CIVIL JUSTICE ADVISORY GROUP
FOR THE SOUTHERN DISTRICT OF FLORIDA

November 19, 1991

Mr. Abel Mattos
Administrator U.S. Court
Court Administration Division
Washington, DC 20544

Dear Abel:

Well, here it is! The Report and Plan (attached as Chapter 9) was unanimously adopted by the Court on Friday November 15. I feel like the proud parent after a nine month gestation!

Your assistance was invaluable and I deeply appreciate it.

Sincerely,

Tracy Nichols

TN:bej

Enclosure

CIVIL JUSTICE ADVISORY GROUP
FOR THE SOUTHERN DISTRICT OF FLORIDA

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SUMMARY AND RECOMMENDATIONS

Nationwide there is mounting pressure for reform in both our state and federal judicial systems. Recently, the President's Council on Competitiveness issued an Agenda for Civil Justice Reform in America (known as the Quayle Report). The Report proposes significant changes in the judicial systems stating that "(t)he current procedural system adds cost by prolonging resolution of disputes and encouraging wasteful litigation." Last year Congress, also concerned with excessive costs and delays in federal litigation, passed the Civil Justice Reform Act of 1990. Under the Act, each District Court is required to appoint a Civil Justice Advisory Group to propose a plan for reducing excessive cost and delay in that District.

The first task of this Advisory Group was to determine if, in fact, there was "excessive" delay in litigation in this District. We spent several months gathering extensive information from court statistics; interviews with judges, magistrate judges and court personnel; surveys of lawyers and litigants; and in-depth review of a random sample of 250 civil cases terminated last year. We concluded, in general, there was no excessive delay in this District which ranks fourth best in the Nation for its median disposition time of civil case. Indeed, we recommend that the practices and procedures of this District may serve as a model for other Districts, particularly in light of the tremendous criminal caseload borne by each District Judge. In the minority of civil cases in which there may have been excessive delay (particularly those complex civil cases requiring extensive judicial attention) the principal causes of such delay are

attributable to the enormous volume of criminal litigation coupled with the failure to fill judicial vacancies in this District.

We are deeply concerned about the effects of the expanding criminal and civil jurisdiction of the federal courts, particularly in the area of "federalizing" state crimes. We will continue to consider this issue in the future.

While the Advisory Group was generally satisfied with the operations of the Court, we recognize that incremental improvements may be made in any system - even one which is already operating efficiently. The proposed Civil Justice Expense and Delay Reduction Plan (Chapter 9) is based on a goal of achieving a five to ten percent increase in the efficiency of handling civil cases. While this may seem to some a modest goal, it is the equivalent of adding one district judge position to our authorized number of sixteen judges. Many of the procedures recommended in the Plan have been used successfully by individual judges in this District for many years. The Plan makes those procedures uniform and mandates their application districtwide. We have also proposed new litigation management techniques and procedures such as mediation and differential case management.

Members of the Civil Justice Advisory Group have been appointed for four years. This Report and the proposed plan are simply a beginning. We will monitor the implementation of the Plan to assess the efficacy of the measures we have recommended. We hope that this coalition of citizens, lawyers, and judges may serve as a mechanism for focusing public attention on the problems facing our local judiciary, the bar, and litigants. We hope that we have contributed and will continue

with others to contribute to the goal of securing the "just, speedy, and inexpensive determination of every action."

RECOMMENDATIONS

The Civil Justice Advisory Group makes the following recommendations which are detailed elsewhere in the Report.

A. Pre-Trial Management Procedures

1. DCM or Tracking. Adopt a system of differentiated case management or tracking under which cases are divided into tracks based on their complexity and requirement for judicial involvement. We recommend three tracks (expedited, standard and complex) under which the parties would be permitted up to either 6, 9, or 12 months of discovery.

2. Uniform Scheduling Orders. Each judge shall enter in all civil cases (except those specifically exempt) a uniform scheduling order which shall (1) limit the time to join additional parties, to amend pleadings, to file all pretrial motions; (2) shall set a time frame for the court to dispose of motions; and (3) shall set a date certain for pre-trail conference or trial. All civil cases should be set for trial within 18 months of the date of filing.

3. Motion Calendar. We studied but do not recommend adoption of a motion day practice similar to that of the state court.

4. Disposal of Ninety-Day Old Motions. We recommend a change in the Local Rule 10(B)(3) which would require the Clerk's Office to notify the Court and the parties of any motion pending for longer than 90 days. Upon such notification

the Court would be required to either rule upon the motion within 10 days or set it for hearing. any exceptions?

5. Limitations on Discoveries. We studied, but do not recommend, further limitations on the scope of discovery. This is an issue we will continue to study in the future.

6. Certificate of Counsel for Discovery Motion. All discovery motion shall have a certification that the party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matter set forth in the motion. why not all motions

7. Alternative Dispute Resolution. We recommend that the District implement a mediation program.

B. Judicial Capacity.

1. Judicial Vacancies. We urge the Executive Branch, the Senate, the ABA and FBI to examine its selection procedures and expedite the process for filling judicial vacancies without comprising a full consideration of each candidate.

2. Advance Notice of Vacancy. Judges and Magistrate Judges should, whenever reasonably possible, give advance written notice of an intent to resign, take senior status or not seek reappointment.

3. Adequacy of Number of Judges. The issue of adequacy of judicial resources is a serous one which we will continue to study in the future. The Advisory Group makes no decision on the adequacy at this time until all judicial vacancies have been filled and we have evaluated the impact of the measures suggested in the Plan.

4. Addition of Law Clerks. We recommend that a pilot project be established in this District to assign an additional law clerk to each magistrate judge and district judge.

How many do they have

C. Prisoner's Civil Rights Cases.

1. The Pro Se Division. The Court should continue to assign prisoner civil rights cases to the Pro Se Division which has proven to be a very efficient and effective method of handling such cases.

2. Administrative Grievance Procedures. The State and the Department of Justice should proceed expeditiously to implement a fair and effective administrative grievance procedures for state inmates.

3. Counsel for Pro Se Prisoners. A committee shall be appointed to present recommendations to the Advisory Group in 1992 for obtaining counsel for Pro Se prisoner civil rights cases and for securing funds to cover discovery costs in such cases.

4. ADR for Prisoner Civil Rights Cases. The District should experiment with implementing Alternative Dispute Resolution procedures to resolve prisoner civil rights cases.

D. Court Administration.

1. Swing Reporters. We recommend that one additional swing reporter be allotted to the District.

2. Management Consultant for Chamber. Consulting and time management services should be made available to any District Judge who desires such services.

This is what happens when you have accountants on the Advisory Group

3. Buildings and Facilities. The property east of 25 N.E. 2nd Avenue should be designated for Phase II of the Law Enforcement Building. Renovation of the existing courthouses should be undertaken after completion of the Federal Law Enforcement Building Phase I.

4. Real Property Authority for Judicial Branch. The judicial branch should be given authority over its real property, replacing General Services Administration as the sole source of real property support.

5. Civil ICMS. The Civil ICMS system should be brought to date as soon as possible. Training sessions should be held to familiarize law clerks, secretaries, and deputy clerks with the case management reports available on Civil ICMS.

Chapter 1

CIVIL JUSTICE ADVISORY GROUP AUTHORITY, STRUCTURE AND PROCEDURES

1.1 Creation of the Civil Justice Advisory Group

In December 1990, the 101st Congress passed the Civil Justice Reform Act of 1990 (the "Act" or "CJRA") requiring each United States District Court to implement a Civil Justice Expense and Delay Reduction Plan (the "Plan"). The Act specifically directed the Court to appoint a Civil Justice Advisory Group ("Advisory Group") to assist in the development of the Plan. The Advisory Group was to be "balanced and include attorneys and other persons who are representative of major categories of litigants" in the court.[1]

Former Chief Judge James L. King, after consultation with his colleagues, appointed a 30-person Advisory Group comprised of civil and criminal lawyers, judges, a magistrate judge, the United States Attorney for this District, the Federal Public Defender for this District, the President of the Florida Bar, business executives, community leaders, an architect, a law school dean, public interest lawyers, an accountant, and a systems analyst.[2] Judge King also served as member of the

[1]Civil Justice Reform Act ("CJRA") 28 U.S.C. § 478(d).

[2]Appendix 1 contains brief biographies of each member of the Advisory Group.

Advisory Group.[3] Each member was appointed for a four-year term with the exception of the United States Attorney who is a permanent member under the Act.[4]

The Act directs the Advisory Group to submit to the Court a report which includes:

- A thorough assessment of the Court's civil and criminal docket;
- Identification of the principle causes for cost and delay in this District;
- Examination of the impact of new legislation on the Court's ability to process civil cases efficiently;
- Recommended measures, rules and programs for decreasing any cost and delay; and
- Consideration of the various litigation management techniques outlined in the Act.[5]

In addition, the Advisory Group is directed to consult with the Court in an annual post-plan assessment of the condition of the civil and criminal dockets.[6]

1.2 Organization and Procedures

At its initial meeting, the Advisory Group adopted a mission statement defining its mission as the development of a civil justice expense and delay reduction plan for the Court's consideration by October 31, 1991.[7]

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[3]Substantial portions of the Plan were derived from practices and procedures devised and used for years by Judge King.

[4]CJRA § 478(d).

[5]CJRA § 472(b)-(c).

[6]Id. § 475.

[7]The Advisory Group's mission statement is attached as Appendix 2.

One of the central goals of the Advisory Group is to enable this Court to qualify as an Early Implementation District under the Act. The Act generally requires all districts to complete their plans by December 1993.[8] Any court which develops and implements its plan by December 31, 1991, however, will be considered an Early Implementation District and thus qualify for funds to implement its plan.[9]

To accomplish this goal of qualifying as an Early Implementation District, the Advisory Group adopted a three-phase work plan. The first phase of the work plan involved a period of discovery during which the Advisory Group developed a fact-based assessment of the current state of the civil and criminal dockets in this District.[10] As part of this assessment, the Advisory Group sent over 500 questionnaires to attorneys and litigants involved in 153 randomly selected civil cases. Members of the Advisory Group reviewed the docket sheet for each case, noting the time required for ruling on motions and identifying whether there was excessive delay in that case and if so, its principal causes. The members of the Advisory Group also personally interviewed all of the district judges and most of the

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[8]CJRA § 482(b). The Act also sets up demonstration programs in five districts and pilot programs in ten districts. These districts were directed to experiment with various case management techniques. The demonstration and pilot programs were also required to implement plans prior to December 31, 1991.

[9]28 U.S.C. § 482(c)(2). The Chief Judge of an Early Implementation District may apply to the judicial conference for "additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan."

[10]The charges to the committees for Phase I are attached as Appendix 3.

magistrate judges. Hundreds of hours were spent collectively by the Advisory Group in this fact-finding phase.

In phase two, the Advisory Group divided itself into five committees to study particular rules, measures, practices, or programs which may reduce cost and delays in this District.[11] The committees were assigned jurisdiction over the following issues:

- The Court Systems Committee studied the adequacy of the number of judges, magistrates, law clerks, and other court personnel; the adequacy of court space and facilities; new technology; and the pro se prisoner civil rights division.

- The Alternative Dispute Resolution Committee focused on the types of ADR which might be suitable for this District.

- The Pretrial Management Committee examined differential case management techniques, tracking, uniform scheduling orders, the court's motion practice, and any other pretrial procedure which increased the time and expense of civil litigation.

- The Committee on the Impact of the Criminal Docket on Civil Litigation studied the effect of criminal cases on civil litigation; the impact of criminal legislation on civil cases, and differential case management or tracking as it applied to criminal cases.

- The General Committee focused on creating measures of performance to use in post-assessment evaluations of the Plan and correlated the statistical data supporting this Report. In addition, the General Committee was assigned the task of examining the current system of filling judicial vacancies.

Phase three of the work plan involved the drafting of this Report and the recommended Civil Justice Expense and Delay Reduction Plan for the Court's

[11]The charges to each committee for Phase II are attached as Appendix 4.

consideration.[12] Several public hearings were held in which the public and all federal, state, and local bars were invited to participate and comment on the draft proposed Plan.

[12]The Advisory Group's proposed Plan for the Court's adoption is found in Chapter 9.

Chapter 2

ASSESSMENT OF CONDITIONS IN THE DISTRICT

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

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

(B) identify trends in case filings and in the demands being placed on the court's resources; . . . CJRA § 472(c)(1)

2.1 Condition of Civil Docket

The Act requires the Advisory Group to assess the Court's current civil and criminal dockets and to review trends in case filings and court resources over time. To carry out this assessment, the Advisory Group 1) reviewed available statistics compiled by the Clerk's Office, Administrative Office, and Federal Judicial Center; 2) conducted an in-depth review of a random sample of 250 civil cases terminated in 1990-91; 3) sent out over 500 surveys to the attorneys and litigants; and 4) interviewed all district judges, as well as most of the magistrates and deputy clerks, the Chief Probation Officer, and various other court personnel.

A. Description of the Court

The Southern District of Florida includes the counties of Broward, Dade, Highlands, Indian River, Martin, Monroe, Okeechobee, Palm Beach and St. Lucie.[13] The District is divided into a Northern Division which includes Ft. Pierce, West Palm Beach and Ft. Lauderdale and a Southern Division which includes Miami and Key

[13] 28 U.S.C. § 89(c).

West. There are courthouse facilities in Miami, Ft. Lauderdale, West Palm Beach, Ft. Pierce and Key West.[14]

The Southern District of Florida is authorized at this time to have sixteen (16) judges, nine (9) full-time magistrate judges, and two (2) part-time magistrate judges. As of September 1, 1991, five of the authorized judgeships were vacant.[15] The authorized and current judgeships are listed below:

Location	Authorized Judgeships	Actual Judgeships	Magistrate Judges
Miami	11	7	6
Ft. Lauderdale	3	3	1
West Palm Beach	2	1	2
Key West	-	-	1 Part Time
Ft. Pierce	-	-	1 Part Time

The Southern District of Florida is located in a metropolitan region with the population concentrated in Dade (1,937,094), Broward (1,255,488), and Palm Beach (863,518) Counties.[16]

B. Overview

Of the 94 district courts in the country, the Southern District of Florida currently ranks fourth in the median time from filing to disposition of all civil cases.[17]

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[14]Court is continuously held in Miami, Ft. Lauderdale and West Palm Beach, and held on a part-time basis in Ft. Pierce and Key West. See Local Rule 2.

