REPORT OF THE CIVIL JUSTICE REFORM ACT ADVISORY COMMITTEE OF THE NORTHERN DISTRICT OF FLORIDA

October 12, 1993

TABLE OF CONTENTS

CIVIL JUSTICE REFORM ACT

ADVISORY COMMITTEE

Steven M. Goldstein, Chairperson
Professor of Law and Associate Dean
for Academic Affairs
Florida State University College of Law

MEMBERS

Kirk Ball
Vice President/General Manager
Fisher-Brown, Inc.

Pamela Jenks Bernard
General Counsel
University of Florida

Eugene L. Brown
Director, Escambia-Pensacola
Human Relations Commission

Harry F. Chiles
Assistant Attorney General
State of Florida

Carolyn T. Cramer

Talbot D'Alemberte
Attorney, Steel Hector & Davis

Carol P. Deegan
CPA
Pierce, Deegan & Hodgin, PA

Karen O. Emmanuel
Attorney
Emmanuel, Sheppard & Condon

John M. Fite
Attorney, Barron, Redding,
Hughes, Fite, Bassett
& Fensom

Robert G. Kerrigan
Attorney, Kerrigan, Estess,
Rankin & McLeod

Duncan Moore
President and CEO
Tallahassee Memorial
Regional Medical Center

Horace Moore
Attorney At Law

Donald H. Partington
Attorney, Clark, Partington,
Hart, et al.

Richard Smoak
Attorney At Law

Gregory R. Miller
Interim U.S. Attorney
Northern District of Florida

Ma'Su Sweeny
Deputy Clerk
U.S. District Court
Northern District of Florida

The Honorable Roger Vinson
U.S. District Judge
Northern District of Florida

Kathy C. Whitaker
Senior Vice President/Cashier
Sun Bank Tallahassee

PROFILE OF THE NORTHERN DISTRICT CASE DOCKET

Introduction

In putting together the profile of the Northern District of Florida case docket which follows, the committee reviewed data reflecting past case filings, trends in case filings and the use of court resources. Specifically, the committee reviewed statistics and other information relevant to these subjects compiled by the Office of the Clerk of the Court of the Northern District, the Administrative Office of the United States, the Federal Judicial Center, the U.S. Bureau of Prisons, and U.S. Attorney's Office for the Northern District. It also considered data provided by the American Bar Association.

The Northern District Case Docket

A. Description of the Court

The Northern District stretches over 23 Florida counties in the northern portion of the state from Escambia County on the west to Alachua County on the east. It has four divisions, one in Pensacola, one in Panama City, one in Tallahassee and one in Gainesville. The District is presently authorized to have four judges, two full time magistrate judges and two part-time magistrate judges. It also has one senior judge.

B. The Civil Docket

1. Number and Types of Civil Cases

Over a six year period, the number of civil cases per judgeship that have been filed in the District has remained relatively constant. The District had 388 civil filings per judgeship during FY 1992[1] in contrast with 323 filings per judgeship in FY 1991.[2] Although the total number of cases per judgeship filed is an important figure, it fails to provide much information concerning the work the cases filed will impose on the court.

As contrasted with the total number of cases filed, the percentage distribution by types of civil cases filed from SY 1990-92[3] is set out below.

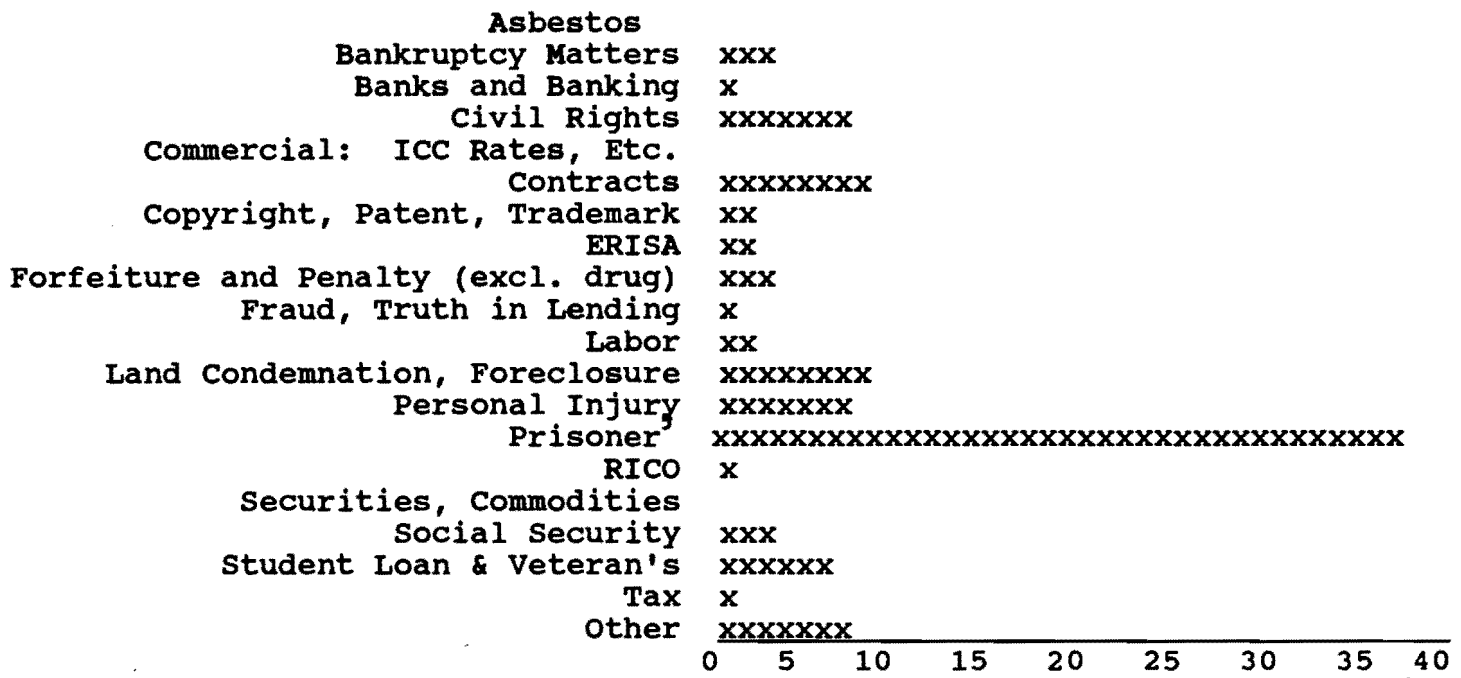
---

[1] "FY" connotes the federal fiscal year which begins on October 1 of the preceding calendar year and ends on September 30 of the named year. If the term "statistical year" or "SY" is used in this report, it connotes the time period from July 1 of the preceding year to June 30 of the named year. Because statistics compiled by the various sources referred to by the committee use different "years," this report will specify whether the year used is fiscal or statistical.

[2] See Appendix A, U.S. District Court Judicial Workload Profile, Florida Northern. In FY 1990, 357 civil cases were filed per judge; 1989, 360; 1988, 418; and in 1987, 397. For an explanation of the Judicial Workload Profile, see Appendix B, Explanation of Profiles For United States District Courts.

[3] "SY" connotes a statistical year from July 1 to June 30, see note 1, supra.

Distribution of Civil Case Filings, SY90-92[4]
Northern District of Florida



The above chart indicates that the District has a disproportionate number of prisoner cases. In SY92, 654 prisoner cases were filed in the District, a significant increase over the previous statistical year when 466 prisoner cases were filed.[6] These cases often require an excessive amount of time to handle

---

[4] See Appendix C, Guidance to Advisory Groups Appointed under the Civil Justice Reform Act of 1990, SY92 Statistics Supplement, p. 11, September 1992.

[5] Prisoner cases encompass all cases filed by prisoners, including post conviction proceedings and actions challenging conditions of confinement.

[6] See Appendix D, Guidance to Advisory Groups Appointed under the Civil Justice Reform Act of 1990, SY92 Statistics Supplement, p. 11, September 1992.

because of the issues involved and because the vast majority of these cases are brought by pro se litigants. The large number of penal institutions in the District helps in part explain the number of prisoner cases filed.[7]

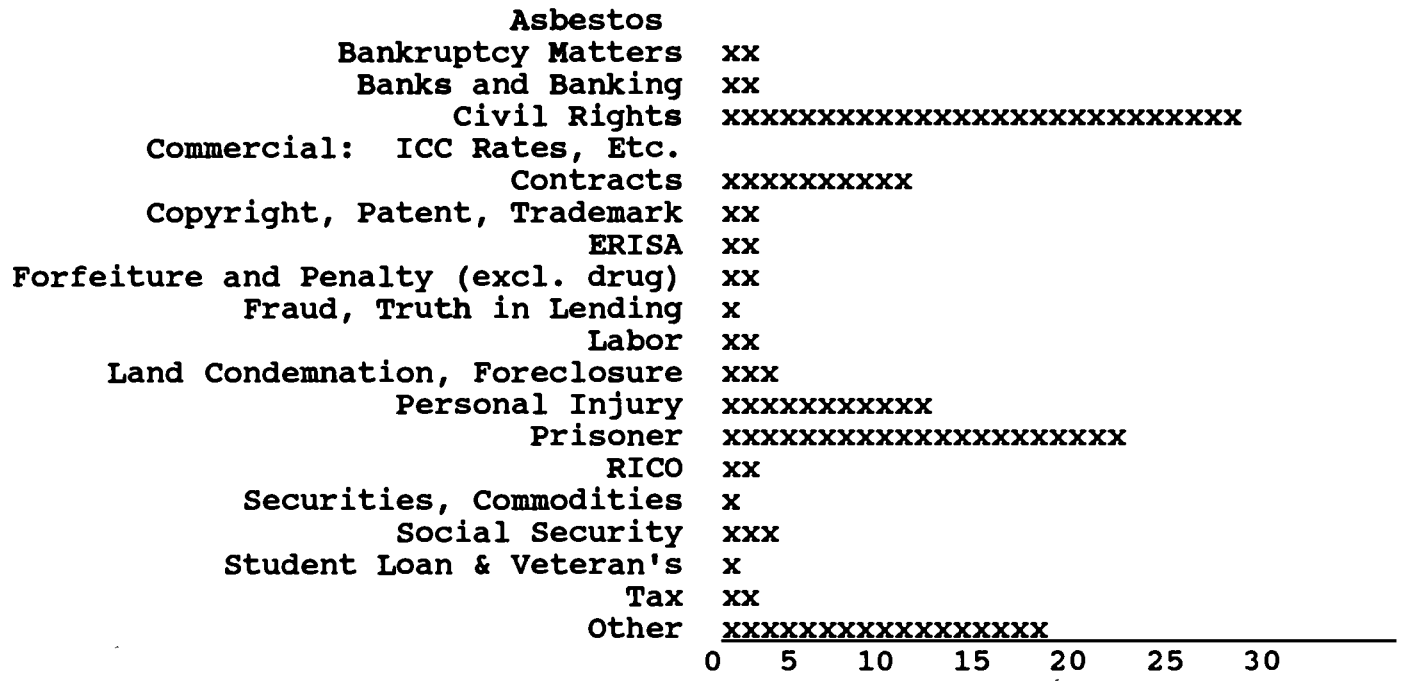
The type of case in of itself will not indicate the workload these cases generate. Therefore, the Judicial Conference of the United States has developed a system of case weights based on an assessment of the judicial time devoted to different types of cases. The weighting system is designed to reflect the work a type of case will impose on the court. In SY 1990-92, the distribution of weighted civil case filings for the Northern District is set forth below:[8]

---

[7] According to statistics maintained by the U.S. Bureau of Prisons, the Northern District of Florida houses 5.8% of the entire U.S. prison population. This amounts to approximately 4,600 individuals. Also, a significant number of state prisoners are housed in state penal institutions located in the Northern District. Finally, the District is host to the State Capitol where many state officials maintain their offices, making venue appropriate for prisoners initiating civil rights actions.

[8] In evaluating the utility of a weighted system, it should be noted that the Judicial Conference uses a national weighting system which may not be consistent with the actual treatment of cases in the Northern District.

Distribution of Weighted Civil Case Filings, SY90-92
Northern District of Florida[9]



It is apparent that weighting the case filings results in a significant increase in civil rights cases, other cases, personal injury cases and, to a lesser extent, contract cases. Although the percentage of prisoner cases decreases, it remains significant.

2. Time Spent on Civil Cases

It appears that the judges of the Northern District in 1992 were able to proceed at approximately the same pace in handling their civil docket as in previous years. The median number of

[9] See Appendix E, Guidance to Advisory Groups Appointed under the Civil Justice Reform Act of 1990, SY92 Statistics Supplement, p. 13, September 1992.

months for a civil case to go from issue[10] to trial, from filing to disposition, [11] and the percent of civil cases over three years old were as follows for the six fiscal years from 1987 - 1992:[12]

Year	Issue to Trial	Filing to Disposition	Number (and %) of Cases Over 3 Years Old
1987	15	8	33 (3.1)
1988	20	6	40 (3.8)
1989	15	9	66 (6.1)
1990	19	10	91 (7.8)
1991	23	11	103 (7.9)
1992	19	9	45 (3.0)

Figures also show that the Northern District ranked eighth of nine Districts within the Eleventh Circuit and 61st of 93 District Courts within the United States for the fiscal year ending September 30, 1992, in median time - 19 months - from issue to trial of all civil cases.[13] Also, the Northern District ranked sixth of nine Districts within the Circuit and 36th of 94 Districts nationally for the fiscal year ending September 30, 1992 in median time - 9 months - from filing to disposition of all civil cases.[14] Finally, for the number and percentage of cases over three years old, the District ranked 5th of nine Districts in the Circuit and

---

[10] "Issue" refers to the point in time when all pleadings and responsive pleadings have been filed but before formal discovery commences.

[11] Note that for this figure, prisoner cases are not included, See Appendix B.

[12] See Appendix A.

[13] See Appendix A.

[14] See Appendix A.

22nd of 94 Districts nationally for FY 1992.[15] It is also instructive to note that the national average for fiscal year 1992 from issue to trial in civil cases was 15 months, from filing to disposition it was 9 months, and the percentage of civil cases over three years old was 7.7%.[16]

In assessing the reasonableness of any time period to dispose of civil cases, it is also instructive to compare civil and criminal cases filed in the District. For purposes of comparison, it makes the most sense to compare the median time in months from "filing to disposition" of criminal felony cases, with the time that elapses from "issue to trial" in civil cases. These comparisons are set out below:

Year	Civil Issue to Trial	Criminal Filing to Disposition[17]
1987	15	3.6
1988	20	3.6
1989	15	4.9
1990	19	5.2
1991	23	5.6
1992	19	5.4

The above figures show that the median time to dispose of a criminal felony case in the District is significantly shorter than the time frame from issue to trial in a civil case. In terms of

---

[15] See Appendix A.

[16] See Appendix F, United States District Courts - National Judicial Workload Profile.

[17] See Appendix A.

the median time to dispose of criminal felony cases, the Northern District ranks 4th of nine Districts within the Eleventh Circuit and 31st of 94 Districts nationally for FY 1992.

Traditionally, the data examined to determine the pace of civil litigation has included the indicators used above - median time from filing to disposition, median time from issue to trial, and number and percentage of three year old cases. However, this data may not always be a reliable indicator of the length of time it actually takes a civil case to go through the federal judicial system. For instance, in a year when a court terminates very few of its oldest cases the median average disposition rate will decrease and thus indicate faster disposition times because the court was disposing of younger cases. Conversely, if the court disposes of a major backlog of older cases, the median disposition time will increase, suggesting that the court was losing, rather than gaining, ground.

Because the age of cases terminated in the most recent year may result in a misleading prediction of how long it will take to dispose of cases now being filed, the Federal Judicial Center suggests life expectancy measures be employed to predict the life of a case.[18] In SY 1992 the Northern District's civil cases experienced a life expectancy of approximately 14 months.[19] This

---

[18] Guidance to Advisory Groups Appointed under the Civil Justice Reform Act of 1990, SY92 Statistics Supplement, pp. 14-15, September 1992.

[19] See Appendix G, Guidance to Advisory Groups Appointed under the Civil Justice Reform Act of 1990, SY 92 Statistics Supplement, p. 15, September, 1992.

figure is a more realistic indicator of how long it takes to dispose of civil cases in the Northern District.

C. The Criminal Docket

1. Overview

In its examination of the impact of the criminal docket on civil cases, the committee undertook a detailed statistical study regarding criminal filings in the District. The committee also examined trends and changes in the nature of federal law, including the impact of the federal sentencing guidelines and the "federalization" of many state crimes. In compiling its data the committee spoke with district and magistrate judges and personnel in the Office of the Clerk, and the office of the United States Attorney for the District.

