the District.

Each district judge is authorized two law clerk positions, and each full-time magistrate-judge, one law clerk. In addition, there are two temporary law clerks shared among the federal judges. Additional law clerk staff could assist with disposition of the heavy motion practice in this district. Further, each judge and magistrate judge has one full-time secretary.

The current staffing level of the clerk's office totals 39 deputy court clerk positions plus the Clerk of Court. Additional staffing needs should be anticipated if certain recommendations of the Advisory Group are implemented in the civil justice plan of this Court. Currently among the deputy clerks are one civil docket clerk and one courtroom deputy per district judge, as well as one docketing/courtroom deputy assigned to our two senior judges, and one courtroom deputy per magistrate judge. The courtroom deputies are responsible for calendaring and case management.

The Court has been burdened with severe space shortage problems. For the past several years attorney conference rooms and witness rooms have, by necessity, been converted to office space for continually growing staff. In order to alleviate space shortages, the renovation and realignment of the federal courthouse as well as portions of other federal buildings in the federal complex is underway. As recently as mid-September 1991, the Office of the Court Clerk opened its new offices on the first floor of the Courthouse building. Additional courtrooms, chambers, conference rooms and office facilities will be provided as work is completed in the next few years.

The implementation of the computerized Integrated Case Management System (ICMS) is complete and automated docketing and case management is totally operational in the Clerk's office.

## III. EXAMINING THE IMPACT OF NEW LEGISLATION ON THE COURT (§472(c)(1)(D))

The Act directs each Advisory Group to "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts" (§472(c)(1)(D)). Pursuant to guidance from the Federal Judicial Center in its memorandum dated February 28, 1991, the Advisory Group has considered this portion of its mandated duties in three principal areas: criminal legislation, civil legislation and legislative inaction. The Group concludes that while federal legislation to date has not been a major contributor to cost and delay in the District, there is the continuing threat of such impact by future legislation by Congress or as a result of legislative inaction which leaves numerous issues unclear.

### A. CRIMINAL LEGISLATION

As noted above in this report, criminal case filings represent 21% of this Court's total docket, unlike some districts which have a higher percentage of criminal workload. A federal prison located at El Reno, Oklahoma, 35 miles west of the seat of the Court and several military installations over which the Court has jurisdiction for criminal offenses are located in the Western District of Oklahoma. Of the total civil cases which comprise 79% of the Court's docket, 16% are prisoner cases. The prisoner cases emanate from federal institutions such as El Reno as well as state correctional facilities located within the District. In 1984, Congress enacted the Sentencing Reform

Act which has placed substantial additional demands on the resources of this Court. Implementation and application of the sentencing guidelines requires substantial additional judicial time which includes detailed review of probation reports and frequent hearings concerning enhancement issues under the sentencing guidelines. These hearings often amount to a mini-trial or satellite litigation even in cases where the defendant has entered a plea of guilty. All federal offenses committed after October, 1987, are now subject to sentencing guidelines and the demand on the Court's time appears to be increasing as the guidelines will soon apply to all criminal cases.

In addition to the increased judicial time required to comply with the sentencing guidelines, there is another negative impact which affects cost and delay flowing from the guidelines. Many criminal defendants who are faced with substantial sentences upon a plea of guilty under the guidelines have elected to proceed to trial as an acceptable risk knowing that their sentence may not be any greater even if convicted at trial. In effect, the sentencing guidelines and minimum sentencing requirements enacted by Congress have operated as a detriment to plea bargaining. To the extent that Congress continues a tough policy on crime and mandatory minimum sentences with little discretion left to sentencing judges, Congress should also recognize that such increased criminal caseload and longer imprisonment trends will have a detrimental effect upon cost and delay in civil litigation in the federal courts. More time will be required to deal with criminal matters to the detriment of the civil docket.

The Group is aware that the Violent Crime Control Act has passed one house of Congress and may be considered by the House before this term of Congress has

ended. That Act may increase federal criminal jurisdiction by broadening it to cover many offenses which heretofore have been handled by parallel state courts. Such legislation, if adopted, would increase the criminal caseload of each federal district judge and possibly serve as a disincentive to attracting qualified judicial applicants to the federal district bench. If Congress continues to enact such legislation in the future, it should consider the impact that it will have upon the ability of the federal courts to function in civil litigation. Fortunately, this District is not in the position of some other districts in the United States in which the criminal caseload has effectively precluded the disposition of civil cases. However, continued broadening of federal criminal jurisdiction will ultimately have that effect on many federal districts, particularly those with large metropolitan communities such as this district.

## B. CIVIL LEGISLATION

In recent years Congress has created several new federal statutory civil remedies. Examples are RICO, ERISA, the Americans with Disabilities Act of 1990, the Fair Debt Collection Practices Act and the Immigration Reform and Control Act of 1990. While Congress may have seen the need for legislating in these areas of commerce and activity within this country, the creation of new civil statutory remedies with federal jurisdiction has and will continue to add to the civil caseload in all districts. In some instances, the district courts have become bogged down with motion practice concerning the meaning of specific sections of congressional legislation. No better example exists than RICO, the acronym for "Racketeer Influenced and Corrupt Organizations," enacted as a part of a 1970 federal statute called the Organized Crime

Control Act. As noted by the commentator for Commerce Clearing House, Inc. in §100 of RICO Business Disputes Guide:

> "Everyone knows that the franchisor, the franchisee, the computer seller, the banker, and the lawyer are not engaged in organized crime. They are not characters of Hollywood "B" movies, Chicago in the 20's, Kefauver Committee adventures of the 50's—or modern drug activities. But RICO is being invoked against them by angered clientele and competitors. . . ."

The commentator goes on to pose these questions which were left by Congress's statutory language for the district and appellate courts of the federal system to determine for themselves:

> "Does the law apply only to schemes involving professional criminals who infiltrate legitimate businesses? Or does it apply to respected businesses and individuals if they engaged in broadly defined misconduct involving mail, wire or securities fraud? Are lawsuits in federal courts authorized to resolve disputes involving "garden variety fraud" of the type traditionally relegated to state courts?" Id.

RICO has spawned considerable litigation extending from the federal district courts of the nation through the courts of appeal to the Supreme Court. Many precise definitions of terms used in the RICO Act remain illusory yet today. Others have been decided one way in one circuit and to the contrary elsewhere. The RICO provisions of the Organized Crime Control Act may be a good example of general legislation left for the courts to define more precisely or it could be that Congress's drafting of the legislation was incomplete. In either event, the impact upon the federal courts has been the same. In this district, some judges have required each RICO plaintiff to complete

a threshold RICO case statement concerning all of the myriad RICO issues involving "pattern," "racketeering activity," "culpable persons," "enterprises" and "activities of the enterprise" before the case can proceed further. Although this may have a desirable effect in "pinning down" RICO plaintiffs to precise factual claims, it does increase judicial time and add to the cost and delay in many civil commercial litigation matters in the district.

Expanded federal jurisdiction has also arisen through the adoption of the so called "superfund provisions" concerning environmental protection. One case in this District involving a superfund claim by the EPA in which there are 37 defendants and 250 third and fourth party defendants, has consumed substantial time by federal judicial officers and is not totally resolved, four years after filing. It is one of the oldest pending cases in the District despite considerable judicial intervention, management and the application of novel techniques in an attempt to resolve it. Doubtless other newly created federal civil remedies have added to the Court's caseload to the detriment of expeditious resolution of other matters.

It is anticipated that in the near future, numerous federal foreclosure actions will be filed as the result of legislation concerning banks and credit institutions. This will add to the workload of the Court.

### C. LEGISLATIVE INACTION

The Group believes that legislative inaction has contributed to the increased cost and delay of pending litigation. The factors considered by the Group include the following: (1) Failure of Congress to be precise in defining new statutory

provisions, statutes of limitation and limits of jurisdiction; (2) Failure of Congress to consider the impact of additional new legislation on the caseload of the existing federal system; (3) Failure of Congress to authorize additional judicial officer personnel sufficient to handle the increased caseload resulting from new legislation.

Only recently has a long disputed and litigated issue involving the statute of limitations in § 10(b) securities cases been resolved by the Supreme Court. Congress has met many times since § 10(b) was construed to imply a private right of action in 1946 and has been aware of the lack of uniformity on this threshold issue in an area much litigated in the federal courts. Because of congressional inaction, the courts were left to deal with this problem for many years finally culminating in the decision of the U.S. Supreme Court in Lampf v. Gilbertson, 115 L.Ed.2d 321 (1991) which determined that the one year/three year statute of limitation provided in Section 13 of the Securities Act of 1933 should apply to this federal cause of action. To say that this 40 years of repeated litigation about the time period for filing a securities fraud action under §10(b) increased cost and contributed to delay in federal securities litigation is an understatement.

One additional area in this subsection deserves some attention. Frequently the process of appointment, investigation and congressional confirmation of a federal judge requires a year or more and delays the addition of needed judicial personnel to the increasing caseload of the courts. In this district, for example, the confirmation of Judge Cauthron took eight months despite the fact that she had served as a Magistrate Judge of this District for four and one-half years prior to her appointment to the bench. The

most recent appointment before Judge Cauthron, that of Layn R. Phillips, took twelve months, although he had previously been the United States Attorney for the Northern of Oklahoma for three and one-half years. Thus it would appear that even where nominees are well known to the federal investigative agencies, the courts and presumably Congress, confirmation continues to remain delayed. Congress has many tasks besides appointing federal judges, but this Advisory Group suggests that a complete but more expedited review of the qualifications and integrity of an appointee to the federal bench be considered by Congress so as to enable these persons to get to work reducing the caseload of the federal courts.

## IV. COST AND DELAY - THE RELATIONSHIP BETWEEN COST AND DELAY

The precise relationship between cost and delay in civil litigation is unclear. The traditional assumption is that the longer a case is pending or is delayed from resolution that the greater the costs of the parties. Put another way, that work expands to fill the time allotted. In this District, however, undue delay does not appear to be a major problem. As reported earlier in this report, the median time from filing to disposition in civil actions is seven months. A Federal Judicial Center study in 1991 concludes that the average life expectancy of all civil actions in this District is 6.5 months. The advisory Group survey of lawyers revealed that of 102 responding, 91 believed the time from filing to disposition was "about right." The same lawyers surveyed concluded that the time between filing and trial of the case was neither too short nor too long. Therefore, the Advisory Group concludes that delay in civil proceedings in this District is not a problem in the average case although some temporary delays in

specific actions may occur - a subject which will be discussed later in this section.

The issue of the costs of civil litigation appears to be more complex. First of all one must determine what costs Congress intended when it enacted the Civil Justice Reform Act. The Act talks in terms of "civil justice expense", the problems of "costs and delay in civil litigation." Because the Act does not define costs or civil justice expense, the Advisory Group has assumed that those terms mean monies expended by parties in civil litigation for attorneys fees, costs, deposition and expert witness fees and related out of pocket disbursements as well as time and money expended by the court in processing, reviewing, trying and resolving civil actions. The Advisory Group is aware of no current empirical data reflecting the costs of civil litigation in federal courts. The Group decided not to conduct any precise study of the costs of a lawsuit, but instead to rely upon the results of its survey of both lawyers and litigants concerning their subjective feelings about the cost of litigation in the District.

Of 94 responses from parties, actual litigants, to the survey by the Advisory Group, six mentioned attorneys fees as an excessive cost item and five mentioned discovery expenses as being excessive. Two litigants expressed a need for faster disposition of discovery problems and two others mentioned a need for court ordered limitations on length and scope of depositions and document requests. Four litigants reported that the requirements for attendance of parties with settlement authority at all settlement conferences was a cost burden. One response suggested that the settlement conference judge allow out of state parties, particularly in debtor/creditor cases, to attend settlement conferences and arbitration by telephone. That person stated

that in "this age of speaker phones, there certainly is no reason to require a party to attend the settlement conference in person." (Summary of Survey, Appendix 4)

With respect to responses by attorneys to excessive costs, eight of the 110 lawyers responding stated that the excessive costs could be reduced by early and successful private settlement negotiations and four suggested cost reduction through cooperation in discovery, scheduling and other discovery related matters. Five responding lawyers stated that too many depositions and excessive document discovery added to needless costs. Such responses that costs were excessive represent a small percentage of the total surveyed but do indicate to the Group that there is some belief among lawyers and litigants practicing civil litigation in this District that some excessive costs in civil litigation may exist.

## SPECIAL CASES

One area of civil litigation in the District may deserve some special consideration. According to statistical reports, 377 pro se prisoner cases were filed in fiscal year 1990 in the District and 317 in 1991, approximately 16% of the civil docket per year. According to statistical evidence, about 30 cases a year emanate from the El Reno Federal Prison within the District and are handled by the U.S. Attorney. The remainder, or about 340 such cases from state prisoners are handled by the office of the Attorney General of the State of Oklahoma. Pro se prisoner cases emanating from state prison inmates in this District plus 250 cases from the two other Oklahoma districts, require the services of approximately five state Assistant Attorney General attorneys as well as the expenditure of funds for discovery, costs and related court out of pocket

expenses. A member of the Advisory Group who works in the area of pro se prisoner cases suggests that these cases may be dealt with more efficiently and with less cost within the District. It is suggested that another pro se law clerk be assigned to the clerk's office to review the vast number of post-petition motions filed by pro se prisoners. The State Attorney General's Offices believe that many of these prisoner motions may be frivolous, e.g., motion to use the telephone, motion to be given free legal pads and pencils, and should not require normal full case treatment but could be dealt with summarily. It is also suggested that a local rule could be adopted concerning pro se cases that would not require a response to such motions by the State of Oklahoma unless ordered by a magistrate judge upon recommendation by the pro se law clerk. It is also suggested that inmate litigants should be advised at the outset that they will be expected to comply strictly with the time periods for filing responsive papers and that their action would be subject to dismissal if they do not comply with such rules.

Another area that deserves some attention from a delay standpoint involves the procedure for the presentation and disposition of motions for preliminary relief such as preliminary injunctions under Rule 65 F.R.Civ.P. There is presently no local rule within the District that establishes a procedure for preliminary relief. One member of the Group who represents indigent parties seeking entitlement to preliminary relief under various federal statutes governing social security benefits, aid to dependents and the like suggests that a local rule should be adopted. The local rule should confer upon preliminary relief motions a priority for hearing second only to the speedy trial requirements in criminal cases. It is also suggested that a procedure should be

implemented that would enable parties to consent to a final determination of a preliminary relief motion by a magistrate judge without requiring the parties to consent to reference of the entire matter to the magistrate judge.

Finally, it is suggested that some reasonable deadline should be imposed for ruling by the court on objections to findings and recommendations of the magistrate judge when a preliminary relief motion is involved.

Another matter of concern to attorneys and clients residing hundreds of miles from the seat of the Court is that there is undue expense in requiring their attendance in Oklahoma City for settlement conferences and other alternative dispute resolution proceedings. The Advisory Group recognizes the economic hardship to litigants from far flung locations in western Oklahoma in coming to Oklahoma City for all hearings. In the next section of this report, the Group recommends the adoption of a mediation program in the District which would permit mediation hearings to be held in cities and towns outside of Oklahoma City that are more conveniently located to the litigants and their counsel in those areas. For example, the District maintains federal courthouses in Lawton and Enid, each a distance of about 80 miles from Oklahoma City. Each city would be a convenient location for the mediation of disputes involving litigants and their attorneys from that area. In the following section of this report, the Group makes some other recommendations involving voluntary exchange of information that should reduce the cost of discovery in civil litigation if adopted.

## PART TWO: PROPOSED CONTENT OF CIVIL JUSTICE COST AND DELAY REDUCTION PLANS FOR PILOT COURTS

### V. THE SIX PRINCIPLES AND GUIDELINES OF LITIGATION MANAGEMENT

Section 472(b)(4) and Section 105(b) of the Act requires each Pilot to consider and include six distinct "principles and guidelines of litigation management and cost and delay reduction." (§473(a)).

They are 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 be 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 Procedure;

(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures 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 considered each category specified in §473 separately in determining to what extent existing rules and procedures accomplished those principles and guidelines and whether additional action and procedures by this District are required. Each subsection is discussed in order.

Section 473(a)(1)

"(1) Systematic differential treatment . . . ." Western District Rule 17, adopted May 20, 1983, as amended July 15, 1985, requires a status conference to be

scheduled in each civil action within 120 days of the filing of the complaint. Prior to such conference, counsel for the parties are required to prepare and submit a written report to the Court in the form provided in Appendix IV to the Rule. At the conference, the Court and counsel discuss an agenda which includes streamlining of claims, the possibility of obtaining admissions, the avoidance of unnecessary proof, identification of witnesses and documents, the possibility of settlement or other procedures, the disposition of any pending matters and the need for adopting special procedures for managing difficult or protracted litigation that may involve complex issues, multiple parties, etc. and all other appropriate matters. (Rule 17, Western District of Oklahoma, Appendix 2)

After the conference and after discussion with counsel for the parties, the Court enters an order to guide the future progress of the action. If difficult or protracted litigation is foreseen, the court may adopt "special procedures for managing of difficult or protracted litigation. . . ." Rule 17(c)(3) authorizes the Court to set dates for supplemental conferences and a final pretrial conference and the date of trial. The language of existing Rule 17 of the District concerning status conferences permits and has been utilized by the judicial officers of this District to systematically treat civil cases on an individual basis. For example, in United States of America v. Royal N. Hardage, CIV-86-1401-W, a "superfund" case filed in 1986, the Court saw the need for specialized treatment because of the great number of parties and legal issues. A special case management order was entered by Judge West to guide the progress of that case. (Appendix 6)

Section 473(a)(2)

**"(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 the trial is scheduled to occur within eighteen months after the filing of 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;**

**(ii) The trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;**

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

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

The Advisory Group observes that the District ranks favorably in national statistics relating to the life span of civil litigation. The Group, in addressing the directives of this section, believes a cautionary note should be sounded regarding the "speedy" resolution of civil litigation. There seems to be little optimism that the increasing demands of criminal matters on the Court's limited resources will ease in the

near future. Civil cases, however, still account for more than 70% of all cases filed. It should also be pointed out that as a result of the efforts of counsel, court imposed settlement conferences, dispositive motions and other alternative resolution methods, the Court is trying only about 5% of the civil cases filed. While the thrust of the Civil Justice Reform Act is directed to elimination of undue delay and expense, pressure for an early disposition of a case will not always result in a reduction in costs, and may even increase costs. Nor will a early disposition always serve the ends of justice, which should always be the ultimate quest for the Bar and the Bench. It is the belief of the Group that any "tinkering" with the system should be minimal and maintain the independence of individual members of the judiciary to control their individual dockets to the greatest extent possible.