[15]In the first two weeks of October, two of the vacancies were filled.

[16]See 1990 U.S. Census.

[17]See Appendix 5, Judicial Workload Profile

For the 1991 statistical year,[18] the median time from filing to disposition for all civil cases was 6 months.[19] The median time from filing to disposition of civil cases has remained relatively constant over the last five years.[20] In 1991, median time from the date a case was at issue to the time it actually went to trial was 12 months.

There does not appear to be a substantial backlog of civil cases in this District. In 1991, only 5% of the Court's cases were over 3 years old -- well below the national average of 10.4%. The Court has consistently maintained a relatively low percentage of 3 year old cases for the last five years.

These indicators (median time from filing to disposition, median time from issue to trial, and percentage of 3 year old cases) are the data traditionally examined for determining the pace of federal civil litigation. This data may not always be a reliable indicator of how long it actually takes a civil case to go through the system at any given time. For example, the statistics may be misleading in a year when a court terminates very few of its oldest cases. In that year, the median average disposition rate will decrease and show faster disposition times because the court was disposing of its younger cases. Looking only at the decreased median disposition time might lead to the conclusion that the court was getting faster, when in fact it was not. Conversely, if a court succeeds in cleaning up a major backlog of older cases, the

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[18]All references in this Chapter to years are to the statistical year ending June 30.

[19]See Appendix 5.

[20]See Appendix 5, Judicial Workload Profile for 1986-91; Fed. Ct. Mgt. Stats.

median disposition time will increase, suggesting that the court was losing ground rather than gaining it.[21]

The Federal Judicial Center has suggested a second measurement for trying to determine how long it takes to process civil cases. The Federal Judicial Center suggests looking at the "life expectancy" of a case and comparing it to a national indexed average life expectancy.[22] In examining the life expectancy of cases for the years 1981-85, the average life span for a civil case in this District was approximately three months above the national indexed average of 12 months. From 1985-89, the life span of civil cases here dropped below the national indexed average of 12 months. In recent years, however, the life expectancy rate began to creep up and is now slightly above the 12-month national average.[23]

C. Review of 250 Recently Terminated Cases

As previously noted, the current average median disposition time for all civil cases in this District is 6 months. Approximately 29% of all civil cases in this District are disposed of in less than six months from the filing date, while the other 71% take longer than 6 months. The Advisory Group sought to have a better understanding of these longer cases and how they differ from short-lived cases. Therefore, we took a random sample of 250 civil cases which took over six months to dispose. The sample

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[21]See Federal Judicial Center, Guidance to Advisory Groups Appointed under the Civil Justice Reform Act of 1990, at p. 14-15.

[22]Life Expectancy measurements are not the same as median disposition times. Life Expectancy Rates are a ratio of the number of cases pending and those terminated in one year.

[23]See Appendix 6 (life expectancy charts).

included no bankruptcy, prisoners' rights, or social security cases, regardless of time to dispose. Furthermore, no cases which took less than six months to dispose were included in the sample. We reviewed the docket sheet of each case noting the following:

- time from filing to disposition:
- manner of disposition (i.e., trial, settlement, summary judgment);
- time from filing to ruling on motions to dismiss, compel and for summary judgment; and
- number of trial settings.

The following statistics are based upon a sample which includes no cases less than six months old and is not meant to be indicative of the general population of cases in the Southern District.

For cases which took over six months to dispose, the average time for disposition was 496 days. This average varied greatly by judge, with the lowest average days to dispose being 338 days and the highest average being 693 days. Approximately one-third of the judges took longer than average to dispose of their cases. The results for disposal time per judge are set forth in Appendix 7.

1. Motion Disposition Time

Of the 250 cases randomly sampled, we noted the disposition time for motions to dismiss, motions for summary judgment, and motions to compel. Of the motions we studied, 69% of them were ruled upon, while 31% remained pending at the time the case was terminated.

Motions to compel were ruled upon in an average of 38 days. Of those motions to compel which were not decided prior to case termination, the average time such motions remained pending was 90 days.

It took on the average under two months for the Court to rule on motions to dismiss and motions for summary judgment. If, however, one looks only at those cases lasting over two years, the average time for deciding a motion for summary judgment substantially increases. Instead of slightly under two months, it took over five months to decide motions for summary judgment in those cases lasting over two years. Those summary judgments motions in the older cases which remained pending at termination had an even longer lifespan of some 7.6 months. These results are summarized in the chart below:

SOUTHERN DISTRICT OF FLORIDA
AVERAGE DAYS TO RULE ON MOTIONS
(from sample of 250 cases lasting over 6 months)

	Days to Rule	Days Pending When Case Resolved
Motion to Dismiss:		
Full sample	101	123
Cases over 2 years	117	291
Motion for Summary Judgment:		
Full sample	109	127
Cases over 2 years	161	229
Motion to Compel:		
Full sample	38	90
Cases over 2 years	37	140

2. Number of Trial Settings

Attorneys for civil litigants frequently complain that they are unable to get a date on the court's trial calendar because of the priority of criminal cases. In our sample of 250 cases, we examined the number of times a case had been set for trial and the days between the first scheduled trial date and the actual beginning of trial. Of those cases which were set for trial, the average number of trial settings was 1.7. The maximum number of settings was 7. Of those cases that went to trial (as opposed to the entire sample), there was an average of 2.2 trial settings. In those cases that went to trial, there was a median of 70 days between the first scheduled trial date and the actual first day of trial.

D. Attorney Survey

The attorneys surveyed by the Advisory Group were about evenly split on their perception of the level of case management exercised by the Court on their case.[24] Half of the attorneys indicated that there was moderate to intensive case management by the Court, while the remaining half indicated that the level of case management was low to none.

Of the various case management actions which could have been taken by the Court, the attorneys responded that holding pretrial activities to a firm schedule, setting and enforcing time limits on allowable discovery, and exerting firm control of a trial were actions generally taken by the Court. Narrowing issues through conferences or other methods, referring the case to alternative dispute resolution,

[24]A copy of the survey is attached as Appendix 8.

setting an early and firm trial date, and conducting or facilitating settlement discussions were actions the attorneys indicated were generally not taken by the Court.

About 50% of the attorneys surveyed believe that their case took too long. Of those that believe that their case took too long, the following are the most commonly indicated factors which contributed to the delay: backlog of cases on Court's calendar (50%), Court's failure to rule promptly on motions (44%), dilatory actions by counsel (33%), and inadequate case management by the Court (27%). When asked an open-ended question about what could be done to reduce delays, the overwhelming majority of responses centered on adding more judges and filling the current judicial vacancies in this District.

The most common fee arrangement for the attorneys was based upon a hourly rate (66%). Some 20% of the attorneys indicated that they had a contingency fee arrangement. The majority of the attorneys (69%) believe that the fees and costs incurred by their client were about right. Twenty-three percent believed that the fees and costs for their clients were too high.

E. Litigant Survey

There were only 23 responses to the litigant surveys.[25] Because of the small sample size, the Advisory Group does not rely upon the survey results in reaching conclusions about the subject matters covered in this litigant survey.

The following results should not be relied upon as being representative of the total population of civil litigants.

Of those who responded to the litigant survey, 61% were defendants and 39% were plaintiffs. The litigants indicated that they spent an average of $38,750 on attorneys' fees and $10,846 on expenses. The average total cost of litigation was $65,104. The average amount of money which was at stake in the case was estimated by the litigants to be $578,605. The majority of the litigants indicated that they paid an hourly rate fee to their attorney. The vast majority (85%) of the litigants believed that they paid their attorneys a reasonable fee.

Only 24% of the litigants believed that the amount of time which it took to resolve their case was about right. The remainder (66%) indicated that it took too long, with 43% of the litigants responding that it took much too long. Ninety-one percent of the litigants stated that arbitration or mediation was not attempted in their case.

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[25]Because litigant names and addresses are not listed on the docket sheet, the Advisory Group sent the litigant surveys to their attorneys, requesting that the questionnaire be forwarded to the client. We do not know if attorneys failed to forward the survey or whether litigants simply did not respond. Other Advisory Groups may wish to consider asking lawyers to provide their client's name and address so that a survey may be mailed directly to the client. Of the over 500 surveys we sent, less than 10 lawyers raised objections regarding disclosure of privileged information or forwarding the questionnaires to their clients. Copies of the litigant surveys are attached as Appendix 9.

F. Judicial and Court Personnel Interviews

Each district judge was interviewed by two members of the Advisory Group using the interview questions attached as Appendix 10. The Judges' responses to the question of whether civil cases took too long in this District were similar to the lawyer survey responses: about one half of the judges believe there are no excessive delays in civil litigation in this District. Of the other half of judges who believe there are delays, they attribute the delays to the vacancies on the bench, the criminal caseload of the Court, the dilatory tactics of lawyers, and the delays caused by unskilled lawyers.

All but one judge believe that the costs associated with civil litigation are unreasonably high. Several judges said that too many lawyers from large firms are assigned to a case or that lawyers churn the files to create higher billings. The judges also point to unskilled lawyers as a factor in unreasonable costs. In addition, the judges believe that costs could be reduced if lawyers consulted with each other prior to filing motions.

The courtroom deputy clerks we interviewed were of the opinion that civil cases requiring more than three days of trial simply can not be scheduled for trial under present conditions. Civil cases with less than three days of trial can be scheduled at the end of a criminal trial calendar and have a greater likelihood of being tried than longer court trials. The clerks also believe that substantive motions in civil cases remain pending longer now than in prior years.

2.2. Excessive Cost and Delay

One of the difficulties in assessing whether there is excessive cost and delay in this District is first determining what is "excessive"? Voluminous amounts of data are

routinely collected by the courts and the U.S. Administrative Office regarding the number of cases filed, terminated, pending, cases pending for more than 3 years, and motions pending for over 6 months. Noticeably absent, however, is any published standard, guideline or goal of what constitutes a timely disposition of civil cases and motions in the federal judicial system and how the court's own statistics measure against the standard.

The closest measurement currently kept of a district court's performance is its relative ranking among the other district courts in the country. That particular measurement while generally helpful can also be somewhat misleading. For example, a court may be ranked number one in having the lowest percentage of three year old civil cases pending and yet still have an unacceptably high number of old cases. A number one ranking in that situation indicates that particular court is doing better than all the other courts, but that all courts, including the top-ranked ones, still have an unacceptably high number of old cases.

The only time disposition standards for civil cases that have gained some acceptance outside the federal judicial system are the ABA Standards relating to Court Delay Reduction developed by the National Conference of State Trial Judges in 1984.[26] The ABA Standards state that:

> 90% of all civil cases should be settled, tried or otherwise concluded within 12 months of the date of case filing; 98% within 18 months of such filing; and the remainder

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[26]The California Judicial Council has adopted the ABA Standard relating to general disposition time for civil trials. Colorado and Michigan are also considering application of the ABA Standards. Solomon and Somerlot, Caseflow Management in the Trial Court, Now and For the Future, ABA (1987), n. 5 at 31.

> within 24 months of such filing except for individual cases in which the Court determines exceptional circumstances exist and for which a continuing review should occur.[27]

After examining numerous studies and surveys of other courts' performance, we have been unable to find any court that has satisfied the ABA Standards for timely disposition of civil cases. For example, the National Center for State Courts examined the disposition times of in civil cases in 26 urban trial courts in 1987.[28] None of the courts met the ABA Standards requiring 90% of the cases to be disposed of within 1 year and all cases to be disposed of within 2 years. At the 1 year mark, courts ranged from a high disposition rate of 82% of its cases to a low disposition rate of only 4% of its cases in one year. At the 2 year mark, several state courts were closer to meeting the ABA Standards, but none of the courts actually achieved the goal. In another study examining the performance in 1985 of 18 courts in urban settings, none of those courts met the ABA Standards either. The state court in Miami came the closest with only 2% of its cases over 2 years old.[29]

This Court did considerably better than most of the state courts in either of the two studies discussed above and came close to meeting the ABA Standards. Of those civil cases terminated in calendar year 1990, 83% of the cases were disposed of within

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[27]National Conference of State Trial Judges, ABA Standards relating to Court Delay Reduction, § 2.52 (1984).

[28]National Center for State Courts, Examining Court Delay, the Pace of Litigation in 26 Urban Trial Courts, 1987, (1989).

[29]National Center for State Courts, Changing Times in Trial Courts (1988).

12 months of filing, 90% were disposed of within 18 months, and 94% were disposed of within 24 months. The following chart shows how our District's civil case disposition times compare with the ABA Standards.

Case Disposition Time	ABA Standard	Southern District
Disposed of Within 12 Months	90%	83%
Disposed of Within 18 Months	98%	90%
Disposed of Within 24 Months	100%	94%

While statistical information is useful, we cannot ignore the perceptions of the users of the judicial system. Somewhat in contrast to the statistical information, at least half of the judges and half of the lawyers surveyed thought that there were delays in civil litigation in this District. Several people at the public hearings also complained of the difficulty in getting a civil case set for trial or in having civil motions ruled on promptly. The deputy clerks we interviewed thought it was almost impossible to schedule a lengthy civil case for trial.

After careful consideration of all the statistical data and anecdotal opinions, we conclude that there is no excessive or avoidable delay in the majority of civil cases in this District. We do, however, believe that there is delay in a smaller percentage of cases, particularly those cases which require greater than average amounts of judicial time for resolving complex motions or holding lengthy trials. We believe the delays

in these complex cases are primarily caused by two factors: (1) the failure to timely fill judicial vacancies, and (2) the overwhelming criminal caseload in this District.