By definition given a finite amount of judicial time, an increase in the time demanded by the criminal docket will limit the resources available for the Court's civil caseload. Although difficult to document, it is believed that the advent of federal sentencing guidelines and the increasing federalization of state crimes has increased the time that the District's judges must devote to the criminal docket. Also, it is axiomatic that the criminal docket must take precedence over civil filings given the Federal Speedy Trial Act and the Sixth Amendment guarantee of a speedy trial.

2. NUMBER AND DISPOSITION OF CRIMINAL CASES

The number of criminal cases disposed of in the Northern District remained relatively constant between FY 1989 and 1992. The number of criminal cases disposed of was as follows: In 1989, 227 criminal cases were disposed of, in 1990, 206 criminal cases were disposed of, in 1991, 210 criminal cases were disposed of and in 1992, 228 criminal cases were disposed of.[20] Regarding criminal felony filings, in FY 1987, 80 cases were filed per judge, in FY 1988, 76 cases per judge, in FY 1989, 77 cases per judge, in FY 1990, 70 cases per judge, in FY 1991, 49 cases per judge, and in FY 1992, 63 cases per judge.[21]

When comparing judicial districts regarding the method of disposition of criminal cases, as a relative matter, the Northern District has consistently had a very high percentage of its criminal cases go to trial.[22] This fact is reflected in the

---

[20] Information provided by the office of the U.S. Attorney for the Northern District of Florida, see appendix H.

[21] See appendix A.

[22] Information provided by the office of the U.S. Attorney for the Northern District of Florida reflects the following for criminal cases tried by jury in the Districts within the Eleventh Circuit:

	Percent Tried by Jury			
District	1989	1990	1991	1992
Ala. N.	11.5	13.4	12.2	15.5
Ala. M.	25.2	29.0	24.9	26.6
Ala. S.	16.6	18.3	24.8	21.4
FLORIDA N.	**26.6**	**29.9**	**27.6**	**26.8**
Florida M.	12.4	16.2	18.5	14.2
Georgia N.	13.5	8.4	.6	17.3
Georgia M.	19.9	13.5	16.7	15.6
Georgia S.	7.4	17.4	10.8	17.2

Attorney Jury Trial Load for fiscal years 1989, 1990, and 1991. In 1989, the District ranked first in the nation in the number of defendants tried by jury per attorney, in 1990 fourth, and the District ranked third in 1991.[23] One possible explanation for these figures is that the policy of the U.S. Department of Justice not to negotiate a plea, absent unusual circumstances, unless a defendant agrees to plead to a major count is strictly implemented in the Northern District, perhaps more strictly than in other districts. Irrespective of the merits of this policy, given the high percentage of criminal cases in the Northern District that go to trial, it stands to reason that district judges are spending a larger proportion of their time in federal criminal trials.[24]

That the number of criminal trials in the District is likely to have had a profound impact on the disposition of civil cases in the District can be seen from the following chart which shows the number of criminal trials and criminal trials as a percentage of total trials. In 1987, slightly more than a majority of trials in the district were criminal, with civil trials comprising approximately 48% of the docket and criminal trials 52%. By 1990, the figures had changed substantially with civil trials being only

---

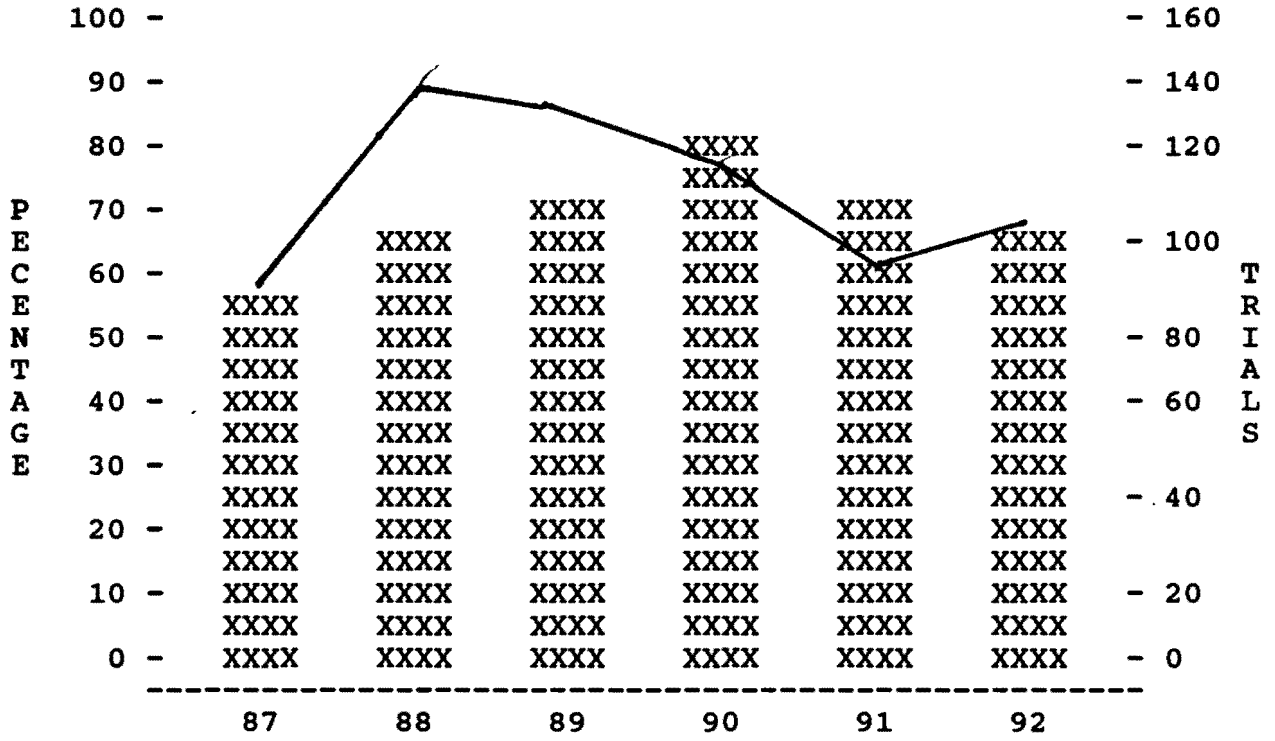
[23]. Information provided by the office of the U.S. Attorney for the Northern District of Florida.

[24]. Also of interest in this context is the fact that in FY 1990 the Northern District was the highest ranking sentencing district for drug offenses in the nation, averaging 160 month per sentence as compared to the national average of 83 months. In 1990 likewise it was the highest sentencing district in the nation for all offenses, averaging 115 months while the national average was 61 months. Information provided by the office of the U.S. Attorney General for the Northern District of Florida.

approximately 20% of all District trials and criminal trials constituting approximately 80% of all District trials. In 1992, criminal trials continued to amount to almost 70% of the cases tried in the District.

Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY87-92[25]

Northern District of Florida



3) The Federalization of State Crimes

---

[25] See Appendix I, Guidance To Advisory Groups Appointed under the Civil Justice Reform Act of 1990, SY 92 Statistics Supplement, p. 19, September 1992. The number of civil trials tried in the District in 1987 was approximately 75, in 1988, 70, in 1989, 55, in 1990, 30 in 1991, 35 and in 1992, 52, see Appendix J, Guidance to Adversary Groups Appointed Under the Civil Justice Reform Act of 1990, SY 92 Statistics Supplement, p. 14, September, 1992.

The committee believes that "federalizing," the continuing expansion of federal jurisdiction over crimes traditionally prosecuted in state courts, is likely to have impacted on and increased the criminal workload of the District judges and may well continue to do so. Some believe that the fundamental nature and character of the federal court system may be in the process of changing because of the federalization of state and local crimes. Many drug cases are being turned over by state law enforcement officials for prosecution in the federal courts because of a belief that if convicted, the accused will serve a longer prison sentence given federal sentencing guidelines. Although state criminal statutes dealing with the unlawful use of narcotics substances authorize lengthy sentences, the perception is that defendants don't serve such sentences if convicted and sentenced in the state courts. Furthermore, anecdotal evidence suggests that although the likely length of time served is an important consideration in the decision where to file a case, state and local law enforcement officials may also prefer to have drug cases tried in federal court because the federal system, due in part to limited discovery, is perceived to resolve cases more expeditiously.

One example of the federalization of traditionally state crime is Project Triggerlock. Pursuant to project guidelines, U.S. attorneys are to use federal weapons laws to target career criminals who commit weapons offenses which offenses have been traditionally addressed by state authorities. Plea bargaining is disallowed. A statute which "expands" federal criminal

jurisdiction in this context is the Violent Crime Control Act of 1991. It federalizes violent crimes committed with firearms that have moved in interstate or foreign commerce.

4. The Federal Sentencing Guidelines

Congressional enactment of the federal sentencing guidelines has also created more work for the federal judiciary. Although many believe that more cases go to trial because of the guidelines, information provided by the office of the U.S. Attorney for the Northern District of Florida does not appear to support this perception. From FY 1982-87, before the current sentencing guidelines went into effect, an average of 26.3% of all felony cases were tried and 23.7% of these were tried by jury.[26] After the sentencing guidelines took effect, from 1988-91 an average of 29.6% of all felony cases were tried and 27.5% were tried by jury.[27] The increase is relatively small, 3-4%. However, the impact of the guidelines on the workload of District judges is likely to be reflected in the additional judicial time spent on sentencing matters.

5. Past Patterns and Future Trends

It is clear that Court resources have not kept pace with the growth in federal resources allocated to prosecuting those accused

---

[26]. Information supplied by the office of the U.S. Attorney for the Northern District of Florida. See Appendix H.

[27]. Ibid.

of violating federal criminal laws. The number of judges in the District grew from 3 in 1985 to 4 in 1993. During this same period of time, the United State Attorney's Office grew from 14 Assistant U.S. Attorneys in 1985 to approximately 26 in 1993. During the same period, the Probation Office increased from 13 employees (8 officers and 5 clerks) to 47 employees (28 officers, 18 clerks and 1 system administrator).

It is unclear whether there will be any budget cuts within the Justice Department or whether any such cuts will impact on prosecutional resources. It is likely, however that the expansion of federal jurisdiction over crimes traditionally heard in state courts will continue, thereby increasing the criminal workload of the federal district courts.

5. Summary

There is little question that the District's criminal docket significantly impacts on the pace of civil litigation. This is particularly the case given the percentage of the District's criminal cases that are tried. Absent actions to reduce the demands of the criminal docket, this docket will continue to significantly impact on the ability of the Court to resolve civil cases in an expeditious fashion.

CASE MANAGEMENT

Introduction

The Civil Justice Reform Act specifically requires that each District in formulating its expense and delay reduction plan consider a variety of litigation management techniques including (a) systematic differential treatment of cases (b) early and ongoing judicial control of the pretrial process (c) monitoring of the discovery process with the aim of encouraging the voluntary exchange of information and the conservation of judicial resources, and (d) the use of alternative dispute resolution processes, 28 U.S.C. §473 (a). In addition, the Act further requires each District to consider certain specific cost and delay reduction techniques. These techniques include requirements that (a) counsel jointly present a discovery case management plan at the initial pretrial conference or explain their reasons for failing to do so (b) each party be represented at each pretrial conference by counsel who has the authority to bind that party regarding matters to be addressed at the conference (c) all requests for extensions to complete discovery or for a postponement of the trial be signed by counsel and the party making the request (d) upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference, 28 U.S.C. §473 (b). In formulating its case management recommendations, the Committee considered the above mentioned techniques as well as other suggestions to reduce costs and delay that are set forth in the Civil Justice Reform Act.

In addressing case management issues , the Committee was in part guided by the results of a survey done of members of the Northern District Bar. Although admittedly not scientific, the survey suggests that the following areas should be addressed by the committee; the need for greater judicial involvement in managing the case beginning early in litigation, the need for prompt rulings on motions, particularly dispositive motions, the need for discovery reform, the need for reducing the cost and delay in the determination of court awards of attorney fees, and the need to establish a mechanism whereby firm trial dates could be set. In considering each of these areas, the Committee considered whether systematic differential case management practices might be warranted. Such practices are premised on assumptions about the complexity of certain kinds of cases, their need for judicial resources and the way in which such cases are likely to proceed. Differential case management principles are currently reflected in the District's handling of prisoner petitions and certain administrative matters, e.g., social security cases, see discussion infra. It was the Committee's belief that systematic differential case management practices are most appropriate when there is a large number of filings that fall into a distinct category or where there are certain types of cases, irrespective of their number, which given their nature should be handled in a systematically different fashion from other civil filings. With the exception of prisoner and certain administrative cases, the Committee does not believe that the District's civil docket warrants systematic differential case management practices.

Increased Judicial Involvement in Case Management Beginning Early In the Litigation

It is the current practice of the federal district judges in civil cases to issue a scheduling order with the exception of matters that are by local rule directly referred to magistrate judges, e.g. prisoner and certain administrative cases, see discussion infra, and other cases in which a scheduling order is deemed inappropriate. The scheduling order is uniform in the District. It generally marks the Court's initial involvement in the case. The order, which is entered without input from the parties, addresses discovery questions, including the permissible discovery time period and how discovery controversies are to be resolved, sets a schedule for certain pretrial matters such as the filing of motions for summary judgment, to amend or join other parties, explains how attorney's fees records must be maintained if a party will be seeking a court award of fees, and sets out certain requirements applicable to the filing of summary judgement motions. Although the scheduling order is issued without input from the parties, it provides that if the discovery time frame is thought to be inadequate, the parties can submit a discovery plan to the Court and that upon motion a discovery conference will be scheduled. The order also provides that if a party so requests by motion, a scheduling or pretrial conference will be held to address any of the matters set out in Rule 16 of the Federal Rules of Civil Procedure. This rule deals with pretrial conferences, scheduling and the management of a case.[28]

---

[28]. A copy of the uniform scheduling order currently used in District is attached hereto or Appendix K.

After considering the merits of increased judicial involvement in case management, it is the Committee's belief that civil cases could be disposed of in a more expeditious and less costly fashion if the Court took a more active role in the case management process, beginning early in litigation. Therefore, the Committee recommends that with certain types of cases excepted, there should be an initial pretrial conference where the Court meets with the parties prior to the issuance of its scheduling order. To assist in making that conference meaningful in the case management context, the Committee also believes that the parties should be required to confer prior to this conference to discuss the merits of the case, the chances of settlement and to be able to provide input to the Court regarding any matters to be addressed in the scheduling order. In addition, the Committee recommends, that where appropriate, there should be an intermediate case management conference conducted by the Court prior to the final pretrial conference. This conference would be designed to assess the progress of the case and address problems or matters that are delaying the resolution of the dispute. Finally, the Committee recommends that the Court should schedule additional case management conferences when requested by the parties or warranted by the pace of the litigation. The Committee believes that the likelihood of a less costly and more expeditious resolution of a matter will be enhanced if the Court plays a more active role in the case beginning early in the litigation.

Regarding the timing of the Committee's proposed initial pretrial conference, Federal Rule of Civil Procedure 16(b) currently provides that the court's scheduling order shall issue as soon as practicable but in no event more than 120 days after the filing of the complaint. A proposed amendment to Rule 16(b), scheduled to take effect December 1, 1993, absent congressional action, similarly provides that the order should be entered as soon as practicable but also provides that in any event the order shall be entered within 90 days after the appearance of the defendant and within 120 days after the complaint has been served on a defendant. Given these time constraints, the Committee recommends that the initial pretrial conference be scheduled within 90 days of the filing of the complaint if the rule is not changed and within 60 days of the appearance of the defendant and within 90 days after the complaint is served if the rule is changed.

It is the Committee's belief that with the exception of certain classes of cases, requiring the parties to confer, prior to the initial pretrial conference, as to the matters to be addressed in the scheduling order and issues relating to the litigation will make the initial pretrial conference with the Court more meaningful. Specifically, the Committee believes that the parties should be required to

a) discuss the nature and basis of their claims and in good faith try to identify the principal factual and legal issues in dispute;

b) discuss the possibilities for a prompt settlement or resolution of the matter and whether the use of alternative dispute resolution processes might be helpful in that regard;

c) propose time tables and cut off dates for

1) the joinder of other parties

2) amendments to the pleadings and

3) the filing of motions and any response thereto;

d) develop a discovery plan which specifically addresses the timing and form of discovery, whether discovery should be conducted in phases and/or be limited to or focused on certain issues, and where permissible whether any changes should be made in discovery procedures or substantive limitations on discovery imposed by the Federal Rules of Civil Procedure or Local Rules of the District;

e) arrive at a good faith estimate as to when the parties believe the case will be ready for trial;

f) address any other matters the Court, by Local Rule, determines should be addressed at this conference between the parties.