With this caveat, the Group makes the following suggestions:

1. **Early involvement by a judicial officer in the assessing and planning the progress of a case.**

Among the members of the Bench, there seems to be different practices with regard to the Court's participation in status conferences. Some judges actively participate in the conferences, encouraging discussion between counsel and the Court regarding the case's preparation for trial. Other judges assign magistrate judges to preside over status conferences but appear to give the magistrate judge little authority to vary the deadlines set by the Court prior to the conference.

The Group strongly recommends that a "judicial officer" with authority to make the necessary scheduling and other procedural orders necessary to ensure a

case's successful progress to trial be present at the status conference.

2. Ongoing involvement by a judicial officer in a case's progress.

The Act "suggests" that the involvement of a judicial officer in a case be "ongoing." The Group agrees subject, of course, to the availability of judicial resources. The phrase "ongoing involvement" suggests more than one status conference or perhaps a more meaningful pretrial conference than the Court now seems to be conducting.

Rarely does the Court review with counsel the content of the pretrial order, at the time it is entered. The Group believes that a face to face conference with the participation of a judicial officer and counsel where the pretrial order is reviewed and discussed is appropriate. The failure to conduct such conference is believed to be one cause of eve of trial continuances. The Group finds that a considerable savings in jury costs may result if the empaneled jury is not left waiting while the Court considers issues at trial which were readily apparent in the pretrial order filed several weeks before.

3. Setting early, firm trial dates.

a. **Early Trial Dates.** The Act suggests that an "early" trial setting is one within eighteen months of filing. This District would appear to be meeting this requirement. The Group once again cautions, however, that "speed" is not always justice nor does an "early" setting necessarily mandate a cost savings to litigants. Some members of the Group believe that an early setting can very easily result in increased costs where the demands of discovery and trial preparation are more than one lawyer can handle. It may also result in inefficient and wasteful discovery and preparation where the time demands prevent the litigants and counsel from reflecting on

the case. The Group simply states that at the present time this District appears to maintain an equitable balance between early disposition of cases and time needed for a case to be properly prepared and presented.

**b. Firm Trial Dates.** "(B) Setting early firm trial dates. . .within 18 months."

The Western District is able to dispose of most civil cases in a year or less from filing. A statistical report of the Federal Judicial Center indicated that the average life of a civil case in the is 6.5 months. This significant achievement is due in part to the setting of a trial date usually within 9-13 months of the status conference. Coupled with dates for completion of discovery and submission of dispositive motions within a fixed time, the parties and counsel can plan towards trial or other resolution of the action within that time frame. The Advisory Group is of the opinion that the setting of a firm trial date at the status conference is an extremely useful planning device for the Court, parties and counsel. Although intervening events such as criminal case trials, other priority business of the Court or counsel may intervene, the adherence to the originally scheduled trial date is seen by the Advisory Group as an extremely desirable factor. The knowledge that a contested matter will be litigated unless otherwise disposed of during a particular week or month within the next 12 months permits all persons involved to schedule intervening activities while meeting deadlines and commitments in other matters.

The Court appears to be doing a good job of setting firm jury trial dates for civil matters. Ideally, trial dates for jury and non-jury matters should be set for dates

certain. The Group recognizes, however, that the demands of the criminal docket and the efficient use of the jury pool make date certain settings difficult in jury trials. (However, see the discussion on dispositive motions below.) While there is inconvenience to counsel, witnesses and litigants as well as additional costs occasioned by the "rolling jury docket", the Group has not found a more efficient alternative that could be implemented with the Court's present resources.

The Group, however, believes that the Court could improve its procedures for setting non-jury matters. Present procedures result in non-jury cases being set for trial at the end of the normal two week jury term and not for a date certain. As a result counsel, witnesses and litigants are "on call" for as long as two weeks before learning whether their case will be tried, much less when. So large a window makes it impossible for parties to do significant planning and substantially increases costs. The Group recommends that non-jury matters be set for a date certain.

### 4. Certification By a Judicial Officer if The Trial Cannot Be Held Within Eighteen Months.

The Group has no objection to such a certification, but does question it's value as a delay preventing tool. Since cases in this District seem to have median case lives well within the eighteen month period, it would not appear such a certification would be needed. Again the Group would question the purpose of such a certification. If some penalty results from the inability of a "normal" case to be tried in eighteen months, then, of course, a more in depth consideration is in order. Otherwise, the Group feels such a certification is not necessary in this district.

### 5. Rulings on Dispositive Motions.

The Court's perceived failure to timely rule on dispositive motions was one of the most frequently cited examples of delay and undue expense in the lawyer survey. The complaint is that the Court's failure to timely rule on dispositive motions forces counsel to prepare for trial on issues that ultimately may not be tried. The result is substantial cost, and when the dispositive motions are ruled on at the last minute, possible delay.

The Group believes that there is a solution to this problem that could also assist in resolution of the date certain problem of non-jury trials and result in more efficient planning of the jury docket. The solution would also maintain significant flexibility among members of the Bench to schedule their own dockets.

It is suggested that the Court set a pretrial conference and require the submission of a pretrial order after the resolution of dispositive motions. At the pretrial conference hearing a firm trial date could be set on the next available jury docket or a date certain set for a non-jury trial. It is believed that the advantages of a change to this procedure would be:

a. The cases which would be set for trial at pretrial would be those cases having a higher probability of being tried.

Empirical data already indicates that only approximately 5% of the filed civil cases are being tried. It can be fairly assumed that ninety-five percent (95%) of the cases are resolved by settlement and compromise, dispositive motion or some other reason. The result of setting cases at the status conference with such a large number of cases resolved without trial is that the Court ends up with large gaps in its trial docket.

If there is added to the scenario cases that are continued from one docket to another, then the problem becomes even more exaggerated. Some dockets may have a large number of "stacked up cases" with the result that those at the bottom of the docket wait up to weeks before being tried or "bumped" to the succeeding trial docket. For non-jury cases the problem compounds itself because they generally follow the jury docket.

b. The Court could more precisely plan its jury trial docket and allocate its resources.

Since fewer cases would be scratched from the trial docket because of settlement or dispositive motion, or continued because they are not ready for trial, there would be certainty in the trial docket settings. The Court could better manage its resources, and counsel, litigants and witnesses could more adequately plan their schedules. With more certainty as to the number of cases to be tried on any given jury docket, the Court may be able to then set non-jury matters for a date certain.

c. The Court still controls its own docket.

The Court still sets its own docket. The suggested change is that the Court will be setting its docket perhaps thirty to sixty days ahead on cases with a higher probability of going to trial rather than six to eight months out on a case with a ninety five percent or better chance of going off the docket or being continued to another docket. Only those cases ready for trial would be set for trial. Other Group members believe that the current practice of setting early trial dates should be continued.

**"(a) Controlling the extent of discovery. . . ."**

Local Rule 17 provides for the control of discovery primarily by establishing a discovery completion date, which may be extended for good cause as long

as the extension does not affect the dispositive motion or trial date. Typically, if a trial month is set within six months from the status conference, a period of discovery lasting 60 to 120 days is provided so as to complete discovery and have sufficient time to prepare and submit dispositive motions well before trial.

The only other formal limits on discovery currently existing within the District are the requirement of a five day notice prior to deposition (Rule 15), and a limit on the number of interrogatories and requests for admissions to thirty (Rule 10). The survey conducted by the Advisory Group indicated that the average number of depositions in each civil case was four with about four days spent in deposition proceedings. (Survey Summary, Appendix 4)

The Advisory Group is aware that the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has proposed sweeping changes in discovery which include limiting the number and length of depositions. The Advisory Group is of the opinion that an arbitrary number of depositions and a maximum time for the length of those depositions may be inappropriate in many cases. The Group is well aware through personal experiences that some depositions of an individual deponent have exceeded normal and reasonable bounds and that in occasional cases, excessive numbers of depositions are taken. However, the few abuses observed by the Group members and the lawyers who responded to the survey in this District suggest that hard and fast rules concerning the number and length of depositions may not be dictated by the experience of most lawyers and litigants. Just as a curfew for all persons under the age of eighteen may not be a reasonable response to a handful of teenagers engaging in mischief after

midnight, an arbitrary limit on deposition discovery may not be warranted because of a few abuses by some lawyers and litigants. In support of that view, only about one-third of the lawyers surveyed in the survey believe that excessive discovery had occurred in any other civil case in which they were involved.

> **"(3) For all cases that the court or an individual judicial officer determines are complex . . ., careful and deliberate monitoring through a discovery case management conference. . . ."**

The subject of case management, settlement and a discovery schedule are all normally on the agenda at the status conference provided by Local Rule 17. The Rule requires counsel to be prepared at the status conference to discuss settlement as well as the other subjects mentioned in this subsection. Often the possibility of settlement at the initial status conference may be unclear because of lack of discovery at that early stage of the action. The Advisory Group recognizes that once threshold legal issues or factual disputes are decided the settlement possibilities of the case may be enhanced. The status conference form required under Local Rule 17 includes listing dates when plaintiff's counsel must initiate settlement discussions with opposing counsel and a date for reporting to the Court on the status of such discussions. With respect to identifying the principal issues in contention or resolution or bifurcation, Local Rule 17 permits a procedure contemplated under this subsection. The Advisory Group is of the opinion that effective case management should be the primary responsibility of the attorneys with the guidance and intervention of the Court consistent with the schedule established at the status conference. Cost and delay will only increase if judicial officers are required to

be involved in every stage of a proceeding from the first pleading to the last. Lawyers possess the most knowledge about the case in which they are involved and have the ethical and legal responsibility to both the Court and their clients to not only meet the deadlines established but to fulfill their responsibilities under the federal rules and statutes.

> **"(4) Encouragement of cost effective discovery through voluntary exchange of information. . . ."**

The United States Supreme Court in Hickman v. Taylor, 329 U.S. 495, 401 (1947) summarized the functions of discovery as being (1) to narrow and clarify the basic issues between the parties, and (2) for ascertaining the facts, or information as to the existence or whereabouts of facts relative to those issues. The Advisory Group suggests that this should be the prominent goal of a "standardized" method of voluntary exchange of information between and among litigants. Many cases filed in this District would lend themselves to the exchange of standard information which should be exchanged without the need for a formal discovery request or demand. The Advisory Group is mindful of the present provisions of Rule 26(b)(1) explaining the scope of discovery expected of litigants and parties in federal civil litigation. The easiest method in which to explore and adopt cost effective discovery through voluntary exchange of information, would be for the Court to incorporate some of the provisions of Rule 26 in a local rule. For example, Rule 26(b)(2) provides for the disclosure and production of insurance agreements insuring liability on behalf of a party. Notably, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States in its

August, 1991 report suggests that the Judicial Conference adopt a threshold voluntary discovery rule which would include the production of all insurance agreements involving liability on behalf of a party. The Advisory Group believes that this is a worthwhile threshold requirement which could be adopted by a local rule, consistent with the Judicial Conference final version of proposed revisions to Rule 26. Likewise, under Rule 26(b)(4) involving trial preparation and experts, the parties could be required to identify trial experts who will be called and to provide the subject matter of their testimony and substance of the facts of their opinions and a summary of the grounds for the opinion. Again, the Advisory Group is aware of the Rules Committee's report in this regard which would essentially supplant the existing requirements for interrogatories of an expert by requiring each party to submit a written report from his expert and to be bound by it.

In addition, Rule 26 and the federal cases construing it provide for the identity of witnesses, addresses and substance of proposed testimony as well as the identification of documents which bear upon relevant evidence under the meaning of Rule 26. In the earlier portion of this report concerning the types of cases filed within the past three years within this District, it is reported that 80% of the cases appear to involve contracts, land condemnation foreclosure, civil rights, personal injury, prisoner, student loan and veterans cases. A local rule could require threshold disclosure of basic information in those cases.

With regard to specific kinds of cases and what voluntary disclosure should be required, there are some possible differences but the theme remains the same. In

personal injury cases, the specific facts concerning the claim of negligence, product failure or other tort can and should be disclosed as well as any claim of contributory, comparative negligence or other defense, not to mention all damage information suffered by the plaintiff known at the time of suit. In contract cases, a copy of the agreement or any memos relied upon as constituting the agreement should be disclosed as well as the identity of any witnesses and identification of all claims for damages and documents supporting those cases. Voluntary disclosure in employment discharge or discrimination cases would be extremely beneficial and cost cutting. A plaintiff's list of documents relied upon as well as the names of persons who were engaged in discrimination and the defendant's policy manuals, employment records concerning plaintiff and other internal documents should be produced as a threshold requirement. The Advisory Group believes that one of the most cost effective measures that could reduce cost for litigants, speed discovery and hasten resolution of matters is a realistic voluntary exchange of information and the use of cooperative discovery devices. One is reminded of the anecdote about the law school professor from a prestigious law school who encountered one of his former brilliant students cleverly crafting responses to interrogatories and document requests. The professor was heard to say "what a waste of talent."

> **"(5) Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification. . . ."**

Rule 14(E) of the District requires counsel to have a face to face meeting concerning discovery disputes before they can be submitted to the Court under Rules 26

and 37. (Appendix 1) This procedure, in place in the Western District since March 27, 1986, has substantially reduced the number of discovery disputes requiring the Court's time and attention.

Some members of the Advisory Group believe that the personal conference requirement of the local rule should be relaxed for lawyers who live in different communities within the state. The proliferation of facsimile transmissions may permit the resolution of discovery disputes without the added expense and time required by travel to another city. Any discovery dispute that cannot be resolved after the mandated conference is normally referred to a magistrate judge of the District for hearing and recommendation to the Court. A high percentage of the few remaining discovery disputes are resolved as a result of hearings before magistrate judges. The Advisory Group is of the opinion that the existing rules and practices adequately deal with the discovery disputes in this district.

**"(6) Authorization to refer appropriate cases to alternative dispute resolution programs. . . ."**

The Western District of Oklahoma has been in the forefront on ADR techniques. The Court currently utilizes settlement conferences conducted before a highly skilled magistrate judge, mandatory arbitration before experienced court annexed arbitrators in all cases involving less than $100,000 and to a lesser degree, the summary jury trial. (See Rule 17(h) and (i).) A report dated August 19, 1991, to the Group by Magistrate Judge Irwin of the District reveals the following: of 21,116 civil cases filed during the period from January 1, 1984, through June 30, 1991, 20,167 were disposed

matters. Third, mediation is relatively inexpensive. Fourth, it could take place at an early stage of the proceeding. Whether summary jury trial results are valid predictors of actual trial results is unclear, but the procedure is more time consuming and expensive, is not final and involves the court and staff. Mediation can be conducted by trained mediators without use of court personnel. In addition, mediation could be conducted in various locations in the District unlike summary jury trials and settlement conferences which currently require parties and counsel to journey to Oklahoma City from any point in the District, sometimes several hundred miles away from their residences and offices.

It is suggested by the Advisory Group that mediation be tried on an experimental basis by amendment of Rule 17. The Mediation Committee of the local Court also recommends that inquiry about voluntary mediation be made at the initial status conference or within time set by the Court at a subsequent conference. The Advisory Group recognizes that the parties and lawyers engaged in litigation in federal court in the District should receive the benefit of some education on the mediation process, and the training and selection of an appropriate mediation panel will need to be implemented. The Regional Office of the American Arbitration Association in Dallas, Texas, has advised that it is available to conduct mediation training in Oklahoma City, the seat of the District, if the Court sees fit to adopt mediation as an additional ADR procedure.

## PART THREE: COST AND DELAY REDUCTION TECHNIQUES NOT MANDATED BUT CONSIDERED

Section 473(b) requires each district court to consider and possibly include

of prior to trial - 95.51%. (Appendix 5.)

Although this number includes cases dismissed by the parties prior to judicial intervention and others resolved by dispositive motions, a substantial number were terminated as a result of ADR procedures. The Magistrate Judge's report lists 700 arbitration hearings, 4,880 settlement conferences and 149 summary jury trials conducted during the seven and one-half year period which led to the termination of all but 951 cases out of 21,116 pending.

Existing ADR procedures are well spelled out in existing rules for the District with few exceptions. Because of the great number of settlement conferences compared with the other procedures of arbitration and summary jury trial, the Advisory Group believes that the settlement conference is the primary reason for the 95% settlement rate.

Mediation. The Advisory Group met with representatives of the local State Court Mediation Committee for the only metropolitan state court in the district. The local state court adopted a mediation program in December of 1990 which appears to be successful to date. A report of that group shows that of 174 cases mediated during the period of December 1, 1990, through June 30, 1991, 105 cases were settled in whole or part as a result of mediation. (Appendix 7)

The Advisory Group believes that the Court should consider adding voluntary mediation to its other ADR techniques for several reasons. First, it would relieve time pressures on the Magistrate Judge who now conducts settlement conferences. Second, it has proven successful in other courts as a final binding settlement of civil

six "litigation management and cost and delay reduction techniques."

With respect to §473(b) the Advisory Group makes the following findings and recommendations:

(1) the requirement that counsel for each party present a joint discovery case management plan is largely satisfied by the status conference report presently in place under Rule 17. Should the Court decide that more detail in case management is required, it could lead to a more orderly progress of the case but will likely also increase expense to the parties through added attorneys fees.

(2) The requirement that each party be represented at a pretrial conference by an attorney who has authority to bind that party is already effectively required under the provisions of Rule 17 of the District.

(3) A requirement that all requests for extensions of time of deadlines be signed by the attorney and the party making the request is seen as an unnecessary and cost ineffective requirement. Lawyers practicing in the District already have an obligation to advise their clients of the status of any action in which they represent a party, including completion of discovery and trial dates. The requirement for a signature by the party as well as the attorney may cause delay in securing signatures by out of town clients as well as unnecessarily undermine the relationship between the attorney and client.

(4) A neutral evaluation program for presentation of the legal and factual basis of the case to a neutral court representative appears to be a novel idea but not without expense and delay. In this district, mandatory arbitration and the possible

adoption of an early mediation program may accomplish the same results. A neutral evaluation program has been successful in other, larger districts, but may not be needed here.