A. Failure to Fill Judicial Vacancies

The consensus of the members of the Advisory Group and the judges, magistrate judges and attorneys interviewed in this District is that the failure to fill judicial vacancies is one of if not the primary factor in any delays occurring in civil litigation in this District.[30] As of September 1, 1991, almost one-third of the federal bench in this District was empty.[31] One vacancy has been pending for three years. Another judgeship has been open for over two years.[32] Two of these vacancies were filed in October, 1991.

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[30]Half of the attorneys surveyed believed that their case took too long. When asked an open-ended question about what could be done to reduce delays, the overwhelming majority of responses from the attorneys centered on adding judges and filling the current vacancies in the District.

[31]There are 16 authorized judgeships in this District. Five judgeships were vacant as of September 1, 1991.

[32]As of September 1, 1991, the following judgeships have been vacant for the noted periods of time:

Aronovitz vacancy - 1095 days (senior status)	Hoeveler vacancy - 304 (senior status)
Scott vacancy - 331 days (resignation)	Spellman vacancy - 176 (death)
New Seat - 335 days (P.L. 101-650)	

From September 1, 1991, the average length of time the five pending vacancies have gone unfilled is 497 days.

Clearly our system is rapidly approaching a "meltdown" point. Judges in this District are working 10 to 12 hours a day, 6 days a week, yet, still they do not have adequate time to devote to large or complex civil matters. In a multimillion antitrust action, the attorneys reported they settled in frustration as they were unable to have motions ruled on promptly or have their cases tried. Civil cases requiring any length of trial time simply languish behind criminal cases on the trial docket as too few federal judges attempt to handle the overwhelming and growing criminal caseload and comply with the requirements of the Speedy Trial Act.

It is almost trivial to justify this widely perceived crisis with statistics. No system can long survive running at or above capacity with only two-thirds of its available resources. The statistics only quantify the collective frustration of lawyers, judges, and litigants in this District.

In 1986, when this Court last had a full complement of judges, it completed a total of 334 civil trials. In 1991, with only 11 active judges, the number of civil trials dropped 37% to 212 -- well below the 10-year average of 300 civil cases. The number of hours spent in civil trial for those same years reflects a similar drop. In 1986, the full complement of judges spent a total of 3339 hours trying civil cases, while in 1991 that number dropped to 2633.[33] These statistics support the common perception that the judicial vacancies have severely eroded the ability of the remaining judges to try civil cases.

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[33]See Appendix 11 for a comparative analysis of the statistical years from 1982 to 1991.

B. Criminal Caseload

The impact of the criminal caseload is more fully discussed in Chapter 3. Each judge in this District tries, on the average, some 3-5 times more criminal cases than a judge in New York, Chicago, Detroit or Philadelphia. In 1991, the judges spent as much as 75% of their trial time devoted to criminal cases. Prosecutorial resources have dramatically increased over the past years and judicial resources have not increased proportionately. Our United States Attorney predicts a conservative 10% annual growth rate in the number of criminal cases filed. With the trend toward increased federalization of State crimes, we expect that the impact of criminal cases will only increase.

Chapter 3

IMPACT OF CRIMINAL DOCKET ON CIVIL CASES

To examine the impact of the criminal docket on the timely and efficient disposition of civil cases in this District, the Advisory Group undertook a detailed statistical examination of the nature and extent of criminal filings in this District over a ten-year period. We also conducted many interviews with judges, magistrate judges, clerical personnel, probation officers, prosecutors and defense attorneys. In addition, we examined trends and changes in the nature of the federal criminal law.

3.1 Condition of Criminal Docket

Because of its metropolitan areas and geographic location, this District has attracted a disproportionately large share of felony criminal cases. In statistical year 1991,[34] the 11 judges of this District tried some 425 felony criminal cases. To put this figure in perspective, when compared to the number of judges and criminal trials in other metropolitan areas last year, the judges in this District tried 3-5 times more criminal cases than judges in the other districts.[35]

The comparatively high number of criminal trials in this District has had a dramatic and profound impact on the disposition of civil cases here. In 1991, the

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[34]The statistical year runs from July 1 to June 30. All reference to years in this chapter refer to the statistical year.

[35]The 21 active judges in the Southern District of New York tried 251 criminal cases; the 23 judges in the Northern District of Illinois tried 175 criminal cases; 13 active judges in the Eastern District of Michigan tried 147 criminal cases; and some 16 active judges in the Eastern District of Pennsylvania tried 132 criminal cases.

number of civil trials in this District dropped substantially from a past yearly average of 300 to barely more than 200 civil trials.[36] The judges, however, were not logging less hours on the bench. To the contrary, in 1991 the 11 judges of the District exceeded the past average annual hours for trial time. Nonetheless, most of this trial time was dedicated to criminal trials. In 1982, over 40% of all trial hours were spent on civil trials. By 1991, the amount of time spent on civil trials dropped to only 25% of all trial hours. This statistical evidence corroborates the perception of the bench and the bar that the Court continues to try a disproportionate number of criminal cases and that its capacity to try civil cases has been seriously undermined.

3.2 Trends

Over the past 20 years, court resources have not kept apace with the explosive growth in resources available to the United States Attorney's office and the Probation office. In 1969, for example, the District had five judges; by December 1990, the authorized number of judges had reached 16. During that same time period, the United States Attorney's office literally exploded from some 15 assistant U.S. Attorneys in 1969 to approximately 215 in 1991.[37] During roughly the same time period the number of grand juries sitting throughout the District has increased thirty-

[36]In 1987, when the Court operated at almost full strength, the District completed the trial of some 340 civil cases (as compared to the 212 civil trials completed last year). See Appendix 11.

[37]In comparison, the Federal Public Defender's office has only 30 assistants in the District. Although ten additional assistant federal defender positions were authorized effective October 1, 1991, they were not funded because of budgetary constraints.

fold. Similarly, the Probation office has increased twenty-fold from 1969 to the present.

Although the number of criminal cases filed and criminal defendants indicted remained relatively constant prior to 1989, the numbers have experienced real growth in the last three years. In 1989, some 1,178 criminal cases were filed in the District. In 1990, the number rose to 1,262 and in 1991 it jumped to 1,517 criminal cases filed.[38] The United States Attorney has projected a conservative growth rate in criminal filings of at least 10% a year in each of the next four years assuming prosecution policy remains essentially unchanged. In this connection, it is worth noting that the United States Attorney has generally not prosecuted "small drug sales" in this District, defined as less than one to five kilograms of cocaine, amounts which are viewed as large drug cases in most of the country.

If measured against a conservative 10% growth rate as predicted by the United States Attorney, these projections would ultimately result in 1,945 criminal cases being filed in 1995 -- a 28% increase over today's criminal case filings. In a district where criminal trial hours already comprise 75% of total trial hours, such an increase would surely eliminate any hope of trial time for civil cases unless judicial resources are concomitantly increased.

[38]See Appendix 11.

3.3 Federalizing State Crimes

These projected increases in the criminal workload of the District are likely to expand even further as the process of "federalizing" state crime continues. We are deeply concerned that the fundamental nature and character of the federal court system is changing radically due to the federalization of state and local crimes. One factor contributing to this transformation is, as our United States Attorney has observed, "that federal prosecutors are being urged to use their existing criminal jurisdiction more thoroughly than in the past." United States Attorney Lehtinen cites as a recent example of this pattern, operation "Triggerlock," in which individuals with one or more prior felonies are prosecuted in federal court for possessing a firearm.

A second factor contributing to the federalization of state crimes is the major and new expansions of federal criminal jurisdiction that are currently underway in Congress. For example, the Violent Crime Control Act of 1991 which passed the Senate this year and is now pending in the House of Representatives, would greatly expand the federal criminal jurisdiction and increase substantially the number of criminal cases prosecuted in this District. Most notably, this bill would federalize violent crimes committed with firearms which have moved in interstate or foreign commerce. While the new jurisdiction might not be fully exercised by federal prosecutors, the proposals to create federal offenses for crimes involving guns which move in interstate commerce (which covers almost all guns) and, even if used modestly, could expand caseloads exponentially.

While these legislative initiatives are understandable given the public's outcry over the plagues of drugs and violent crime, the proposed litigation will profoundly

and adversely effect the federal judiciary's ability to handle civil litigation. The number of federal judges required to handle this increase in criminal cases combined with the character of such cases, raises the specter of turning the federal courts into a mirror image of the country's crowded, urban local court systems.

Recommendation: We wholeheartedly concur with the recommendation of the Federal Courts Study Committee that "[a]n office of Judicial Impact Assessment should be created in the judicial branch to advise Congress on, inter alia, the effect of proposed legislation on the judicial branch and legislative drafting matters likely to lead to unnecessary litigation."[39]

3.4 Supervised Release

We observe that the entry of large numbers of supervisory release cases soon into the District's judicial system will strain still further the available resources. With the advent of sentencing guidelines, Congress eliminated the parole commission and thereby created a whole class of additional cases to be adjudicated by the federal courts. In other words, matters such as parole violations which were formerly handled in this District by the parole commission will now be shifted to the federal courts. The volume of supervised release cases will be a function of the number and nature of criminal cases prosecuted in the District.

The federal public defender has studied this problem for our Advisory Group and suggests that up to 400 additional judicial proceedings will result annually from

[39]Report of the Federal Courts Study Committee, April 2, 1990 ("Fed. Cts. Study Comm.") at 89.

controversies involving supervised release. The handling of these cases will require substantial additional court time, involving the district judges and conceivably magistrate judges. There are substantial questions whether a magistrate can conduct a supervised release proceeding at all, particularly in cases involving felony charges.

3.5 Creation of Criminal Justice Committee

Although the District is already amply served by numerous committees, the Advisory Group has found that its Criminal Impact on Civil Justice Committee (comprised of the United States Attorney, the Federal Public Defender, a district judge and several lawyers) serves as a unique and useful forum to redress certain problems in the criminal justice system.

Recommendation: We recommend that a Standing Criminal Justice Committee be formed, made up of an Article III judge, a magistrate judge, the United States Attorney, the Federal Public Defender, the Chief Probation Officer, and two prominent attorneys from the private bar to serve as a liaison between the bench and bar in areas of common interest in the criminal justice system.

Chapter 4

PRETRIAL MANAGEMENT

4.1 Current Pretrial Management Procedures In This District

The framework for pretrial procedures in this District is set forth in Local Rule 14. That rule describes procedures for scheduling conferences, scheduling orders, pretrial conferences and voluntary exchange of information by the parties. Because of the flexibility contained in Local Rule 14, the pretrial procedures in this District vary from judge to judge. They are in general described below.

A. Scheduling Conference and Order

Local Rule 14 requires the parties to meet within 20 days after an answer is filed or within 90 days of filing the complaint (whichever occurs first) to agree on a preliminary schedule for discovery. Ten days after the meeting, the parties are required to submit a Joint Report of Scheduling Meeting accompanied by a Joint Proposed Scheduling Order incorporating the parties' detailed discovery schedule. The discovery schedule is to include: a limitation on the time to join additional parties and to amend the pleadings; limitation on the time to file all pretrial motions; any proposed use of the manual on complex litigation; and any other matters which the parties might jointly propose.

There is nothing in the Local Rules which actually requires the Court to enter either the parties' proposed scheduling order or the Court's own order. Nor do the rules require the Court to hold a scheduling conference with the parties to set a time

framework for discovery, pretrial conference and trial. The rules also do not require that the Court set early on a date certain for pretrial conference or trial.

It is the conclusion of the Advisory Group, after interviewing the judges, reviewing the case surveys and responses of attorneys, and discussing the experiences of the individual members of the Advisory Group, that Local Rule 14 is largely honored in the breach. Counsel simply do not voluntarily comply with the Rule's provision unless required to do so by a Court order or at a scheduling conference held by the Court. Of the 250 cases we reviewed, only 12% percent actually had scheduling orders docketed.[40] Only 3 of the 11 judges currently send out orders requiring the parties to comply with Local Rule 14 and file a joint proposed scheduling order. About half of the judges hold scheduling conferences at which they set discovery schedules and pretrial or trial dates.[41] Those who hold scheduling conferences believe they are useful in getting the parties together with the judge to discuss the case and plan its progress. The other half of the judges told us that scheduling conferences were a waste of time because they occur too early in the pretrial process to be effective. A few judges believed that overly detailed scheduling orders engendered even more costs and delays as the parties sought to either enforce or change deadlines.

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[40]Some judges hold scheduling conferences at which they orally announce discovery deadlines and pretrial conference dates. Those oral scheduling orders would not appear on the docket sheet unless a written order confirming the dates was entered later. Therefore, this low percentage of scheduling orders may be somewhat misleading.

[41]One judge refers the parties to a magistrate for the scheduling conference.

B. Pretrial Conferences

Local Rule 14 requires a pretrial conference, pursuant to Rule 16(a) of the Federal Rules of Civil Procedure, to be held in every civil action unless the Court orders otherwise. About half of the judges routinely hold pretrial conferences. The other half do not, stating that pretrial conferences are generally only useful in complex cases.

C. Voluntary Exchange of Information

This District is one of two districts in the country (Central District of California being the other) that we know of which currently requires the parties to exchange information automatically at the outset of the case without court order or formal request. Local Rule 14 requires the parties no later than 90 days after the case is filed to exchange all documents then reasonably available which support the allegations of their pleadings, to exchange any other evidence then reasonably available, and to exchange a list of witnesses then known to have knowledge of the facts supporting the material allegations of their pleadings. These requirements of Local Rule 14 closely parallel the proposed amendments to Rule 26 of the Federal Rules of Civil Procedure.[42] Again, it is our experience that lawyers in this District routinely ignore

[42]The proposed amendments to Rule 26 would require initial disclosures, without a discovery request, of the name, address and telephone number of each individual likely to have information that bears significantly on any claim or defense; a copy of or description by category and location of all documents, data compilations and tangible things in the possession, custody or control of the party that are likely to bear significantly on any claim or defense; a computation of any category of damages claimed; and any insurance agreement which may be used to satisfy a judgment.

the voluntary exchange requirements of Local Rule 14 unless specifically ordered by the Court in either a scheduling order or at a scheduling conference.