Following this meeting of the parties, but in no event later than 5 days before the initial pretrial conference with the Court the committee recommends that the parties be required to prepare and submit to the Court a case management plan which addresses the matters set out in c), d), e), and f) above and which also indicates whether the parties believe that the use of alternative

dispute resolution processes would be helpful in resolving the dispute. If counsel are unable to agree in whole or in part on such a case management plan, the committee recommends that counsel be required to certify to the Court that they have met and conferred with opposing counsel regarding such a plan, and for the parties to indicate the matters on which they agree, and their respective positions on those issues to which they cannot agree.

The types of cases which the Committee would except from the above required meeting of the parties and case management plan requirements as well as the recommended initial pretrial conference with the Court are all prisoner cases, student loan and veterans matters, land condemnation and foreclosure proceedings, social security matters, bankruptcy proceedings, forfeiture matters, any other matter in which a party is proceeding pro se, and any matter exempted by Court order. The Committee does believe, however, that the Court should have discretion to order the parties to confer, to prepare the case management plan and to have the initial pretrial conference described above in any case the Court deems it appropriate to do so.

The Committee further recommends that, as a general rule, within ten days of the initial pretrial conference with the Court, the Court should enter a case scheduling order addressing the matters described in c), d), e), and f) above, specifically including the setting of an estimated trial date. The Committee

believes that the Court should also address in its order whether it wishes the parties to pursue consideration of alternative dispute resolution processes and set a date for any intermediate case management conference, if warranted.

Regarding any subsequent requests by the parties for changes or extensions in the deadlines or dates established by the Court in the scheduling order, the Committee believes that any such requests must be approved by the Court and that requests should not be granted simply because both parties consent to the request. The Committee believes that requests for changes or extensions should only be granted upon a showing of good cause. The Committee also considered and rejected a requirement specifically suggested by the Civil Justice Reform Act, see 28 U.S.C. §473(b)(3) "that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request." The Committee did not believe that conditions in the District warranted such a requirement.

The Committee would note that its recommendation for the parties to confer, prior to the issuance of the case scheduling order, to prepare a case management plan parallels a specific suggestion in the Civil Justice Reform Act that the parties jointly present a discovery case management plan at the initial pretrial conference or explain the reasons for their failure to do so, see 28 U.S.C. §473(b)(1). Also, the recommendation is in many respects analogous to a proposed change to Rule 26(f) of the Federal Rules of Civil Procedure, which change is scheduled to go into effect

December 1, 1993 absent congressional action. The proposed change requires the parties to confer as soon as practicable or in any event at least 14 days before a scheduling conference is held or scheduling order is due under Rule 16(b) and to, among other things, develop a discovery plan and discuss the nature and basis of their claims and possibilities of a prompt settlement. The Committee's recommendation differs, however, from what is required by the proposed Rule 26(f) since the Committee does not recommend that the meeting between the parties be for the purpose of making or arranging for the disclosures mandated by proposed Rule 26(a)(1). As is discussed in more detail infra, the Committee recommends that the District opt out of the automatic required disclosure provisions of proposed Rule 26(a)(1), if this Rule change goes into effect.

The Committee recognizes that recommending that the Court play a more active role in case management beginning early in the litigation may not be realistic, particularly given the demands placed on the Court by the District's criminal docket. However, the Committee believes if the Court is able to take a more active role through an initial pretrial and intermediate case management conference, as well as at other times when warranted, that civil cases are likely to be disposed of in a more expeditious and less costly fashion. In this regard, the Committee would note that the Civil Justice Reform Act specifically requests that Districts, in formulating their expense and delay reduction plans, consider increased early and ongoing control of pretrial process through the

involvement of a judicial officer, see 28 U.S.C. §473(a)(2). Further, the Committee believes that under some circumstances, it may well be appropriate for magistrate judges to conduct the pretrial conferences recommended above, see Local Rule 24 (J)(2)(b)(2). Some members of the Committee, however, believe that if magistrate judges do conduct these conferences, their benefit will be lessened since the "educational" process furthered by involving the Court early in litigation would by definition not occur if it is a magistrate judge who conducts the pretrial conferences suggested.

Prompt Rulings on Motions

The failure of the Court to rule promptly on pending motions was the most frequent complaint of those responding to the Committee survey. Clearly, the failure to rule on motions, particularly dispositive motions, may impact on a party's ability to comply with certain deadlines set out in the scheduling order and delays the time when the case will become ready for trial. Information presented to the Committee suggests that magistrate judges are rarely utilized to assist in the resolution of motions filed in civil cases other than cases which are automatically referred to the magistrate judges, e.g. prisoner, social security cases. In the section of this report entitled "Utilization of Magistrate Judges," the Committee recommends that the Court consider referring more pretrial civil motions, both of a non-dispositive and dispositive nature to the magistrate judges. Doing so might result in a speedier ruling on these matters.

The Committee also believes that there should be presumptive time periods within which motions should be ruled upon. For non-dispositive motions, the Committee recommends that a ruling should be rendered within 60 days of the opposing party's response or within 15 days of oral argument if oral argument is granted. For dispositive motions, the Committee believes that 120 days from the opposing party's response or 15 days from oral argument if granted is an appropriate presumptive time frame. It should be emphasized that the Committee is not suggesting that it necessarily should take 60 or 120 days to rule on non-dispositive or dispositive motions, but only, as a general rule, that motions should be ruled upon within these time frames.

The Committee also recommends that the Office of the Clerk monitor the progress of motions to ensure that they are expeditiously resolved. Specifically, the Clerk should be responsible for notifying each District Judge, on a monthly basis of which motions are not being ruled upon within the presumptive time frames suggested above. A copy of this notice should also be sent to the Chief Judge. It should be emphasized, however, that despite its recommendations that there be presumptive time frames for resolving civil pretrial motions, the Committee is not suggesting that the Court enter an order if it believes that it needs additional time to render a fair and reasoned decision on the motion. Finally, the Committee believes that Local Rule 6, Motion Practice, should be amended to reflect the recommendations set out above.

Discovery

In general, the Committee believes that the discovery rules and procedures presently utilized in the Northern District of Florida are sufficient to allow for the free exchange of documents and relevant information among and between the parties. It is recognized, however, that when abuses do occur or when disputes arise, the failure to promptly address and resolve them can be a source of considerable delay and expense to the parties. Hopefully, the recommendations set forth both above in the section dealing with the disposition of motions, and below, if implemented, will help speed the process and alleviate any expense and delay associated with problems in resolving discovery disputes.

The Committee would note that there are some substantial changes to the Federal Rules of Civil Procedure relating to discovery which have been proposed and, absent congressional action, will take effect on December 1, 1993. The comments and recommendations below are based upon both the present discovery rules and practices and the proposed changes.

Consistent with Rule 16(b) of the Federal Rules of Civil Procedure, discovery procedures, limitations and timetables are presently set out by the Court in the case scheduling order. The Committee has recommend that the parties be required to confer and assist in establishing a discovery plan to be set forth in that order, following an initial pretrial conference, see discussion supra. The Committee encourages the parties and the Court to consider making use of "phased" discovery, where warranted,

allowing a limited first round of discovery to frame the issues and then a "follow-up" round to narrow those issues.

There is a proposed Rule of the Federal Rules of Civil Procedure, Rule 26(a) (1) which would place upon the parties a duty to disclose without a formal discovery request generally within (10) days of the parties discovery planning meeting, certain "core information" about their case or defense. The information required to be disclosed would include the names and addresses of all individuals likely to have discoverable information relevant to disputed facts and the subject of that information; a list or description of all documents relevant to the disputed facts alleged in the pleadings; a computation of damages, including documents supporting such computation; and any insurance agreements. The proposed rule provides that it will not apply if, by stipulation, court order or by Local Rule, it is determined that it should not be applicable.

The Committee believes this proposed change to be impractical, and believes it could create more, rather than less, expense for the parties in a significant number of cases and also could further delay the resolution of disputes. The committee believes that the proposed rule may well lead to satellite litigation concerning whether certain information should have been disclosed and will place lawyers in the difficult position, absent any request to do so, of having to disclose information which may be harmful to their clients. The Committee further believes that given current practices in the Northern District of Florida, such a mandated

early disclosure provision is unnecessary. The Committee, therefore, recommends that the District opt-out from this rule should it take effect.

There is also a proposed Federal Rule of Civil Procedure, Rule 26(a) (2), scheduled to take effect December 1, 1993 absent Congressional action, which sets forth in some detail the types of disclosures required when expert witnesses are to be used. Similar information is presently required to be disclosed in the Northern District pursuant to the Court's standard Scheduling Order. The Committee believes the disclosures called for both in the proposed federal rule and in the District's Scheduling Order are helpful in reducing costs and delay. The committee encourages the Court to continue to require specifically the disclosure of the names, backgrounds, opinions and bases for those opinions of all expert witnesses any party intends to use at trial.

A third proposed rule change would require the parties to disclose the identity of witnesses and documents to be used at trial with the exception of materials which would be used solely for impeachment purposes, proposed Rule 26 (a) (3). This rule change would also require the parties to designate those witnesses whose testimony is expected to be presented by means of a deposition. The Committee has no objection to this proposed change and to the extent such disclosures are not currently required, the Committee recommends, that they be required in the District assuming the proposed rule does not take effect.

A fourth proposed rule change would allow the parties to depose any expert without the need for a court order, as is presently required, proposed Rule 26(b) (4) (A). While it the committee's understanding that such an order is generally pro forma in the District, the committee believes this rule change to be a good one, one which would save the cost and delay of seeking such an order, pro forma though it may be. The Committee thus recommends, whether this proposed change is accepted or not, that the Northern District consider the routine allowance of expert depositions without the need for a court order. This could be done either through Local Rule or by simply so ordering in the Court's standard Scheduling Order if the proposed rule does not go into effect.

Also regarding expert witnesses, although the Committee recognizes that their use can be a major source of expense in litigation, it does not believe that requiring the submission of the entire direct testimony of such witnesses prior to trial, as has been suggested in other District plans, would be either practical or necessarily result in a cost savings. The Committee would however recommend that the parties be encouraged to make use of videotape depositions of experts in lieu of live testimony. If the parties do so, the expense of expert travel and the costs accruing while experts are forced to wait to testify could be avoided.

Fifth, proposed rule changes would also call for certain limitations on the amount of discovery which is permitted. In particular, proposed Rule 30(a) (2) (A) would require leave of court if the proposed deposition under this rule or Rule 31 (depositions upon written questions) would result in more than ten (10) depositions being taken by any party and proposed Rule 33(a) would preclude more than 25 written interrogatories, including subparts, being served upon a party by any other party, without leave of court.

While the Committee generally agrees that over-discovering a case is a potential source of abuse that can lead to greater expense and delay, and thus supports some limitations, the Committee believes that the present 50 interrogatory limitation on the number of interrogatories, which is the limitation in place in the Northern District of Florida, see Local Rule 7(C), is more realistic than the 25 interrogatory limit set out in the proposed rule change. It also does not believe that a specific number limitation on depositions is necessary in this District. Given that proposed Rule 26(b) (2) allows a District by local rule to alter the limits in the proposed rules on the number of depositions and interrogatories, the Committee recommends that Local Rule 7 (C) remain in place and that an additional subsection be added to that rule, eliminating the deposition limitation of proposed Rule 30(a) (2)(A), if that proposed rule goes into effect.

Finally regarding discovery, to the extent not addressed above in the section dealing with the disposition of motions, the Committee strongly urges that methods for the early and effective resolution of discovery disputes be implemented. In particular, the Committee believes that the present rule in the District requiring the parties to confer and attempt to resolve their discovery disputes without judicial intervention is absolutely necessary. The required certification explaining all such attempts which must accompany motions relating to discovery is also useful.

Secondly, the Committee believes that the parties should be encouraged to explore and adopt nonjudicial methods of resolving discovery disputes. Such methods might include agreements to mediate or arbitrate such matters, utilizing law professors, retired judges or other disinterested individuals or, making use of a special master. In addition, as suggested earlier, the parties might agree to allow the magistrate judges to resolve discovery disputes. Finally, the Committee also recommends greater utilization of the sanctions presently authorized in the Federal Rules of Civil Procedure when judicial involvement is required to resolve discovery disputes.

Attorney's Fees

The Committee reviewed and considered several suggestions and ideas in attempting to address ways in which the expense of attorneys' fees might be lessened and how the delays inherent in resolving attorneys' fees disputes might be avoided.

The Committee hopes that if the recommendations suggested previously and those that follow are implemented, the attorney's fees incurred by the parties will be lessened. That is, assuming greater cooperation between the parties, fewer contentious matters to be resolved and with less delay involved in getting those matters resolved, attorneys should spend less time on litigation and, consequently, should bill less.

Regarding the amount of attorneys fees, the committee did consider but rejected such ideas as requiring attorneys to charge set rates or work on fixed schedules based upon the services to be performed. It was believed that such alternatives to an hourly billing system or a contingency fee arrangement might have antitrust implications and would otherwise prove to be problematic and unrealistic.

There was also general recognition and approval by the Committee of the current practice in the District of requiring a party who may seek a court award of attorney fees to file monthly summaries of time spent on a particular case, with the understanding that a failure to file such records during a given month would mean the inability to be compensated for work done during that period. This requirement is set forth in the standard Scheduling Order used in the District, and the Committee recommends its continued use.

The Committee noted, however, that neither the standard District scheduling order or any Local Rule addresses the question of the expense and delay associated with the resolution of attorneys' fee disputes both as to a party's entitlement to fees and the amount due. The Committee notes that a proposed addition to Rule 54 of the Federal Rules of Civil Procedure, specifically subsection (d) (2) which will become effective December 1, 1993 absent congressional action, would for the first time address attorneys' fees process questions. In part, the proposed rule authorizes Courts to address the question of liability for fees before dealing with the issue of appropriate rates and hours. The Committee believes this approach is a sound one since the often significant expense of securing experts to offer opinions on appropriate rates and hours might be avoided in cases where the Court determines there is no entitlement to fees.

In addition, the proposed rule authorizes the Courts, by Local Rule, to establish methods and procedures which could alleviate the need for costly evidentiary hearings which some believe are becoming more prevalent in attorneys' fees disputes. It is the Committee's belief that after the culmination of the litigation, attorneys' fees questions should not give rise to any additional significant protracted litigation. The Committee therefore, recommends that the Court consider a local rule setting parameters on the type and amount of discovery which would be allowed on attorneys' fees issues, reasonable limitations on, or even the disallowance of the use of experts in such matters, reasonable

limitations on or even the disallowance of live testimony in the resolution of such questions, the referral of attorneys fees applications to special masters or magistrate judges and any other alternatives which might reduce the time and expense involved in concluding this final aspect of the litigation.

Finally, the Committee would note that the proposed addition to the attorneys' fee rule calls for any motion seeking fees to be filed within 14 days after entry of judgment, unless otherwise provided by statute or order of the Court. The Committee suggests that this time period is not sufficient. Presently, Local Rule 6 (F) allows motions to tax costs to be filed within 30 days after termination of the action or proceeding. The Committee believes this to be a more realistic time frame, and suggests that the relevant Local Rule be amended to allow 30 days for the filing of both cost and attorneys' fee entitlement motions.

Establishing Trial Dates

The Committee believes that the setting of "firm" trial dates early in the litigation could play a major role in reducing the costs and delay in civil litigation in the District. It is for this reason that it recommends that the parties, prior to an initial pretrial court conference, attempt in good faith to arrive at an estimated trial date, that this date be included in the parties case management plan, and that the Court include a trial date in its scheduling order. The Committee recognizes the difficulty of the Court setting "firm" trial dates early in the litigation, given the Court's criminal docket and the

constitutional and statutory priority afforded criminal cases. Nevertheless, the Committee believes that every effort should be made by the Court to set a "firm" trial date early in the litigation and that to the extent possible that the date be adhered to. In this regard, particularly at the time of any intermediate case management conference, the Committee believes that there is no reason why it could not be determined whether if what has been estimated to be a possible trial date could in fact become a "firm" trial date. The Committee believes strongly that the setting of a "firm" trial date, as early in the litigation as possible, is likely to encourage settlement, reduce the cost of litigation and lead to the expeditions resolution of civil disputes.

UTILIZATION OF MAGISTRATE JUDGES

Introduction

The Northern District of Florida currently has two full-time magistrate judges, one based in Tallahassee and one based in Pensacola, and two part-time magistrate judges. The part-time magistrate judges are based in Gainesville and Panama City. The phrase "part-time magistrate judge" is somewhat misleading since in the District the part-time magistrate judges have been assigned specific functions and duties of a limited nature rather than being asked to perform a variety of judicial tasks for a set period of time per week.

Given the pressures placed by the Northern District criminal docket on the District judges, the committee believed it important, particularly in the context of offering suggestions for reducing delay and costs in civil litigation, that it examine what magistrate judges are legally permitted to do and how they are currently being utilized in the District. Specifically, the committee sought to determine if any changes regarding the use of magistrate judges might be warranted, which changes might impact on the cost of civil litigation in the District as well as the time necessary to bring a matter to conclusion.