(5) The requirement that representatives of the party with authority to bind them in settlement be present for settlement conferences already exists under Rule 17(h) of the local rules. This rule which has been most effective requires the presence of the lead attorney, a party with full settlement authority and, if there is insurance coverage, a representative of the insurance company. No one is excused from attendance except by the settlement conference judge. There may be exceptions in cases of multiple parties, class actions or the like, but the requirement suggested is already in place in this District.

(6) Such other features as the district court considers appropriate after consideration of the recommendations of the Advisory Group. The Group's suggested "other features" under this subsection are contained in other sections of the Report. They are summarized at the end of the report.

## PART FOUR: CONCLUSIONS AND RECOMMENDATIONS

## VI. SUMMARY OF CONCLUSIONS

The Advisory Group concludes that this Court has through its own rules and procedures complied with the requirements of Sec 473(a) of the Act. In addition, the Group believes that this Court is employing most of the techniques to be considered under 473(b) of the Act. The Group believes that technique (3), requiring parties to sign requests for extension of deadlines, in addition to the counsel is unnecessary and not cost

effective. The Group also concludes that the neutral evaluation program mentioned in (4), while useful in some districts, may not be appropriate or needed in this District.

## VII. RECOMMENDATIONS

The recommendations listed below are made by the Advisory Group as possible "fine tuning" procedures that could improve what is already an efficient and cost and delay sensitive court system.

Upon review, the Court may adopt some and reject others. To assist the Court, the recommendations are listed in the order of priority as viewed by the Group.

1. Adoption of a mediation program as an early ADR technique to augment existing programs.

2. Voluntary disclosure of threshold information and data as suggested in § 473(a)(4) of the Act.

3. Additional staff assistance on pro se cases, particularly involving prisoners.

4. Reduction of summary jury trial usage because of its cost and delay compared with other ADR techniques.

5. Adoption of a local rule concerning preliminary relief matters.

6. Prompt ruling on pending dispositive motions to avoid costs and delay in preparing for trial.

7. Setting firm trial dates in non-jury cases.

8. Increased usage of trial before magistrate judges of the Court.

In addition, the Advisory Group suggests several actions which would assist the

Court if adopted by the federal court system or Congress.

1. Appointment of an additional magistrate judge for the district.

2. Increase the jurisdictional amount in diversity cases.

3. Prompt processing and approval of judicial nominees by Congress.

## INDEX TO THE APPENDIX TO THE REPORT OF THE ADVISORY GROUP OF THE UNITED STATES COURT FOR THE WESTERN OF OKLAHOMA

# APPENDIX 1

## LOCAL RULE 14 OF THE WESTERN DISTRICT OF OKLAHOMA

## MOTIONS, APPLICATIONS AND OBJECTIONS

## Rule 14

## MOTIONS, APPLICATIONS AND OBJECTIONS

(A) Briefs. Each motion, application or objection shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Each party opposing the motion, application or objection shall, within fifteen (15) days after the same is filed, file with the Clerk and serve upon all other parties a response which shall be supported by a concise brief. Any motion, application or objection which is not opposed within fifteen (15) days, as set out above, shall be deemed confessed. The Court may, in its discretion, shorten or lengthen the time in which to respond. The original and one copy of each motion, application or objection shall be deposited with the Clerk. No brief shall be submitted which is longer than twenty-five (25) typewritten pages without special permission of the Court. Reply and supplemental briefs are not encouraged and may be filed only upon application and leave of Court. They shall be limited to ten (10) pages in length unless otherwise authorized by the Court. Oral arguments on motions, applications or objections will not be conducted unless ordered by the Court.

(B) Summary Judgment Motions. The brief in support of a motion for summary judgment (or partial summary judgment) shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be numbered and shall refer with particularity to those portions of the record upon which movant relies. The brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section which contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, shall state the number of the movant's fact that is disputed. All material facts set forth in the statement of the movant shall be deemed

admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party.

(C) Motions Not Requiring Briefs. No brief is required by either movant or respondent unless otherwise directed by the Court, with respect to the following motions:

(1) for extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed, or as extended by previous orders;

(2) to continue a pretrial conference, hearing or motion, or the trial of an action;

(3) to amend pleadings;

(4) to file supplemental pleadings;

(5) to appoint next friend or guardian ad litem;

(6) for substitution of parties; and

(7) motions to compel answers to interrogatories.

Any of the above motions not requiring briefs shall be accompanied by a proposed order stating the relief requested by said motion.

(D) Brief with Motion, Application or Objection. The Clerk shall not accept for filing any motion, application or objection requiring a brief, unless accompanied by such brief, without permission of the Court.

(E) Conference of Attorneys with Respect to Motions or Objections Relating to Discovery; Sanctions. With respect to all motions or objections relating to discovery pursuant to Rules 26 through 37, Federal Rules of Civil Procedure, this Court shall refuse to hear any such motion or objection unless counsel for movant first advises the Court in writing that he has personally met and conferred in good faith with opposing counsel, but that, after a sincere attempt to resolve differences has been made, they have been unable to reach an accord. However, no personal conference shall be required where the movant's counsel represents to the Court in writing that he has conferred with opposing counsel by telephone and (1) the motion or objection arises from failure to timely make a discovery response, or (2) distance between counsels' offices renders a personal conference infeasible. When

the locations of counsels' offices, which will be stated with particularity by movant, are in Oklahoma only, a personal conference is always deemed feasible as to distance. After the presentation of a discovery dispute to the Court following compliance with this Rule, an award of expenses may be made or sanctions may be imposed in accordance with Rule 37, Federal Rules of Civil Procedure.

(F) Motions in Criminal Cases. Motions in criminal cases, and particularly motions made pursuant to Rules 7(f), 12, 16, 21 and 41(e), Federal Rules of Criminal Procedure, shall be in writing and state with particularlity the grounds therefor and the relief or order sought. All such motions shall be filed with the Clerk within eleven (11) calendar days after arraignment, and a copy served upon the United States Attorney, who shall respond within five (5) days after filing, unless a different time is fixed by statute or the Federal Rules of Criminal Procedure for such motions or responses thereto. All motions and responses thereto must be accompanied by a concise brief citing all authorities upon which the movant or respondent relies. The Court may, however, in its discretion, order or allow such motions or responses thereto to be filed at a time earlier than or later than that fixed by this Rule.

(G) Motions to Reconsider or Overrule Orders Issued by Judges of This District. Once a motion or application has been presented and an order entered by a judge sitting in this district, a motion to reconsider or overrule said order shall be presented only to the judge entering the order or to the other active judges sitting en banc. A unanimous vote of the other active judges sitting en banc will be required to overrule such order previously entered. The movant or applicant shall make known the action taken by the judge to whom it was previously submitted. This provision is intended to apply to such things as applications for search warrants, wiretaps, pen registers and other such applications or motions which are made to a judge without a case having been filed. It is not a means to appeal an order entered in a case, nor is it intended to apply where a case is transferred from one judge to another and a motion to reconsider a prior ruling is made.

(H) Applications for Extensions of Time. All applications for extension of time for the performance of an act required or allowed to be done shall state:

(1) the date the act is due to occur without the requested extension;

(2) whether previous applications for extensions have been made to include the number, length of extension, or other disposition of them;

(3) specific reasons for such requested extension to include an explanation why the act was not done within the originally allotted time;

(4) whether the opposing counsel or party agrees or objects to the requested extension; and

(5) the impact, if any, on scheduled trials or other deadlines.

Such requirements shall apply to all applications to extend the date for discovery cutoff, to file dispositive or other motions, to amend the pleadings, to bring in new parties, and/or to continue a trial or hearing date or to extend any other schedule established by the Court or by law. All applications shall be accompanied by a proposed order for the Court's use if such relief is granted.

# APPENDIX 2

## LOCAL RULE 17 OF THE WESTERN DISTRICT OF OKLAHOMA

## CIVIL STATUS CONFERENCES; CRIMINAL PRETRIAL CONFERENCES, MANAGEMENT

## RULE 17

## CIVIL STATUS CONFERENCES; CRIMINAL PRETRIAL CONFERENCES; MANAGEMENT

(A) Scheduling. A scheduling order shall issue in civil cases (excepting administrative reviews and prisoner cases) within one hundred twenty (120) days from the date of filing the complaint, in accordance with Rule 16, Federal Rules of Civil Procedure.

(B) Preparation by Counsel for Status Conference Scheduled by the Court. Prior to the first status conference scheduled by the Court, trial counsel for each of the parties shall confer and prepare a status report. Said report shall include, to the extent then known, the contentions of each party and the issues of fact and law. It will also contain a list of all exhibits, witnesses, and discovery materials to the extent then known, together with estimates of time needed to complete discovery and trial time. It shall be the duty of counsel for the plaintiff to arrange this conference and the duty of all counsel to jointly participate in and facilitate it. The information exchanged shall be incorporated into the status report. This status report will be prepared and signed jointly and filed as a single document with the Clerk of the Court no later than five (5) days prior to the status conference scheduled by the Court. (The Status Report shall conform to the form required for Final Pretrial Order, attached to these Rules as Appendix IV, but shall be entitled "Status Report.")

(C) Agenda at Conference.

(1) Counsel who will conduct the trial and pro se litigants shall attend any conference required by the Court and shall be prepared to discuss:

(a) the streamlining of claims and/or defenses;

(b) the possibility of obtaining admissions of fact and of documents;

(c) the avoidance of unnecessary proof and of cumulative evidence;

(d) the identification of witnesses and documents;

(e) the possibility of settlement or use of extra-

judicial procedures;

(f) the disposition of any pending matters;

(g) the need for adopting special procedures for managing of difficult or protracted litigation that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(h) all other appropriate matters.

(2) The Court at the status conference will establish insofar as feasible the time:

(a) to join other parties and to amend the pleadings;

(b) to serve and hear motions;

(c) to conduct and complete discovery; and

(d) to file the submissions required by the Final Pretrial Order entered by the Court, said submissions including proposed voir dire, requested jury instructions or proposed findings of fact and conclusions of law, witness lists, exhibit lists, trial briefs, joint preliminary statements, stipulations, and hypothetical questions.

(3) The Court will also set if necessary or feasible the dates of any supplemental status conferences, the date of the final pretrial conference, if any, and the date of trial.

(D) Preparation of Status Reports, Final Pretrial Orders, and Other Orders.

(1) Unless otherwise ordered by the Court, counsel for the plaintiff, with full and timely cooperation of other counsel and pro se parties, is responsible for preparing, obtaining approval of all parties, and furnishing the Court any status reports, pretrial orders or other orders required by the Court or these Rules.

(2) The clerk who keeps the minutes of the status conference shall have forms available substantially conforming to that attached to these Rules as Appendix V whereby the time and/or

date fixed by the Court for the performance of specified duties may be inserted. Upon request therefor, counsel will be supplied with a copy of such form so that they may make their own notations of deadlines and of other orders prescribed by the judge presiding over the conference. Such executed form, when approved by the Court and filed, shall constitute the order of the Court as to such schedules without the necessity of filing of any other order to the same effect. Unless otherwise directed by the assigned judge, the form and content of a Final Pretrial Order, conforming to the sample form shown at Appendix IV, attached hereto, shall be filed by plaintiff's counsel on or before the first day of the month that the case is scheduled for trial.

(E) Default. Failure to prepare and file a required status report, failure to comply with the Final Pretrial Order, failure to appear at a conference, appearance at a conference substantially unprepared, or failure to participate in good faith may result in any of the following sanctions: the striking of a pleading, a preclusion order, staying the proceeding, default judgment, assessment of expenses and fees (either against a party or the attorney individually), or such other order as the Court may deem just and appropriate.

(F) Criminal Case -- Pretrial Conference. A pretrial conference may be held in criminal cases for the purpose of considering such matters as will promote a fair and expeditious trial. Such conference may, at the discretion of the Court, be conducted by a magistrate, as provided in Rule 39(B)(2) hereof.

(G) Criminal Case -- Stipulations -- Exhibits. Consistent with the applicable Federal Rules of Criminal Procedure, and whenever it can be done without violating or jeopardizing the constitutional rights of the defendant in any criminal case, stipulations should be made at or prior to the pretrial conference with respect to the undisputed facts and the authenticity of documents. Each instrument which it is anticipated may be offered in evidence by either side (or photostatic copy of such instrument, if agreeable), should be marked with an exhibit number prior to the trial.

(H) Settlement Conferences. The Court may upon its own motion or at the request of any of the parties order a settlement conference at a time and place to be fixed by the Court. A magistrate or a district judge other than the judge assigned to the case, to be known as the settlement conference judge, shall conduct it. The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons, or representatives of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly and actively associated with the party or parties. Other interested parties such as insurers or indemnitors shall attend and are subject to the provisions of this Rule. Only the settlement conference judge may excuse attendance by any attorney, party or party's representative. The parties, their representatives and attorneys are required to be completely candid with the settlement conference judge so that he may properly guide settlement discussions, and the failure to attend a settlement conference or the refusal to cooperate fully may result in imposition of sanctions mentioned in paragraph (E) of this Rule. The settlement conference judge may issue such other and additional requirements of the parties or persons having an interest in the outcome as to him shall seem proper in order to expedite an amicable resolution of the case. The settlement judge will not discuss the merits of the case with the assigned judge but may discuss the status of motions and other procedural matters and shall have the right to meet jointly or individually with parties or persons or representatives interested in the outcome of the case without the presence of counsel. No statements, admissions, or conversations will, in any form, be used in the event of subsequent trial.

(I) Summary Jury Trial; Alternative Methods of Dispute Resolution. The Court may, in its discretion, set any civil case for summary jury trial, mandatory (nonbinding) arbitration (in accordance with Rule 43), mediation or other alternative method of dispute resolution as the Court may deem proper.

# APPENDIX 3

## APPENDIX IV TO THE WESTERN DISTRICT OF OKLAHOMA RULES

## STATUS REPORT OR FINAL PRETRIAL ORDER

APPENDIX IV

NOTE: Use this form for both
STATUS REPORT
(complete to extent possible at time filed)
and
FINAL PRETRIAL ORDER
(complete fully)

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

| | | |
|---|---|---|
| JOHN DOE, by his guardian ad litem, JANE DOE, Plaintiff, | ) | |
| vs. | ) | CIV. _____ |
| XYZ CORPORATION, Defendant. | ) | |

(STATUS REPORT)
or
(FINAL PRETRIAL ORDER)
(use title as appropriate)

Date of Conference: _____, 19 ___.

Appearances: John Y. Lawyer, Walters, Oklahoma, for plaintiff;
Sam X. Attorney, Lawton, Oklahoma, for defendant.

I. A. BRIEF PRELIMINARY STATEMENT stating facts and positions of the parties. (To be used in jury selection and in instructing the jury.)

B. Suggested voir dire questions.

II. STIPULATIONS

A. all parties are properly before the court;

B. the court has jurisdiction of the parties and of the subject matter;

C. all parties have been correctly designated;

D. there is no question as to misjoinder or nonjoinder of parties;

E. plaintiff, a minor, appears through her guardian;

F. Facts:

1. Plaintiff is a citizen of Wichita County, Texas.

2. Defendant is a New York corporation, licensed to do business in the State of Oklahoma.

G. Legal Issues:

May a 9-year old child be held guilty of contributory negligence?

H. Factual Issues:

1. Was plaintiff injured and damaged by the negligence of the defendant?

2. What amount, if any, is plaintiff entitled to receive of defendant as compensatory damages?

III. CONTENTIONS

A. Plaintiff:

1. Facts:

(a) That Richard Roe was driving defendant's truck as defendant's agent;

(b) That Richard Roe was negligent in that he drove at an excessive speed and while under the influence of intoxicating liquor.

2. Factual Issues:

(a) What amount, if any, is plaintiff entitled to recover of defendant as punitive damages?

B. Defendant:

1. Facts:

(a) That Richard Roe, a former employee, took defendant's truck without authorization and, at the time of the accident, was not the agent or employee of defendant.

2. Factual Issues:

(a) Did plaintiff, by his own negligence, contribute to his injury and damage?

IV. EXHIBITS

Exhibits not listed will not be admitted by the Court unless good cause be shown and justice demands their admission.

A. Plaintiff:

| Number | Title | Objection | Rule Relied Upon |
|---|---|---|---|
| 1 | Patrol Report | Hearsay | 803 |
| 2 | Photo of plaintiff | None | |

B. Defendant:

| Number | Title | Objection | Rule Relied Upon |
|---|---|---|---|
| 1 | Photo of scene | None | |
| 2 | Scale model | None | |

V. WITNESSES

No unlisted witness will be permitted to testify as a witness in chief except by leave of Court when justified by exceptional circumstances.

A. Plaintiff:

| Name | Address | Proposed Testimony |
|---|---|---|
| John Jones | 615 Rains Street Wichita Falls, TX | Facts surrounding accident, extent of |
| Frank Flake<br>Joe Rock | Selma, N.C.<br>Temple, Arizona | Speed of defendant's vehicle, intoxication of driver |

B. Defendant:

| Name | Address | Proposed Testimony |
|---|---|---|
| All witnesses listed by plaintiff. | | |
| Sam Smith | 4 Appian Way Okla. City, OK | Facts surrounding the theft by driver of the vehicle |

VI. TRIALS BRIEFS, including requested jury instructions or proposed findings of fact and conclusions of law.

VII. ESTIMATED TRIAL TIME

_____.

VIII. POSSIBILITY OF SETTLEMENT

Good _____ Fair _____ Poor _____

IX. POSSIBILITY OF COURT-ANNEXED ARBITRATION - LOCAL RULE 43
(For Status Reports only - inapplicable for Final Pre-Trial Orders).

Include a statement as to the eligibility of this case for mandatory arbitration and/or whether you wish to consent to arbitration under Local Rule 43. In accordance with 28 U.S.C. §652(a)(2) and Local Rule 43(B)(2)(c), this statement should also include any necessary certification as to amount of damages.

All parties approve this order and understand and agree that this order supersedes all pleadings and shall not be amended except by order of the Court.

_____
John Y. Lawyer
Counsel for Plaintiff

_____
Sam X. Attorney
Counsel for Defendant.

APPROVED this _____ day of _____, 19___.