4.2 Differentiated Case Management or Tracking

> *In formulating the provisions of its civil justice expense and delay reduction plan, ... an advisory group ... shall consider ...:*
>
> *(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case; CJRA § 473(a)(1).*

One of the litigation management tools highlighted in the Act and its legislative history is differentiated case management ("DCM") or "tracking".[43] Under differentiated case management, cases are divided into classes or "tracks" based on their complexity and requirement for judicial involvement.[44] Differentiated case management is premised on the proposition that while not all cases are alike there are groups of cases which are enough alike that they can be and should be treated similarly. In other words,

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[43]The Act requires two district courts to "experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and time frames for the completion of discovery and for trial." CJRA § 104(b). The United States District Court for the Western District of Michigan and for the Northern District of Ohio are the two courts required to experiment with tracking. Id.

[44]The Advisory Group expresses its grateful appreciation to Caroline Cooper, Director of the Bureau of Justice Assistance Pilot Differentiated Case Management Project. Ms. Cooper is a nationally recognized expert in the area of court management and we appreciate her coming to Florida to share her experiences and recommendations with us. We also appreciate Judge Ronald Taylor, a State Court Judge from St. Joseph, Michigan coming to Miami to meet with us to discuss his court's experience with tracking.

while a routine collection matter should not be treated the same as a complex security litigation, the collection matter should be treated the same as other routine matters. Instead of having a hundred different discovery deadlines for one hundred different cases, each case can be expected to fall into one of three or four categories.

Most jurisdictions which have DCM programs use three tracks: expedited, standard and complex. An expedited track is used for cases requiring minimal discovery and which can be quickly moved to final disposition. Complex track cases involve extensive pretrial discovery and motion activity. Standard track cases are the vast majority of cases which fall into neither expedited nor complex categories. In some jurisdictions, DCM or tracking has resulted in a formalized process in which civil cases are categorized at filing and separated into tracks; a timetable is established for each case; and specialized court personnel monitor the case's progress and send out computer-generated notices regarding upcoming deadlines.[45]

Some jurisdictions not only tailor the time for discovery for each track but also limit the scope of discovery as well. For example, in the state court in Camden County, New Jersey, expedited matters are assigned to a track allowing 100 days from discovery during which 50 interrogatories may be sent but no depositions taken without leave of court. A standard track case is permitted 200 days of discovery with 50 interrogatories and depositions of only parties and experts. The complex case track has no discovery limits and the judge develops the schedule with the attorneys. Under

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[45]See generally Differentiated Case Management: A Report from the Field, State Court Journal, 25 (Spring 1991); Case Differentiations: An Approach to Individualized Case Management, 73 Judicature 17 (1989).

the Camden County system, the parties file an information statement with their initial pleadings delineating which track is appropriate. The judge resolves any differences between the parties as to track assignment. The experience in Camden County has been that very few hearings have been necessary to resolve disagreements over track assignments. Target dates for mediation and other alternative dispute resolution hearings are also built into the tracks for standard and complex cases.[46]

While DCM or tracking may be the new favorite concept in court administration circles, the fundamental principle of tracking has been applied quite successfully by certain judges in this District for several decades. Most judges here follow the essential principle of DCM which is early and ongoing management of the case by a judicial officer. Some judges operate their own informal system of tracking by routinely assigning cases to a three, six, nine or twelve month discovery schedule depending on the case complexity, number of parties, location of evidence, etc. We believe it would be extremely beneficial to formalize this practice, make it uniform among all judges, and educate the bar about this uniform system.

We recommend a differential case treatment system be adopted in this District using essentially three tracks: expedited, standard and complex. Cases should be assigned to the tracks based on the complexity of the case, number of parties, volume of evidence, problems locating or preserving evidence, time reasonably required for discovery, time estimated by parties for discovery, and time reasonably required for

[46]See BJA Pilot Differentiated Case Management (DCM), an Expedited Drug Case Management (EDCM) Program, Overview and Program Summaries (August 1990).

trial, among other factors. The following discovery period should be assigned to the various tracks:

- 90-179 days for expedited cases;
- 180-269 days for standard cases; and
- 270-365 for complex cases.[47]

Counsel for plaintiff should be required to select one of these three periods for discovery and so note on the civil cover sheet when the complaint is filed. If defense counsel disagrees with the selection of the track by plaintiff's counsel, defense counsel should so note in the joint proposed scheduling order required under Local Rule 14. The Court will consider the parties' estimation of time required for discovery along with the other factors noted above in selecting the appropriate track for that case.

As a general guideline, a case may be considered to fall within the expedited category if it is a relatively noncomplex case requiring only 1 to 3 days of trial and minimal discovery preparation. Complex cases would be those requiring over 10 days of trial and involving extensive discovery and motion activity. The complex category may include antitrust, patent infringement, class actions, major disasters, environmental, securities and tax suits. It is anticipated that less than 10% of the civil actions subject to a scheduling order would be assigned to the complex tract. All cases which fall into neither the expedited nor complex category would be classified as

[47] The court may set the discovery deadline for any date within the timeframe allowed for that track. For example, a standard case (allowing 180-269 days for discovery) may have a discovery deadline of 210 days from the date of entry of the scheduling order.

standard cases. Generally standard cases would require only 3 to 10 days of trial and involve moderate amounts of discovery and motion practice.

Within 40 days after the filing of an answer or within 120 days after the filing of the complaint (whichever shall first occur) each judge shall in all civil cases (except certain exempt actions)[48] enter a scheduling order. The judge may enter the scheduling order with or without holding a scheduling conference with the parties. We suggest, but do not recommend requiring, that a scheduling conference be held in complex cases or in those cases where a party requests the conference.

The scheduling order shall include a date certain for the following:

a) completion of all discovery;

b) filing all pretrial motions;

c) resolution of pretrial motions;

d) the pretrial conference (if one is to held); and

e) the trial date.

Pursuant to Local Rule 14, the parties may first file a joint proposed scheduling order containing the above. Even if the parties fail to submit a joint proposed scheduling order, the court must enter its own scheduling order.

We recommend that in setting discovery and trial dates certain, the goal should be to set a trial date for generally all civil cases no later than 18 months from the date of filing the complaint. A goal of 18 months for disposition of most civil cases is not

[48] Certain types of cases will be exempt from the requirements of this scheduling order and are the same as those exempt actions listed in Local Rule 14 with the addition of prisoner civil rights cases.

an unrealistic one. Currently, the Court disposes of 90% of all civil cases within 18 months.

RECOMMENDATION: The Plan should include a section providing for the systematic, differential treatment of civil cases using expedited, standard, and complex tracks with the goal being to dispose of generally all civil cases within 18 months.

4.3 Motion Practice

Based upon the number of vacancies in this District, the high proportion of criminal cases, and the greater than average amount of time each judge must spend in trial, the Advisory Group concludes that, as a general matter, there is no avoidable or excessive delay in ruling on motions in this District. In fact, the overall average of slightly less than 2 months to rule on motions to dismiss and motions for summary judgment is, in light of these factors, a tremendous accomplishment by this Court. These disposition times reflect the unyielding dedication and continuous hard work by the judges and their staffs.

While in general we conclude there are no systemic problems of delays in ruling on motions, we have noted during the course of our case studies[49] and at public hearings of unreasonable delay in ruling on motions in individual cases or in a small percentage of certain types of cases. For example, while the overall average of ruling on motions to dismiss and motions for summary judgment is approximately 2 months, for those cases lasting longer than 2 years there is a notable increase in the time for ruling on motions to dismiss and motions for summary judgment. Moreover, while the

[49]Of the half of the attorneys surveyed who believed their case took too long, the most commonly indicated factor for delay was the failure to rule promptly on motions.

court generally disposes of motions in a reasonable time when it rules, currently some 30% of the motions are not ruled on when the case is finally concluded.[50]

A. Deadlines for Filing Motions

> *In formulating the provisions of its civil justice expense and delay reduction plan, each United States District Court, in consultation with an advisory group . . . , shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction: . . .*
>
> *(D) setting, at the earliest practical time, deadlines for filing motions and a time framework for their disposition; CJRA 473(a)(2)(D).*

Under the current Local Rule 14, the parties are required to submit a joint proposed scheduling order early in the case which contains, inter alia, a "limitation on the time to join additional parties and to amend the pleading; a limitation on the time to file all pretrial motions."

The guiding principle expressed in Local Rule 14 is that by setting target dates for filing motions, the delays associated with certain motions will likely be reduced. For example, substantial delays can occur when plaintiffs add defendants to the lawsuits piecemeal over time. A newly added defendant often must repeat discovery already conducted by the other parties, thereby delaying the entire process as the late party plays catch up with the others. The delayed addition of parties may occur

[50]In cases lasting over 2 years, our survey indicated it takes 117 days for the Court to rule on a motion to dismiss and 161 for the Court to rule on summary judgment motions. The time is considerably lengthened if one also considers the motions that remain pending, without ruling, when the case is finally concluded. For example, in cases lasting more than 2 years, summary judgment motions remained pending for an average of 7.6 months and were still unresolved when the case was terminated.

because plaintiff is unable to identify all defendants prior to the lawsuit without at least some discovery. On the other hand, it may also result because plaintiff's counsel simply failed to make a diligent effort to identify all potential defendants. An outside time limit, will accommodate both situations by permitting addition of parties without excessive delay.

While the principles of Local Rule 14 in setting limits on filing motions can be an effective way to reduce delays in civil litigation, currently its effectiveness is undermined by its limited use.

RECOMMENDATION: The Uniform Scheduling Order should contain a provision setting a limitation on the time to join additional parties, to amend the pleadings, and to file all pretrial motions.

B. Disposition of Motions

The Advisory Group reiterates that after exhaustive research it has concluded that in general the 11 judges of this District must be commended for the tremendous effort they have successfully undertaken to process civil cases despite the press of the criminal caseload and the judicial vacancies. We are deeply concerned that any efforts to improve the time for disposing of motions not result in undermining the quality of judicial decisionmaking by overly emphasizing speedy resolution. Obviously, not all motions require equal amounts of the Court's time. Some motions may involve novel or complex legal issues. Others may require an evidentiary hearing or extensive briefing. It may be quite proper and reasonable for a judge to take several months longer than the average to decide these types of motions. Moreover, the Advisory Group recognizes the dangers in setting artificial deadlines without regard to these and

other external factors which bear on a judge's ability to rule on motions (such as increased caseloads, increased trial time due to criminal cases, and judicial vacancies). It is quicker to simply deny, without explanation, a motion rather than taking the additional time required to draft an opinion explaining the Court's decision or granting the motion in part.

Currently, the Local Rules and the individual scheduling orders used in this District set deadlines for filing motions; they are silent, however, on any time framework for resolving those motions. While we are cognizant of the pitfalls of imposing too strict or inflexible guidelines when disposing of motions, similarly we recognize the benefits of having at least some reasonable guidelines. Just as counsel should commit to and follow a schedule for discovery and filing motions, so too should the Court commit to a reasonable time framework for disposing of those motions. We leave it to the discretion of each judge to decide what a reasonable time frame should be in each case.

We reiterate that these time frames for both counsel and the Court are not intended to be inflexible deadlines impervious to any change in circumstances. Rather they should be general guidelines by which counsel and the Court can organize and plan the progress of the case. The Advisory Group calls attention to the fact that, at all times, counsel and the parties cannot be expected to adhere strictly to a pretrial schedule or to a trial date if the court is unable to rule promptly upon discovery, summary judgment and other motions affecting the ability of counsel to complete discovery or to prepare for trial.

RECOMMENDATION: **The Uniform Scheduling Order should contain a reasonable time frame for disposing of motions.**

C. Monitoring Motions and Responses

The clerk's office prepares a flow chart of the motions and responses filed each day. Each Judge has a different method for monitoring the status of those motions. Some manually log each motion and response as it comes in. Others use their personal computers to keep track of their motion inventory. In some chambers, the law clerks monitor motions, while in others deputy clerks and secretaries perform this function. There is not yet an integrated computer system that disseminates this information from the clerk's office to the judges' and magistrates' chambers.

Elsewhere in this Report (Section 8.5) we note that the clerk's office will soon have the capacity to produce daily a computerized Pending Motions' Report which will record the case name, type of case, date of filing motion, response and reply briefs, any hearing date, and the number of days the motions are under advisement. These reports, like a profit and loss statement or billable hours summary, are important management tools which allow midpoint corrections and prioritization of work by Court staff.

The Pending Motions' Report, if properly used, may also redress a problem which occasionally occurs when a district judge refers a pretrial motion to a magistrate judge. Some magistrates have reported that they do not always receive a copy of the order of referral or of the motion referred and the motion simply slips through the cracks. At least one magistrate spends substantial time periodically reviewing the docket sheets of all cases assigned to that magistrate to assure that all orders of

referral were received. We did not find this to be a pervasive problem, but a problem which nonetheless should be redressed.

D. Motion Calendar Practice

This District has experimented with motion calendar practices in the past. All efforts to date have been unsuccessful. It is the belief of most of the judges as well as the Advisory Group that there is presently no need for implementation of a motion calendar.

Commencing in 1985 through 1986, then United States District Judge Thomas E. Scott began a motion calendar. It was widely advertised in the local bar newspapers and all litigants were advised of its availability by Judge Scott. The parties generally did not take advantage of the calendar and ultimately it was discontinued by Judge Scott. Other judges have had similar experiences. These experiences weigh heavily on the other members of the Court as well as the Advisory Group.

An earlier study by the Federal Judicial Center confirms that a motion day practice would not necessarily speed up the disposition time of motions in this District. In fact, the study showed this District's practice of ruling on the basis of written memoranda was faster than a District which relied primarily on a motion day practice.[51]

The Advisory Group has surveyed the present members of the Court on the need for a motion calendar. The majority of the judges believe that it is presently unnecessary and would not be widely used by counsel. Routine procedural motions

[51]Federal Judicial Center, Judicial Controls and the Civil Litigative Process: Motions at p. 30 (1980).