The Authority of Magistrate Judges

28 U.S.C. § 636 sets out the jurisdiction and power of magistrate judges. Rule 24 of the Local Rules of the Northern

District of Florida also defines the authority of the magistrate judges in a manner consistent with the above-referenced statutory provision. Basically, the relevant federal statutory provision and local rule provide that magistrate judges may not conduct civil jury or non-jury trials and enter a judgment in a case, absent the consent of the parties, 28 U.S.C. § 636(c)(1), Rule 24 (E), Local Rules of the Northern District of Florida. This prohibition significantly impacts on the role magistrate judges can be expected to play in reducing the costs and delay associated with civil litigation in the District. However, notwithstanding the above-described limitation, magistrate judges are legally authorized to perform significant judicial duties in civil cases. Specifically, a federal district judge may designate a magistrate judge to hear and determine a variety of non-dispositive pre-trial matters, including discovery matters, see 28 U.S.C. § 636(b)(1)(A) and Local Rule 24(C). Regarding the magistrate judge's resolution of such matters, a party may appeal the determination to the federal district judge assigned the case. The District Court shall then consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law, 28 U.S.C. § 636(b)(1)(A) and Local Rule 27(A). In addition, a federal district judge may designate a magistrate judge to hear case dispositive motions, including motions to dismiss, motions for summary judgment, and other significant motions such as motions for temporary injunctive relief and motions to permit the maintenance of a class action, 28 U.S.C. § 636(b)(1)(B), Local Rule

24(D). The Court may also designate a magistrate judge to consider certain classes of cases, such as those initiated by prisoners, 28 U.S.C. §636(b)(1)(B), Local Rule 24(F)(G)(I). Regarding designations to consider case dispositive and other significant motions as well as certain types of cases, the magistrate judge is to submit to the federal district judge proposed findings of fact and recommendations for disposition and is permitted to conduct whatever proceedings, including evidentiary hearings, that are necessary for the magistrate judge to reach conclusions. A party may then file, within ten (10) days after being served with a copy of the magistrate judge's findings of fact and recommendations for disposition, written objections to the magistrate judge's report, specifically identifying those portions to which he objects. The federal district judge is then required to make a de novo determination of those portions of the report to which an objection has been made and may accept, reject, or modify in whole or in part the findings or recommendations of the magistrate judge. The Court may also, in resolving the matter, rely solely on the record developed by the magistrate judge, may recommit the matter to the magistrate judge for further proceedings or the District Court may take further action to develop the record before ruling, 28 U.S.C. § 636(b)(1)(C), Local Rule 27(B).

In addition to the authority in civil cases to perform the duties described above, magistrate judges are also authorized to perform a variety of duties in federal criminal cases including, trying criminal misdemeanor cases with the consent of the parties,

conducting pre-trial release and preliminary hearings, processing criminal complaints, issuing appropriate warrants or summons, and issuing search warrants, 28 U.S.C. § 636(a), Local Rule 24(J), 25(B). A federal district judge may also designate a magistrate judge to hear a motion to dismiss or quash an indictment or information, or a motion to suppress evidence in a criminal case, 28 U.S.C. § 636(b)(1)(B), Local Rule 24 (D)(1)(h)(i). If the court does so, the process to be followed is identical to what is utilized when the court designates a magistrate judge to consider a dispositive motion in a civil case.

Subject to the time constraints imposed by the magistrate judge's role in assisting in handling the District's criminal docket, the likelihood of magistrate judges playing a significant role in civil litigation in the District is dependent on the willingness of the parties to consent to the use of magistrate judges and the court's willingness to refer significant matters to them.

Utilization of Magistrate Judges In The District

At the present time, the workload of the two full-time magistrate judges consists primarily of handling cases initiated by prisoners, criminal misdemeanor cases, and cases involving non-criminal petty offenses which occur on federal property within the District, e.g., military bases, national forests. By local rule, all misdemeanor cases and prisoner cases, including applications for post-conviction relief and petitions challenging conditions of

confinement, are automatically assigned to the full-time magistrate judges, Local Rule 25(B)(C). Information obtained by the committee suggests that the number of cases in which the parties consent to the authority of the magistrate judge to enter a judgment in a case is not significant and that, with the exception of the prisoner cases and some administrative law matters, e.g., Social Security, the federal district judges are not referring civil matters to the magistrate judges with any degree of frequency. This is true both as to non-dispositive civil matters as well as other matters that the magistrate judge may be designated to hear, subject to the requirement that the magistrate judge submit a report containing proposed findings of fact and recommendations for disposition.

It is clear that the number of prisoner cases, criminal misdemeanor, and non-criminal petty offenses filed in the District makes it unlikely that the full-time magistrate judges will have the ability to spend a significant amount of time on other civil matters if the matters they are currently handling are to receive the attention they presently receive. For the statistical year 1992, 654 prisoner petitions were filed in District.[29] As of July 31, 1993, the two full-time magistrate judges had pending 433 and 368 prisoner cases, respectively.[30] Their ability to resolve these cases in an orderly and expeditious fashion is further complicated by the fact that in the vast majority of cases the prisoner is not

---

[29]. See appendix D.

[30]. See appendix L, Summary of Criminal Cases Filed, Terminated and Pending in the Norther District of Florida, July 31, 1993.

represented by counsel. Regarding criminal misdemeanor cases, it is estimated that 10-15 cases per month, District-wide, are referred to the full-time magistrate judges. Finally, figures indicate that approximately 1,000 non-criminal petty offense cases in the District are disposed of by the magistrate judges each year.

Conclusions and Recommendations

Given the demands on magistrate judges by the Northern District criminal misdemeanor and non-criminal petty offense docket, and by prisoner cases, it may well be that any suggestions to encourage the parties to consent to the authority of the magistrate judge to enter a judgment in other civil cases as well to encourage the federal district judges to refer additional civil matters to the magistrate judges, of both a non-dispositive and dispositive nature, may not be practical. This is the case since the increased use of magistrate judges in other civil cases will by definition impact on the magistrate judges' ability to handle the cases which currently make up the bulk of their workload. Although the committee recognizes that the determination of the number of magistrate judges to be assigned to a District is a complex one, see 28 U.S.C. §633, it believes that the nature of the Northern District docket justifies another full time magistrate judge and recommends that the court seek one. Ideally, the committee believes that there should be one full time magistrate judge for each federal trial court judge in the District. In addition, the committee has two suggestions regarding the prisoner and non-petty criminal offense docket of the magistrate judges. First, to the

extent that the vast majority of the prisoner cases are filed pro se, this impacts on the ability of the magistrate judges to deal with these cases in an orderly and expeditious fashion. To address this problem, the committee recommends that the Chief Judge appoint a prisoner pro bono counsel committee which would be charged with recommending to the Court, within a reasonable time, a pro bono plan which would be designed to identify counsel who would be willing to handle, on a pro bono basis, prisoner cases which have been found, after an initial screening, to contain allegations sufficient to warrant the assignment of counsel. Given the recent adoption by the Florida Supreme Court of a voluntary pro bono plan for members of the Florida Bar, the committee believes it is particularly appropriate for the Court to consider at this time, the establishment of a prisoner pro bono counsel plan. Second, the committee believes that it should not be necessary for the magistrate judges to preside in many of the non-criminal petty offense and perhaps some of the criminal misdemeanor matters they are currently handling, particularly those involving offenses occurring on military installations and other federal properties within the District. It therefore recommends that those charged with prosecuting such offenses, i.e. the office of the U.S. Attorney, determine through discussions with state and military authorities whether some of these matters could be resolved without involving the jurisdiction of the magistrate judges.

Assuming the assignment of an additional magistrate judge to the District or successful actions to reduce the demands on

magistrate judges resulting from the Districts criminal misdemeanor, non-criminal petty offense, and prisoner case docket, the question arises of how magistrate judges might become more involved in the resolution of other civil cases. In addition, even in the absence of additional magistrate resources or a reduction in the demands imposed by the current magistrate judge workload, increased use of magistrate judges in other civil matters may still be warranted when one considers the needs in those areas against the needs in the areas which currently comprise the bulk of the magistrate judge work load. The committee recommends that the Court consider ways to increase the involvement of the magistrate judges in the resolution of civil cases, other than the prisoner and governmental administrative cases, e.g., social security, veterans benefits, in which they are currently involved.

Specifically, regarding the authority of magistrate judges to enter a judgment in a case if the parties consent, the committee recognizes that these may be strategic or tactical reasons in many cases which may make it unlikely that both parties will consent to the use of a magistrate judge. Nevertheless, the committee believes that the Court should not be hesitant to apprise the parties of the benefits of consenting to the use of a magistrate judge, particularly if the use of a magistrate judge would result in an earlier trial or final hearing date. In this regard, the committee recommends that during any court conference with the parties at which a trial or final hearing date is to be discussed and set that the magistrate judge be present and that the court

discuss with the parties what a likely trial or final hearing date will be if they consent to the use of a magistrate judge as contrasted with the Court. Although the committee recognizes that the Court must make clear to the parties that they are free to withhold consent without adverse substantive consequences, see 28 U.S. §636, (c)(2) Local Rule 26(B)(2), this should not preclude the Court from apprising the parties of the benefits of consenting to the authority of a magistrate judge to resolve their case.

As to the district judges designating the magistrate judges to hear and determine certain non-dispositive civil pretrial matters and to hear and report on certain dispositive and other significant questions that arise in civil matters, the committee recognizes that some lawyers believe that such referrals, which by definition result in a division of authority in a case, can be counter-productive and may lead to an unnecessary duplication of work. Nevertheless, the committee recommends, particularly regarding the resolution of non-dispositive civil pretrial matters, such as discovery questions, that the Court consider increasing the number of such matters that they currently refer to magistrate judges. This is not to denigrate the importance of such issues, but only to suggest that their resolution by magistrate judges might help reduce the current delays in civil litigation. The committee would also note that to the extent more civil matters are referred to magistrate judges for their consideration, this may impact on the willingness of those who litigate in the Northern District to encourage their clients to consent to the authority of the magistrate judge to enter a judgment in cases, given the increased familiarity of members of the Northern District Bar with the

magistrate judge. The committee also recommends that the Court consider amending Local Rule 6, Motion Practice so that when issues regarding non-dispositive matters are presented to the Court for resolution the parties would be required to indicate whether they have any objection to the question being referred to a magistrate judge and if they do whether they have any reasonable basis for believing that the matter could not be fairly and expeditiously resolved by a magistrate judge. Irrespective of the response of the parties, this would not mean that the Court had to refer the matter to the magistrate judge. Rather such a requirement would simply apprise the Court of the party's position regarding such a referral. The committee also recommends that the Court consider a similar requirement as to dispositive motions and other motions which if referred to the magistrate judge, would require the magistrate judge to submit to the court a report containing proposed findings of fact and recommendations for disposition.

The committee recognizes that absent increased magistrate judges resources or a reduction in the demands imposed by the current magistrate judge workload, greater and increased involvement of the magistrate judges in "new" civil matters will necessarily impact on the way each currently handles their present duties. Ultimately, however, in determining whether greater magistrate judge involvement is warranted, the question becomes one of balancing competing concerns. The committee believes that, in some cases, increased involvement may be warranted, notwithstanding the impact it may have on other matters handled by the magistrate judges.

ALTERNATIVE DISPUTE RESOLUTION

Introduction

The Civil Justice Reform Act specifically requires the District Courts to consider the feasibility of incorporating alternative dispute resolution (ADR) mechanisms in their delay and expense reduction plans. After considering the feasibility of doing so, the committee recommends that the Court adopt an ADR program consisting of early neutral evaluation (ENE) and mediation. This is not to suggest that other ADR mechanisms, such as arbitration, summary jury trials, and mini trials should not be encouraged when appropriate, particularly if proposed by the litigants. However, the committee believes that ENE and mediation are best suited to meet the needs of the District.

Both ENE and mediation are expressly contemplated by the Civil Justice Reform Act. 28 U.S.C. §473(b)(4) directs each Court to consider adopting "a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a non-binding conference conducted early in the litigation," while 28 U.S.C. §473(a)(6) expressly suggests that District Courts consider utilizing mediation.

It is the Committee's belief that the ENE and mediation ADR processes will work hand in hand. ENE will give the parties an opportunity to obtain a realistic appraisal of the merits of their case from an experienced and respected member of the Bar early in

the litigation. Hopefully, such appraisals will enhance the prospect of an early settlement. It will also give the parties the opportunity to obtain from the evaluator suggestions for how best to resolve differences and to minimize costs and delays in resolving the matter. To the extent the litigation moves forward, mediation will provide a further opportunity to settle the case, obviating the need for a trial. At a minimum, mediation may be helpful in narrowing the issues, thus reducing the judicial resources that will need to be allocated to the matter.

ENE differs from mediation in that its focus is on providing the parties with an objective appraisal of the merits of the case, on offering suggestions for how best to resolve differences, and on how best to minimize costs and delay in resolving the dispute. It contemplates each party presenting their case in a summary fashion to an experienced, respected member of the bar who is familiar with the type of litigation in which the parties are engaged. It is not intended to be a lengthy or time consuming process. The primary focus in mediation, on the other hand, is settlement. The goal of the mediator is to facilitate a mutually acceptable and voluntary agreement between the parties. Strictly speaking, the mediator should avoid evaluating the case. Rather, the mediator's task is to help identify issues, foster joint problem solving, and to explore with the parties settlement alternatives.

The committee believes that an ENE and mediation program should meet with the approval of the members of the Northern District Bar. Although the idea of an ENE as proposed may be new

to many lawyers, the committee has been told that it has met with success elsewhere. In addition, although many members of the Bar have not done so in concert with their adversary, it is likely that many lawyers have chosen to seek "early neutral evaluations" from other members of the Bar. The concept then should not prove foreign to them. Regarding mediation, it has become widely accepted in the state court system. As such, most lawyers are familiar with it. The availability of a number of certified, qualified mediators should also make it easier to implement a program that will prove acceptable.

In recommending for the District the above-described ADR program, the committee sought to minimize the costs to the litigants and the Court. Compensation for early neutral evaluators and mediators are to be set by Court rule. The recommendations specifically include provisions to ensure that indigent parties are not precluded from using the ADR mechanisms suggested. Although the committee does recommend that the Court designate a District ADR administrator, it does not believe that the time commitment of the administrator should be substantial. Perhaps an employee in the office of the Clerk can perform this function. The committee does believe that a District ADR advisory committee consisting of members of the Northern District Bar and interested laypersons should be established to measure the effectiveness of the program and to offer suggestions for changes, when warranted. The committee's proposed rules for the recommended ADR program follow.

The Northern District of Florida
Alternative Dispute Resolution Program

Rule 1: Definitions

A. Definitions

1. Alternative Dispute Resolution: A broad range of mechanisms and processes, supplementing the court adjudication process, which are designed to assist the parties to litigation in resolving differences.

2. Alternative Dispute Resolution Administrator: A person designated by the Chief Judge of the District with the authority and responsibility to administer and coordinate the programs described herein. The duties of the ADR administrator shall include maintaining a list of qualified early neutral evaluators and mediators, reviewing complaints with the ADR program or individual evaluators or mediators, and more generally monitoring and providing oversight to the ADR programs described herein.

3. Alternative Dispute Resolution Advisory Committee: A committee, appointed by the Chief Judge of the District, consisting of members of the Northern District Bar and interested laypersons which committee is responsible for measuring the effectiveness of the District's ADR program and for offering suggestions for change, when warranted.

4. Early Neutral Evaluation: A process occurring early in the litigation in which a neutral evaluator meets with the parties to offer an objective appraisal of the merits of the litigation. The evaluator should also offer suggestions as to how best to resolve differences and to minimize the costs and delay incident to resolving the matter. An ENE should be conducted in an informal manner and any appraisal or suggestions of the evaluator are confidential.

5. Early Neutral Evaluator: A person with a recognized expertise in a particular kind of litigation who provides the parties with an objective appraisal of the case and who offers suggestions for resolving differences and for minimizing the costs and delay incident to resolving the matter.

6. Mediation: Mediation provides an opportunity for the parties to reach agreement as to how best to resolve their dispute. It includes a supervised settlement

conference, presided over by a qualified neutral, designed to promote conciliation and the ultimate settlement of an action. It is an informal and non-adversarial process with the goal of assisting the parties in reaching a mutually acceptable and voluntary agreement. Decision making authority in mediation rests with the parties with the mediator's role being one of helping the parties resolve their differences.

7. Mediator: A person who assists the parties to litigation in reaching a mutually acceptable and voluntary resolution of their dispute. The mediator does not offer conclusions upon questions of law or fact or the outcome of a case, but rather fosters joint problem solving, helps the parties analyze the issues separating them and assists the parties in exploring settlement alternatives.