_____
United States District Judge

# APPENDIX 4

SUMMARY OF SURVEY OF LAWYERS AND LITIGANTS IN THE WESTERN DISTRICT OF OKLAHOMA

Attorney Questionaire - 110 Responses

I. BACKGROUND:

A. & B.

| Years in Practice | No. | % | Avg. % Practice Fed. Crt |
|---|---|---|---|
| 0-5 | 7 | 6 | 37% |
| 6-10 | 24 | 22 | 54% |
| 11-15 | 21 | 19 | 30% |
| 16-25 | 47 | 44 | 42% |
| over 25 | 9 | 8 | 40% |
| Total | 108 | 100 | |

II. ACTIVITIES IN THE REFERENCED CASE:

| | Average Number |
|---|---|
| A. How many depositions were taken? | 4 |
| B. How many days were spent in deposition? | 4 |
| C. How many days were spent in trial? | 0 |
| D. How many days were spent in settlement negotiations? | 2 |

E. The time from filing to disposition was:

| | No. | % |
|---|---|---|
| Too short | 3 | 3 |
| Too long | 8 | 8 |
| About right | 91 | 89 |
| Total | 102 | 100 |

III. COST OF LITIGATION

A. The cost of litigation was:

| | | No. | % |
|---|---|---|---|
| not excessive | 0 | 50 | 48 |
| | 1 | 11 | 11 |
| | 2 | 15 | 14 |
| | 3 | 14 | 13 |
| | 4 | 10 | 10 |
| greatly excessive | 5 | 4 | 4 |
| Total | | 104 | 100 |

IV. DELAY

| A. The action was delayed by: | No. | % |
|---|---|---|
| lawyers | 14 | 41 |
| the court | 6 | 18 |
| litigants | 14 | 41 |
| Total | 34 | 100 |

V. ALTERNATIVE DISPUTE RESOLUTION

| A. These methods were employed: | No. | % |
|---|---|---|
| court mandated arbitration | 12 | 16 |
| summary jury trial | 2 | 3 |
| court ordered settlement conf. | 33 | 43 |
| other | 30 | 39 |
| Total | 77 | 100 |

| B. Was this effective? | No. | % |
|---|---|---|
| Yes | 33 | 69 |
| No | 15 | 31 |
| Total | 48 | 100 |

C. Which technique is most effective?

| | No. | % |
|---|---|---|
| 1. Arbitration | 6 | 8 |
| 2. Settlement Conference | 65 | 92 |
| 3. Summary Jury Trial | 0 | 0 |
| 4. Other | 0 | 0 |
| Total | 71 | 100 |

| E. Would court annexed mediation utilizing a panel of trained mediators be an effective tool in reducing costs and delay? | | No. | % |
|---|---|---|---|
| | Yes | 46 | 56 |
| | No | 36 | 44 |
| | Total | 82 | 100 |

| F. Have you participated in the mediation of any civil litigation dispute in any court? | | No. | % |
|---|---|---|---|
| | Yes | 59 | 64 |
| | No | 33 | 36 |
| | Total | 92 | 100 |

| Was the mediation an effective way of reducing costs and delay? | | No. | % |
|---|---|---|---|
| | Yes | 18 | 60 |
| | No | 12 | 40 |
| | Total | 30 | 100 |

V. ALTERNATIVE DISPUTE RESOLUTION - Continued

G. How many settlement conferences were conducted?

| | No. | % |
|---|---|---|
| 0 | 28 | 45 |
| 1 | 21 | 34 |
| 2 | 11 | 18 |
| 3 | 2 | 3 |
| 4 | 0 | 0 |
| 5 | 0 | 0 |
| Total | 62 | 100 |

H. Was the settlement conference productive?

| | No. | % |
|---|---|---|
| Yes | 22 | 61 |
| No | 14 | 39 |
| Total | 36 | 100 |

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

| | No. | % |
|---|---|---|
| Yes | 15 | 24 |
| No | 48 | 76 |
| Total | 63 | 100 |

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

| | No. | % |
|---|---|---|
| Yes | 14 | 18 |
| No | 66 | 83 |
| Total | 80 | 100 |

K. Was the award instrumental in causing the parties to settle?

| | No. | % |
|---|---|---|
| Yes | 9 | 45 |
| No | 11 | 55 |
| Total | 20 | 100 |

L. If the award didn't cause settlement, did another form of alternative dispute resolution result in settlement?

| | No. | % |
|---|---|---|
| Yes | 4 | 17 |
| No | 19 | 83 |
| Total | 23 | 100 |

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

| | No. | % |
|---|---|---|
| Yes | 22 | 81 |
| No | 5 | 19 |
| Total | 27 | 100 |

VI. DISCOVERY

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

| | No. | % |
|---|---|---|
| Yes | 35 | 37 |
| No | 60 | 63 |
| Total | 95 | 100 |

V. TRIAL

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

| | | No. | % |
|---|---|---|---|
| too short | 0 | 5 | 5 |
| | 1 | 17 | 18 |
| | 2 | 20 | 22 |
| | 3 | 44 | 47 |
| | 4 | 7 | 8 |
| too long | 5 | 0 | 0 |
| Total | | 93 | 100 |

Party Questionaire - 93 Responses

| | | | |
|---|---|---|---|
| 1. Was there excessive delay? | | No. | % |
| | Yes | 6 | 7 |
| | No | 81 | 93 |
| | Total | 87 | 100 |
| 3. Was the case settled? | | No. | % |
| | Yes | 59 | 72 |
| | No | 23 | 28 |
| | Total | 82 | 100 |
| | | No. | % |
| A. Settlement conference Judge Irwin | | 14 | 18 |
| B. Court annexed arbitration | | 7 | 9 |
| C. Summary jury trial | | 1 | 1 |
| D. Private settlement negotiations | | 43 | 57 |
| E. Other | | 11 | 14 |
| | Total | 76 | 100 |
| 4. Would mediation assist in settlement? | | No. | % |
| | Yes | 15 | 23 |
| | No | 50 | 77 |
| | Total | 65 | 100 |
| 5. Was there excessive cost or expense? | | No. | % |
| | Yes | 15 | 19 |
| | No | 62 | 81 |
| | Total | 77 | 100 |

CIVIL JUSTICE ADVISORY GROUP

QUESTIONNAIRE TO PARTY

(Subjective Responses)

**2. If so (if there was excessive delay in the case), what do you believe were the primary causes of that delay?**

Out of 97 responses, there were 89 either not applicable or "no" answers based on "no" answers to question #1 (was there excessive delay in the case?).

Only one of 97 stated length of deposition and postponement of scheduled dates as a cause. One mentioned failure of the court to rule on summary judgment motions. One mentioned post settlement delays, another delays associated with related litigation and another unavoidable delay caused by bankruptcy complication. One said delay was caused by "lawyers." There were 2 prisoner pro se responses - one regarding need for better access to law library and delay in determination of improper forum as problems and the second commented on the unfairness of automatic continuances/extensions granted the state without allowing him a response.

**5. Do you believe that in the referenced case there was excessive cost or expense? If so, what were the causes of the cost or expense, in your opinion? (First part, " yes/no" tabulated elsewhere)**

Out of 97 responses returned, 6 specifically mentioned attorneys fees as the cause of this excessive cost. 5 specifically mentioned expenses related to discovery. 2 said that the lawsuit was frivolous in the first place causing excessive costs. Expert witness fees were the cause in 2 responses and investigator expenses also mentioned once. One other said more time was needed between discovery cut-off and other trial deadlines to focus on settlement without cost and expense of trial preparation necessitated by impinging trial deadlines. 1 said cost was not excessive due to the manner in which it was handled (agreed judgment).

6. **Do you have any suggestions that would improve the prompt and efficient resolution of federal court cases in Oklahoma City? If so, list them.**

There were 38 responses out of the 97 surveys returned. These responses are included below by category.

Foreclosure actions. Three comments. One response was that there is not need for excessive Status Conferences and Status Reports in these proceedings - that increases cost and don't help. Another stated that the Court handles foreclosure actions very expeditiously. Yet another said there is a need for uniform local rules for foreclosure proceedings, replevin, confirmation hearings and deficiency judgment hearings as well.

Status conferences. There was one comment suggesting a reduction in paperwork, such as current use of the extensive Scheduling Conference Status Reports.

Discovery. Seven responses were directed to this facet of litigation. 2 stated a need for faster disposition of discovery problems with one of those suggesting a need for the close monitoring of the discovery process and speedy access to the assigned judge or magistrate for disposition of disputes. Two others mentioned a need for court-ordered limitations on length and scope of depositions and on irrelevant discovery and document requests. One recommended identification of only those witness who would testify so as to cut down on unnecessary depositions. Two others mentioned early discovery deadlines and restricted discovery in smaller cases.

Motions. 5 stressed a need for faster disposition of pre-trial motions and reduction in time such motions are kept under advisement in order to avoid unnecessary discovery, delay and cost. Another said that the Court should weed out the frivolous lawsuits at the appropriate stage by being more agressive in ruling upon dispositive motions.

Settlement procedures in general. 20 responses were received that related to this entire area. One party suggested that the court "quit trying to settle every case at all costs" and make procedures available for attorneys to choose. Another said more forceful use of settlement processes would help. Another was in favor of early use of settlement procedures. Yet another suggested having each attorney within 30 days of the answer submit parameters of possible settlement on the controlling issues only. Then a conference should be immediately set for preliminary discussion before a magistrate. One more general comment was that the settlement conference, mediation and mini-trial be restricted in smaller cases and, in this same vein, another stated that multiple settlement conferences and the summary jury trial procedure are, for the most part, not helpful. It went on to say "In addition to

being expensive, they are time consuming and counter-productive. A single settlement conference should suffice in the 'normal' case."

Arbitration. Early arbitration hearings are helpful said one respondent. Another was concerned that the award did not contain sufficient pain and suffering damage amounts but that he could not go on with the case due to inability to post de novo fees.

Settlement conference. Three parties said the settlement conference was effective largely due to Judge Irwin himself. Three others commented that there is a need for the court-sponsored settlement conference earlier in the litigation. Another wanted more settlement conferences.

Mediation. There were 3 responses suggesting that mediation would be good in Federal Court and its use should be increased.

Required attendance at settlement proceedings. Four responses were aimed at our courts requirement for attendance of parties with settlement authority. One respondent suggested that the court not require out of state home office employees to travel to OKC for Arbitration Hearings where the local representative would suffice, but that a settlement conference was different. Another stated that settlement conferences should be eliminated where parties must travel long distances in cases which the lawyers think the case will not settle. It further said that more consideration should at least be given to allow the parties to appear by telephone in those cases.

The following response is quoted in its entirety in the interest of cost evaluation: "Allow out-of-state parties, particularly in debtor-creditor cases, to attend settlement conferences and arbitration by telephone. In a case of less than $100,000, a creditor can be forced to fly to Okla. City for arbitration, settlement conference, depositions and trial. When the chances of recovery from an insolvent debtor are questionable, a creditor can be forced to drop the lawsuit or settle for an unacceptable amount to avoid the prohibitive cost of travel. In this age of speaker phones, there certainly is no reason to require a party to attend a settlement conference in person."

Another responded that mandatory attendance of client representatives with full settlement authority at a settlement conference should occur (1) within one month before discovery cut-off and (2) again immediately after discovery cut-off.

Miscellaneous. In regard to frivolous lawsuits, one suggestion was to make it more financially dangerous to bring one. Again the elimination of the use of automatic extensions to the state in prisoner cases was mentioned as a means of cost reduction. And finally there were 3 comments that stated that no improvement is needed with one saying that resolution of cases in the Western District is prompt and if costs are excessive, neither the court nor the lawyers can do anything about it.

# CIVIL JUSTICE ADVISORY GROUP QUESTIONNAIRE TO ATTORNEYS

## Subjective Responses To Questionnaires 73-114

## I. BACKGROUND

**I(C). Describe the nature of your practice in Federal Court:**

39 attorneys responded (only 2 did not respond to the surveys I reviewed). Most have multiple areas of practice. The following summarizes this information:

11 attorneys described themselves with a personal injury/products liability practice in Federal Court
11 labor and employment law
5 personal injury
4 civil rights
9 debtor/creditor
5 contract disputes
4 business/commercial
3 foreclosure (1 Federal, 1 County)
2 general civil
2 tax
2 securities
2 banking
1 real estate
1 oil and gas/environmental
1 bankruptcy
1 social security disability
1 criminal
1 Miller Act
1 professional responsibility

## III. COST OF LITIGATION

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

There were 18 specific responses out of 41 reviewed. The remainder marked not applicable, none or left blank.

7 said costs of litigation were reasonable or could not have been improved with one of those stating impossibility of improvement due to bankruptcy complications, another citing consolidation of the six cases as assisting with cost containment, and one was an RTC foreclosure with an agreed judgment.

2 suggested cost elements would have been improved by better cooperation and professional conduct of opposing counsel with one specifying needed cooperation in the discovery process.

3 more suggested other discovery stage improvements such as
- the need for limiting discovery,
- closer monitoring of discovery by the court, and
- a recommendation to follow the state rule of the one taking the deposition paying for it rather than incur excessive costs for non-productive depositions which drain poor and low income plaintiffs.

3 responses in the ADR area said
-an earlier settlement conference would have been helpful,
-use of court-ordered mediation,
-use early settlement conference or mediation

1 awarding fees for a needless motion to remove a case from small claims court would have been helpful

1 less required reports and status conferences with more time allowed for the parties to resolve the issue would have saved costs.

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

There were 10 responses out of 41 reviewed. The remainder were marked N/A, said "none", or were blank.

5 cited some form of lack of cooperativeness during the discovery process
-unreasonable refusal to respond to discovery requests
-arguments over whether certain documents should be produced
-discovery in one case used to discover incidents to bring another case

1 general delay tactics on routine matters

1 lack of cooperation of co-counsel

1 it was not the attorney, but the party, due to his pro se status and increased filings

1 the unnecessary small claims removal

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

There were 19 specific responses out of 41 reviewed. The remainder responded N/A, none, or were blank.

3 early negotiated settlements with assistance of attorneys, before cost of depositions and with little or no court involvement contributed to cost reduction

6 cited amicable discovery
-cooperation with exchange of documents and other information
-agreement of both counsel to interview rather than depose numerous employees of the defendant with all counsel and parties present
-cooperation in setting up depositions and producing witnesses voluntarily
-exchange of evidence without much formality

2 both attorneys agreed to an early settlement conference

1 granting of protective order saved costs

1 granting motion for sanctions which let to dismissal

1 nature of the case is relevant i.e. briefing on the administrative record keeps costs down.

4 related to early evaluation as a key:
- early evaluation, cost effective discovery and realistic settlement positions
-working on agreed judgment and getting stipulations and agreement on legal and factual issues
-immediate settlement discussions and full cooperation with all aspects of the case
-all lawyers involved addressed the central issue quickly and directly. Once that was accomplished, the parameters of a resolution were identified and pursued.

**IV. DELAY**

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

12 responses out of 41 reviewed. The remainder said N/A, none or were blank.

5 related to discovery:
-wanting more documents without limiting time frame
- refusal to respond to requests for production, to fully respond to interrogatories and failure to appear for depositions
- unreasonable refusal to respond to discovery requests
- failure to timely respond
- delay tactics on routine matters

2 related to evaluation:
- unreasonable settlement position
-unreasonable expectations

1 failure to respond to settlement proposal

1 failure to attend settlement conference

1 pro se litigant

1 filing of meritless action

1 scheduling problems of out of town attorney

1 disagreement on amount of damages

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

There were 9 specific comments out of 41 reviewed. The remainder marked N/A, none, or were blank.

2 no delay
- 3 month disposition
- dismissal due to Rule 11 sanctions

1 delay was unavoidable

1 nothing could be done when dealing with pro se litigant

2 related to discovery
- closer monitoring of the discovery process by the assigned judge or magistrate
- shorter discovery deadlines

1 limiting the scope of the causes of action

1 court-ordered mediation

1 summary jury trial was the only procedure that could be used to expedite the disposition as the dispute was only as to amount of damages.

## V. ALTERNATIVE DISPUTE RESOLUTION

**V (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?**

12 specifically said " none" or" nothing" with 4 other specific responses. The remainder were blank.

1 mediation
1 arbitration
1 mediation within 30 days of suit being filed
1 earlier implementation (case had settlement conference only)

The following are some interesting comments not reflected in the statistical answers:

**F. Have you participated in the mediation of any civil litigation dispute in any court or through the American Arbitration Association or other private organization? If so, was mediation of the dispute an effective way of reducing costs and delay?**

- AAA proceeding -not effective means of dispute resolution
- not effective - no controls to curb abusive discovery demands
- mediation is effective and a cost reducer
- adds to expense and attorneys fees
-surprised by settlement with help of arbitrator
-mediation was effective but the discovery must be largely done first.

**J. AND K. (Deals with court annexed arbitration)**

-award encouraged defendants to re-examine their positions and offer an acceptable settlement amount.
- case resolved because pro se litigant failed to request de novo trial

The following comment refers to all our procedures and questions V. J,K,& L. " Arbitrations have generally let to favorable comments from participants, counsel and parties... It facilitates settlement. Judge Irwin does an excellent job in conducting mandatory settlement conferences. His unique abilities, together with the simple act of having all of the parties and their counsel together under the auspices of the court for the express purpose of discussing settlement, inevitably facilitates settlement... In the majority of cases in which I have appeared as counsel in the court ordered summary jury trial, settlement has resulted... I do not believe that summary jury trial should be used routinely, but should be reserved for special situations (e.g. cases in which it is especially difficult for counsel and the court to predict liability and/or damages.)"

## VI. DISCOVERY

**VI (A). In the Western 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?**

There were 12 specific responses out of 41 reviewed. The remainder were blank, said "no", etc. Only 5 addressed the "types of action" part of the question as follows:

2 officers and directors liability cases, bank bond litigation, with excessive discovery and depositions of excessive witnesses

1 product liability cases with excessive depositions of experts

1 most types of cases with "too much" discovery

1 multi party cases

The remainder responded to the "forms of excessive discovery":

1 excessive interrogatories and requests for production at the commencement of the litigation

1 excessive requests for document production and excessive depositions of corporate executives who had no involvement

1 depositions lasting longer than 1 day and court would not intervene

1 excessive time spent on discovery, not excessive discovery

1 the excessive discovery abuse (rather than excessive discovery) in the form of unreasonable refusal to adequately respond to requests, delay tactics and unjustified objections

1 unnecessary depositions due to parties listing of numerous persons they claimed they would call at time of trial but had no intention of so calling.