(e.g., motions to extend time and motions to amend) are generally disposed of in a timely manner by the Court. On substantive motions (e.g., motions for summary judgment), the judges will generally grant oral argument if requested by the parties. Therefore, the Advisory Group agrees with the court members that a motion calendar is not presently necessary because past efforts have been unsuccessful; present motion practice appears sufficient without it; and a motion day would require additional judicial time without necessarily hastening the speed of ruling on the motions.

RECOMMENDATION: We do not presently recommend adoption of a motion calendar in this District.

E. Use of Magistrate Judges

The judges are referring more and more motions, including substantive motions to the magistrate judges for report and recommendations. Although this may save some time from the district judge's perspective, on balance it probably increases the total time for disposition of the motion. Whereas a judge may rule from the bench or enter an order denying the motion, without explanation, a magistrate judge does not have that option. The magistrate judge must enter a written report and recommendation explaining the rationale behind the recommendation. Moreover, on substantive motions, it is almost a certainty that the losing party will appeal the magistrate's order. Thus, motions requiring substantial time from the magistrate are not finally disposed of and must be reviewed again de novo by the district judge. In effect, the magistrate has become a very experienced and higher paid law clerk. Assigning three law clerks to district judges (as is recommended in Section 5.5(c)), may ease the necessity of using magistrates to rule on substantive motions.

Based on this Court's successful assignment of all prisoner civil rights cases to Magistrate Judge Sorrentino, the Advisory Group suggests that the Court consider whether other types of cases likewise could be processed more efficiently by directly assigning certain civil cases to one or more magistrates rather than the current system of random assignment to all magistrates. Certain types of cases which the Court may consider would be social security, ERISA, title VII, and civil rights cases. The Court may also wish to study further the advisability of assigning several magistrates to a criminal division.

RECOMMENDATION: The Court should consider whether certain types of civil cases may be more efficiently resolved by direct assignment to one or more magistrates.

The Advisory Group also believes that Congress should amend the Magistrates Act to expand the jurisdiction of magistrate judges to hear and dispose of certain types of cases without a right of de novo review by a district judge. Social security cases, student loan cases, forfeitures, and supervised released cases, are the types of cases which can and should be fully adjudicated by a magistrate judge.

F. Publication of Aged Motions

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

(1) the number of motions that have been pending for more than 6 months and the name of each case in which such motion has been pending;

(2) the number of bench trials that have been submitted for more than 6 months and the name of each case in which such trials are under submission; and

(3) the number and names of cases that have not been terminated within 3 years after filing. CJRA § 476(a).

The Act requires that a semi-annual report of motions that have been pending for more than 6 months be made "available to the public." As of now, there are no guidelines on how these reports should be distributed. There was intense debate among members of the Advisory Group regarding the benefits or detriments of publishing the list of aged motions as well as the judge assigned to the case. A majority of the Advisory Group believes such a practice would be more detrimental than helpful. We believe such information may be most useful by being circulated among the judges and magistrate judges. We will continue to consider this issue in the future.

A frequent question raised by attorneys frustrated with delays in ruling on motions was what actions, if any, could be taken by counsel to speed up the disposition of pending motions. Local Rule 10(B)(3) provides a mechanism for obtaining a

hearing on any motion pending for more than 90 days.[52] Some counsel indicate reluctance to be the one to notify the Court that their motions have been pending for over 60 days and state that it is almost impossible to cajole opposing counsel into joining in such a motion. We note that other districts have a more anonymous system. Under this system, the clerk's office, rather than counsel, notifies the judge of aged motions. We believe such a mechanism is preferable to the current procedure set forth in Local Rule 10(B)(3).

RECOMMENDATION: Local Rule 10(B)(3) should be amended to read:

> **With respect to any motion or any matter which has been pending and fully briefed with no hearings set thereon for a period of 90 days, the Clerk of the Court shall send to the Court and to all parties a "Notification of 90 Days Lapsing and Ripeness for Hearing". When the Court receives such a notification, it shall set the matter for hearing within 10 days of receipt of the notification or shall issue an order resolving the motion or other matter during that same 10 day period.**

G. Certificate of Counsel Regarding Discovery Motions

In formulating the provisions of its civil justice expense and delay reduction plan, ... and advisory group ... shall consider ... (5) conservation of judicial resources by prohibiting the

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[52]*The rule provides:*

> *With respect to any motion or any other matter which has been pending and fully briefed with no hearing set thereon for a period of 90 days or longer, the Court shall set a hearing thereon upon written notice of the fact given by any party. At the expiration of 60 days during which a motion has been pending and fully briefed, counsel must file a notice of the motion's pendency for that time as a prerequisite to obtaining a hearing upon notice at the end of 90 days.*

> *consideration of... discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on matters set forth in the motion. CJRA § 473(a)(5).*

The Local Rules currently require counsel to confer with opposing counsel and certify to the Court that a good faith effort has been made to resolve the issues raised in a motion to compel or motion for protective order.[53] The Civil Justice Reform Act suggests that courts consider requiring counsel to consult with opposing counsel prior to filing any discovery motion. The Advisory Group concurs with this suggestion.

RECOMMENDATION: A Local Rule should be enacted requiring all discovery motions to include a statement from movant's counsel that a good faith effort was made to resolve by agreement with opposing counsel the issues raised and whether there was any objection to the motion.

4.4 Limits on Discovery

Currently, in this District the only limitation on the scope of discovery is Local General Rule 10(I)(5) which limits a party to one set of 40 interrogatories, including all parts and subparts. The proposed Rule 33(a) of the Federal Rules of Civil Procedure would limit initially the number of interrogatories to 15 including all subparts. Proposed Federal Rule 30(a)(2)(A) limits the number of pretrial depositions by each side to 10. Proposed Federal Rule 30(d) limits the time for depositions to 6 hours absent agreement by the parties or order of Court. The Advisory Group debated the possibility of placing limits on the number and time allotted for

[53]Local Rule 10(I)(7).

depositions. At this time, the Advisory Group does not support the imposition of a limit on the number and length of depositions. We will continue to study and consider this important issue in the future.

RECOMMENDATION: **We do not recommend at this time a further limitation on the scope of discovery; however, we will continue to consider carefully this issue in the future.**

4.5 Alternative Dispute Resolution

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

• • •

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

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

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

CJRA § 473(a)(6).

The Act authorizes and encourages courts to consider including some form of alternative dispute resolution ("ADR") programs in their Plans. Although individual judges in this District have experimented with various types of ADR, the District as a whole has never formally approved and adopted any type of ADR. Many other federal courts, however, have implemented various types of ADR and reported

favorable results.[54] The use of mandatory mediation in the state courts of Florida has also received positive comments from the bench and bar alike.[55]

The Advisory Group has examined a variety of ADR programs presently employed by other federal districts. Below is a brief description of those programs the Advisory Group believes are deserving of further consideration for implementation in this District.

1. **Early Neutral Evaluation ("ENE").** The Act specifically mentions ENE as a technique all courts should consider in developing their Plans. CJRA §473(b)(4). When ENE is utilized, the litigants meet early in the case with an outside neutral, usually an attorney expert in the subject area, for a brief, confidential, nonbinding session to discuss both sides of the case. The major benefits of ENE are that it serves to enhance communication, narrow issues, helps to structure the discovery process, and promotes settlement while not compromising the perceived neutrality of the trial judge. The overall experience with ENE has been very positive. In a study of 67 cases using ENE, almost 80% of the lawyers and 74% of the clients expressed a "high level

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[54]The Advisory Group is grateful to Judge Terrell Hodges, former Chief Judge of the United States District Court, Middle District of Florida for travelling to Miami to explain his court's arbitration and mediation programs. For a summary of the various ADR programs currently in use in federal courts see Court-Based Dispute Resolution Programs, prepared by Federal Judicial Center and Administrative Office, 1991 (describing various ADR programs used by the federal courts); CPR Practice Guide, "ADR Use in Federal and State Courts," Winter 1989-90; CPR Legal Program, ADR and the Courts; A Manual for Judges and Lawyers, 1987; CPR, 9 Alternatives, July 1991.

[55]The Advisory Group extends a special thanks to Judge Gerald Wetherington, former Chief Judge of the Eleventh Judicial Circuit in and for Dade County for interrupting a conference in Naples, Florida to travel to the Advisory Group's meeting in Miami to describe his court's experience with mandatory mediation.

of satisfaction" with the program.[56] One concern raised has been that there is no provision for compensating the evaluators who may spend significant time on the case. (N.D. Ca., E.D. Ca., D.D.C.)

2. **Mediation.** In this program, the litigants meet with an outside neutral, appointed by the court or selected by the litigants, for in-depth settlement discussions. Often, the mediators are experts in the subject matter. Mediators facilitate discussions among the litigants to assist them in identifying the underlying issues and resolving the matter on a consensual basis. This program has been widely implemented in various forms in both federal and state courts. The views regarding the effectiveness of this technique vary and are difficult to evaluate because of the number of variables in each mediation program. The most often reported comment in all instances was that mediation seemed most effective in tort cases and simple contract cases when conducted after a limited initial discovery period. The most significant variable affecting the success of mediation is the choice of mediator. In most of the federal programs, the judge has the authority to order participation in mediation. In a few courts, party consent is required. Implementation of this program raises significant issues with respect to who should bear the costs. Some programs rely on pro bono mediators. Others compensate mediators at a market rate. In the latter programs, proponents of mediation expressed concern that this beneficial program would be restricted to the well-off litigant. (D.C., D.Conn., M.D. Fla., E.D. Pa., W.D. Wa., E.D. Wa.)

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[56]Levine, Judicature, Dec.-Jan. 1989.

3. **Settlement Weeks.** The court designates a specific time period during which many cases are referred to settlement conferences with neutral attorneys. Because each neutral agrees to conduct settlement conferences in a number of cases during the designated period, each conference is generally less in-depth than contemplated by mediation programs. The purpose of this program is to speed settlement and increase the chances of settlement. Maximum success with this program is achieved when there is follow-up by the neutral attorney or a judicial officer. The primary disadvantage is that the typical case is referred after discovery has been concluded. Consequently, settlement occurs, if at all, after significant expenditures have been incurred. (N.D., W.Va., S.D. Oh.)

4. **Case Valuation.** This program requires the litigants to briefly present their cases to an outside neutral or panel of neutrals who then give the litigants an opinion of the fair settlement value (as distinguished from a judgment value) of the case. This differs from mediation in that the neutral does not participate in discussions with the litigants. The purpose is to promote settlement in relatively straightforward money damage cases and, depending on when in the process the valuation takes place, it speeds settlement in cases likely to settle on their own. The primary impetus behind this technique was a fee shifting provision where parties who rejected the valuation were liable for the opponent's fees if a trial award did not exceed the valuation by 10%. This practice however was rejected by the Sixth Circuit in Tidel v. Northwestern Michigan College, 865 F.2d 88 (6th Cir. 1988). The program's present major disadvantage is the requirement that the neutral's fee be paid by the parties.

5. **Arbitration.** This method requires the litigants to briefly present their cases to an outside neutral or panel of neutrals who then give the litigants their opinion of the judgment value of the case. Its purpose is the same as case valuation except that it offers parties the opportunity of an advisory adjudication of their case. This process differs from mediation in that it is adjudicatory rather than consensual in nature. In a 1990 study of 10 federal court-annexed arbitration programs, the Federal Judicial Center found that the majority of cases settle before the arbitration hearing and 82-90% of those heard settle after the hearing. In addition, 97% of the judges surveyed said arbitration reduced their workloads.[57] Interestingly, participants in mandatory programs reported more satisfactory outcomes than participants in voluntary programs which were all under-utilized. The concerns with the program were that it was very labor intensive for the clerk's office and a general uneasiness that mandatory referral coupled with disincentives for rejecting awards might interfere with the right to trial.

6. **Non-Binding Summary Jury Trials ("SJT").** In this program the litigants briefly present their cases to a jury which returns an advisory verdict. The purpose is to use the assessment of typical jurors as a catalyst for settling cases that are poised for a lengthy trial. This program has been employed by several of the judges in this District and has not been met with wide acceptance as an effective ADR tool. This procedure does tie up judicial time and courtroom facilities. Some judges found that it was actually counterproductive. Attorneys in districts using this method widely

[57]Meierhoefer, B. Court-Annexed Arbitration in Ten District Courts (FJC) (1991).

report concern that it does not provide any significant savings of costs or time because of the necessity of preparing for both the summary and regular trial. Nevertheless, various districts have reported very successful outcomes. For example, of the 117 cases brought to SJT in the Western District of Oklahoma, all but 38 settled.[58] (C.D. Ill., N.D. Ind., S.D. Ind., E.D. Ky., W.D. Ky., W.D. Mich., W.D. Ohio, W.D. Ok., W.D. Ok, M.D. Pa., M.D. Tenn.)

The ADR experience in other districts has demonstrated that the most daunting task facing a district wishing to undertake the implementation of an ADR plan is the resolution of fundamental issues which must necessarily be addressed as a precondition to the implementation of a program.

Among the issues which must initially be resolved are:

(a) Who will make the decisions setting the goals for the program to be implemented, and the choices of techniques to employ?

(b) What should be the program goals?

(c) Under what authority should the ADR program be established to give it legal legitimacy?

(d) How and by whom should the ADR program be administered?

(e) Should it be a mandatory or a voluntary program?

(f) How is the program to be financed?

(g) Should the program carry incentives for participation, should it be neutral or should it carry sanctions for less than complete good faith-participation?

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[58]CPR, 9 Alternatives, no. 7, at p. 105 (July 1991).

(h) Who would conduct the ADR? For instance, use of court personnel is less costly to litigants but it necessarily limits the flexibility of scheduling and creates another time bottleneck in the litigation process. On the other hand, judicial officials command more respect and help maintain the confidence of litigants.