Rule 2: Consideration of Alternative Dispute Resolution Mechanisms

A. Timing: Before the initial case management conference with the Court, counsel shall discuss with their client(s) and opposing counsel the appropriateness of utilizing one of the ADR mechanisms described herein. At the initial case management conference, the parties shall advise the Court of the results of their discussions concerning ADR. At that time, and at subsequent conferences, if appropriate, the Court shall explore with the parties the possibility of utilizing one or more of the ADR mechanisms described herein.

Rule 3: Referral to Alternative Dispute Resolution

A. How Made: The Court may refer a case to ADR on the agreement of the parties, upon motion of any party after having given the opposing party an opportunity to respond, or on its own motion. The Court shall not act on its own motion without first giving the parties notice of its intent to refer the case to ADR and an opportunity to respond. In the absence of a belief that another ADR method is better suited to the case and the parties, the Court will respect any agreement by the parties as to an ADR process or provider. The decision to refer a case to ADR does not preclude the Court from suggesting or requiring other settlement initiatives, when warranted.

Rule 4: Early Neutral Evaluation

A. Purpose: The purpose of an early neutral evaluation is to provide the parties with an opportunity to obtain, early in the case, an objective appraisal of the merits of the dispute from a respected, experienced member of the Bar who is familiar with the type of litigation which the dispute

involves. It also provides the parties with the opportunity to obtain from the evaluator suggestions for how best to resolve differences and to minimize costs and delay in resolving the matter. ENE also provides a cost effective way for the parties to learn about an opponent's case, early in the litigation, in an informal but somewhat structured setting.

B. Eligible Cases: Any civil case may be referred to ENE.

C. Timing: A case may be referred for a neutral evaluation at any time but it is best to do so early in the litigation, prior to the commencement of formal discovery.

D. Early Neutral Evaluator

1. Qualifications: The evaluator shall be a member in good standing of a state Bar with significant experience in handling the type of litigation which the matter involves. Any attorney wishing to be an evaluator must agree to evaluate some cases for no fee if the proceedings involve an indigent party or parties. The parties may also, by agreement, select any person to be the evaluator in a specific case.

2. Evaluator List: Attorneys wishing to serve as neutral evaluators must submit to the District's ADR administrator a completed application form which contains a concise summary of the interested attorneys legal experience, the subject area(s) in which the attorney believes he has a particular expertise and other information, to be determined by the ADR administrator, which the administrator believes will be useful in administrating the ENE program. The ADR administrator shall compile a list of those seeking to be early neutral evaluators, which list will be available to the public.

3. Selection: If a case has been referred to ENE, the parties must notify the ADR administrator no later than 15 days after the date of the notice of referral whether they have selected a neutral evaluator. If the parties fail to notify the ADR administrator of their selection within that period, the ADR administrator will select an evaluator, with expertise in the subject area which the matter involves, from the list maintained by the administrator.

4. Neutrality Of The Evaluator: If at any time a party raises or the evaluator becomes aware of an issue with respect to the evaluators neutrality, the evaluator shall either step aside or disclose to the parties all facts relevant to the question of his neutrality. If after doing so, a party requests that the evaluator withdraw, the evaluator may do so or may elect to continue if the evaluator believes the party's concern about his neutrality is not well founded. If the evaluator elects

to continue over the objection of a party, the objecting party shall have the right to ask a magistrate judge to remove the evaluator. The evaluator shall be disqualified by the magistrate judge if the objecting party establishes that there is a reasonable basis to believe that the evaluator would not be neutral and impartial. If an evaluator is disqualified, the ADR administrator shall promptly designate a new evaluator, absent agreement of the parties on an evaluator.

5. Compensation: Absent an agreement by the parties to the contrary, an early neutral evaluator shall be compensated for time and be reimbursed for any reasonable expenses incurred at rates set in a standing order issued by the Chief Judge of the District. Other than this compensation, the evaluator shall not charge or accept in connection with the evaluation any fee or thing of value. Also, absent agreement of the parties to the contrary or order of the Court, the costs of the early neutral evaluation shall be paid equally by the parties. If the litigation is not resolved by settlement and the case is later concluded at trial, the prevailing party, upon motion, may recover as costs in the matter monies paid for the early neutral evaluation. Indigent parties will not be denied access to an ENE because of their indigence and indigent parties will not be responsible for a portion of the fees and expenses of the early neutral evaluation. If a party raises a question about whether the other party to the litigation is indigent, this question will be resolved by the ADR administrator.

6. Evaluators as Counsel in Other Case: Any attorney who serves as an evaluator, pursuant to these rules, shall not for that reason be disqualified from appearing and acting as counsel in any other cases pending in this court.

E. Procedures:

1. Setting the Evaluation: After the evaluator has been selected, the evaluator shall promptly consult with the parties and after doing so shall send a written notice to them of the time and place of the evaluation. The ENE shall be held no later than 45 days from the date of the evaluator's designation.

2. Attendance: The following persons must attend the evaluation conference:

a) All parties, or a representative of the party having full authority to settle the matter without further consultation. If a party is the United States, or an agency, official, or employee thereof, or the state or other public agency, or an official or employee thereof, the party shall be deemed to appear at an evaluation conference if a representative with full authority to act in good faith on behalf of the party is present;

b) counsel for each party with full authority to negotiate a settlement on behalf of that party;

c) a representative of the insurance carrier having full authority to settle without further consultation, if a party is insured. The evaluator may waive the presence of the representative of the insurance carrier if the representative's absence will not negatively impact on the evaluation.

If a party fails to appear at a duly noticed evaluation without good cause, the judge to whom the case has been assigned upon motion, may impose sanctions, including an award of evaluator fees and other costs against the party failing to appear.

3. Written Summary of the Case to be Provided to the Evaluator: Prior to the ENE, each party shall submit to the evaluator and the opposing party a written evaluative summary of the case of no more than 15 pages in length, together with any relevant documentation. The summary shall succinctly describe the nature of the dispute and why the party believes he has a meritorious position. It shall also include any other information the party believes would be useful to the evaluator in preparing for the evaluation. The written evaluative summaries and documentation shall not be filed with the court and shall not be made available to the court. The evaluator may also request that the parties provide additional information, prior to the ENE, which the evaluator believes would be useful.

4. The ENE Conference:

a) The ENE conference will be informal, non-adversarial and confidential.

b) At the evaluation conference, each party, through counsel or otherwise, will be permitted to make an oral presentation. The evaluation session is in part designed to promote communication and information sharing between the parties. The evaluator will have considerable discretion in structuring the conference.

c) The evaluator's assessment of the merits of the case, suggestions for resolving differences and for minimizing costs and delay will be purely advisory. They will not be communicated to the Court. The evaluator may offer his assessment and suggestions at the conference or may choose to do so, within a reasonable time, after its conclusion.

d) The Court will have no access to any of the written material supplied and/or used or oral statements made during the course of the evaluation conference. Any communications made in connection with or during the early evaluation conference may not be disclosed to anyone who is not involved in the litigation, nor may any such communication, unless otherwise discoverable or obtainable as a matter of federal law be used for any purpose, including impeachment, in the pending or any future proceeding. Absent the consent of the parties, no transcripts or record of the evaluation conference will be permitted.

Rule 5: Mediation:

A. Purpose: Mediation is an alternative dispute resolution process designed to facilitate the resolution of a dispute, through the assistance of a neutral third party. It is an informal, non-adversarial process which is intended to supplement but not replace the adjudicative process.

B. Eligible Cases: Any civil case may be referred to mediation.

C. Timing: A case may be referred to mediation at any time deemed appropriate by the parties or the Court.

D. Effect on Other Proceedings: Referral to mediation shall not delay or stay other proceedings unless so ordered by the court.

E. Mediators:

1. Qualifications: Any person certified as a Circuit Court mediator pursuant to rules adopted by the Florida Supreme Court, who remains in good standing as a circuit court mediator, is qualified to serve as a mediator in proceedings in the federal district courts for the Northern District of Florida. Any person wishing to serve as a mediator, however, must agree to mediate some cases for no fee if the proceedings involve an indigent party or parties. The parties may also, by agreement, select any person to be their mediator in a specific case.

2. Mediator List: Persons who have been certified as circuit court mediators pursuant to rules adopted by the Florida Supreme Court, who remain in good standing and who wish to serve as mediators in matters in the District Courts of the Northern District of Florida must submit to the District ADR administrator a completed application form on which the applicant indicates the date of their certification as circuit court mediators. They must also affirm they remain in good standing. The application form will also require the disclosure of such other information that the ADR administrator believes will be useful in administering the District's mediation program. The ADR administrator shall prepare and maintain a list of mediators consisting of those who seek to serve as mediators in the District courts of the Northern District and who are, given these rules, qualified to do so. This list shall be available to the public, upon request.

3. Selection: If a case has been referred to mediation, the parties must notify the ADR administrator no later than 15 days after the date of the notice of referral if they

have selected a mediator by mutual agreement. If the parties fail to notify the ADR administrator within the above-referenced period that they have selected a mediator, the federal district judge to whom the case has been assigned shall select a mediator from the list maintained by the ADR administrator.

4. Standards of Conduct: All mediators who mediate cases in the courts of the Northern District of Florida shall be governed by the Standards of Conduct approved by the Florida Supreme Court for certified mediators, see Part II, Standards of Professional Conduct, Rule 10.020 - Rule 10.150, Florida Rules for Certified and Court-Appointed Mediators. The Chief Judge of the Northern District of Florida shall have the authority and responsibility to discipline a mediator for a violation of these standards of conduct.

5. Disqualification of a Mediator: Any party may move the judge to whom the case has been assigned to enter an order disqualifying a mediator for bias or prejudice or for other good cause, including a violation of the Standards of Conduct. If the Court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement either agreed to by the parties or selected by the court from the list maintained by the ADR administrator. Nothing in this rule shall preclude mediators from disqualifying themselves or refusing an assignment if a question is raised as to their bias or prejudice.

6. Compensation: Absent an agreement by the parties to the contrary, a mediator shall be compensated for time and be reimbursed for any reasonable expenses incurred at rates set in a standing order issued by the Chief Judge of the District. Other than this compensation, the mediator shall not charge or accept in connection with the mediation of the case, any fee or thing of value. Also, absent agreement of the parties to the contrary or order of the Court, the costs of mediation shall be paid equally by the parties. If litigation is not resolved by settlement and the case is later concluded at trial, the prevailing party, upon motion, may recover as costs in the matter monies paid for mediation. Indigent parties will not be denied access to mediation because of their indigence and indigent parties will not be responsible for a portion of the fees and expenses of mediation. If a party raises a question about whether the other party to the litigation is indigent, this question will be resolved by the district judge assigned to the case.

7. Mediators as Counsel in Other Cases: Any attorney who is a certified mediator and who serves as a mediator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending in this court.

F. Procedures:

1. Setting the Mediation: After the mediator has been selected, he shall, after consulting with the parties, send each a written notice setting out the time and place of the mediation. The initial mediation conference shall be held no later than 45 days from the date of the mediators designation.

2. Attendance: The following persons must attend the mediation conference:

a) All parties, or a representative of the party, having full authority to settle the matter without further consultation. If a party is the United States, or an agency, official, or employee thereof, or the state or other public agency, or an official or employee thereof, the party shall be deemed to appear at a mediation conference if a representative with full authority to mediate in good faith on behalf of the party and to recommend a settlement to the party is present;

b) counsel for each party with full authority to negotiate a settlement on behalf of that party;

c) a representative of the insurance carrier having full authority to settle without further consultation if a party is insured. The mediator may waive the presence of the representative of the insurance carrier if the representative's absence will not impair the possibility of a settlement.

If a party fails to appear at a duly noticed mediation without good cause, the judge to whom the case has been assigned upon motion, may impose sanctions, including an award of mediator fees and other costs against the party failing to appear.

3. Providing Written Materials to the Mediator: Prior to the mediation, each party should provide the mediator with whatever written materials the party believes will be helpful to the mediator in fostering a settlement. The mediator may also request that the parties provide any additional information which the mediator believes would be useful.

4. The Mediation Conference:

   a) The mediation conference will be informal, non-adversarial and confidential.

   b) At the commencement of the mediation, the mediator should inform the parties that the process is consensual in nature, that the mediator is an impartial facilitator, and that the mediator may not impose or force any settlement on the parties.

   c) The mediator will have considerable discretion in structuring the mediation. A mediator shall not coerce or unfairly influence a party into a settlement agreement and shall not make substantive decisions for any party to the mediation process. A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation. A mediator shall not knowingly assist the parties in reaching an agreement which for reasons such as fraud, duress, over reaching, the absence of bargaining ability or unconscionability would be unenforceable.

   d) A mediator shall preserve and maintain the confidentiality of all mediation proceedings except where required by federal law to disclose information. Mediation shall be regarded as a settlement proceeding and any communication related to the subject matter of the dispute made during the mediation by any

participant, mediator, or any other person present at the mediation shall be a confidential communication. No admission, representation, statement, or other confidential communication made in the course of setting up or conducting the mediation proceedings, not otherwise discoverable or obtainable as a matter of federal law, shall be admissible in any other proceeding. Absent the consent of the parties, no transcript or record of the mediation will be permitted.

e) Absent an extension from the court, mediation must be completed within 45 days of the initial mediation conference.

f) Immediately upon conclusion of the mediation, the mediator shall file a mediation report with the district judge to whom the case has been assigned, with a copy to the District ADR administrator, indicating only whether the case settled, settled in part, or that the case did not settle. With the consent of the parties, the mediator's report may also identify any matters or issues which if completed or resolved would facilitate the possibility of a settlement. In the event the parties reach an agreement to settle the case, each lead counsel shall notify the court of that fact and promptly prepare and file the appropriate dismissal or settlement papers.

Rule 6: ADR Advisory Committee:

A. Appointment and Purpose: An advisory committee consisting of attorneys who are members of the Northern District Bar and interested laypersons shall be appointed by the Chief Judge of the District to monitor the use and success of the alternative dispute resolution program described herein and for offering changes in the program when warranted.

Summary of Conclusions and Recommendations

A. Case Management

1. With the exception of prisoner and certain administrative cases, the District's civil docket does not warrant systematic differential case management practices, p. 17.

2. Civil cases could be disposed of in a more expeditious and less costly fashion if the Court took a more active role in the case management process, beginning early in the litigation. With certain types of cases excepted, there should be an initial pretrial conference where the Court meets with the parties prior to the issuance of its scheduling order. To assist in making that conference meaningful in the case management context, the parties should be required to confer prior to this conference to discuss the merits of the case, the chances of settlement and to be able to provide input to the Court regarding any matters to be addressed in the scheduling order. Where appropriate, there should be an intermediate case management conference conducted by the Court and the Court should also schedule additional case management conferences when requested by the parties or warranted by the pace of litigation, p. 19-25.

3. There should be presumptive time periods within which motions should be ruled upon, p. 26.

4. The Office of the Clerk should monitor the progress of motions to ensure that they are expeditiously resolved, p. 26.

5. The parties and the Court should consider making use of "phased" discovery, where warranted, allowing a limited first round of discovery to frame the issues and then a "follow-up" round to narrow those issues, p. 27-28.

6. The District should opt-out of proposed Federal Rule of Civil Procedure 26(a)(1) should it become effective, p. 28-29.

7. The disclosures relating to expert witnesses required by the District's scheduling order and mandated by proposed Federal Rule of Civil Procedure 26(a)(2) are helpful in reducing costs and delay and should continue to be required, p. 29.

8. The disclosures mandated by proposed Federal Rule of Civil Procedure 26(a)(3) should be required in the District, assuming the proposed rule does not take effect, p. 29.

9. As set out in proposed Federal Rule of Civil Procedure 26(b)(4)(A), The Northern District should consider the routine allowance of expert depositions without the need for a court order, p. 30.

10. The parties should not be required to submit the entire direct testimony of expert witnesses prior to trial. The parties should be encouraged to make use of videotape depositions of experts in lieu of live testimony, p. 30.

11. The District should continue to have a 50 interrogatory limitation, notwithstanding proposed Rule of Civil Procedure 33(a) which would preclude more than 25 written interrogatories, including subparts. Also, contrary to proposed Federal Rules of Civil Procedure, 30(a)(2)(A) and 31 leave of court should not be required if a proposed deposition would result in more than 10 depositions, p. 31

12. Methods for the early and effective resolution of discovery disputes should be implemented, including encouraging the parties to explore and adopt nonjudicial methods of resolving discovery disputes. There should be greater utilization of the sanctions presently authorized in the Federal Rules of Civil Procedure when judicial involvement is required to resolve discovery disputes, p. 32.

13. Suggested alternatives to an hourly billing system or a contingency fee arrangement, such as requiring attorneys to charge set rates or work on fixed schedules based upon the services to be performed, may have antitrust implications and would otherwise prove to be problematic and unrealistic, p. 33.