1 no excessive discovery experiences but said that extended discovery is the best methodology for dispute resolution

## VIII. RECOMMENDATIONS AND COMMENTS

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

There were 16 specific responses out of 41 reviewed. Many did not report multiple factors.

Discovery comments relating to both attorney and court practices:

-1 unreasonable discovery demands by attorneys
-2 excessive and burdensome requests for production with no relevancy
-2 excessive interrogatories
-2 excessive depositions

-1 unnecessary discovery disputes requiring motions, briefing and argument
-1 parties who have greater financial abilities attempting to wear down other parties by excessive discovery - especially useful technique if great disparity in financial resources exists between the parties
-1 failure of court to intervene in unreasonable discovery
-2 failure of court to limit discovery or monitor discovery process
-1 multiple extensions of discovery over a year

Witnesses
-1 excessive use of expert witnesses
-1 listing witnesses when party had no intention of calling them at trial
-1 excessive use of witnesses who contend they are experts in some field

Lawyers
-1 recalcitrant, uncooperative attorneys
-1 poor lawyering (lack of understanding of the issues)
-1 over-lawyering
-1 failure to fully disclose information and use of all possible methods to prevent disclosure when disclosure meant his client would loose
-1 behavior and performance of lawyers
-1 delay tactics

Motions
-4 failure by court to give prompt rulings or dispositive motions (one said that this often renders settlement conferences useless, another said this caused major discovery expense and much expense with finalizing pre-trial process and trial preparation expenses)

Other Court

-1 failure of court to require specificity in pleading (relying on "notice" pleading then not holding plaintiff to filed contentions)

-2 required conferences and reports, excessive paperwork orders, often repetitive

-1 lack of a reliable date certain for commencement of trial

Settlement, ADR

-1 no settlement discussions until after discovery concluded

-1 in debtor-creditor cases under $100,000, attendance required at arbitration, settlement conference, depositions and trial increases costs

-1 multiple settlement conferences

-1 summary jury trials

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

21 responses out of 41 reviewed.

First Priority and single responses for cost reduction improvements:

-1 more reasonable lawyers

-4 earlier settlement conferences ("rather than just before trial")

-2 more mediation and arbitration

-1 require each party to immediately disclose all relevant information

-1 closer monitoring of discovery disputes

-1 greater use of magistrates to monitor case, motions, etc.

-1 fewer pre-trial filing requirements

-1 simplify by encouraging stipulations to undisputed facts at early stage.

-1 require parties to identify those witnesses they reasonably anticipate calling for trial sufficiently in advance of trial to eliminate discovery depositions of unnecessary witnesses

-1 less motion practice

-1 timely ruling on motions

-1 more judgments on motion for summary judgment

-1 establish a quiet period during which motions to dismiss and summary judgments are pending

-2 quicker trials (shorter time between filing and trial)

-1 eliminate multiple settlement conferences

-1 enforcing Rule 11

-1 in foreclosure cases, allow parties to resolve some issues without normal scheduling orders. This increases fees and costs when 75% don't go to trial.

**2nd Priority**

-1 more reasonable lawyers
-1 reasonable limitations on burdensome and irrelevant discovery requests
-1 less extensive depositions
-1 prompt resolution of discovery disputes
-1 more extensive pre-trials
-1 suggest the parties consider non -jury trials and avoid time, cost and expense of jury trials
-1 have initial settlement conference first after all information is exchanged
-1 notify attorneys of summary judgment decision at least 30 days prior to trial to reduce trial preparation costs
-1 to the extent possible, create more certainty as to precise trial date
-1 eliminate the summary jury trial

**3rd Priority**

-1 more reasonable lawyers
-1 limiting expert testimony to those truly qualified
-1 more extensive status conferences
-1 have all parties agree as to controlling issues in detail
-1 require timely rulings by the court

**VIII (C). List, in order of priority, three factors which you believe contribute most to the cost of litigation in the Western District of Oklahoma.**

18 responses out of 41 reviewed.

**First Priority and single responses:**

-2 unreasonable lawyers or no cooperation of other party
-1 pretrial filing requirements
-1 meaningless "status conferences" which are time consuming and expensive to parties
-1 rush to complete discovery
-1 failure of court to adequately monitor discovery process
-2 depositions
-1 excessive discovery and delay
-1 listing of unnecessary witnesses or those not reasonably expected to testify at trial
-1 parties with greater financial resources attempting to "wear down" opponent
-2 failure of court to make timely rulings on motions
-2 settlement conferences, arbitration or mediation would be more cost effective than summary jury trials

-1 court-mandated procedures that are not productive
-1 length of time to trial
-1 obstacles of successful litigants to recover attorneys fees

2nd Priority responses:

-1 recalcitrant, uncooperative attorneys
-1 failure of attorneys to understand the applicable law
-1 burdensome and irrelevant discovery requests
-1 inflexible attitude of court regarding extensions of discovery and continuances - result in time and expense in order to obtain a needed delay and additional cost just to meet the court's schedule
-1 required reports and conferences
-1 needless motions
-1 excessive paperwork on motions
-1 scheduling trial prior to ruling on summary judgments and other dispositive motions
-1 delay by courts in ruling on motions
-1 lack of date certain for commencement of trial
-1 arbitration and summary jury trials
-1 should have voluntary arbitration that is mandatory
-1 lack of mediation before discovery is completed
-1 settlement conference when settlement is impossible

3rd Priority responses:

-1 preparation of Exhibit Notebooks
-1 excessive use of expert witnesses
-1 excessive paperwork of motions to produce and interrogatories
-1 unnecessary discovery disputes requiring motions, briefing and arguments
-1 discovery disputes
-1 motions for summary judgments
-1 not getting results on critical motions until eve of trial
-1 poor lawyering (lack of understanding of issues)
-1 need for court to toughen up on liability issues to discourage frivolous lawsuits

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

20 responses out of 41 reviewed.

First Priority and single responses:

-3 no problem with current duration of litigation in Western District. (present time quick enough; time frame compatible with orderly due process)
-1 sensible approach to evaluation of cases
-1 have plaintiff submit proposed schedule shortly after filing
-1 set cases for trial and cut out all the stuff that happens before trial
-1 realistic status conference order dates
-1 more stringent compliance with deadlines
-1 quicker trials
-1 restrict discovery to reasonable areas
-1 closer monitoring of discovery process
-1 require parties identify only those witnesses they reasonably expect to call for trial
-2 settlement conference earlier in the litigation process
-1 earlier mediation, arbitration or settlement conference
-1 court ordered mediation before discovery completed
-1 should have voluntary arbitration that is mandatory
-1 emphasize availability of arbitration and settlement conference, at the request of either party, early in the litigation
-2 quick ruling on motions

2nd Priority responses:

-1 stricter control over excessive and burdensome discovery requests
-1 prompt resolution of discovery disputes
-1 informal resolution of discovery disputes
-1 set short time period to add parties and claims so overall scope of litigation can be determined early
-1 have defendant submit proposed schedule at time of filing answer
-2 mediation or ADR earlier in litigation process
-1 require specialization certification for trial attorneys
-1 appoint temporary judges to dispose of backlogged dockets

3rd Priority responses:

-1 need control over use of expert witnesses
-1 stricter enforcement of ethical rules for lawyers
-1 parties to submit a jointly proposed schedule
-1 have 1 settlement conference and then trial if it is unsuccessful

**VIII (E). List, in order of priority, three ways to improve pretrial discovery in the Western District of Oklahoma.**

17 responses out of 41 reviewed.

First priority and single responses:

- 3 Enforce the rules - broader use of sanctions for failure to comply
-1 make losers in discovery disputes always pay costs and fees
-1 closer monitoring of the discovery process
-1 restrict discovery to reasonable areas
-1 more cooperation among attorneys
-1 have parties agree on numbers of depositions and type of other discovery to be taken
-1 have available an expedited procedure, in all cases, for resolution of discovery disputes
-1 have an early discovery cut-off date
-1 allow more flexibility in "deadlines" when both sides are in agreement
-1 judge should hold pre-trial conference/status conference to single out issues that are without merit
-1 require earlier identification of witnesses who can reasonable be expected to testify at trial
-2 require list of potential witnesses earlier so depositions can be taken with understanding they can be supplemented but with the proviso that they must be listed as soon as discovered
-1 face to face meetings requirement with opposing counsel often is difficult to accomplish - change requirement to only require comment to discuss the dispute.

2nd Priority responses:

-1 emphasize desirability of counsel and parties developing discovery plans at outset of litigation.
-1 orderly development of case
-2 more active involvement by judiciary in discovery process (i.e. enforcement of discovery violations and rules regarding cooperation and completion of discovery)
-1 prompt resolution of discovery disputes
-1 parties should not be permitted to wait until the last day to take depositions

3rd Priority responses:

-1 requirement that plaintiffs' basic theory supported by facts which must be alleged at status conference (early in process)
-1 no additional time for discovery without good grounds and approved by the court
-1 reasonable restrictions on burdensome and excessive discovery requests
-1 more active enforcement of ethical rules

**VIII (F). List, in order of priority, three ways to improve status conferences in the Western District of Oklahoma.**

17 responses received out of 41 reviewed.

-2 present status conference format is excellent.
-1 abolish them except where attorneys cannot agree on scheduling deadlines
-2 court could provide a scheduled time for discovery completion and dispositive motions and proposed trial date and if no objection by the parties, no Status Conference would be necessary and Scheduling Order could be filed.
-1 eliminate personal attendance unless a problem exists that requires court attention
-1 less Status Conferences in foreclosure actions - they tend to be repetitive and not effective
-1 have initial settlement conference prior to Status Conference
-1 more active participation by knowledgeable judges
-1 more attention to scope of issues
-1 judge should require counsel to support issues raised so as to avoid unnecessary discovery on soon to be abandoned issues
-1 more active role of judiciary in encouraging stipulations of facts to avoid unnecessary waste of time at trial
-1 have parties confer prior to status conference. Plaintiff to provide specific factual support for its claims; identify weak and strong claims and early basis for compromise resolution
-1 allow parties more time to develop the facts of their case before setting status conference.
-1 possibly hold them later or establish a discovery planning conference and then hold a status conference.
-1 closer monitoring of the discovery process

<u>2nd Priority responses:</u>

-1 set status conference if it appears there is some change in the case warranting a hearing
-1 restrict discovery to reasonable areas - make restrictive rulings
-1 require parties to accurately set fourth their theories of recovery or defenses (not shotgun approach)
-1 allow attorneys to decide or scheduling of discovery and then force them to adhere to it
-1 prompt resolution of discovery disputes

<u>3rd Priority responses:</u>

-1 allow the parties more leeway in establishing deadlines

**VIII (G). List, in order of priority, three ways to improve settlement conferences in the Western District of Oklahoma.**

14 responses out of 41 reviewed.

**First Priority and single responses:**

-4 Judge Irwin is doing an excellent job. (One said to clone Judge Irwin)
-1 earlier settlement conferences could be helpful
-1 require mediation at different stages of lawsuit (before discovery and after discovery)
-1 emphasize availability at any time during the proceeding at request of a party
-1 require parties to meet prior to settlement conference and identify strengths and weaknesses of the case and begin negotiation process
-1 have each party identify which issue in detail will determine settlement
-1 attorneys should be more realistic concerning the real value of their lawsuit
-1 have settlement conference judge be more aggressive in trying to get parties to settle
-2 require signed affidavits from insurance representatives that they have complete and full settlement authority (it is believed that some do not have this authority or that it is limited)
-1 threshold issues (summary judgment, defenses or theories of liability) should be decided prior to settlement conference

**2nd Priority responses:**

-1 schedule the conference earlier in the litigation
-1 allow for mediation by court-appointed "outside" mediators who are certified
-1 require parties to meet at least once prior to settlement and report results
-1 in the appropriate case, Settlement Judge to make recommendations to both sides
-1 have all pending motions resolved before settlement conference

There were no 3rd priority responses.

**VIII (H). List, in order of priority, three ways to improve court mandated arbitration in the Western District of Oklahoma.**

14 responses out of 41 reviewed. There were no true 2nd or 3rd priority responses.

-1 While I agree that the client or corporate representative of a party need to be present, I do not believe the person with "actual settlement authority" should be required to attend the arbitration. We have found that the manager of the store in question is the better person to attend. It makes him realize the importance of the case and how actions of employees can be perceived differently by others.

-1 only schedule arbitration when requested by a party

-1 extremely good experiences - no suggestions

-1 do away with mandated arbitration - allow voluntary

-1 schedule earlier in litigation process

-1 increase the dollar amount of cases subject to mandatory arbitration

-2 permit court-mandated arbitration to be used in cases that have values in excess of $100,000

-1 I cannot agree to mandatory arbitration because experience has shown that there is not a full understanding as to what is covered by the rule and the arbitrators do not understand the applicable law and are more subject to outside influences and consequently do not rule in accordance with the law.

-1 should have a voluntary arbitration that is mandatory

-1 be prepared

-1 emphasize it can be made available early in litigation at joint request of the parties

-1 need mandatory participation by the client; prohibit argument by counsel in reference to evidence that will or may be presented; require any reference to evidence be substantiated with reference to deposition testimony, affidavits, and or exhibits copied and produced at arbitration; select arbitrators specifically qualified in the area of the law at issue in the lawsuit.

**VIII (I). List, in order of priority, three ways to improve summary jury trials in the Western District of Oklahoma.**

8 specific responses out of 41 reviewed. There was no prioritization of the responses I reviewed.

-3 eliminate/abolish summary jury trials - too expensive

-1 instruction of jury only in issues raised

-1 this procedure is effective, but is not used very frequently. It is costly and, therefore, it is probably preferable that it not be used very often.

-1 schedule earlier

-1 be prepared

-1 permit limited use of live testimony so that credibility of witnesses can be evaluated by jurors.

**IX. LIST ANY ADDITIONAL RECOMMENDATION YOU HAVE THAT WOULD HAVE RESULTED IN A LESS COSTLY RESOLUTION OF THE DISPUTE IN THE REFERENCED CASE.**

4 specific responses of 41 reviewed.

-1 it has not been resolved

-2 no suggestions; the referenced case was handled well, rapidly and efficiently

-1 The Federal Courts are so much better than the State Courts it is hard to find much fault with them; however, I believe more issues could be resolved through summary judgment if the judges would not care so much about being overturned on appeal.

## CIVIL JUSTICE ADVISORY GROUP QUESTIONNAIRE TO ATTORNEY
## Responses 37 through 72

**I(C) Describe the nature of your practice in Federal Court.**

2 Administrative Law
1 Banking
4 Bankruptcy
2 Business Litigation
3 Civil Rights
10 Commercial Litigation
1 Construction, Fidelity & Surety
1 Criminal
6 Debtor/Creditor
4 Employment Discrimination
3 Environmental
1 Franchise litigation
1 Habeas Corpus
1 Insurance Defense
1 Labor
2 Oil & Gas
1 Patent, trademark, copyright
12 Personal Injury
8 Product Liability
2 Securities
1 Tort Litigation

**III(B) COST OF LITIGATION. The cost of litigation in the referenced case could have been improved by:**

1 Accelerating discovery and limiting scope/length of depositions
1 Faster resolution of discovery disputes (sanctions for bad faith conduct)
1 Restricting size and contents of record on appeal
1 Counsel being knowledgeable about law
1 Less discovery and motion practice
1 Fewer expert witnesses
2 Could not be improved
3 Faster rulings on motions
2 Fewer conferences in the court and less paperwork requirements
23 Not applicable/None/No response

**III(C) COST OF LITIGATION. In the referenced case one or more lawyers in the action conducted procedures which contributed to excessive costs. Those actions were:**

1 Dilatory practices during most phases of the case, especially discovery
1 Filing of baseless motion to dismiss
1 Frivolous lawsuit
1 Objection to almost every question although objections reserved at commencement of deposition
1 Postponing scheduled deadlines

1 Pro se litigant designated numerous documents as part of record on appeal neither presented to nor considered by the bankruptcy court
31 Not applicable/None/No response

III(D) **COST OF LITIGATION. In the referenced case one or more lawyers took actions which contributed to the reduction of excessive costs in the action as follows:**

1 Consolidated discovery with similar cases
8 Cooperative/expeditious discovery
8 Early/expeditious settlement discussions
1 Meetings among defendants to decide discovery and trial requirements
1 Requested exclusion of designated items which were neither presented to nor considered by bankruptcy court
1 Stipulations to dispose of controversy
14 Not applicable/None/No response

IV(B) **DELAY. The actions taken by the above parties which caused delay in the referenced action were as follows:**

1 Delay in preparing and filing answer
1 Failure to promptly rule on motion for summary judgment
1 Ignorance of counsel concerning law
1 Insurance carrier was unrealistic
1 No summons issued
1 Out of state plaintiff
1 Too many extensions
29 Not applicable/None/No response

IV(C) **DELAY. Delay in the referenced action could have been reduced by the following practices or procedures:**

1 Counsel should be more knowledgeable concerning law
1 Issue summons
1 Prompt ruling on motion for summary judgment
1 Speed up time in filing answer
1 Stick to scheduling order
31 Not applicable/None/No response

V(D) **ALTERNATIVE DISPUTE RESOLUTION. What other form of alternative dispute resolution would have reduced costs of litigation of the referenced case or reduced delay in the referenced case?**

3 Arbitration/mediation
1 Binding summary jury trial
32 Not applicable/None/No response

VI(A) **DISCOVERY. In the Western 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 form of excessive discovery occurred?**

1 Necessity of compelling definite answers
1 Counsel prolonging litigation
2 Creating production for fear or increased value reasons rather than basic fact-finding approach
1 "Churning" to increase hourly billing and financially harass lawyers whose clients didn't have as much money to spend on the case
1 Overbroad inquiries
1 Excessive interrogatories
2 Excessive deposition time due to undue objections, repetitive questioning
4 Excessive depositions
1 Excessive requests for unnecessary documents
2 Depositions with inquiry into matters of little, if any, relevance
22 Not applicable/None/No response