Based on a survey of the extensive literature on existing ADR programs, interviews with judge and lawyer participants in various ADR programs, and the experiences of individual members of the Advisory Group, we recommend that, at a minimum, a mediation program be adopted in this District. The Local Rules Committee of this Court, proceeding separately and independently from the Advisory Group, has arrived at the same conclusion. The Advisory Group believes many issues remain which should be resolved in order to have a successful mediation program. We recommend that these issues be resolved through a collaborative effort of those representative of the participants in the program –specifically, judges, magistrate judges, lawyers, litigants, and mediators. By specifically recommending further study and implementation of mediation, we do not suggest that other forms of ADR (particularly Early Neutral Evaluation) should not be further studied and implemented as well.

RECOMMENDATION: We recommend that the Court appoint a Mediation Committee by December 1, 1991 including judges, magistrate judges, lawyers, and others who are representative of those categories of civil litigants who may utilize a mediation program. The Mediation Committee should be directed to submit a Report and Recommended Plan to the Court by April 1, 1992 for implementing a mediation

program in this District and any other alternative dispute resolution programs the Committee deems appropriate for this District.

Chapter 5

Judicial Capacity

5.1 Judicial Vacancies

As mentioned earlier in this Report, one of the primary causes of delay in this District (if not the primary cause) is the failure to fill vacant judgeships in a timely manner. There are 11 districts nationwide classified as having a "judicial emergency" in which a judgeship has been vacant for longer than 18 months. Two of those 11 judicial emergency districts are in Florida, this District and the Middle District of Florida. From January 1991, this District had 5 of its 16 authorized judgeships vacant. By October 11, 1991 two of the five vacancies had been filled. A total of 118 vacancies exist nationwide for district court judges.[59]

From its first meeting, the Advisory Group made it a high priority to respond to and assist in whatever manner possible to ease this judicial emergency. The Advisory Group resolved to press for the speedy filling of the present judicial vacancies, study the present system of selecting judges, and recommend regulations or procedures which may expedite the process.

On May 14, 1991, several members of this Advisory Group and a representative of the Advisory Group of the Middle District of Florida went to Washington to discuss

[59]Telephone conversation of September 12, 1991 with David A. Sellers, Public Information Officer, Administrative Office of the United States courts, Washington, D.C.

the status of the judicial vacancies in Florida.[60] The task force met with Senator Connie Mack, former Chief Justice Raymond Ehrlich, counsel to Senator Graham, Ted Kaufman, Chief of Staff for Senator Joseph R. Biden, Jeffrey Peck, Staff Director for the Senate Judiciary Committee, and Murray Dickman, Assistant to the United States Attorney General, Department of Justice. The task force attempted to convey the detrimental effects of the judicial emergency suffered not only by the understaffed judges, but by lawyers and litigants as well.

Both of Florida's senators expressed their firm commitment to resolving this crisis. The Advisory Group commends both Senator Mack and Senator Graham for the bi-partisan effort they have mounted to ease the crisis not only in the state of Florida but nationwide.[61] The Advisory Group is satisfied that its Senators are doing everything possible to ensure the timely filling of the judicial vacancies.

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[60]Richard Capen, James Fox Miller, Tracy Nichols and Aaron Podhurst from this Advisory Group were part of the Washington delegation. Leon Handley from the Advisory Group of the Middle District of Florida was also invited to participate. The Advisory Group from the Northern District of Florida was invited to send a representative but was unable to do so. The Advisory Group expresses its grateful appreciation to Knight Ridder, Inc. which donated its corporate jet for transporting this task force to Washington.

[61]Senators Graham and Mack introduced the "Judicial Nomination and Confirmation Reform Act of 1991", which requires the President to submit the nomination of a judge to the Senate within six months of the vacancy. It also requires the Senate Judiciary Committee to review and report to the Senate within three months of receiving the nomination. Other respected commentators have also called for time limitations on the filling of judicial vacancies. See editorial, "Delay in Filling Federal Judicial Vacancies," 74 Judicature no. 2 Aug-Sept. 1990, (suggesting that the Department of Justice complete its investigations within 2-4 months after a vacancy occurs; that the President make the nomination 4 months after a judge leaves the bench; and that the Senate take no more than 3 months to consider nominees.) See also the National Law Journal, Vol. 12, no. 9, Nov. 6, 1989 in which Prof. Dan Meador of the University of Virginia proposed the creation of a permanent judicial selection office within the Department of Justice to expedite the processing of candidates for federal judge.

It is critical that concerned citizens of this District continue to press for filling judicial vacancies in a timely fashion. We believe the efforts of the Advisory Group impressed upon members of the Senate and Executive Branch that delays and inaction adversely impact not only the judges forced to carry the extra workload but also lawyers and litigants who simply cannot get their civil cases heard.

RECOMMENDATION: The Advisory Group should appoint a permanent subcommittee with one of its functions being the monitoring and coordinating of the process of filling judicial vacancies. We believe that the public, acting with and through the permanent subcommittee, can lower the average time of filling judicial vacancies without in any way lowering the quality of the appointments.

5.2 Judicial Selection Process

Many people think it takes too long to appoint federal judges. Few people, however, understand the process and can specifically identify where and why delays occur. Depending on who is speaking, the blame is placed alternatively on the White House, the Department of Justice, the United States senator, the ABA, the Senate, the FBI, the Senate Judiciary Committee -- or any combination of the above. Without ascribing blame, the Advisory Group sought to study the process and understand the roles of the participants and examine available facts not just opinions.[62]

Under the Constitution, the President has the power to nominate federal

[62]We thank Mary Beth Savory and Mitchell Bainwol of Senator Mack's office for their professional courtesy and helpful assistance in this task.

judges, and with the advice and consent of the Senate, to appoint them for life tenure.[63] For years, the informal practice has been for the senior senator from the state in which a vacancy exists and from the presidential party to submit to the Department of Justice the name or names of potential nominees.[64] Presently, the Bush administration requires the republican senator to submit at least three names for consideration. If the person proposed is not suitable, the senator will be requested to submit another name until a suitable candidate is found. The potential nominees are then interviewed by the Department of Justice. The Department of Justice and Senator consult and make a tentative selection for the vacant seat. The name of the prospective nominee is then forwarded to the American Bar Association[65] and FBI for evaluation. After the ABA and FBI evaluations are completed, the Attorney General makes a recommendation to the White House. The White House reviews the individual's records and, if satisfied, the President nominates the individual and

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[63]U.S. Constitution, Article II, Sec. 2(2).

[64]The Advisory Group gathered its information for this section from interviews with the following: Murray Dickman, Assistant to the Attorney General who coordinate judicial selection in the Justice Department; Jeffrey Peck, Staff Director of the Senate Judiciary Committee; and Ralph I. Lancaster, Jr., Chairman of the ABA Standing Committee on Federal Judiciary. For a general overview of the process, see also Goldman, S. "The Bush Imprint on the Judiciary: Carrying on a Tradition", 74 Judicature April-May 1991 at page 294.

[65]The ABA's Standing Committee on the Federal Judiciary evaluates the prospective nominees professional qualifications -- integrity, professional competence, and judicial temperament. See The ABA Standing Committee on Federal Judiciary, What it is and How it Works, ABA Publication, March 1991. The ABA examines the legal writing of the prospective nominee and personally conducts extensive confidential interviews with those likely to have information regarding the professional qualifications of the prospective nominee. At the request of the Senate Judiciary Committee, the ABA submits its rating for the public record. The rating is either well qualified, qualified or not qualified.

forwards his or her name to the Senate for consideration. The Senate Judiciary Committee evaluates the nominee and sets the nomination for hearing. Upon approval by the full Senate, the President signs the commission appointing the nominee to the judgeship.

For the past 12 years, this entire process, from vacancy to confirmation, has on the average taken 13 months. The bulk of that time (11 months) is required for the selection, investigation and nomination process. The Senate takes, on the average, two months to act on the nomination. The chart below compiled by the Administrative Office of the United States Courts reflects the process for the past 12 years.

Average Number of Days from
Vacancy Date to Nomination and from
Nomination to Confirmation
1979 - 1990

Year	Number of Nominees*	Average Days from Vacancy to Nomination	Number of Confirmations	Average Day from Nomination to Confirmation	Total Days from Vacancy to Confirmation
1979...	152**	231	135	74	305
1980...	47	325	64	91	416
1981...	44**	413	44	37	450
1982...	44	323	44	30	353
1983...	34	278	34	39	317
1984...	44	163	44	36	199
1985...	86**	324	86	48	372
1986...	44	368	44	42	410
1987...	62	344	62	129	473
1988...	22	214	22	101	315
1989...	23	627	15	60	687
1990...	48	327	56	81	408
AVG. FOR PAST 12 YRS.		328		64	392

* Includes only nominees who were confirmed.

** Nominations for 1979 includes 125 for new positions created November 8, 1978.
Nominations for 1981 include 26 for vacancies which occurred prior to 1981.
Nominations for 1985 include 59 for new positions created July 10, 1984.

The Advisory Group fully recognizes that careful scrutiny must be given to a prospective nominee's integrity, professional competence, judicial temperament, character, experience and other characteristics essential to serving as a federal judge. It is a life tenure appointment to a position of great power and authority. The Advisory Group also recognizes that prospective nominees should be fairly afforded some opportunity to respond to inquiries and concerns. We understand that certain investigations encounter more difficulty than others and will require longer periods of time.

It is nonetheless the conclusion of the Advisory Group that, in general, the process simply takes too long. Again, the Advisory Group does not assign blame to any particular participant in the process. At various times and on various nominations, each group may have taken longer than reasonable. Instead, the Advisory Group calls on each participant to examine its own procedures and methods and streamline those procedures without sacrificing a studied and careful deliberation of the prospective nominee's qualifications.

RECOMMENDATION: **The Advisory Group finds that an average of 13 months is, in general, an unreasonably long time for filling judicial vacancies. The Advisory Group urges the Executive Branch, the Senate, the ABA, and the FBI to examine its**

selection procedures and expedite the process without compromising a full consideration of each candidate.

5.3 The Florida Judicial Screening Process

Senator Connie Mack believes that the high quality of the federal judiciary in the state of Florida can best be maintained by using an advisory commission composed of outstanding members of The Florida Bar to recommend to him persons who would be most qualified to serve the public as judicial officers. Accordingly, in 1989, he created the Federal Judicial Advisory Commission of Florida, a 21-person commission generally representative of the population of Florida. The Commission screens applicants for judicial vacancies certified to exist or which will exist within the year and provides a pool of prescreened and qualified individuals for consideration by Senator Mack. The Commission is required to submit at least three prospective nominees for each vacancy. Senator Mack has agreed that he will not recommend to the President or the Department of Justice any person whose name is not among those submitted by the Commission.

Within 45 days of notification of a vacant seat or potential vacancy within the year, the Commission publishes a notice in the Florida Bar news announcing the vacancy and inviting applicants. Applicants are given 30 days to submit an application along with writing samples and disclosure of limited financial information required under public disclosure laws. The Commission members review each application and vote, via telephone or mail, on those deemed most qualified.

The full Commission then personally interviews those potential nominees most qualified. Although the Commission is large, only one-third of the 21 members are

required to constitute a quorum. In its two years of operation, the lowest number attending any meeting was 17. The Commission has never yet failed to acquire a quorum to conduct the interviews.

Some judges and lawyers criticize this method of prescreening candidates and argue for a return to days when the Senator privately selected his or her choice. Critics argue that the Commission process takes too long and discourages certain qualified individuals from applying because they do not want their partners or clients to learn of their interest in the position.

As to the first criticism, the Advisory Group finds that the selection methods used by Senator Mack and his Commission do not unduly lengthen the entire process. Of those judgeships which have become vacant since the Commission was formed, it has taken an average of 102 days from the date the seat becomes vacant for the following to occur: the position to be advertised, applications reviewed, applicants interviewed by the Commission, a list forwarded to the Senator, applicants interviewed by Senator Mack, consultation with the Department of Justice, and a recommendation to the Department. In one case the process took only 32 days. Because the Commission prescreens a number of candidates at once and has a pool of qualified candidates, it is able to make instant recommendations, as it did upon the sad loss of Judge Eugene P. Spellman. Moreover, the Commission's practice of interviewing for vacancies which are certified to occur within one year, without waiting for that vacancy to actually occur, such as a judge taking senior status, is a time-saving measure as well.

Regarding the criticism that the public nature of the process may discourage some from applying, the Advisory Group finds that the benefits of an open, fair process

based on merit selection and not political patronage far outweigh whatever disadvantages, if any, exist. Senator Mack and the Commission have done a superb job of not only selecting those who are most qualified to fill the vacancies but also people who reflect the cultural and ethnic diversity of our District. The Advisory Group commends Senator Mack and the Commission for their thorough procedures and encourage them to continue to perform their roles with due speed and thorough consideration.

5.4 Advance Notice of Resignation of Senior Status

Senator Mack's Commission will begin to consider applicants for a vacancy as soon as a judge gives notice that he or she intends to take senior status or resign. If such notice is given sufficiently in advance, the Commission and others in the selection process have adequate time to consider applicants prior to the date the vacancy actually occurs. We strongly encourage each judge and magistrate judge to give as much advance notice as is reasonably possible of an intent to take senior status, resign, or not seek reappointment.

Recommendation: The Plan should contain a provision in which judges and magistrate judges agree to give written notice to the appropriate persons, whenever reasonably possible, of his or her intent to resign, to take senior status, or not to seek reappointment.

5.5 Adequacy of Number of Judges and Staff

A. District Judges

The issue of the adequacy of the number of district judges is a matter of serious concern to the Advisory Group. Historically, the allocation of judgeships has lagged far behind the demand for these resources in our growing metropolitan area with its explosive criminal caseload. Even when additional resources have been allocated, we have, many times, experienced unreasonable delays in filling the new judgeships. Many members of this group -- judges, lawyers and laypersons -- believe that our judicial resources are still not adequate to meet current and future demands, particularly as criminal filings increase and the court's jurisdiction over both civil and criminal matters continues to expand. Despite these legitimate concerns, the Advisory Group is not prepared to make a recommendation on the adequacy of the number of judges or magistrate judges until all 16 authorized district judge positions have been filled and until we can measure the ability of a full court to handle the business of the district.