14. The current practice in the District of requiring a party who may seek a court award of attorney fees to file monthly summaries of time spent on a particular case, with the understanding that a failure to file such records would mean the inability to be compensated for work done during that period, should be continued, p. 33.

15. Consistent with proposed Federal Rule of Civil Procedure 54 (d)(2), Courts should address the question of liability for fees before dealing with the issue of appropriate rates and hours, p. 34.

16. The Court should consider a local rule setting parameters on the types and amount of discovery which would be allowed on attorneys' fees issues, reasonable limitations on, or even the disallowance of the use of experts in such matters, reasonable limitations on or even the disallowance of live testimony in the resolution of such questions, the referral of attorneys fees applications to special masters or magistrate judges and any other alternatives which might reduce the time and expense involved in concluding this final aspect of the litigation, p. 34 - 35.

17. Contrary to proposed Federal Rule of Civil Procedure 54(d), the Committee recommends that the parties be allowed 30 days, following the termination of the action or proceeding, for the filing of both cost and attorney's fee entitlement motions, p. 35.

18. The setting of "firm" trial dates early in the litigation would play a major role in reducing the costs and delay in civil litigation in the District. The parties, prior to an initial pretrial conference, should attempt in good faith to arrive at an estimated trial date, this date should be included in the parties case management plan, and the Court should include a trial date in its scheduling order, p. 35, 36.

B. Utilization of Magistrate Judges

1. The nature of the Northern District docket justifies an additional full time magistrate judge and the court should seek one. Ideally, there should be one full time magistrate judge for each federal trial judge in the District, p. 42.

2. The Chief Judge should appoint a prisoner pro bono counsel committee charged with recommending to the Court, within a reasonable time, a pro bono plan designed to identify counsel who would be willing to handle, on a pro bono basis, prisoner cases which have been found, after an initial screening, to contain allegations sufficient to warrant the assignment of counsel, p. 43.

3. The office of the U.S. Attorney should initiate discussions with state and military authorities to determine whether certain criminal misdemeanor and non-criminal petty offenses could be resolved without involving the jurisdiction of the magistrate judges, p. 43.

4. The Court should consider ways to increase the involvement of the magistrate judges in the resolution of civil cases, other than those in which they are currently involved. The Court should not be hesitant to apprise the parties of the benefits of consenting to the use of a magistrate judge, particularly if the use of a magistrate judge would result in an earlier trial or final hearing date. During any court conference with the parties at which a trial or final hearing date is to be discussed and set, the magistrate judge should be present and the court should discuss with the parties what a likely trial or final hearing date will be if they consent to the use of a magistrate judge as contrasted with the Court, p. 44, 45.

5. Particularly regarding the resolution of non-dispositive civil pretrial matters, such as discovery questions, the Court should consider increasing the number of such matters that they currently refer to magistrate judges, p. 45.

6. The Court should consider amending Local Rule 6, Motion Practice so that when issues regarding non-dispositive matters are presented to the Court for resolution the parties would be required to indicate whether they have any objection to the question being referred to a magistrate judge and if they do whether they have any reasonable basis for believing that the matter could not be fairly and expeditiously resolved by a magistrate judge. A similar practice should be required as to dispositive motions and other motions which if referred to the magistrate judge, would require the magistrate judge to submit to the court a report containing proposed findings of fact and recommendations for disposition, p. 46.

C. Alternative Dispute Resolution

1. The Court should adopt an ADR program consisting of early neutral evaluation and mediation. Proposed rules for the recommended ADR program are set out in detail in the report. Other ADR mechanisms should be encouraged when appropriate, particularly if proposed by the litigants, p. 47.

2. The Court should designate a District ADR administrator, p. 49.

3. A District ADR advisory committee consisting of members of the Northern District Bar and interested laypersons should be established to measure the effectiveness of the ADR program and to offer suggestions for changes, when warranted, p. 49.

APPENDIX A

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

FLORIDA NORTHERN

			TWELVE MONTH PERIOD ENDED SEPTEMBER 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		1,804	1,488	1,280	1,311	1,482	1,431		
	Terminations		1,600	1,278	1,184	1,276	1,485	1,167		
	Pending		1,733	1,529	1,381	1,291	1,246	1,233		
	Percent Change In Total Filings Current Year	Over Last Year...		21.2					10	2
		Over Earlier Years...			40.9	37.6	21.7	26.1	8	3
	Number of Judgeships		4	4	3	3	3	3		
	Vacant Judgeship Months**		1.6	10.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	451	372	427	437	494	477	27	6
		Civil	388	323	357	360	418	397	27	5
		Criminal Felony	63	49	70	77	76	80	31	5
	Pending Cases		433	382	460	430	415	411	32	5
	Weighted Filings**		332	298	330	371	374	356	71	9
	Terminations		400	320	395	425	495	389	44	6
	Trials Completed		44	40	47	62	66	57	15	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.4	5.6	5.2	4.9	3.6	3.6	31	4
		Civil**	9	11	10	9	6	8	36	6
	From Issue to Trial (Civil Only)		19	23	19	15	20	15	61	8
OTHER	Number (and %) of Civil Cases Over 3 Years Old		45 3.0	103 7.9	91 7.8	66 6.1	40 3.8	33 3.1	22	5
	Average Number of Felony Defendants Filed per Case		1.9	2.0	1.7	1.8	1.7	1.5		
	Jurors	Avg. Present for Jury Selection**	27.96	34.79	37.14	29.66	28.23	31.17	20	3
		Percent Not Selected or Challenged**	15.4	28.4	25.1	20.3	20.4	23.6	10	2

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

1992 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1551	45	118	666	101	161	19	128	110	15	123	2	63
Criminal*	247	-	9	39	11	12	39	52	9	30	3	15	28

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

APPENDIX B

EXPLANATION OF PROFILES FOR UNITED STATES DISTRICT COURTS

*OVERALL WORKLOAD STATISTICS

Filings	**TOTAL NUMBER OF DISTRICT COURT CASES WHICH WERE** (Exclusive of all misdemeanor criminal cases)	Filed during the year, including transfers
Terminations		Terminated during the year
Pending		Pending at the end of the year
Percent Change in Total Filings – Current Year	Over Last Year ▶	Percentage change in total filings – current year over previous
	Over Earlier Years ▶	Percentage change in total filings – current year over two, three, four and five years ago
Number of Judgeships	Authorized Judgeships (Does not include senior judges)	
Vacant Judgeship Months	Number of months during profile year that an authorized judgeship was not filled	

*ACTIONS PER JUDGESHIP

FILINGS	Total *	**ALL FIGURES IN THIS SECTION ARE OBTAINED BY DIVIDING THE TOTAL STATISTICS FOR THE COURT BY THE NUMBER OF AUTHORIZED JUDGESHIPS.** Excludes all misdemeanor criminal cases	Total civil and criminal felony cases filed
	Civil		Includes all civil cases filed
	Criminal Felony		Includes all criminal felony cases filed whether by indictment, information, or transfer
Pending Cases			Total pending cases at the end of the year
Weighted Filings*			This figure is a mathematical adjustment of filings which gives heavier count to cases known to be of a more difficult and time consuming nature
Terminations			Includes all terminated cases, civil & criminal felony, tried and not tried, disposed of during the year
Trials Completed			Total trials completed by judges, including evidentiary trials, hearings on temporary restraining orders and preliminary injunctions

MEDIAN TIMES (MONTHS)

From Filing to Disposition	Criminal Felony	For all criminal felony defendants and all civil cases except land condemnation, prisoner petitions, recovery of overpayments, enforcement of judgments, and deportation reviews terminated during the year whether by trial or other disposition. For all criminal felony defendants time is computed from the filing date to either the sentencing date or the dismissal/acquittal date including excludable delays reported under the Speedy Trial Act. When the District had less than 10 terminations the median case was not computed.
	Civil**	
From Issue to Trial (Civil Only)		For civil cases, except land condemnation, going to a trial during profile years, this figure shows the time interval in months for the middle (median) case. Time is computed from the date the answer or response is filed to the date trial begins.

OTHER

Number (and %) of Civil Cases Over 3 Years Old		Total number of civil cases pending three years or more as of the end of the year and the percentage these same cases represent of total civil pending caseload.
Average Number of Felony Defendants Filed per Case		The average number of defendants for each felony case filed (excludes transfers).
Jurors	Average Present for Jury Selection	Average number of petit jurors reporting to court for jury selection.
	Percent Not Selected, or Challenged	Percent of petit jurors not selected, serving or challenged on jury selection days.

*See Page 167.

NATURE OF SUIT AND OFFENSE CATEGORIES

CASE CLASS					
CIVIL	A - Social Security B - Recovery of Overpayments and Enforcement of Judgments C - Prisoner Petitions D - Forfeitures and Penalties and Tax Suits	E - Real Property F - Labor Suits G - Contracts H - Torts	I - Copyright, Patent, and Trademark J - Civil Rights K - Antitrust	L - All Other Civil Cases
CRIMINAL FELONY (Excludes transfers.)	A-Immigration B-Embezzlement C-Weapons and Firearms D-Escape	E-Burglary and Larceny F-Marihuana and Controlled Substances G-Narcotics H-Forgery and Counterfeiting	I-Fraud J-Homicide and Assault K-Robbery	L - All Other Criminal Felony Cases

WHAT THE DISTRICT'S NUMERICAL STANDINGS MEAN

These show where an individual district court stands in relation to other district courts in the circuit and in the country. All "workload" statistics are ranked in descending order (highest value receives rank of 1) and all other statistics are ranked in ascending order (lowest value is ranked first). In some categories fewer than 94 courts are ranked because the information was not available for all districts.

▲ VERTICAL ROW OF NUMBERS IN RIGHT MARGIN

**Civil median excludes all recovery/enforcement cases. See page 167.

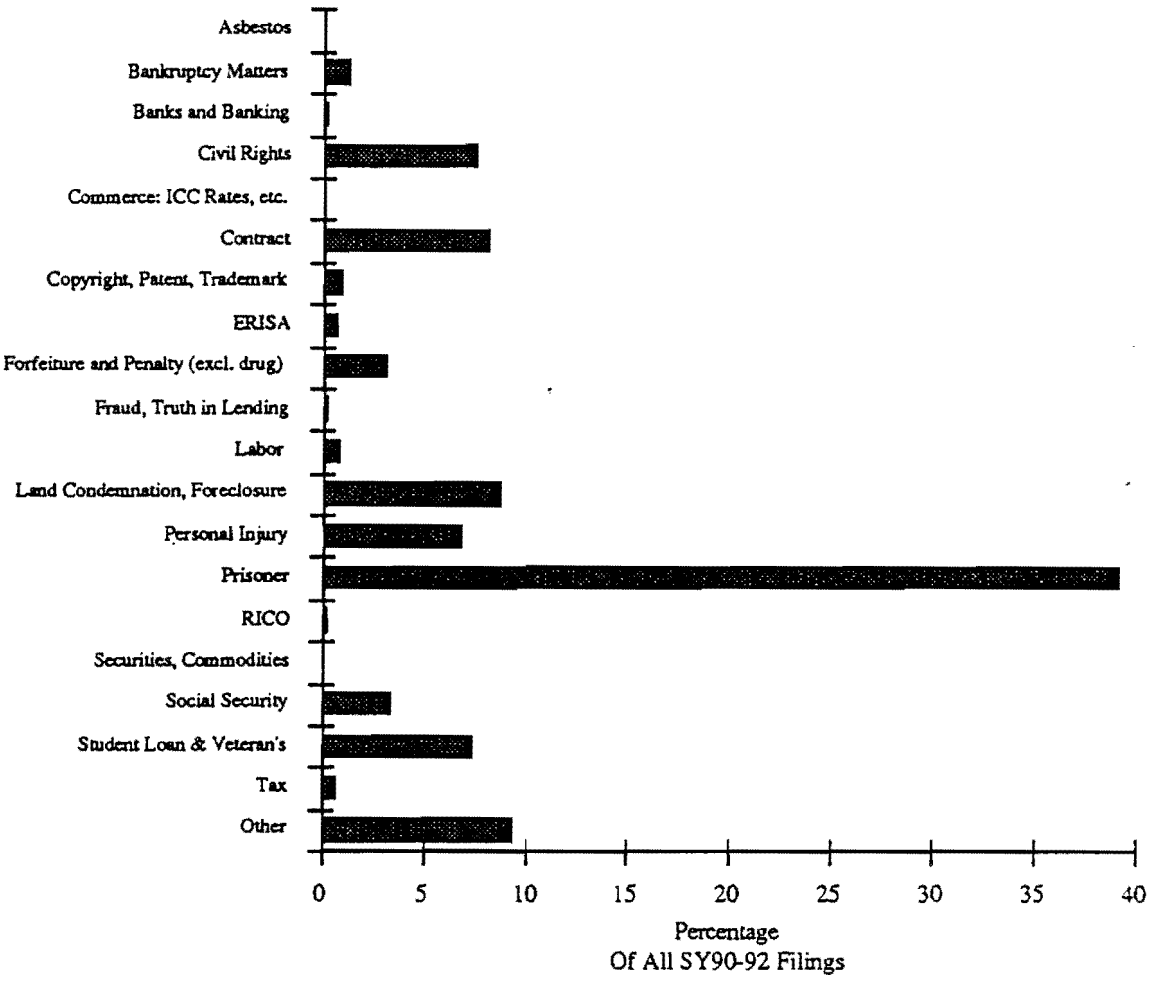
APPENDIX C

- securities cases
- other actions under federal statutes; e.g., FOIA, RICO, and banking laws

Chart 1 shows the percentage distribution among types of civil cases filed in your district for the past three years.

Chart 1: Distribution of Case Filings, SY90-92

Northern District of Florida



APPENDIX D

Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY83-92
Northern District of Florida