## VIII RECOMMENDATIONS AND COMMENTS.

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

2 Clients' unwillingness to accept the law/unrealistic clients
1 Cost of discovery
1 Cost of experts
2 Court required paperwork
2 Court ordered conferences
2 Court reluctance to rule as matter of law on substantive issues
1 Court using mediation procedures to force settlement
4 Court imposed rules and procedures surrounding pretrial orders/preparation/presentation
7 Court's delay in ruling on motions
1 Delays of all kinds
1 Denial of dispositive motions
1 Deposition costs
6 Excessive/overly broad discovery
1 Excessive interrogatories
1 Failure to require early settlement conferences
2 Failure of counsel to be receptive to early settlement discussions
1 Failure of lawyers to be thorough
2 Forced adherence to litigation deadlines while awaiting ruling on motion for summary judgment
1 Frivolous lawsuits
1 Ignorance of the law
1 Inability to subpoena witness into district
1 Invalid legal theories
21 Judicial indifference to discovery abuse
1 Late notice of depositions
1 Lawyers refusing to conduct litigation on a reasonable basis
1 Pro se litigants
1 Refusal to focus on legal issues early
1 Staying discovery during pendency of motions

2 Voluminous pleadings, briefs and agreements/over-briefing
16 Not applicable/None/No answer

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

1 Assess attorneys fees as sanctions
1 Clarify basis for discovery objections
1 Cooperation among counsel
8 Court rule on motions/substantive issues quickly
3 Court ordered mediation
1 Court supervision of pro se litigants
3 Date certain setting of civil trials
1 Defer status conference until completion of discovery
1 Dismiss more motions for sanctions and attorneys fees without hearing in cases that are undeserving
6 Earlier settlement conferences
1 Exhaustive pretrial conference not more than 90 no less than 60 days prior to trial
2 Extension of litigation deadlines if decision on motion for summary judgment not made within 45 days of filing of response
3 Flexibility in litigation deadlines
1 Focus on substantive issues earlier
1 Impose of costs of litigation on losing party
1 Increase in cap for mandatory arbitration to $200,000
1 Increase use of interrogatories instead of short depositions
4 Judicial control of discovery
1 Leave form of presentation to lawyers
1 Limit of deposition time and length
1 Limit pre-trial discovery in small cases
1 Limit scope and necessity of expert testimony
1 Limit number of persons accepted to law school
1 Oversight of settlement discussions
1 Reduce clerk's excessive charges
2 Reduce court contact with litigants
1 Reduce time from filing to disposition
4 Reduce paperwork requirements
1 Refuse to grant leave to file reply/surreply briefs on every issue
1 Relax requirements regarding pretrial orders, exhibits
1 Resolve discovery disputes by phone conference
1 Selective use of alternative dispute resolution
1 Settlement conferences on attorney fee questions
1 Sustain more requests to quash certain discovery
3 Tighter controls on abuse of discovery requests/depositions
13 Not applicable/None/No answer

(C) **List, in order of priority, three factors which you believe contribute most to the cost of litigation in the Western District of Oklahoma**

1 Absence of earlier alternative dispute resolution
6 Abuse of discovery
2 Cost of experts
3 Cost of depositions/discovery
4 Court failure to timely rule on pending motions
2 Court ordered conferences
2 Court reluctance to rule as matter of law on substantive issues
2 Court required paperwork
2 Delay by attorneys
1 Denial of dispositive motions
1 Discovery disputes
1 Document production
1 Excessive concentration on pretrial filings
2 Failure of counsel to cooperate
2 Failure to require early settlement conferences
3 Failure of counsel to be receptive to early settlement discussions
1 Frivolous pretrial motions
1 Inexperienced counsel
2 Inflexible litigation deadlines
1 Lawyers refusing to conduct litigation on a reasonable basis
1 Needless court appearance for lawyers
1 Needless efforts to force litigants into settling cases after reasonable attempt at settlement
1 Other delays of all kinds
1 Overdone rules
1 Poor performance by lawyers of limited ability or energy
1 Pretrial paperwork
1 Pro se litigants
1 Summary jury trial
1 Time from filing to disposition
2 Uncertainty with trial dates
1 Overdone pressure on attorneys
15 Not applicable/None/No answer

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

1 Clarify basis for discovery objections
1 Cooperation of counsel
1 Court supervision of pro se litigants
1 Court ordered mediation
2 Date certain for trial
1 Defer status conference until completion of discovery
1 Don't grant all requests for extensions
7 Early settlement conferences
1 Interrogatories instead of short depositions

2 Judicial control of discovery
1 Limit deposition time allocated and proposed length
2 Modified alternative dispute mechanisms
1 More frequent status/pretrial conferences
1 Pretrial conference 60 to 90 days prior to trial
7 Prompt Court rule on motions/substantive issues
1 Realistic discovery schedule/fewer extensions
3 Reduced paperwork requirements
2 Reduced court contact with litigants
1 Resolve discovery disputes without a hearing
1 Screen case for defensibility
20 Not applicable/None/No answer

(E) **List, in order of priority, three ways to improve pretrial discovery in the Western District of Oklahoma.**

3 Assess costs against discovery abusers
2 Clarify rules on discovery objections
1 Cost of discovery
1 Defer status conference until completion of discovery
1 Develop specific discovery plan, take more time in initial scheduling conference
1 Discourage frivolous Rule 11 motions used for tactical purposes
1 Don't criticize reasonable lawyers and litigants
1 Early exchange of witness and exhibit lists
1 Eliminate summary jury trial
1 Eliminate "meet and confer" rule, have court available to rule
2 Encourage litigants to confer about and with potential witnesses before unneeded depositions are taken
2 Encourage cooperation among counsel
1 Encourage informal discovery before formal
1 Encourage early settlement
1 Increase use of interrogatories instead of short depositions
2 Judicial control of discovery
1 Limit deposition time allocated and proposed length
5 Limit discovery to relevant facts
1 Narrow the issues involved early on
1 No award of attorney fees/sanctions that would encourage filing of motions in order to get them
1 Pretrial conference 60-90 days prior to trial
4 Quick and decisive resolution of discovery disputes
1 Reduce paperwork
1 Resolve disputes by phone conference
1 Rules to encourage agreed deposition scheduling
1 Sanction unreasonable attorneys and litigants
1 Sanction bad faith tactics
1 Stick to deadlines
1 Stop evasive answers
1 Telephone conferences replacing court appearance
20 Not applicable/None/No answer

(F) **List, in order of priority, three ways to improve status conferences in the Western District of Oklahoma.**

2 Abolish
1 Add preliminary settlement conference
2 Allow eight months from date of filing to trial; if not ready, dismiss or grant sanctions
1 Allow more time and thoroughly discuss case
2 Allow litigants to set schedules without court involvement
1 Clarify rules on discovery objects, logging of privileged documents
1 Conduct by conference call for non-metro area lawyers
1 Conference held by magistrate or judge who can discuss settlement
1 Defer status conference until completion of discovery
3 Earlier date for conference
1 Earlier date for arbitration
1 Earlier date for settlement conference
1 Eliminate need for witnesses to identify exhibits or testify
1 Eliminate "meet and confer" rule, have court available to rule
1 Encourage agreed scheduling orders
2 Focus on legal issues
1 Handle by telephone
1 If assigned judge hears status conference go directly to abbreviated settlement conference before magistrate
1 Let lawyers know what Judge expects prior to conference
1 Make report more narrative
1 Mandatory, magistrate-controlled discovery conferences
1 More flexibility in discovery deadlines
1 More emphasis on stipulations
1 Pretrial conference 60-90 days prior to trial
1 Schedule after beginning of discovery
1 Take more time in initial scheduling conference, develop specific discovery plan
21 Not applicable/None/No answer

(G) **List, in order of priority, three ways to improve settlement conferences in the Western District of Oklahoma.**

1 Have clients attend by conference call
1 Have more than one
1 Push harder for settlement
5 Schedule earlier
1 Schedule first conference before considerable discovery is undertaken
1 Schedule last conference following "final" pretrial
1 Strictly enforce requirement of representative present with unlimited settlement authority
1 Submit binding/non-binding offers of settlement to magistrate before the conference - not to be seen by other parties
1 When it's apparent a case won't settle, don't continue
28 Not applicable/None/No answer

(H) **List, in order of priority, three ways to improve court mandated arbitration in the Western District of Oklahoma.**

6 Abolish
1 Allow time for meaningful presentation of issues/evidence
1 Balance list with attorneys from other areas of the law
1 Do prior to discovery and if unsuccessful again after discovery is completed
1 Have conference/written agreement as to details, costs, rules, finality, etc.
1 Have arbitrators conduct settlement conference
1 Increase limits to $200,000
1 Increase arbitrator compensation
1 Keep paperwork to a minimum
1 Limit type of case
1 Make litigant sign trial de novo request
1 Promulgate arbitration rules
2 Require parties' attendance and testimony
1 Simply procedure and hold preliminary hearing to hone down issues
1 When it's apparent a case won't settle, don't continue
25 Not applicable/None/No answer

(I) **List, in order of priority, three ways to improve summary jury trials in the Western District of Oklahoma.**

3 Abolish
1 Discourage "sandbagging" of arguments and evidence
1 Don't limit theories of either party
2 Have instructions fully ready to present at close of evidence
2 Have all motions of substantive law ruled on as soon as possible
1 Lengthen allowable time to each party to present case
2 Let lawyers try their case in courtroom; if sanction required, Judge to do so harshly in chambers
1 Permit limited testimony by key witnesses
1 Require substantial stipulations of documents
1 Require substantial stipulations of facts in writing
1 Use in conjunction with settlement conference and sufficiently before trial
1 When it's apparent a case won't settle, don't continue
27 Not applicable/None/No answer

## IX. LIST ANY ADDITIONAL RECOMMENDATIONS YOU HAVE THAT WOULD HAVE RESULTED IN A LESS COSTLY RESOLUTION OF THE DISPUTE IN THE REFERENCED CASE.

1 Early preliminary meeting with settlement judge/magistrate to hone down issues, simplify discovery and promote settlement
2 Eliminate as much court contact as possible
2 Eliminate punitive damages except in only strongest of cases
2 Eliminate questionnaires
33 Not applicable/None/No answer

CIVIL JUSTICE ADVISORY GROUP

QUESTIONNAIRE TO PARTY

(Subjective Responses)

**2. If so (if there was excessive delay in the case), what do you believe were the primary causes of that delay?**

Out of 94 responses, there were 86 either not applicable or "no" answers based on "no" answers to question #1 (was there excessive delay in the case?).

Only one of 94 stated length of deposition and postponement of scheduled dates as a cause. One mentioned failure of the court to rule on summary judgment motions. One mentioned post settlement delays, another delays associated with related litigation and another unavoidable delay caused by bankruptcy complication. One said delay was caused by "lawyers." There were 2 prisoner pro se responses - one regarding need for better access to law library and delay in determination of improper forum as problems and the second commented on the unfairness of automatic continuances/extensions granted the state without allowing him a response.

**5. Do you believe that in the referenced case there was excessive cost or expense? If so, what were the causes of the cost or expense, in your opinion? (First part, " yes/no" tabulated elsewhere)**

Out of 94 responses returned, 6 specifically mentioned attorneys fees as the cause of this excessive cost. 5 specifically mentioned expenses related to discovery. 2 said that the lawsuit was frivolous in the first place causing excessive costs. Expert witness fees were the cause in 2 responses and investigator expenses also mentioned once. One other said more time was needed between discovery cut-off and other trial deadlines to focus on settlement without cost and expense of trial preparation necessitated by impinging trial deadlines.

6. **Do you have any suggestions that would improve the prompt and efficient resolution of federal court cases in Oklahoma City? If so, list them.**

There were 36 responses out of the 94 surveys returned. These responses are included below by category.

Foreclosure actions. Three comments. One response was that there is not need for excessive Status Conferences and Status Reports in these proceedings - that increases cost and don't help. Another stated that the Court handles foreclosure actions very expeditiously. Yet another said there is a need for uniform local rules for foreclosure proceedings, replevin, confirmation hearings and deficiency judgment hearings as well.

Status conferences. There was one comment suggesting a reduction in paperwork, such as current use of the extensive Scheduling Conference Status Reports.

Discovery. Seven responses were directed to this facet of litigation. 2 stated a need for faster disposition of discovery problems with one of those suggesting a need for the close monitoring of the discovery process and speedy access to the assigned judge or magistrate for disposition of disputes. Two others mentioned a need for court-ordered limitations on length and scope of depositions and on irrelevant discovery and document requests. One recommended identification of only those witness who would testify so as to cut down on unnecessary depositions. Two others mentioned early discovery deadlines and restricted discovery in smaller cases.

Motions. 4 stressed a need for faster disposition of pre-trial motions and reduction in time such motions are kept under advisement in order to avoid unnecessary discovery, delay and cost. Another said that the Court should weed out the frivolous lawsuits at the appropriate stage by being more agressive in ruling upon dispositive motions.

Settlement procedures in general. 20 responses were received that related to this entire area. One party suggested that the court "quit trying to settle every case at all costs" and make procedures available for attorneys to choose. Another said more forceful use of settlement processes would help. Another was in favor of early use of settlement procedures. Yet another suggested having each attorney within 30 days of the answer submit parameters of possible settlement on the controlling issues only. Then a conference should be immediately set for preliminary discussion before a magistrate. One more general comment was that the settlement conference, mediation and mini-trial be restricted in smaller cases and, in this same vein, another stated that multiple

settlement conferences and the summary jury trial procedure are, for the most part, not helpful. It went on to say "In addition to being expensive, they are time consuming and counter-productive. A single settlement conference should suffice in the 'normal' case."

Arbitration. Early arbitration hearings are helpful said one respondent. Another was concerned that the award did not contain sufficient pain and suffering damage amounts but that he could not go on with the case due to inability to post de novo fees.

Settlement conference. Three parties said the settlement conference was effective largely due to Judge Irwin himself. Three others commented that there is a need for the court-sponsored settlement conference earlier in the litigation. Another wanted more settlement conferences.

Mediation. There were 3 responses suggesting that mediation would be good in Federal Court and its use should be increased.

Required attendance at settlement proceedings. Four responses were aimed at our courts requirement for attendance of parties with settlement authority. One respondent suggested that the court not require out of state home office employees to travel to OKC for Arbitration Hearings where the local representative would suffice, but that a settlement conference was different. Another stated that settlement conferences should be eliminated where parties must travel long distances in cases which the lawyers think the case will not settle. It further said that more consideration should at least be given to allow the parties to appear by telephone in those cases.

The following response is quoted in its entirety in the interest of cost evaluation: "Allow out-of-state parties, particularly in debtor-creditor cases, to attend settlement conferences and arbitration by telephone. In a case of less than $100,000, a creditor can be forced to fly to Okla. City for arbitration, settlement conference, depositions and trial. When the chances of recovery from an insolvent debtor are questionable, a creditor can be forced to drop the lawsuit or settle for an unacceptable amount to avoid the prohibitive cost of travel. In this age of speaker phones, there certainly is no reason to require a party to attend a settlement conference in person."

Another responded that mandatory attendance of client representatives with full settlement authority at a settlement conference should occur (1) within one month before discovery cut-off and (2) again immediately after discovery cut-off.

Miscellaneous. In regard to frivolous lawsuits, one suggestion was to make it more financially dangerous to bring one. Again the elimination of the use of automatic extensions to the state in prisoner cases was mentioned as a means of cost reduction. And finally there were 2 comments that stated that no improvement is needed with one saying that resolution of cases in the Western District is prompt and if costs are excessive, neither the court nor the lawyers can do anything about it.

# APPENDIX 5

REPORT OF MAGISTRATE JUDGE PAT IRWIN ON ALTERNATIVE DISPUTE RESOLUTION IN THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA
UNITED STATES COURTHOUSE
OKLAHOMA CITY, OKLAHOMA 73102

PAT IRWIN
UNITED STATES MAGISTRATE

(405) 231-5483

August 19, 1991

Peter Bradford, Chairman
Civil Justice Reform Act Advisory Group.

RE: REPORT ON THE DISPOSITION OF CASES COVERING THE PERIOD BEGINNING JANUARY 1, 1984 AND ENDING JUNE 30, 1991.

This report covers the period beginning January 1, 1984, and ending June 30, 1991. During this 7-1/2 years the Court disposed of 21,116 civil cases. 20,167 civil cases were terminated prior to trial and 949 were disposed of by jury and non-jury trials. Percentage wise - 95.51% of the 21,116 cases were terminated prior to regular court trial during the 7-1/2 years.

The 20,167 cases terminated prior to trial include:

(1) The cases dismissed by the parties prior to judicial intervention;

(2) (a)Disposition of cases by the Court sua sponte; (b) by court orders responsive to dispositive motions, such as sustaining Motions for Summary Judgment; (c) or any other orders issued by the court disposing of a case prior to trial; and

(3) Cases settled by reason of the combination of Arbitration, Summary Jury Trials, Settlement Conferences and all other proceedings involving court intervention.

PAT IRWIN
United States Magistrate Judge

PI:ker

| YEAR | CASES TERMINATED PRIOR TO TRIAL | CASES TERMINATED BY JURY AND NON-JURY TRIAL | TOTAL NUMBER OF CASES TERMINATED | NUMBER OF ARBITRATION HEARINGS HELD | NUMBER OF SUMMARY JURY TRIALS HELD | NUMBER OF SETTLEMENT CONFERENCES HELD | PRIOR TO TRIAL.. PERCENTAGE CASES DISMISSED, SETTLED, TERMINATED |
|---|---|---|---|---|---|---|---|
| 1984 | 2,786 | 140 | 2,926 | -0- | 10 | 605 | 95.2% |
| 1985 | 3,437 | 172 | 3,609 | Started May 1985<br>14 | 17 | 725 | 95.25% |
| 1986 | 2,880 | 135 | 3,013 | 114 | 13 | 742 | 95.52% |
| 1987 | 2,851 | 157 | 3,008 | 125 | 18 | 742 | 94.78% |
| 1988 | 2,480 | 121 | 2,601 | 135 | 26 | 626 | 95.35% |
| 1989 | 2,499 | 99 | 2,598 | 143 | 30 | 614 | 96.2% |
| 1990 | 2,158 | 79 | 2,237 | 119 | 25 | 546 | 96.47% |
| Jan. 1-91 June.30-91 1991 | 1,076 | 48 | 1,124 | 54 | 10 | 280 | 95.73% |
| | | | | | | | Average |
| TOTAL | 20,167 | 951 | 21,116 | 700 | 149 | 4,880 | 95.51% |

95.51% of the cases terminated since January 1, 1984, have been dismissed, settled or terminated prior to trial. The total number of settlement conferences held (4,880) does not include the settlement conferences conducted by the Summary Jury Trial Judge after the Summary Jury Trial.