RECOMMENDATION: The subcommittee charged with assessing the adequacy of the number of district judges shall evaluate this issue further and report back to the Advisory Group in 1992.

B. Magistrate Judges

Our concerns regarding the adequacy of the number of district judges apply with equal force to the adequacy of the number of magistrate judges. Moreover, if magistrate judges continue to handle more civil trials and motions, as recent statistics indicate they will, the need for additional magistrate positions will become even more

acute. Just as we have diligently searched for procedural reforms which may incrementally improve the system, so too shall we continue to study the need for additional judicial resources.

RECOMMENDATION: The subcommittee charged with assessing the adequacy of the number of magistrate judges shall evaluate this issue and report back to the Advisory Group in 1992.

C. Law Clerks

Every judge in this District expressed the belief that perhaps the most useful and cost effective manner for decreasing delays in civil litigation would be the allocation of a third law clerk to each district judge and a second clerk for each magistrate judge. The number of law clerks assigned to district judges and magistrate judges has been unchanged for decades despite the enormous growth in the number of cases handled by each judge and the increased complexity of developing areas of law.

RECOMMENDATION: We strongly urge that a pilot project be established in this District for allowing an additional law clerk position for each district judge and magistrate judge.

D. Courtroom Deputies

The courtroom deputy is the logical choice for the civil case coordinator for each judge's chambers. However, the courtroom deputies cannot effectively perform this function when they are also required to fulfill their court duties during trial. Because of the greater amount of time the judges in this District spend in trial as compared to other Districts, the courtroom deputies have little time left for civil case management.

As a consequence, the courtroom deputies in this District must spend 10 to 12 hours per day in attempting to meet all their responsibilities.

RECOMMENDATION: We recommend that additional courtroom deputy positions be sought in order to relieve courtroom deputies of at least a portion of their trial duties, so they may perform civil case management responsibilities.

E. Staffing: Clerk's Office

Despite a dramatic increase in both fillings and population in this District, a staffing study has not been completed for this District by the Administrative Office in Washington in approximately 10 years. We believe the Clerk's Office has been understaffed for several years. This has led to a breakdown in morale and providing efficient service to the judges of this District.

RECOMMENDATION: We recommend that the Administrative Office expeditiously complete a staffing study which fully evaluates the adequacy of the number of personnel in the Clerk's Office.

Chapter 6

PRISONER CIVIL RIGHTS CASES

With the burgeoning prison population in this country, one of the fastest growing categories of civil cases in the federal courts is pro se prisoner litigation. In 1958, prisoner civil rights suits constituted about 1% of all federal civil filings.[66] By 1989, that percentage had increased to 11%.[67] Last year in this District, approximately 19% of all civil cases filed were prisoner pro se petitions.[68] Prisoner complaints are the second largest category of civil cases filed in the Southern District of Florida.

Prisoner petitions present difficult challenges to the court system. Inmates use the courts to complain about everything from the loss of jewelry to very serious medical claims. Plaintiffs are almost always unschooled and often essentially illiterate. They know little of the rules of procedure. The Court is frequently required to coach the plaintiff, with orders explaining his or her rights and obligations as the case progresses. The law in this area is everchanging and can be complex.

The large geographic area of this District and the number of state and federal prisons in the District exacerbates the problem. Successive complaints and petitions often raise identical or similar issues but are assigned to different judges. In the past, this resulted in confusion and occasionally contradictory rulings.

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[66]Fed. Cts. Study Comm. at 49.

[67]Id.

[68]Of the 4,447 civil cases filed in 1990 in this District, 833 were prisoner petitions assigned to the Pro Se Division.

6.1 The Pro Se Division

In 1987, this Court established a unique program, the Pro Se Division, to address these challenges. The Pro Se Division is run by Chief Magistrate Judge Charlene Sorrentino who is assisted by four career law clerks, one secretary and one office clerk. The success of this program has generated numerous inquiries from around the country.

All pro se prisoner cases are assigned randomly to a district judge and to Chief Magistrate Judge Sorrentino. The Pro Se Division handles the case in its entirety with the exception of interim dispositive motions and final disposition of the case which are made by the district judge after a report and proposed final order is submitted by the Pro Se Division. The Pro Se Division represents a specialized expertise and resource which spares the district judges and their staffs a great deal of time.

The Pro Se Division has developed a software program which allows it to track its cases on a daily basis. Each month every district judge receives a printout of his or her own cases assigned to the Pro Se Division, showing the filing date and current status of each case. The report also includes the subject matter of the case, pendency of any motions, whether the case is ripe for disposition, dates of all hearings and trials, and similar information.

Prisoner cases do not languish on the calendar because prisoners do not know how to obtain service of process, issue subpoena, or perform other ministerial functions essential in litigation. The Pro Se Division now performs these functions for them. Perhaps the greatest benefit of the Pro Se Division is that it allows the Court to not only expeditiously close a large number of frivolous cases, but also to ferret out those

meritorious cases which otherwise might languish without the diligent attention they deserve. Chief Magistrate Judge Sorrentino and her staff are commended for their superb work.

RECOMMENDATION: **The Court should continue to assign all prisoner civil rights cases to the Pro Se Division which has proven to be a very efficient and effective method of handling such cases.**

6.2 **Administrative Review of Prisoner Complaints**

Many prisoner pro se complaints could and should be resolved at the institutional or some other administrative level. Attempting to address matters that do not rise to the level of federal constitutional claims is a waste of precious resources for all involved. Congress attempted to remedy this situation in 1980 when it passed the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, et seq. The Act requires an inmate in a state prison to first exhaust his or her administrative remedies through any state inmate grievance procedure which the Department of Justice has certified to be in "substantial compliance" with certain statutory "minimum standards."[69] The Court

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[69]The statutory minimum standards require

1) an advisory role for inmates in the development and implementation of the grievance procedures;

2) specific maximum time limits for written replies to an inmate's grievance;

3) priority processing of emergency grievances;

4) safeguards to avoid reprisals against a complaint; and

5) independent review of the disposition of grievances by someone not under the direct supervision or control of the institution.

is allowed to continue a prisoner pro se federal action for up to 90 days and require the prisoner to exhaust his or her administrative remedies.[70]

The Florida Legislature, in an apparent attempt to implement such an inmate grievance procedural exhaustion requirement, passed Florida Statute § 944.331 in 1985, which provides:

> The department shall establish by rule an inmate grievance procedure which shall conform to the Minimum Standards for Inmate Grievance Procedures as promulgated by the United States Department of Justice pursuant to 42 U.S.C. § 1997(e).

Six years have passed since the Legislature's mandate to the Florida Department of Corrections. The first grievance procedure plan submitted to the Department of Justice was rejected for several reasons. The Department of Corrections revised its procedures and resubmitted the plan. According to state officials, the grievance plan has been pending before the Department of Justice for almost two years now without an action or comment.

Apparently, Florida's experience is not unique. The Federal Courts Study Committee likewise observed that "[f]or whatever reason, Justice Department regulations and procedures for certifying a state's system are slow."[71] The Federal Courts Study Committee concluded that a state should be permitted to persuade either a federal court or the Attorney General that its grievance procedures are fair and effective. While this may sidestep the inordinate delays in the Justice Department

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[70]42 USC §1997e

[71]Fed. Ct. Study Comm. at 49.

certification process, it creates other problems. Federal Courts in different districts of the same state may require different and inconsistent grievance procedures.

We conclude that a fair and effective grievance procedure at the administrative level could be an extremely useful mechanism for decreasing the number of prisoner civil rights cases filed in federal court. To be effective, however, the administrative procedure must be more than simply a rubber stamp.

RECOMMENDATION: We urge the state and the Justice Department to proceed expeditiously with implementing a fair and effective grievance procedure for state inmates. We recommend that the grievance procedure be independent of the Department of Corrections in the nature of ombudsman programs which have been successful in other states.

6.3 Obtaining Counsel for pro se Prisoners

Unlike criminal cases, there is no constitutional right to counsel for prisoners in civil rights cases.[72] Lack of legal representation severely hampers both the ability of the pro se plaintiff to fully and fairly present a claim and of the Court to efficiently process the claim. The Pro Se Division now has numerous cases technically ready to be tried in which the plaintiff is seriously disadvantaged because the plaintiff has no funds to subpoena witnesses, let alone pay counsel. Cases which are tried by pro se plaintiffs, without the assistance of counsel, consume far more than the average

[72]The Sixth Amendment right to counsel applies only to criminal cases. The Criminal Justice Act provides for payment of counsel and expenses in criminal cases and in civil cases which are quasi-criminal in nature, such as habeas corpus and extradition.

amount of a judge's calendar time because the plaintiffs are generally unaware of the rules and procedures and are not skilled in clearly presenting their cases.

The Pro Se Subcommittee of the Court Systems Committee has issued a report, adopted by the Court Systems Committee, containing many thoughtful and significant recommendations for obtaining counsel for pro se prisoner litigants. The Report discusses the case of In re Amendments to Rules Regulating the Florida Bar -- 1-3.-1(a) and Rules of Judicial Administration -- 2.065 (Legal Aid), 573 So. 2d 800 (Fla. 1990). In that case, the Supreme Court of Florida held "that every lawyer of this state who is a member of the Florida Bar has an obligation to represent the poor when called upon by the courts and that each lawyer has agreed to that commitment when admitted to practice law in this state." Id. at 806. The Supreme Court of Florida has not yet finally ruled on whether the pro bono obligation of lawyers is mandatory or voluntary. That decision is currently pending before the Court.

Recruiting volunteer lawyers for prisoner cases is made even more difficult because there are currently no provisions for paying counsel's interim costs such as travel, deposition transcripts, expert witnesses, subpoena fees, etc. These expenses can be substantial. If plaintiff prevails, certain costs and expenses, along with reasonable attorney's fee, can be assessed against defendants.[73] If plaintiff loses, though, counsel is out-of-pocket for all expenses incurred as well as his or her time. This places a tremendous burden and unreasonable risk upon the lawyer who takes a pro se case.

[73]28 U.S.C. § 1988.

We believe the first step in any effort to recruit or appoint lawyers to represent pro se litigants must begin with the establishment of some mechanism for, at a minimum, covering the lawyer's out-of-pocket costs. Some districts charge a modest annual fee to all lawyers who are members of the District Bar which is used to pay expenses in pro se litigation. The Court Systems Committee has recommended developing a revolving litigation loan fund to cover discovery costs. If the litigation is successful, the loan would be repaid from the fees recovered. If unsuccessful, the loan is forgiven. Suggested sources of funding for the litigation loan fund include grants from The Florida Bar Foundation, law firm contributions, attorney admission fees, and contributions from meritorious § 1983 actions. We believe these suggestions are meritorious and deserve high priority in the Advisory Group's agenda for 1992.

RECOMMENDATION: The Chairman of the Civil Justice Advisory Group shall appoint a committee to consider the recommendations of the Court Systems Committee and present a full report to the Advisory Group in 1992 with specific recommendations for obtaining counsel for pro se prisoners in civil rights cases and for securing funds for covering discovery costs in such cases.

6.4 Alternative Dispute Resolution

The Report of the Pro Se Subcommittee recommends using volunteer mediators and volunteer counsel to attempt to resolve prisoner civil rights cases. To be beneficial, mediation should take place after preliminary discovery on the primary issues and before completion of full (and costly) discovery. A settlement week, similar to the concept earlier discussed in Section 5.5, may also be an innovative response to the backlog problem of prisoner civil rights cases. A singular fullscale press could be

mounted to recruit volunteer attorneys and mediators and train the entire group in the basics of civil rights law and mediation. Even if the mediation does not result in a settlement it may serve a useful purpose of identifying those pro se cases with meritorious claims.

RECOMMENDATION: **Direct the Mediation Committee to include in its recommendations a plan for submitting pro se prisoner civil rights cases to mediation or any other type of alternative dispute resolution deemed useful.**

CHAPTER 7

COURT ADMINISTRATION

7.1 Video Court Reporting

Some state and federal courts have experimented with recording court proceedings solely by use of video cameras. Generally, five to seven cameras are strategically placed throughout the courtroom and are activated either manually by a clerk or automatically by an electronic "brain" which determines which camera and microphone should be on. Video court reporting is usually justified by its cost savings. It replaces a highly skilled professional court reporter with either complete automation or a video clerk to operate the system. The record produced is also less costly. A videotape record generally costs $20, while the written transcript of the same may cost from $400 to $800.[74] Video recording also seems to provide greater flexibility for a judge's schedule.

The primary disadvantage of a video court reporting system is the unwieldy and time-consuming process of reviewing the record. Without a written transcript, it is very difficult to locate specific portions of the record. We believe this serious disadvantage makes the current state of video reporting impractical for further consideration in this District. It appears that video recording systems may be more useful in courts where there is a shortage of skilled court reporters.

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[74] See "Video Court Reporting: A Review of Recording Systems and Vendors", June 28, 1991, National Center for State Courts at page 2.

At present, this district has fifteen court reporters and two "swing reporters", all of whom are highly skilled and dedicated professionals. Given the greater percentage of time the judges of this District spend in trial (compared to the national average) and the concomitant increased demands this places on the court reporters, we recommend a ratio of one swing reporter for every five official court reporter positions. This would result in adding one "swing reporter" position at the present.

RECOMMENDATION:

We do not recommend the implementation of any video court reporting system at this time; however, we do recommend that one additional "swing reporter" be allotted to the District.