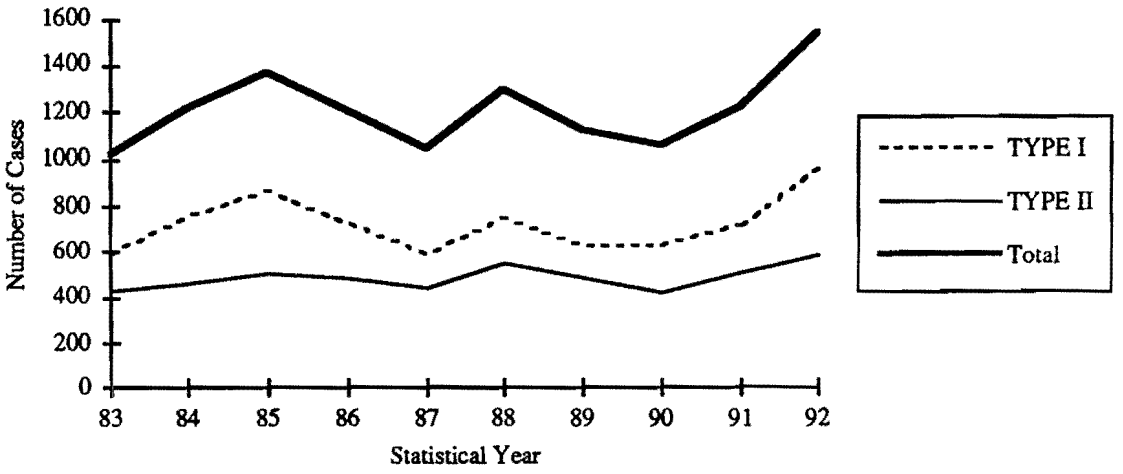


Table 1: Filings by Case Types, SY83-92

Northern District of Florida

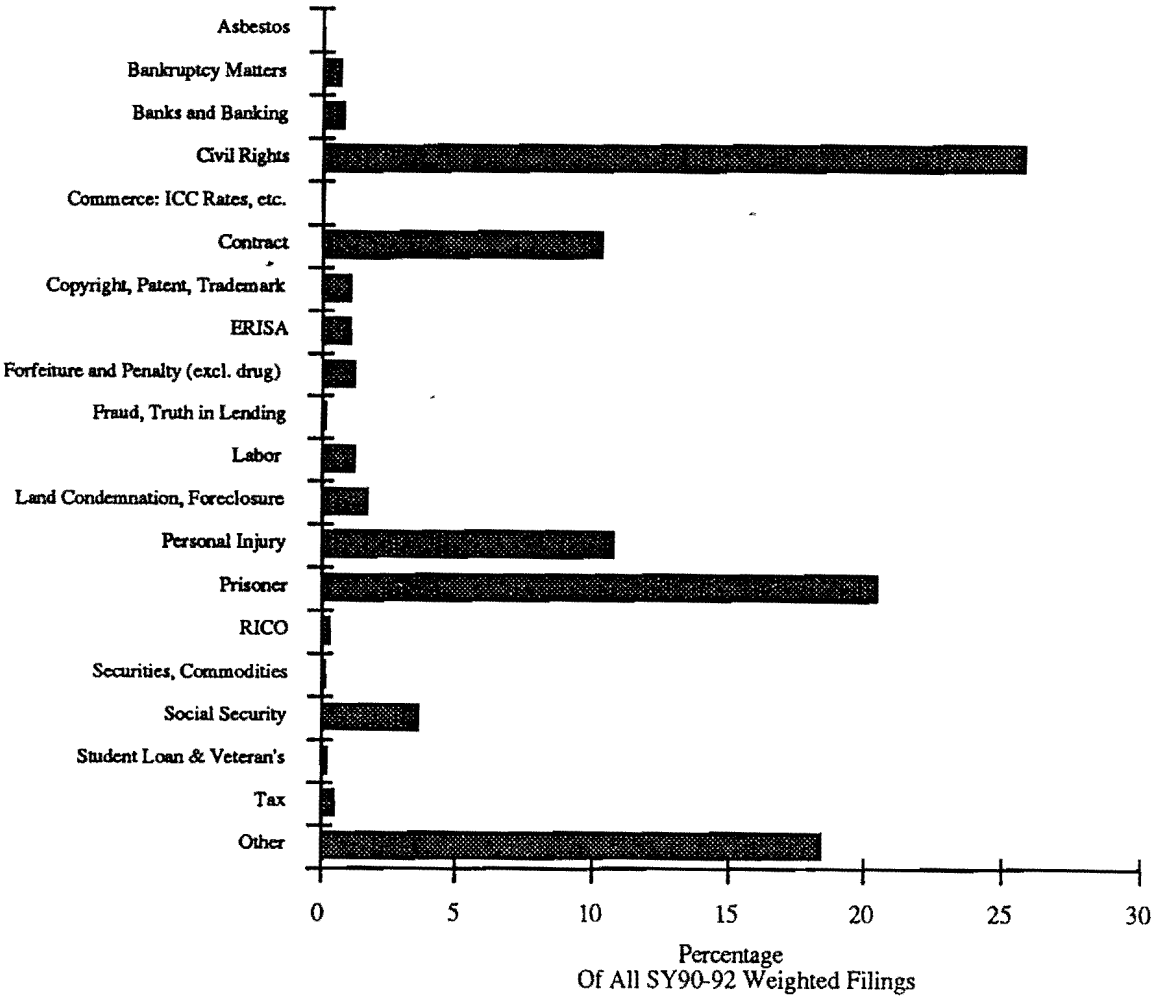
	YEAR									
	83	84	85	86	87	88	89	90	91	92
Asbestos	0	2	0	0	0	2	0	0	3	0
Bankruptcy Matters	4	13	10	16	21	13	41	23	13	14
Banks and Banking	0	1	0	1	1	1	0	0	2	6
Civil Rights	86	89	66	76	79	88	80	71	98	120
Commerce: ICC Rates, etc.	0	1	1	0	0	3	1	2	1	0
Contract	114	128	135	143	139	206	123	101	97	112
Copyright, Patent, Trademark	42	22	12	11	9	19	13	13	10	15
ERISA	0	1	3	3	6	5	7	7	14	8
Forfeiture and Penalty (excl. drug)	4	9	9	17	20	28	61	16	51	55
Fraud, Truth in Lending	4	6	7	7	5	1	9	0	5	3
Labor	12	13	22	15	12	20	6	12	8	12
Land Condemnation, Foreclosure	47	91	111	118	97	202	49	94	97	143
Personal Injury	85	94	85	103	69	76	83	94	76	91
Prisoner	389	361	342	264	257	254	308	372	466	654
RICO	0	0	0	0	2	1	1	7	2	1
Securities, Commodities	4	10	9	8	2	2	11	0	3	0
Social Security	61	96	92	69	47	83	51	37	53	40
Student Loan and Veteran's	92	189	307	252	174	189	182	102	78	105
Tax	4	12	17	8	18	10	7	6	11	11
All Other	70	80	137	92	81	87	82	93	124	143
All Civil Cases	1018	1218	1365	1203	1039	1290	1115	1050	1212	1533

APPENDIX E

c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights to show the approximate distribution of demands on judge time among the case types accounting for the past three years' filings in this district. The chart does not reflect the demand placed on magistrate judges.

Chart 3: Distribution of Weighted Civil Case Filings, SY90-92

Northern District of Florida



APPENDIX F

United States District Courts — National Judicial Workload Profile

			ALL DISTRICT COURTS					
			1992	1991	1990	1989	1988	1987
OVERALL WORKLOAD STATISTICS	Filings[1]		265,612	244,790	251,166	257,259	269,982	265,234
	Terminations		263,034	250,615	245,014	255,473	266,595	262,605
	Pending		262,805	260,095	273,301	267,440	269,646	266,006
	Percent Change in Total Filings - Current Year	Over Last Year ▶		8.5				
		Over Earlier Years ▶			5.8	3.2	-1.6	0.1
	Number of Judgeships		649	649	575	575	575	575
	Vacant Judgeship Months		1313.4	1227.6	540.1	374.1	485.2	483.4
ACTIONS PER JUDGESHIP	FILINGS	Total	409	377	437	447	470	461
		Civil	355	325	381	393	419	411
		Criminal Felony	54	52	56	54	51	50
	Pending Cases		405	401	475	465	469	463
	Weighted Filings		416	384	452	454	469	454
	Terminations		405	386	426	444	464	457
	Trials Completed		32	31	35	35	34	34
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	5.9	5.8	5.4	5.2	4.5	4.1
		Civil	9	10	9	9	9	9
	From Issue to Trial (Civil Only)		15	15	14	13	14	14
OTHER	Number (and %) of Civil Cases Over 3 Years Old		17,249 7.7	21,252 9.4	25,672 10.6	23,137 9.7	21,918 8.9	20,043 8.2
	Average Number of Felony Defendants Filed per Case		1.6	1.5	1.5	1.5	1.6	1.5
	Jurors	Avg. Present for Jury Selection	37.64	37.43	35.60	36.07	32.70	31.14
		Percent Not Selected or Challenged	34.1	34.3	33.9	35.4	33.7	32.1

1992 CIVIL AND FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

TOTAL CIVIL	230,509	TOTAL CRIMINAL FELONY[1]	34,277
A-Social Security	8,958	A-Immigration	1,883
B-Recovery of Overpayments and Enforcement of Judgment	16,006	B-Embezzlement	1,467
C-Prisoner Petitions	48,423	C-Weapons and Firearms	3,782
D-Forfeitures and Penalties and Tax Suits	7,825	D-Escape	576
E-Real Property	9,976	E-Burglary and Larceny	1,676
F-Labor Suits	16,394	F-Marihuana and Controlled Substances	5,118
G-Contracts	33,428	G-Narcotics	6,768
H-Torts	38,179	H-Forgery and Counterfeiting	1,022
I-Copyright, Patent, and Trademark	5,830	I-Fraud	6,354
J-Civil Rights	24,233	J-Homicide and Assault	595
K-Antitrust	502	K-Robbery	1,925
L-All Other Civil	20,755	L-All Other Criminal Felony Cases	3,113

[1] Filings in the "Overall Workload Statistics" section include criminal transfers, while filings "by nature of offense" do not.

APPENDIX G

indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

Note that these measures serve different purposes. Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts; it is corrected for changes in the case mix but not for changes in the filing rate. Charts 5 and 6 display calculations we have made for this district using these measures.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY83-92
Northern District of Florida

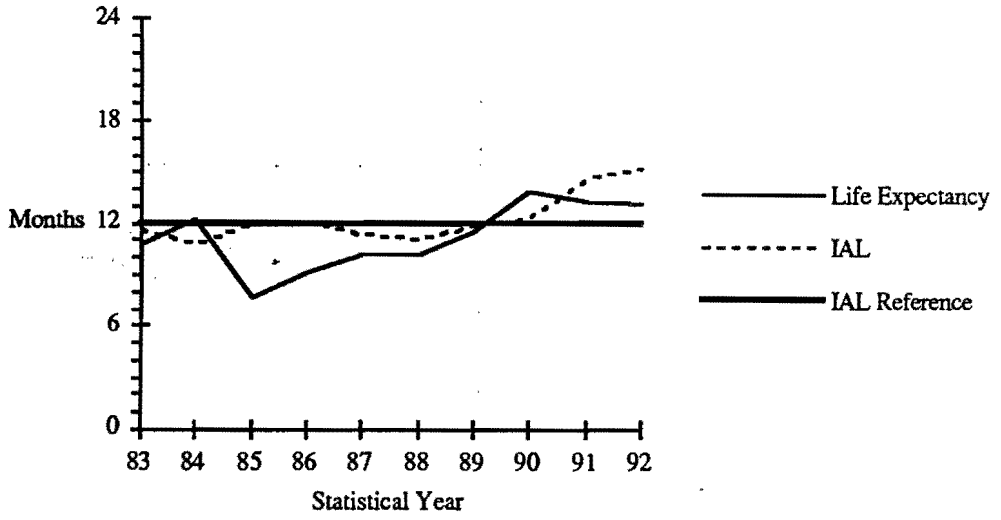
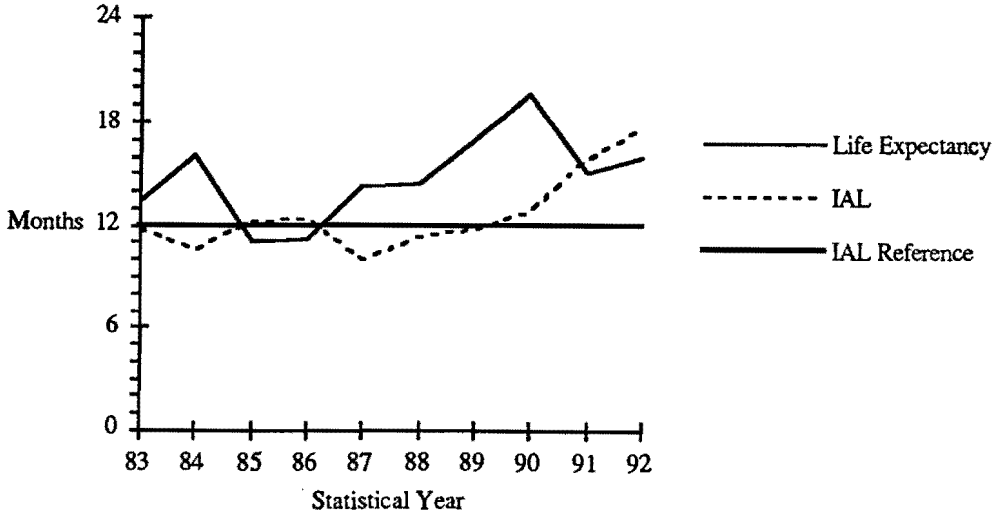


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY83-92
Northern District of Florida



APPENDIX H

NDFL COURT STATISTICS - Except as otherwise noted, all figures were taken or derived from statistics maintained and published by the U.S. Department of Justice

FISCAL YEAR	CRIMINAL CASES FILED *	DEFENDNTS FILED	CRIMINAL CASES PROCESSED	DEFENDNTS PROCESSED	CRIMINAL CASES PENDING AT END OF FY	DEFENDNTS PENDING AT END OF FY	CRIMINAL CASES TRIED BY JUDGE OR JURY	DEFENDNTS TRIED (JURY TRIALS)	% OF CRIMINAL CASES TRIED BY JUDGE OR JURY	% OF DEFENDNTS TRIED (JURY TRIALS)
1982	122	259	137	270	103	210	25	86 (81)	18.2%	31.9% (30%)
1983	115	240	105	212	112	238	27	70 (59)	25.7%	33% (27.8%)
1984	237	348	197	335	153	251	47	94 (89)	23.9%	28.1% (26.6%)
1985	256	395	236	363	171	279	41	83 (74)	17.4%	22.9% (20.4%)
1986	327	496	282	452	248	438	50	68 (63)	17.7%	15% (13.9%)
1987	276	419	199	318	232	548	58	85 (74)	29.1%	26.7% (23.3%)
1988	234	410	235	377	231	395	68	88 (78)	28.9%	23.3% (20.7%)
1989	240	448	227	387	239	450	63	107 (99)	27.8%	27.6% (25.6%)
1990	203	356	206	348	233	452	58	115 (104)	28.2%	33% (29.9%)
1991	216	422	210	416	235	453	54	125 (115)	24.5%	30% (27.6%)
1992	247	526	228	433	269	532	NA	120 (116)	NA	27.7% (26.8%)
1993	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

NA = Not Available NC = Not Computed

* - "CRIMINAL CASES" and "DEFENDANTS" refer only to felony criminal cases and defendants

** - Computed from monthly records mainted by the NDFL Clerk's Office on each District Judge and all visiting Judges. "Trial" is a narrower category that "contested Hearings," which includes all trials plus all hearings (including sentencings) which are contested and involve the presentation of evidence.

*** - FYs 85 and 91 were chosen because the total hours for those years most closely approximated the average total hours for FY 83-87 (the five years preceding implimentation of the Guidelines) and FY 89-93 (the five years following implementation). FY 88 was ommitted as a transitional year.

**** - Projected on the basis of ten months statistics (Oct 92 - Jul 93)

NDFL COURT STATISTICS - Except as otherwise noted, all figures were taken or derived from statistics maintained and published by the U.S. Department of Justice

FISCAL YEAR	# OF DIST. JUDGES SITTING (NOT INCL. SENIOR STATUS)	CRIMINAL CASES PROCESSED PER JUDGE	CRIMINAL DEFENDNTS PROCESSED PER JUDGE	CRIMINAL CASES TRIED PER JUDGE	DEFENDNTS TRIED PER JUDGE (JURY TRIALS)	DEFENDNTS PER CRIMINAL CASE AS FILED (PROCESSED)	DEFENDNTS PER TRIAL	JUDGES' HOURS IN DIST. COURT TRIAL/OTHER TOTAL**	JUDGES' HOURS IN CONTESTED HEARINGS CRIM/CIV %CRIM/%CIV **
1982	2.5	54.8	108	10	34.4 (32.4)	2.12 (1.97)	3.44	NA	NC
1983	3	35	70.7	9	23.3 (19.7)	2.09 (2.02)	2.59	1138/433 1571	NC
1984	3	65.7	111.7	15.7	31.3 (29.7)	1.47 (1.70)	2.0	1941/660 2601	NC
1985	3	78.7	121	13.7	27.7 (24.7)	1.54 (1.54)	2.02	2486/647 3133	1409/1139 55%/45% ***
1986	3	94	150.7	16.7	22.7 (21)	1.52 (1.6)	1.36	2250/674 2924	NC
1987	3	66.3	106	19.3	28.3 (24.7)	1.52 (1.6)	1.47	2063/633 2969	NC
1988	3	78.3	125.7	22.7	29.3 (26)	1.75 (1.6)	1.29	1899/619 2518	NC
1989	3	75.7	129	21	35.7 (33)	1.87 (1.7)	1.70	2543/670 3213	NC
1990	3	68.7	116	19.3	38.3 (34.7)	1.75 (1.69)	1.98	2391/630 3021	NC
1991	3	70	139	18	41.7 (38.3)	1.95 (1.98)	2.31	2724/686 3410	1904/605 76%/24% ***
1992	4	57	108.3	NA	30 (29)	2.13 (1.9)	NA	2852/959 3811	NC
1993	NA	NA	NA	NA	NA	NA	NA	2515/700 3215 ****	NC

NA = Not Available NC = Not Computed

* - "CRIMINAL CASES" and "DEFENDANTS" refer only to felony criminal cases an* - Includes trials and all hearings (including sentencings) which are contested and involve the presentation of evidence.

** - Computed from monthly records mainted by the NDFL Clerk's Office on each District Judge and all visiting Judges. "Trial" is a narrower category that "contested Hearings," which includes all trials plus all hearings (including sentencings) which are contested and involve the presentation of evidence.

*** - FYs 85 and 91 were chosen because the total hours for those years most closely approximated the average total hours for FY 83-87 (the five years preceeding implimentation of the Guidelines) and FY 89-93 (the five years following implementation). FY 88 was ommitted as a transitional year.