**APPENDIX 6**

CASE MANAGEMENT ORDER
IN USA v. HARDAGE

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

FILED

UNITED STATES OF AMERICA,
Plaintiff,
vs.
ROYAL N. HARDAGE, et al.,
Defendants.

No. CIV-86-1401-W

DOCKETED

CASE MANAGEMENT ORDER

In order to promote the orderly and efficient conduct of the instant litigation, this Court hereby enters the following Case Management Order:

I. Admission of Attorneys

Each attorney who is not of the bar of this Court shall, upon application to this Court, be deemed admitted pro hac vice to practice before this Court in this proceeding.

II. Liaison Counsel

A. Counsel for Defendants Advance Chemical Distribution, Inc.; Allied-Signal, Inc.; AT&T Technologies, Inc.; Ashland Oil, Inc.; Atlantic Richfield Company; Borg-Warner Corporation; Cato Oil & Grease Company; Dal-Worth Industries, Inc.; Double-Eagle Refining Company; Exxon Corporation; The Firestone Tire & Rubber Company; Foster Feed & Seed Co.; Gencorp, Inc.; Honeywell, Inc.; J.O.C. Oil Exploration Company, Inc.; Kerr-McGee Refining Corporation; L & S Bearing Company; Magnetic Peripherals, Inc.; Maremont Corporation; McDonnell-Douglas Corporation; Mobil Chemical Corporation; Nalco Chemical Company; Oklahoma Gas and

Electric Company; Oklahoma National Stockyards Company; The Oklahoma Publishing Company; Rockwell International Corporation; Texaco, Inc.; Texas Instruments, Inc.; Uniroyal, Inc.; UOP, Inc.; Westinghouse Electric Corporation; and Weyerhaeuser Company (hereinafter collectively referred to as "Generator Defendants") shall appoint a liaison counsel.

B. Counsel for Defendants Powell Sanitation Service, Inc.; Samuel L. Bishkin individually, and d/b/a Eltex Chemical & Supply Company; and United States Pollution Control, Inc., (hereinafter collectively referred to as "Transporter Defendants"), shall appoint a liaison counsel.

C. Counsel for Royal N. Hardage need not appoint liaison counsel.

D. Respective liaison counsel shall be appointed within ten days of entry of this Case Management Order and the Court and all parties shall be notified promptly of the name, address and telephone number of such liaison counsel.

E. Duties of Liaison Counsel

1. General Responsibilities

The respective liaison counsel shall be responsible for:

a. coordination of the defense of defendants on common issues;

b. communication with the Court and with the government on behalf of their respective group of defendants;

c. organization of joint and uniform discovery and other pleadings and papers on behalf of defendants.

2. Communications with the Court

All communications from the Court shall be directed to the liaison counsel. Liaison counsel will be responsible for notifying each counsel representing defendants within its respective group of defendants of all communications from the Court.

3. Pleading Files

Each liaison counsel shall maintain complete files containing copies of all documents served by or upon defendants, which files shall be reasonably available for inspection and copying by counsel for all defendants within its respective group of defendants.

4. Certificate of Service

a. Service List

Each liaison counsel shall file with the Court, and maintain and distribute to all counsel, up-to-date official service lists of its respective group of defendants. It shall be the responsibility of each defense counsel within the respective group of defendants to notify the liaison counsel of any changes necessary to maintain the service list up-to-date.

b. Form of Certificate

Whenever any document is filed with the Court, it shall be sufficient for the certificate of service to state the particular document was served upon counsel for all parties at the address given in the latest official service list (specifying the date thereof) filed with the Court and maintained by liaison counsel.

5. Service

a. Pleadings and documents directed to all defendants

Any document which is directed to all defendants within a respective group of defendants can be served by sending a copy of that document to the liaison counsel. Liaison counsel has the responsibility for distributing copies of such documents to each defendant within his or her respective group of defendants. The time allowed for responding to any document served under this provision shall be extended by five days to allow for distribution of the document by liaison counsel.

b. Pleadings or documents directed to less than all defendants

Liaison counsel is not responsible for and is not authorized to accept service of any

pleadings or other documents directed to fewer than all of the defendants within his or her respective group of defendants. Any party wishing to serve such a pleading or document may perfect that service only by serving copies on counsel of record for each party to whom the document is directed and on liaison counsel.

6. Additional Responsibilities

The liaison counsel, or his or her designee, shall perform such other duties as may be expressly authorized or directed by further order of this Court.

7. Court Appearance

To promote the efficiency of court proceedings, the defendants are directed to coordinate their presentations and argument before the Court through the liaison counsel for their respective group of defendants or his or her designee, to the maximum extent feasible and practicable. Argument will be presented by only one representative from each group of defendants selected by the group to present argument, to the maximum extent feasible and practicable. Additional attorneys representing individual defendants may argue upon leave of the Court, for good cause shown.

8. Separate Counsel

The designation of liaison counsel shall not preclude counsel for any party from participating in this action through its own individual counsel, to the extent necessary to represent the individual interest of that party, and subject to the conditions set forth in this Case Management Order.

III. Motions

A. To avoid duplicative motions practice, it is hereby directed that all motions, briefs and other papers shall be filed whenever possible by the Generator Defendants jointly and by the Transporter Defendants jointly, through their liaison counsel or his or her designee, to the maximum extent feasible and practicable. Motions on behalf of Defendant Royal N. Hardage need not be filed jointly with other defendants.

B. Whenever a defendant wishes to file pleadings or motions separate from those of liaison counsel, that defendant shall do so only after first attempting to have its pleadings or motions presented through the liaison counsel and within ten (10) days of the filing of a related pleading, if any, by the liaison counsel. Separate motions filed by defendants shall contain a statement that such defendants have complied with this provision.

IV. Cross-claims

The filing of all cross-claims for indemnification or contribution among defendants shall be stayed until sixty (60) days after the signing of this Order. This shall not prevent

some or all of the defendants from agreeing among themselves to stay or to prevent the filing of cross-claims. The Court and parties recognize that claims for relief may be filed in the future among defendants and that such future claims will not be barred by this stay. Any cross-claim filed prior to the entry of this Order also shall be stayed until sixty (60) days subsequent to the signing of this Order.

V. Bifurcation of Trial

A. The trial of this action is bifurcated into two phases. Phase I, which shall be tried first, shall determine whether defendants are liable to plaintiff under Section 7003 of RCRA, 42 U.S.C. § 6973, and under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. Phase II, which will be tried following the trial of Phase I, at a date to be designated by this Court, will relate to the issues of appropriate response-remedial measures and damages.

B. Any trial of cross-claims or third-party claims for contribution shall be separate from the United States' action and shall not commence until the trial in Phases I and II has been completed. Any trial of insurance carrier responsibility issues shall occur during Phase I.

VI. Discovery

A. Stay

Discovery shall proceed upon all issues related to liability (Phase I) and on issues relating to response measures and damages (Phase II).

B. Discovery Scheduling Order

The parties will meet within thirty (30) days of the entry of this Case Management Order and will agree upon a schedule for all discovery for Phase I and Phase II. This schedule will be submitted to the Court for approval and issuance of a Discovery Scheduling Order. If such a schedule cannot be agreed upon within forty (40) days of the entry of this Case Management Order, the parties will notify the Court and will submit proposed schedules for the Court's review, so the Court may enter a Discovery Scheduling Order. Any Discovery Scheduling Order submitted by the parties shall include, at a minimum, the following: (1) the number of interrogatories permitted; (2) a schedule for service of interrogatories, requests for production of documents and requests for admissions; (3) a date by which all depositions shall be completed; and (4) a date by which all discovery shall be completed.

Except as otherwise provided in the Discovery Scheduling Order, whenever a defendant wishes to file discovery requests, pleadings, or motions separate from those of liaison counsel, that defendant shall do so only after first attempting to have its discovery requests, pleadings, or motions presented through the liaison counsel and, in any event, within ten (10) days of the filing of a related request, pleading, or motion, if any, by the liaison counsel.

C. Written Discovery

1. Written discovery, including interrogatories, requests for production and for admissions, shall be submitted jointly on behalf of their respective defendants by liaison counsel, or his or her designee, to the maximum extent feasible and practicable. Other defense counsel for individual defendants may submit their ideas, drafts or other work product to liaison counsel for incorporation into written discovery to be filed by liaison counsel. Joint discovery will reflect both the common and particular needs of each defendant. Independent discovery by individual defense counsel will be permitted only by leave of Court, upon representation that liaison counsel has refused to incorporate into its discovery the requests of individual defense counsel, and that such requests are unique to and essential to the defense of that individual defendant.

2. Plaintiff may file interrogatories to each defendant whose cumulative total to each defendant may not exceed that set forth in the Discovery Scheduling Order described above. Each representative group of defendants (Generator Defendants and Transporter Defendants) and Royal N. Hardage may file interrogatories whose cumulative total may not exceed that set forth in the Discovery Scheduling Order described above. Each subpart of an interrogatory shall be counted as a separate interrogatory, except that interrogatories inquiring as to the existence, location and custodian of documents or physical evidence shall be construed as one interrogatory. Any interrogatories in excess of

the foregoing must be approved by this Court. In responding to discovery, Plaintiff need provide only one copy of its response to each liaison counsel and one copy to the attorney for Royal N. Hardage. Each liaison counsel will be responsible for distributing to counsel within their respective group of defendants all answers to discovery.

D. Depositions

At depositions, liaison counsel or other defense counsel designated by liaison counsel, shall have the opportunity to begin and to complete his or her examination of each witness at a deposition. Such counsel shall ask all questions on behalf of his or her respective group of defendants. Other defense counsel may ask questions only upon representation on the record that either the liaison counsel has refused to inquire into the area to be explored, or that the area is unique to and essential to the defense of the individual defendant. An objection by counsel for any of the Generator Defendants made at a deposition shall be deemed made by all Generator Defendants. Similarly, an objection by counsel for any of the Transporter Defendants made at a deposition shall be deemed made by all Transporter Defendants.

VII. Third Party Defendants

Third party defendants may be added as follows:

(1) The defendants are granted until sixty (60) days after the signing of this Order to file third-party complaints.

Thereafter, leave of Court on motion upon notice to all parties to the action is required.

(2) Service of the third-party summons and third-party complaint shall be made promptly, and also shall be accomplished by service of a copy of this Case Management Order. This Case Management Order shall be binding upon each third-party defendant as though they were presently a defendant, unless relief is sought upon motion filed by the third-party defendant within twenty (20) days of service of the third-party complaint. Third-party defendants shall appoint a liaison counsel. Third-party defendants shall have sixty (60) days from service of the third-party complaint in which to file a response.

(3) In the event of the withdrawal or removal of a third-party from any private agreement which stayed or prevented the filing of third-party claims, the defendant shall be allowed thirty (30) days following a withdrawal or removal within which to file a third-party complaint against the withdrawing or removed party.

VIII. Settlement Organization

A. Due to the number of parties, all defendants and third-party defendants are directed to organize themselves for purposes of settlement discussions and to report to this Court and to Plaintiff's attorneys within fifteen (15) days of the entry of this Case Management Order, or their joinder in the case, on their chosen manner of organization. The Report shall include, at a minimum, the identity of designated representatives

(no more than six) who shall represent the group or sub-group of parties in settlement discussions. The make-up, structure, authority and compensation (if any) of this Settlement Committee shall be determined by defendants and third-party defendants.

B. Defendants will select from among the members of the Settlement Committee a spokesperson to be designated as "Negotiation Counsel." The "Negotiation Counsel" shall be the spokesperson for defendants during negotiations. Defendants may select as "Negotiation Counsel" the person who is "Liaison Counsel."

C. Representatives of plaintiff and all defendants and all third-party defendants shall meet within thirty (30) days of the entry of this Case Management Order to identify and to discuss those matters which may be resolved through the settlement process.

IX. Cooperation Among Defendants and Exchange of Information

A. The cooperation among defendants for the purpose of coordinating discovery, trial, sharing counsel, or otherwise minimizing expenses in the instant litigation shall not constitute, by itself, evidence of conspiracy, concerted action or any other wrongful conduct.

B. All information and/or documents exchanged among defendants and third-party defendants (and their agents, consultants, experts and attorneys) is communicative for the limited purpose of assisting in a common defense effort, and shall not constitute

a waiver of the attorney-client privilege, work-product exception to discovery, trade secret, or other privilege.

X. Extensions

Any opposed application for an extension of the foregoing deadlines must be in writing and served upon counsel for each party having an interest in the extension. Any opposed application must disclose (1) the precise relief sought; (2) good cause for such extension; (3) a statement regarding the positions of counsel for other parties regarding the applications; and (4) a statement that counsel have conferred in good faith and are unable to agree upon an extension.

XI. Modification or Supplementation

This Case Management Order may be further modified or supplemented for good cause shown.

ENTERED this 26TH day of March, 1987.

LEE R. WEST
UNITED STATES DISTRICT JUDGE

# APPENDIX 7

REPORT OF STATE COURT MEDIATION IN OKLAHOMA CITY
OKLAHOMA DISTRICT COURT

# STATUS OF CJ AND CS CASES REFERRED TO MEDIATION IN OKLAHOMA COUNTY (OKLAHOMA) DISTRICT COURT

December 1, 1990 through June 30, 1991

©Nancy K. Anderson, attorney/mediator
Gloria C. Bates, attorney/mediator
Barbara J. Bingham, legal assistant, Murrah & Davis

## FACT SHEET

1. TIME PERIOD - December 1, 1990, was the effective date for new local court rules that allow judges to refer to mediation any civil case in the state district courts of Oklahoma and Canadian counties. (Previously, the court rules had no provisions for mediation.) This report concerns referrals only in Oklahoma County, which includes Oklahoma City, the state capital. June 30, 1991, was the end of the fiscal year.

2. TYPES OF CASES - CJ cases are those civil cases in which damages in excess of $10,000 are sought. CS cases are those in which more than $2,500 but no more than $10,000 in damages is sought. A separate report has been prepared on mediation of small claims (SC) cases, which involve no more than $2,500. No report has been prepared on domestic relations cases; relatively few referrals have been made, and further development is anticipated.

3. REFERRAL PROCEDURE - Cases are referred by court order initiated by a judge, by an attorney, or by agreement. Judges varied in the extent to which they initiated referrals, and in when they did so, i.e., at various stages of litigation.

4. SOURCES OF INFORMATION - The status of cases referred to mediation was determined from a variety of sources, including: a) one or both of the two forms that are required to be submitted to the court administrator for each case referred to mediation; b) court orders, and c) individual followup on cases in which information on the form reporting the results of mediation was incomplete or no form was filed. Followup on more than 70 cases required hundreds of phone conversations with attorneys' offices.

5. NUMBER OF CASES - The total number of cases in the study is 283. This figure includes 279 cases referred by court order, and four cases in which mediation occurred by agreement of the parties, and there was no referral order. Of the 283 cases, 278 were CJ cases and five were CS cases. (The four voluntary cases were counted because they were among those on which report forms were submitted. Other voluntary mediations are known to have occurred as a result of the rules, but report forms are not required on such mediations.

6. STATISTICS INCLUDED - The study includes all CJ and CS cases referred to mediation through June 30, beginning with two cases referred in late November after the local rules were adopted but before they took effect. The statistics include all results reported as of August 2 for such cases. Results of mediations after July 1 in such cases are not included unless report forms were turned in by August 2.

7. RESULTS PENDING - Results were still pending in 109 cases (38.5 percent) of the 283 cases. "Results pending" includes cases for which the original mediation deadline was July 1, 1991, or later and no results had been reported by June 30; and cases in which the original deadline was prior to July 1 and mediation had not yet occurred (with or without a continuance by the court) but attorneys reported that it was still anticipated. In some of the latter cases, mediations were reported scheduled in July or August. A common cause for delay was the need for further discovery.

8. RESULTS REPORTED - Reports of results were obtained in 174 (61.5 percent) of the 283 cases referred. The results were broken into three categories: did not / will not mediate; settled before mediation, and mediated.

9. DID NOT / WILL NOT MEDIATE - 21 cases (12 percent of results reported). This category includes cases in which 1) the judge withdrew the mediation order at the request of one or more of the attorneys, 2) an order was ignored, or 3) an order became moot, e.g., a case was dropped without settlement.

10. SETTLED BEFORE MEDIATION - 22 cases (13 percent of results reported). This category includes cases in which settlement was reached after a referral order was entered and before mediation. The reports of settlements before mediation support the general belief that mediation orders encourage parties to settle on their own.

11. MEDIATED - 131 cases (75 percent of results reported). Results of cases mediated are reported under three categories: settled, settled in part, and not settled.

12. SETTLED IN MEDIATION - 78 cases (59.5 percent of cases mediated). This category includes cases in which agreement was reached soon after the formal mediation sessions - if such agreements were reported - as well as those in which agreement was reached at mediation.

13. SETTLED IN PART - 5 cases (4 percent of cases mediated). This category includes cases in which agreement was reached on one or more issues or claims, or the case was settled as to some but not all parties.

14. NOT SETTLED - 48 cases (36.5 percent of cases mediated). The lack of settlement in or soon after a mediation session does not mean mediation failed, as illustrated by the comments of some of the attorneys contacted for information for this report. The mediation may lay the groundwork for settlement later on, for example, or clarify issues for trial.

15. JUDGES - Fourteen district judges and one special district judge referred cases to mediation during the seven months covered by the report. The number of cases referred ranged from 65 cases by one judge to two cases each by several judges. Ten or more cases were referred to mediation by each of the following judges: Bana Blasdel, Bryan Dixon, Leamon Freeman, Richard Freeman, Niles Jackson, Eugene Mathews, Dan Owens and Carolyn Ricks.

16. MEDIATORS - A total of 24 individuals were identified as mediator for at least one of the 131 cases mediated. Of these, 17 were private mediators or representatives of private (fee paid) or public (volunteer mediators) mediation services on the list compiled for the court by the OCBA subcommittee; the other seven were not.

17. TYPES OF CLAIMS - Individual data was not collected on the types of claims involved in each case. However, they covered a wide range, from personal injury and medical malpractice to oil and gas and real estate contracts.

18. TIME ALLOWED FOR MEDIATION - The time limits set by judges varied from a few days to a few months, depending on the litigation schedule. In 112 cases where both the date of the court order and the date of the original deadline for mediation were available, 76 cases were mediated no later than the original deadline. This constitutes timely compliance with the original deadline in 68 percent of the cases referred. Included in the remainder were cases for which the mediation order was withdrawn; that figure was not determined. The number of cases for which the judges extended the deadline is not known.

19. AGE OF CASES - The 283 cases were filed in 1984 through 1991.

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Nancy K. Anderson and GLoria C. Bates co-drafted the local court rules for referral to mediation and co-chair the Mediation Subcommittee of the Alternative Dispute Resolution Committee of the Oklahoma County Bar Association. Barbara J. Bingham compiled the mediation statistics.

For further information, contact:

-Nancy K. Anderson, 2605 SW 66, Oklahoma City, OK 73159
405/682-4930

-Gloria C. Bates, 2212 Shadowlake Drive, Oklahoma City, OK 73159
405/691-5080

.09-10-91

# MEMORANDUM

TO: All Members, CJAG-Western District of Oklahoma

FROM: Peter B. Bradford, Chairman

DATE: August 23, 1991

RE: Mediation

The Judicial Improvements Act of 1990, Section 473(a)(6) requires the Western District, as a Pilot District, to consider referring cases to ADR programs, ". . . including mediation, . . ."

More than 75% of the CJAG members responding to the group questionnaire of July 2, 1991 answered that a court annexed mediation program be instituted.

At the August 20, 1991 meeting of the group, Chairman Bradford reported that he had met with the ADR Committee of the OCBA in August concerning the mediation program of the Oklahoma County District Court, adopted December 1, 1990.

Group members Huff and Edem volunteered to meet with Bradford and mediation sub-committee members of the OCBA to discuss the state mediation program and possible implementation of a mediation program in the Western District.

That meeting was held August 21, 1991. Bob Raftery, a lawyer mediator and chairman of the OCBA-ADR Committee, Nancy Anderson, lawyer mediator, and Sylvia Marks Barnett, lawyer mediator and president of the Oklahoma Academy of Mediation, met with Bradford, Huff and Edem.

The OCBA mediation group recommended that mediation be considered by the Western District of Oklahoma as an additional ADR alternative. The Oklahoma County mediation program has been successful so far with a success rate of 70% in 205 cases up to May 8, 1991. It was suggested that mediation be discussed at the initial status conference under Local Rule 17 (an amendment of that Rule to include mediation would be required). If voluntary mediation was not agreed to at that time, counsel would be requested to report to the court when sufficient case evaluation had taken place to permit an informed mediation proceeding. At that point, mediation could be mandatory or voluntary. Possibly some percentage of civil cases could be sent to mediation instead of non-binding arbitration under Local Rule 43.

The group members present agreed that selection of a panel of trained mediators, the opportunity for training of mediators and the general education of the federal bar about the mediation process all would be necessary.

It was also recognized that mediation hearings could occur at any town in the District as a convenience to litigants and counsel residing at some distance from Oklahoma City.

Chairman Bradford will discuss these subjects with Magistrate Judge Blasdel and Ann Dudley Marshall and report further at the next meeting of CJAG on September 6, 1991.

PBB\MEDIATIO.MEM

# APPENDIX 8

FORM OF QUESTIONNAIRE TO ATTORNEYS AND PARTIES BY
THE CIVIL JUSTICE ADVISORY GROUP
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

# CIVIL JUSTICE ADVISORY GROUP QUESTIONNAIRE TO ATTORNEY

This questionnaire is being sent to legal counsel of record who participated in a civil lawsuit which was terminated within the Western District during the statistical year 1991. Please answer all questions to the best of your ability and return the completed questionnaire to Robert Dennis, Clerk of the Court, United States District Court, Western District of Oklahoma, 200 N.W. 4th Street, Room 3210, Oklahoma City, Oklahoma 73102.

Information obtained from these questionnaires will be compiled into statistical results and employed in a report to be submitted by the Civil Justice Advisory Group to the Judges of the Court in connection with their implementation of a plan pursuant to the Civil Justice Reform Act of 1990. If you have any questions, please contact either Mr. Dennis or Peter B. Bradford (405/232-0003), Chairman of the Civil Justice Advisory Group.

The term "the referenced case" means the civil lawsuit terminated during statistical year 1991 in which you were counsel. The style and case number are listed on the enclosed letter.

## I. BACKGROUND.

A. Years in Practice: 0-5 6-10 11-15 16-25 over 25

B. What percentage of your practice is in Federal Court?

C. Describe the nature of your practice in Federal Court: (e.g., personal injury, product liability, employment discrimination, labor, securities, debtor/creditor, other).

## II. ACTIVITIES IN THE REFERENCED CASE.

A. Approximately how many depositions were taken in the referenced case?

B. How many days were spent in deposition in the referenced case?

C. How many days were spent in trial, if any, in the referenced case?

D. How many days were spent in settlement negotiations, including settlement conferences in the referenced case?

E. The time from filing of the action to disposition in the referenced case was:

_____ too short
_____ too long
_____ about right.

III. COST OF LITIGATION.

A. The cost of litigation in the referenced case was:
(0 = not excessive, 5 = greatly excessive) 0 1 2 3 4 5

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

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

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

IV. DELAY.

A. In the referenced case the resolution of the action was delayed by:

_____ lawyers
_____ the court
_____ litigants

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

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

V. ALTERNATIVE DISPUTE RESOLUTION.

A. The following methods of alternative dispute resolution were employed in the referenced case:

_____ court mandated arbitration
_____ summary jury trial
_____ court ordered settlement conference
_____ other (please specify) _____

B. The alternative dispute resolution described in the preceding question was or was not effective in resolving the action?

C. Which alternative dispute resolution technique is the most effective procedure used in the Western District of Oklahoma?

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

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

F. Have you participated in the mediation of any civil litigation dispute in any court or through the American Arbitration Association or other private organization? If so, was mediation of the dispute an effective way of reducing costs and delay?

G. If you participated in a court ordered settlement conference in the referenced case, how many settlement conferences were conducted? 0 1 2 3 4 5

H. Was the settlement conference productive?

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

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

K. If you participated in a court annexed arbitration proceeding in the referenced case, did it result in an award which was instrumental in causing the parties to settle the litigation?

L. If the award did not cause settlement of the litigation, did another form of alternative dispute resolution result in settlement?

M. Was the time and expense spent in the alternative dispute resolution program considered worthwhile in an effort to settle the dispute? If not, why not?

## VI. DISCOVERY.

A. In the Western 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 form of excessive discovery occurred?

## VII. TRIAL.

A. In the Western District of Oklahoma, is the time between filing of a complaint and trial of the case (0 = too short, 5 = too long): 0 1 2 3 4 5

## VIII. RECOMMENDATIONS AND COMMENTS.

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

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

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

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

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

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

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

H. List, in order of priority, three ways to improve court mandated arbitration in the Western District of Oklahoma.

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

IX. LIST ANY ADDITIONAL RECOMMENDATIONS YOU HAVE THAT WOULD HAVE RESULTED IN A LESS COSTLY RESOLUTION OF THE DISPUTE IN THE REFERENCED CASE.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

# CIVIL JUSTICE ADVISORY GROUP QUESTIONNAIRE TO PARTY

If possible, the group would like to have the following information from your client in the referenced case. You may obtain this information by telephone inquiry or personal conference.

1. In the referenced case, do you believe that there was excessive delay from the time the suit was filed until it was terminated?

2. If so, what do you believe were the primary causes of that delay?

3. Was the referenced case settled? If so, what procedures enabled the settlement to occur?

   A. Settlement conference - Judge Irwin

   B. Court annexed arbitration

   C. Summary jury trial

   D. Private settlement negotiations

   E. Other (Please specify)

4. Would mediation assist in the settlement of referenced case?

5. Do you believe that in the referenced case there was excessive cost or expense? If so, what were the causes of the cost or expense, in your opinion? (For example: attorney fees, filing fees, expert witness costs, other expenses)

6. Do you have any suggestions that would improve the prompt and cost efficient resolution of federal court cases in Oklahoma City? If so, list them.

**This information, while confidential, will be of assistance to the Civil Justice Advisory Group of the Western District of Oklahoma which is required by law to review the disposition of cases in this Court. Thank you.**

# APPENDIX 9

FEDERAL JUDICIAL CENTER STATISTICAL REPORT

OKW

| Yr | | Stud Loan/ Vets | Pris CvRts | Pris Oth | SocSec | Asbestos | Insurance | Other Contract | CivRts | CivRts Jobs | Pers. Injury | Bankrup tcy | Land Condemn/ Foreclose | Copyr/Pat /Trdmrk | Banking | RICO | Labor | ERISA | Securities | Tax | ICC | Forfeiture, Penalty | Fraud | All Other | All |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 81 | Term | 0 | 58 | 123 | 46 | 0 | 72 | 283 | 57 | 33 | 265 | 10 | 90 | 13 | 3 | 0 | 31 | 3 | 27 | 39 | 6 | 25 | 12 | 321 | 1517 |
| | Pending | 0 | 28 | 22 | 34 | 0 | 58 | 230 | 51 | 41 | 273 | 5 | 53 | 15 | 3 | 0 | 27 | 2 | 34 | 22 | 0 | 0 | 8 | 197 | 1103 |
| | Life expect | 0.0 | 5.8 | 2.1 | 8.9 | 0.0 | 9.7 | 9.8 | 10.7 | 14.9 | 12.4 | 6.0 | 7.1 | 13.8 | 12.0 | 0.8 | 10.5 | 8.0 | 15.1 | 6.8 | 0.0 | 0.0 | 8.0 | 7.4 | 8.7 |
| 82 | Term | 98 | 77 | 120 | 44 | 0 | 78 | 363 | 56 | 50 | 345 | 20 | 111 | 23 | 3 | 0 | 27 | 2 | 28 | 48 | 1 | 5 | 10 | 286 | 1795 |
| | Pending | 25 | 42 | 23 | 36 | 0 | 63 | 314 | 42 | 49 | 278 | 3 | 96 | 13 | 1 | 0 | 13 | 1 | 35 | 23 | 1 | 4 | 13 | 182 | 1227 |
| | Life expect | 3.1 | 1.9 | 2.3 | 9.8 | 0.0 | 9.7 | 10.4 | 9.0 | 11.8 | 9.7 | 1.8 | 10.4 | 6.8 | 4.0 | 0.0 | 5.8 | 6.0 | 15.8 | 5.8 | 12.0 | 9.6 | 15.6 | 7.6 | 8.2 |
| 83 | Term | 366 | 66 | 105 | 57 | 0 | 86 | 646 | 62 | 79 | 379 | 13 | 156 | 24 | 15 | 0 | 14 | 2 | 40 | 54 | 7 | 15 | 16 | 271 | 2473 |
| | Pending | 57 | 32 | 36 | 46 | 0 | 72 | 595 | 54 | 63 | 271 | 10 | 131 | 14 | 57 | 0 | 17 | 1 | 126 | 15 | 0 | 6 | 21 | 146 | 1770 |
| | Life expect | 1.9 | 5.8 | 4.1 | 9.7 | 0.0 | 10.0 | 11.1 | 10.5 | 9.6 | 8.6 | 9.2 | 10.1 | 7.0 | 45.6 | 0.0 | 14.6 | 6.0 | 37.8 | 3.3 | 0.0 | 4.0 | 15.8 | 6.5 | 8.6 |
| 84 | Term | 539 | 113 | 147 | 79 | 0 | 106 | 960 | 58 | 79 | 354 | 26 | 159 | 18 | 28 | 0 | 27 | 2 | 39 | 36 | 2 | 10 | 22 | 188 | 2992 |
| | Pending | 61 | 41 | 40 | 106 | 2 | 106 | 615 | 58 | 97 | 394 | 27 | 122 | 17 | 37 | 0 | 18 | 1 | 169 | 19 | 3 | 4 | 27 | 188 | 2152 |
| | Life expect | 1.4 | 4.4 | 3.3 | 16.1 | 0.0 | 12.0 | 7.7 | 12.0 | 14.7 | 13.4 | 12.5 | 9.2 | 11.3 | 15.9 | 0.0 | 8.0 | 6.0 | 52.0 | 6.3 | 18.0 | 4.8 | 14.7 | 12.0 | 8.6 |
| 85 | Term | 536 | 132 | 101 | 130 | 1 | 129 | 869 | 71 | 104 | 450 | 44 | 133 | 18 | 27 | 0 | 21 | 3 | 121 | 39 | 11 | 14 | 31 | 247 | 3232 |
| | Pending | 130 | 35 | 32 | 47 | 3 | 123 | 632 | 72 | 128 | 481 | 21 | 113 | 20 | 22 | 0 | 23 | 3 | 100 | 28 | 2 | 8 | 40 | 206 | 2269 |
| | Life expect | 2.9 | 3.2 | 3.8 | 4.3 | 36.0 | 11.4 | 8.7 | 12.2 | 14.8 | 12.8 | 5.7 | 10.2 | 13.3 | 9.8 | 0.0 | 13.1 | 12.0 | 9.9 | 8.6 | 2.2 | 6.9 | 15.5 | 10.0 | 8.4 |
| 86 | Term | 221 | 118 | 123 | 69 | 4 | 166 | 888 | 75 | 136 | 546 | 51 | 133 | 26 | 19 | 0 | 27 | 6 | 50 | 57 | 5 | 11 | 40 | 253 | 3024 |
| | Pending | 34 | 52 | 54 | 23 | 1 | 119 | 669 | 91 | 125 | 433 | 32 | 150 | 8 | 18 | 1 | 32 | 16 | 84 | 18 | 3 | 5 | 32 | 212 | 2212 |
| | Life expect | 1.8 | 5.3 | 5.3 | 4.0 | 3.0 | 8.6 | 9.0 | 14.6 | 11.0 | 9.5 | 7.5 | 13.5 | 3.7 | 11.4 | 0.0 | 14.2 | 32.0 | 20.2 | 3.8 | 7.2 | 5.5 | 9.6 | 10.1 | 8.8 |
| 87 | Term | 168 | 130 | 157 | 46 | 1 | 171 | 909 | 109 | 116 | 471 | 67 | 175 | 14 | 23 | 2 | 35 | 19 | 50 | 36 | 7 | 11 | 33 | 233 | 2983 |
| | Pending | 52 | 42 | 63 | 31 | 4 | 173 | 568 | 96 | 93 | 384 | 74 | 126 | 11 | 13 | 13 | 31 | 7 | 69 | 25 | 3 | 7 | 38 | 167 | 2090 |
| | Life expect | 3.7 | 3.9 | 4.8 | 8.1 | 48.0 | 12.1 | 7.5 | 10.6 | 9.6 | 9.8 | 13.3 | 8.6 | 9.4 | 6.8 | 78.0 | 10.6 | 4.4 | 16.6 | 8.3 | 5.1 | 7.6 | 13.8 | 8.6 | 8.4 |
| 88 | Term | 153 | 118 | 181 | 58 | 4 | 224 | 725 | 119 | 93 | 460 | 105 | 127 | 15 | 20 | 3 | 29 | 12 | 44 | 43 | 7 | 11 | 43 | 248 | 2842 |
| | Pending | 28 | 50 | 62 | 51 | 13 | 126 | 433 | 85 | 76 | 289 | 89 | 68 | 9 | 12 | 21 | 29 | 14 | 50 | 40 | 6 | 11 | 23 | 146 | 1731 |
| | Life expect | 2.2 | 5.1 | 4.1 | 10.6 | 39.0 | 6.8 | 7.2 | 8.6 | 9.8 | 7.5 | 10.2 | 6.4 | 7.2 | 7.2 | 84.0 | 12.0 | 14.0 | 13.6 | 11.2 | 10.3 | 12.0 | 6.4 | 7.1 | 7.3 |
| 89 | Term | 141 | 141 | 179 | 87 | 15 | 181 | 611 | 110 | 94 | 396 | 118 | 149 | 23 | 19 | 17 | 41 | 15 | 23 | 46 | 6 | 19 | 25 | 222 | 2678 |
| | Pending | 14 | 50 | 40 | 69 | 13 | 100 | 298 | 69 | 75 | 220 | 46 | 179 | 13 | 19 | 10 | 26 | 9 | 48 | 32 | 2 | 17 | 22 | 155 | 1526 |
| | Life expect | 1.2 | 4.3 | 2.7 | 9.5 | 10.4 | 6.6 | 5.9 | 7.5 | 9.6 | 6.7 | 4.7 | 14.4 | 6.8 | 12.0 | 7.1 | 7.6 | 7.2 | 25.8 | 8.3 | 4.0 | 10.7 | 10.6 | 8.4 | 6.8 |
| 90 | Term | 94 | 172 | 200 | 111 | 12 | 147 | 418 | 76 | 92 | 289 | 80 | 323 | 21 | 15 | 16 | 37 | 11 | 22 | 57 | 17 | 18 | 21 | 220 | 2469 |
| | Pending | 7 | 31 | 40 | 41 | 16 | 95 | 200 | 93 | 57 | 182 | 43 | 242 | 10 | 17 | 1 | 31 | 8 | 47 | 26 | 2 | 3 | 19 | 133 | 1344 |
| | Life expect | 0.9 | 2.2 | 2.4 | 4.4 | 16.0 | 7.8 | 5.7 | 14.7 | 7.4 | 7.6 | 6.5 | 9.0 | 5.7 | 13.6 | 0.8 | 10.1 | 8.7 | 25.6 | 5.5 | 1.4 | 2.0 | 10.9 | 7.3 | 6.5 |

The table shows cases terminated and pending and estimated life expectancy, by case type, for statistical years (12 months ending June 30) 1981-1990. All life expectancy computations are estimates but the method used here is a rough estimate, computed by dividing annual terminations into pending cases, and then multiplying by 12 to convert the units to months. Although the estimate is a rou one, it generally proves to be reliable except when annual case filings vary markedly from annual terminations. Asbestos cases, in particular, exhibit this problem, and the life expectancy estimates these cases is often obviously meaningless. Generally, the life expectancy estimates can be assumed to provide a reliable indication of trend so long as year-to-year variations are modest enough to indicate a trend. Prepared by John Shapard of the Federal Judicial Center (FTS 633-6326).