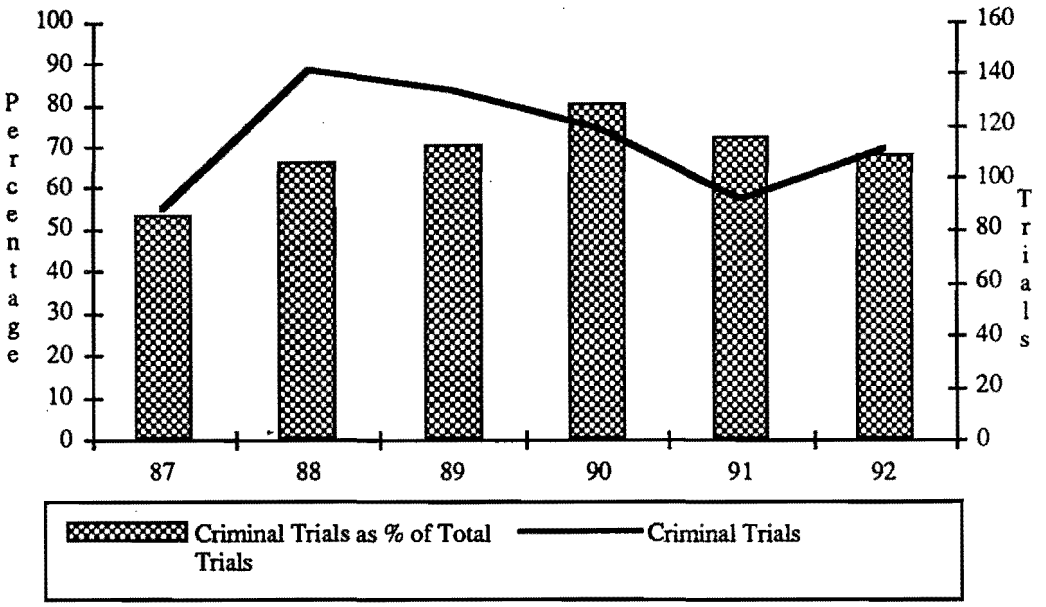
**** - Projected on the basis of ten months statistics (Oct 92 - Jul 93)

APPENDIX I

b. The demand on resources by criminal trials. Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY87-92

Northern District of Florida



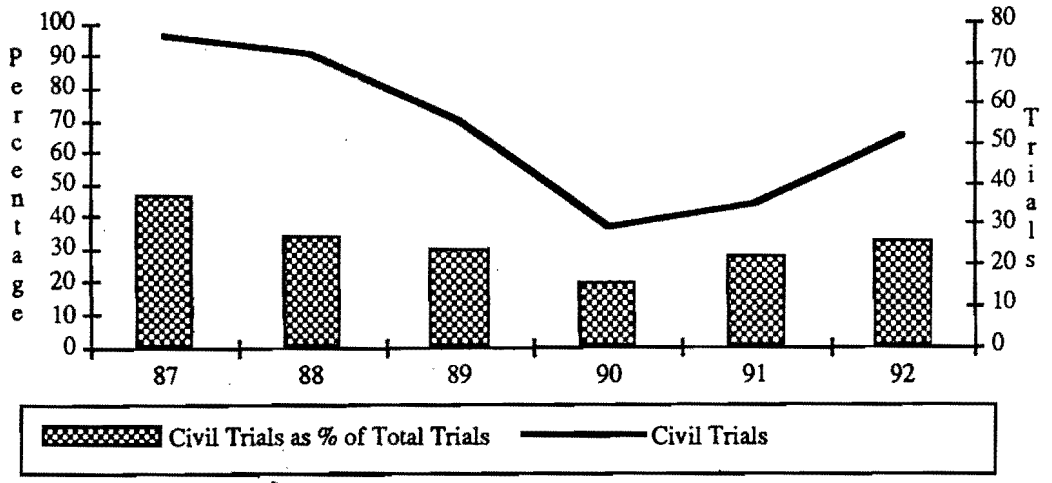
For more information on caseload issues

This section was prepared by John Shapard of the Federal Judicial Center with assistance from David Cook and his staff in the Statistics Division of the Administrative Office of the U.S. Courts. Questions and requests for additional information should be directed to Mr. Shapard at (FTS/202) 633-6326 or Mr. Cook at (FTS/202) 633-6094.

APPENDIX J

Another indicator of burden is the incidence of civil trials. Chart 4 shows the number of civil trials completed and the percentage of all trials accounted for by civil cases during the last six years.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY87-92
Northern District of Florida



d. Time to disposition. This section is intended to assist in assessments of "delay" in civil litigation in this district. We first look at conventional data on the pace of litigation and then suggest some alternative ways of examining data to estimate the time that will be required to dispose of newly filed cases. The *MgmtRep* table shows the median time from filing to disposition for civil cases and for felonies. Time from joinder of issue to trial is also reported for civil cases that reached trial. These data are commonly used to assess the dispatch with which cases have moved through a court in the past. When enough years are shown and the data for those years are looked at collectively, reasonable assessments of a court's pace might be made.

Data for a single year or two or three may not, however, provide a reliable predictor of the time that will be required for new cases to move from filing to termination. An obvious example of the problem arises in a year when a court terminates an unusually small portion of its oldest cases. Both average and median time to disposition in that year will show a decrease. The tempting conclusion is that the court is getting faster when the opposite is actually the case. Conversely, when a court succeeds in a major effort to clean up a backlog of difficult-to-move cases, the age of cases terminated in that year may suggest that the court is losing ground rather than gaining.

Since age of cases terminated in the most recent years is not a reliable predictor of next year's prospects, we offer other approaches believed to be more helpful. *Life expectancy* is a familiar way of answering the question: "How long is a newborn likely to live?" Life expectancy can be applied to anything that has an identifiable beginning and end. It is readily applied to cases filed in courts.

A second measure, *Indexed Average Lifespan* (IAL), permits comparison of the characteristic lifespan of this court's cases to that of all district courts over the past decade. The IAL is indexed at a value of 12 (in the same sense that the Consumer Price Index is indexed at 100) because the national average for time to disposition is about 12 months. A value of 12 thus represents an average speed of case disposition, shown on the charts below as IAL Reference. Values below 12

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

_____/

SCHEDULING ORDER

Rule 1 of the Federal Rules of Civil Procedure requires a "just, speedy, and inexpensive determination of every action." To accomplish that purpose, and in accordance with Rule 16(b) of the Federal Rules of Civil Procedure, it is ORDERED as follows:

(1) Discovery Period. The parties are directed to conduct discovery so that the due date of any discovery requested shall not be later than _____. The conduct of any discovery which would require a later due date shall be permitted only on order of the Court. No extension of time will be granted except for good cause and upon showing of diligence during the initial discovery period. [See Local Rule 9] The filing of motions SHALL NOT operate to toll or extend the discovery cut-off date set forth in this paragraph.

Entered on docket _____ by _____

[Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCRP]

Copies mailed to _____

_____

(2) **Alternative Discovery Plan and Discovery Conference.** In accordance with Rule 26(f) of the Federal Rules of Civil Procedure, the parties are directed to confer and submit a discovery plan to the Court if the discovery period set out herein is deemed by the parties to be inadequate. In such event, the plan shall be filed within 40 days from the date of this order, and shall specifically address the five numbered requirements of Rule 26(f). Upon motion, a discovery conference will be scheduled.

(3) **Expert Witnesses.** The identification of expert witnesses and their opinions is commonly the source of most pre-trial delay. In order to expedite the discovery process, and in addition to the requirements of Rule 26(b)(4)(A), **each party shall submit to the opposing party at the earliest opportunity a list of all expert witnesses anticipated to testify at trial.** The list shall also include the address and area of expertise of each expert witness. A copy of each expert's written opinion with supporting facts and grounds, or a written summary thereof, shall be attached to the list. Although no time deadline is set herein for the submission of this information, the parties are directed to do so sufficiently in advance of the discovery deadline set in paragraph (1) of this order that depositions may be scheduled and taken before the discovery period ends. Expert witnesses not timely identified as required herein, or whose expert opinions have been significantly modified or changed after discovery has ended, will normally not be permitted to testify at trial. The parties are reminded that discovery depositions of experts expected to be called as witnesses at trial are subject to the provisions of Rule 26(b)(4)(A)(ii).

(4) **Interrogatories and Requests for Admissions.** The combined total interrogatories and requests for admissions from one party to another party shall not exceed fifty (50) in number, including subparts. [See Local Rule 7]

(5) **Schedule of Pre-Trial Matters.** In accordance with Rule 16(b), the following schedule shall apply to this case, unless excluded by Local Rule 29 or unless any party shall file an objection or request for a different schedule within 20 days from the date of this order, viz:

(a) Joinder of other parties and amendments of pleadings shall be accomplished by the service and filing of the appropriate motions or pleadings within the time required by the Federal Rules of Civil Procedure of the Local Rules, except as noted below.

(b) All motions and responses shall be served and filed within the time required by the Federal Rules of Civil Procedure or the Local Rules.

(c) For purposes of (a) and (b), above, if the rules and this order do not provide a time for the filing or service of the motions or pleadings, then such motions or pleadings shall be served and filed within the period provided for the completion of discovery.

(d) Motions for summary judgment shall be filed as promptly as possible, but, unless otherwise permitted by court order, not later than 20 days after the close of discovery. The certificate required under Local Rule 6(B) need not be filed regarding motions for summary judgment.

(e) A motion for leave to bring in a third-party defendant under Rule 14 of the Federal Rules of Civil Procedure shall be made either within the period provided for the completion of discovery, or within three (3) months from the date of service of the moving party's answer to the complaint or reply to the counterclaim, whichever comes first; provided, however, that motions of this nature may be granted after the expiration of such period in exceptional cases upon showing of special circumstances and of the necessity for such relief in the interest of justice and upon such terms and conditions as the Court deems fair and appropriate. Leave of Court shall not be required if the service of the third-party complaint is made within 10 days as provided by Rule 14(a), Federal Rules of Civil Procedure, nor if made within 10

days under Rule 14(b), Federal Rules of Civil Procedure, and Local Rule 13 shall be construed accordingly.

(f) Unless otherwise ordered by the Court, no motions to compel discovery may be filed after the close of discovery.

(g) Motions filed may be disposed of without hearing. [See Local Rule 6].

(h) If any party so requests by motion, a scheduling conference or preliminary pre-trial conference will be held to address any of the matters set out in Rule 16(a), (b), and (c), Federal Rules of Civil Procedure.

(i) The parties are directed to inform the Court within 40 days from the date of this order if it appears that this case should be made subject to the Manual for Complex Litigation.

(6) Attorneys' Discovery Obligations. The Rules of Civil Procedure set out explicit time limits for responses to discovery requests. If an attorney cannot respond on time, he should move for an extension of time within which to do so, and consult with, or inform, opposing counsel, so that in the meantime no motion to compel a response will be filed.

(7) Rule 37 Awards of Motion Expenses. Since attorneys are expected to comply with the rules, the Court will ordinarily award counsel fees for time spent in filing (and, if necessary, arguing) a motion to compel if such a motion is necessary to make the recalcitrant party respond, or for time spent in opposing (and, if necessary, arguing) such a motion that is found to be unnecessary or without basis, and Rule 37 of the Federal Rules of Civil Procedure will be strictly enforced. Certification of all discovery requests, responses, and objections is required under Rule 26(g), and violations thereof will be subject to sanctions.

(8) Resolution of Discovery Controversies. Counsel should attempt to resolve discovery controversies without the Court's intervention. The Court will entertain a motion with respect to

matters which remain in controversy only if, after consultation and sincere attempts to resolve differences, counsel are unable to reach an accord. Any motion filed shall include certification that such attempts have been made, in accordance with Local Rule 6(B). Counsel's attention is also directed to the provisions of rule 26(b)(1) and Rule 26(g), Federal Rules of Civil Procedure, [Over-Discovery and Counsel's Obligations], and Title 28, United States Code, Section 1927 [Counsel's Liability for Excessive Costs].

(9) **Attorneys' Fees Records.** In any proceeding in which any party is seeking attorney's fees from the opposing party (to be awarded by the Court pursuant to any statute, contract, or law), the party seeking such an award of attorney's fees shall:

(a) Maintain a complete, separate, and accurate record of time (to the nearest 1/10 of an hour) devoted to the particular action, recorded contemporaneously with the time expended, for each attorney and each specific activity (i.e. not just "research" or "conference") involved in the action and

(b) File a summary of such time record with the Clerk of the Court by the 15th day of each month during the pendency of the action, for work done during the preceding month. If the attorney wishes to file these records under seal, the attorney must, at the time of such filing, place the records in a sealed envelope no larger than 8-1/2 by 11 inches. The attorney must also attach to the front of these sealed records a summary of the time records and serve a copy thereof on opposing parties or their counsel, which summary shall state the total of the hours represented by the sealed filing, i.e.,

"TOTAL ATTORNEY HOURS THIS FILING" _____

"TOTAL NON-ATTORNEY HOURS THIS FILING" _____

If the attorney does not place these time records in a sealed envelope, such records will remain unsealed in the file. Attorney time records will not be placed in the general case action file but will be maintained in a separate folder in the Clerk's Office. Upon termination of this case or the determination of attorney's fees, whichever occurs later, all sealed time records in this civil action will be destroyed.

(c) If claim is going to be made for services performed by any person not a member of the bar, a separate time record shall be maintained for each such individual and filed as specified above, together with the hourly rate at which such person is actually reimbursed.

(d) Time records for past work performed to date in this case shall be filed within thirty (30) days from receipt of this order, or by the required filing date of the current month's time records, whichever is later.

The purpose of this requirement is to enable the Court to adequately perform its function in accordance with the standard enunciated in Blum v. Stenson, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984); Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933 (1983); Norman v. Housing Authority of City of Montgomery, 836 F.2d 1292 (11th Cir. 1988); King v. McCord, 707 F.2d 466 (11th Cir. 1983); and Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). Failure to comply with these requirements will result in attorneys' fees being disallowed for the required reporting period.

(10) Summary Judgment Motions. Any motion for summary judgment filed pursuant to Rule 56 (or Rule 12(b)(6) which requires reference to matters outside the pleading), Federal Rules of Civil Procedure, shall be accompanied by a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement constitutes grounds for denial of the motion.

The statement shall reference the appropriate deposition, affidavit, interrogatory, admission, or other source of the relied-upon material fact, by page, paragraph, number, or other detail sufficient to permit the Court to readily locate and check the source.

The party opposing a motion for summary judgment shall, in addition to other papers or matters permitted by the rules, file and serve a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue

to be tried, in the format set forth above.

All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be filed and served by the opposing party.

(11) **Amendments**. This order may be amended by the Court on its own motion or upon motion of any party.

DONE AND ORDERED this _____ day of _____, 19___.

_____
Roger Vinson
United States District Judge

APPENDIX L

DISTRICT OF FLORIDA NORTHERN
JULY 1, 1993 THROUGH JULY 31, 1993
SUMMARY OF CIVIL CASES FILED, TERMINATED, AND PENDING

JUDGE NAME	TOTAL	SOCIAL SEC	PRISONER CIVIL RIGHTS	PRISONER OTHER	OTHER CIVIL RIGHTS	VA / STUDNT LOAN	OTHER CONT.	PROPTY RIGHTS	REAL PROP.	PER INJURY	PER PROP.	BK APP.	TAX SUITS	LABOR SUITS	ALL OTHER
STAFFORD, WM H., JR.															
FILINGS	39	-	24	6	1	-	-	-	-	2	-	3	-	-	3
TERMINATIONS	30	-	12	13	1	-	1	-	2	1	-	-	-	-	-
PENDING	364	1	185	57	45	3	14	-	6	15	1	6	-	7	24
PAUL, MAURICE M.															
FILINGS	30	-	12	5	2	-	-	-	-	8	-	-	-	-	3
TERMINATIONS	13	-	7	2	2	-	1	1	-	-	-	-	-	-	-
PENDING	467	4	155	44	75	4	15	4	13	46	3	1	3	16	84
VINSON, C. ROGER															
FILINGS	28	-	10	5	2	-	5	-	-	5	-	-	-	-	1
TERMINATIONS	67	1	5	1	5	-	3	-	-	50	-	-	-	-	2
PENDING	312	1	90	72	45	-	37	1	1	34	1	2	1	8	19
ARNOW, WINSTON E.															
FILINGS	32	7	7	8	-	-	-	-	10	-	-	-	-	-	-
TERMINATIONS	25	3	8	4	-	1	-	-	9	-	-	-	-	-	-
PENDING	308	58	113	65	-	9	2	-	60	-	-	-	-	-	1
NOVOTNY, SUSAN															
FILINGS	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TERMINATIONS	2	-	1	-	1	-	-	-	-	-	-	-	-	-	-
PENDING	18	2	7	4	1	-	-	-	-	-	1	-	-	-	3
SHERRILL, WILLIAM C. JR.															
FILINGS	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TERMINATIONS	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PENDING	7	-	2	-	1	-	-	1	-	2	-	-	-	-	1
COLLIER, LACEY A.															
FILINGS	20	-	-	-	4	-	4	-	-	8	1	-	-	-	3
TERMINATIONS	69	-	1	-	7	-	4	-	1	54	-	-	2	-	-
PENDING	174	-	10	7	36	-	32	3	3	38	5	2	1	8	29
TOTAL DIST. FILINGS	149	7	53	24	9	-	9	-	10	23	1	3	-	-	10
TOTAL DIST. TERMS	206	4	34	20	16	1	9	1	12	105	-	-	2	-	2
TOTAL DIST. PENDING	1,650	66	562	249	203	16	100	9	83	135	11	11	5	39	161