7.2 Computer-Integrated Courtroom

In response to the growing interest in video and audio court reporting, the National Court Reporters Association set up a "courtroom of the future" in federal District Judge Roger Strand's courtroom in Phoenix, Arizona. In this computer-integrated courtroom, the Judge and attorneys have an on-screen display of the transcript of the court proceedings just three seconds after the court reporter records it. The heart of the system is a "computer-aided transcription" or CAT, which translates the recorder's phonetically-based keystroke into English on a computer screen. This computer display eliminates the need for a reporter to read back testimony and enables the Judge to glance at a screen to see what question prompted an objection. At the end of the day, lawyers can leave the courtroom with a written transcript of the day's testimony in hand.

Lawyers may also load depositions, hearing transcripts, discovery materials, and other documents into the computer system for easy access during trial. Instead of scrambling through boxes of depositions searching for impeachment testimony, a lawyer can simply key in the information to the computer and print out the pertinent deposition testimony in seconds.

Judge Strand freely admits he was computer illiterate before participating in this program. He learned to type (using a computer tutorial) and attended classes at a local community college to learn basic computer programs. Attorneys may be trained in the basics of how to operate the computer system in a matter of hours. The cost of installing a computer integrated system in a courtroom is approximately $35 - $50,000.

RECOMMENDATION: **It appears that there are substantial benefits to be gained from a computer integrated system. The Advisory Group will continue to monitor the implementation of this system in federal courts nationwide and will assist the court in any efforts to obtain a computer-integrated system.**

7.3 Management Consultant For Chambers

The Advisory Group greatly benefitted from the fresh perspective brought by the business executives in our group to the problems of time delays in the judicial system. These members, more accustomed to working in quantitative measures of productivity, offered unique recommendations for increasing efficiency in the judicial system. Although the "product" of a judicial system is not necessarily susceptible to the same quantitative measuring rods of productivity used by banks or newspapers, there are components of the judicial system which can be improved by application of various

management techniques used in a business setting. For example, there is a constant stream of paper and information both "intrachambers" - between the judge, the law clerks, the secretary, and the deputy clerks - as well as "interchambers" - between the chambers and other components of the court family (clerk's office, magistrate's chambers, lawyers' offices, etc.).

At the recommendation of the Court System Committee, the Advisory Group closely examined the organization of one judge's chambers to recommend management procedures for increasing efficiency and effectiveness.[75] To assist us in this process, we retained Modern Management Technology, Inc. ("MMT"), a well-respected management consulting firm located in Miami. MMT focused on the personal organization and filing systems of the chambers, work habits, the flow and handling of intraoffice paper work, the delegation of work and feedback, and communication between the judge and his staff. Although MMT has not yet completed its consulting work, preliminary evaluations indicate the project has resulted in improvements in the chamber's organization, efficiency and communications.

RECOMMENDATION: **We recommend that similar consulting and training services be made available to any district judge who desires such services. We recommend that funding be requested for a phased-in approach in which the services will be made available to four judges each year for the next three years.**

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[75]We appreciate and applaud Judge Edward B. Davis and his staff for their cheerful willingness to be "guinea pigs" in our examination of the information stream in their chambers.

7.4 Buildings And Facilities

This District currently faces a critical space problem. Two magistrates judges in Miami have no courtrooms permanently assigned to them. Moreover, because of the shortage of space, the jury rooms corresponding to certain magistrate courtrooms in Miami have been reassigned to law clerks, making it impossible to conduct a jury trial in these courtrooms. Absent the construction of additional facilities this space shortage can only become more problematic in the future. Between now and 1999, half of the district judges will become eligible for retirement in senior status. At present, the District has a total of 31 authorized judicial officers.[76] With this large number of judicial officers and the possibility of eight district judges opting for senior status, there is a pressing need for additional physical space to accommodate the Court.

In recognition of the critical space problem faced by the Court in Miami, the construction of the Federal Law Enforcement Building Phase I has begun, immediately north of the current courthouse complex. When completed, the building will accommodate six district courtrooms and chambers. This project was originally planned as a twin tower development. The Bureau of Prisons has since acquired the adjacent site (originally scheduled for Phase II) and plans to build a detention center

[76]The breakdown is:

- 16 authorized district judges
- 3 district judges on senior status
- 9 full-time magistrate judges
- 1 recalled magistrate judge
- 2 parttime magistrate judges

there. We note that the Bureau of Prisons currently owns property located east of 25 N.E. Second Street. This property (east of 25 N.E. Second Street) should be designated for the Federal Law Enforcement Building Phase II and planning should begin immediately for that building.

RECOMMENDATION: We recommend that the property east of 25 N.E. Second Avenue be designated for Federal Law Enforcement Building Phase II and that the Court commence planning immediately for that building.

After the completion of the Federal Law Enforcement Building Phase I and the subsequent move of certain functions to the new building, a renovation of the two existing buildings in Miami should be undertaken. A decade of very heavy use has taken its toll on the existing United States Courthouse Tower. Moreover, the jury rooms in the United States Courthouse and Post Office should be returned to their original use and additional offices for law clerks should be built.

RECOMMENDATION: We recommend that the renovation of the United States Courthouse and Post Office and the United States Courthouse Tower be undertaken after the completion of the Federal Law Enforcement Building Phase I and that the Court commence planning immediately for this renovation.

There is currently pending legislation before Congress which gives all real property authority to the judicial branch and eliminates General Services Administration as the sole source of property support. The judiciary, as a separate branch of government, should not have to depend on the executive branch for such an important function as real property administration. We believe the judiciary can administer its own real property more effectively and for the same cost or less.

RECOMMENDATION: **We recommend that Senators Graham and Mack cosponsor a bill first introduced in Congress by Senator Moynihan (s. 2839) which would give real property authority to the judicial branch and eliminate the General Services Administration as the sole source of real property support.**

7.5 Automation: Civil ICMS

In the last two years, this District has experienced a dramatic increase in its automation capabilities. In August 1990, the Clerk's office had approximately 5 personal computers in use among 107 employees. Today, the Clerk's office has a total of 60 personal computers in use. While this increased capacity has obviously enhanced the ability of the Clerk's Office to process documents more efficiently, it has also created some immediate problems in implementing the system and training personnel.

This computer expansion began last fall when the District began to implement a civil automated docketing and full case management system known as the Integrated Case Management System ("Civil ICMS"). Civil ICMS is a computer system which allows docketing to be done electronically. It also may be used as an effective case management tool. For example, there are various reports which may be generated from Civil ICMS, such as: pending motions report, answer report, and scheduling report. We believe the pending motions report which tracks the filing of motions and responses is a particularly useful management tool. Currently, each chambers uses a different system for tracking pending motions. Some manually enter the information into a log, while others use their personal computers to keep track of pending motions. A standard report, prepared by the Clerk's office and distributed to all judges and

magistrate judges, of the status of pending motions is an important piece of management information for monitoring the aging of the pending motions inventory.

In general, however, none of the reports available on Civil ICMS are used because not all cases have been docketed on the Civil ICMS System. The Clerk's office initially attempted to transfer all dockets on to Civil ICMS, but this project was abandoned due to lack of staff. Because the Civil ICMS database is incomplete, the available reports, such as a pending motions report, are useless. Currently, the Clerk's office must manually prepare a motion flow chart using information from the Civil ICMS System and from the former computer system (SIRS) previously in use. This is a time-consuming and duplicative task which could be eliminated if Civil ICMS were fully operational.[77]

RECOMMENDATION: We recommend that the Clerk's office request additional positions in order to input the backlog of data into Civil ICMS. As soon as the Civil ICMS database is accurate and complete, the Clerk's office should routinely produce the pending motions report available on ICMS and replace the manual flow chart produced by the Clerk's office. Training sessions should be held to familiarize law clerks, secretaries, and deputy clerks with the Civil ICMS reports.

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[77]We note that the Court Administration Division, after an extensive review of the Court's automation system, likewise concluded that the Court should begin to use Civil ICMS (and particularly the pending motions report) as a case management tool. See Post-Automation Review Report to the Clerk of Court, dated July 9, 1991.

Chapter 8

COMPLIANCE WITH CIVIL JUSTICE REFORM ACT

The advisory group of a United States district court shall submit to the court a report. . . which shall include --

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

CJRA § 472(b)(4).

Section 473 of the Civil Justice Reform Act contains a menu of various litigation management principles and cost and delay reduction techniques which the courts and advisory groups are directed to consider for inclusion in their plans. The Act also requires the Advisory Group's Report to explain how its proposed plan complies with those techniques suggested in section 473 of the Act. (CJRA §473(a)(1)). Each technique will be discussed below:

8.1 Section 473 of the Act

A. Differential Case Management (CJRA §473(a)(1))

The first cost and delay reduction principle suggested in Section 473 of the Act is the "systemic, differential treatment of civil cases ...." As discussed in Section 5.2 of this Report the Advisory Group has carefully considered and has recommended implementation of a differentiated case management or tracking system which assigns cases to either expedited, standard or complex tracks.

B. Early and Ongoing Control of Pretrial Process (CJRA §473(a)(2))

The Act suggests that a judge assert early and ongoing control of the pre-trial process by assessing and planning the progress of the case; setting early and firm trial dates to occur within 18 months after the filing of the Complaint; control the extent

of discovery and time for completion of discovery; and set deadlines for filing motions and a time framework for their disposition. The Advisory Group has incorporated each of these principles in the proposed Uniform Scheduling Order discussed earlier in Section 5.2 of this Report.

C. Management Plan for Complex Cases (CJRA §473(a)(3))

The Act suggests that for complex cases, the judicial officer may engage in more intensive case management by presiding over a series of conferences at which the judge explores the parties' receptivity to settlement; identifies the principal issues in contention; provides for staged resolution or bifurcation of issues; prepares a discovery schedule; limits the volume of discovery; phases discovery into or two more stages; and sets deadlines for filing motions and a time framework for their disposition. As is discussed in Section 5.4, the Advisory Group has considered limitations on discovery, including phasing discovery into two or more stages. At this time, the Advisory Group does not recommend a change in the Local Rules providing for limits on discovery. The other principles raised in this section can be addressed at the scheduling conference and in the Uniform Scheduling Order proposed in Section 5.4.

D. Voluntary Exchange of Information (CJRA §473(a)(4))

Another delay reduction procedure outlined in the Act is to encourage voluntary exchange of discovery. As previously mentioned in Section 5.1(c) of this Report, this District already has a local rule which requires the parties to exchange, early in the case, documents and witness lists. This local rule has already enacted the voluntary exchange procedure contemplated by the Act.

E. Certificate of Counsel for Discovery Motions (CJRA §473(a)(5))

The Act suggests that all discovery motions be accompanied by a certification that the party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matter set forth in the motion. The Advisory Group has considered this principle and recommends it for inclusion in the plan. See Section 5.3(g).

F. Alternative Dispute Resolution (CJRA § 473(a)(6))

Alternative dispute resolution programs, including mediation, mini-trial and the summary jury trial, are suggested for study by the Advisory Group and the Court. The Advisory Group appointed a subcommittee to study alternative dispute resolution and has recommended a plan for implementation of mediation in this District. See Section 5.5.

G. Joint Discovery Plan (CJRA § 473(b)(1))

The Act requires the Advisory Group to consider a requirement that counsel jointly present a discovery case management plan at the initial pretrial conference. This District already has a local rule requiring counsel to confer and submit a joint proposed scheduling order. The Advisory Group believes that this can be an effective technique for reducing cost and delay if counsel follow the local rule requiring it.

H. Authority to Settle at Pretrial Conference (CJRA §473(b)(2))

Another technique mentioned in the Act is a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party. We read Section 473(b)(2) as requiring an attorney to have settlement authority at "each" pretrial conference including the initial scheduling conference. We

believe the scheduling conference occurs too early in the case for an attorney to have properly evaluated the case and conferred with the client on a settlement amount. We therefore decline to recommend adoption of a local rule requiring the attorney to have settlement authority at each pretrial conference.

I. Party Signature for Request for Extension of Time (CJRA §473(b)(3))

The Act invites courts to require that motions for extensions of time or postponement of trial be signed both by the attorney and the party making the request. The Advisory Group has considered this proposal and recommends strongly against it. We believe that a rule requiring a party signature undermines the relationship between an attorney and client and improperly suggests that an attorney would not previously consult the client before requesting an extension.

J. Early Neutral Evaluation (CJRA § 473(b)(4))

The Act suggests that we consider recommending an early neutral evaluation program. We examined this program and discussed it in Section 5.5 of this Report. We strongly recommend that the committee implementing mediation also consider implementing an early neutral evaluation program as well.

K. Client Attending Settlement Conference (CJRA §473(b)(5))

Another one of the litigation techniques in the Act requires that upon notice by the Court, representatives with authority to settle be present or available by telephone during any settlement conference. We believe this is already the practice of the judges in this District, and we agree that it should continue. The Advisory Group notes, however, that there are limited circumstances where this may not be a reasonable requirement such as when a government is prohibited by law from delegating the

power to settle and may only make such a decision after a public hearing upon due notice to protect persons whose rights may be affected by the settlement.

L. Additional Advisory Group Recommendations (CJRA §473(b)(6))

The Act also requires the Court to consider such other features as the Advisory Group may recommend. This Report and the accompanying proposed plan contain several recommendations that were not explicitly suggested in the Civil Justice Reform Act. The following are examples of other issues raised and addressed by the Advisory Group:

- advance notice of resignation or senior status by judges and magistrates (Section 7.4);
- additional law clerks to district judges (Section 7.5(c));
- partial specialization by magistrate judges (Section 7.5(b));
- additional courtroom deputies (Section 7.5(d));
- improving grievance procedures in the state system for prisoner civil rights cases;
- obtaining counsel for prisoner civil rights cases;
- implementing alternative dispute resolution procedures for prisoner's civil rights cases;
- management consulting for chambers (Section 9.3); and
- full implementation of the court's electronic docketing computer system (Section 9.5).

Chapter 9

CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLAN

FOR THE

UNITED STATES DISTRICT COURT

OF THE

SOUTHERN DISTRICT OF FLORIDA

November, 1991

Draft 7
10/02/91

INTRODUCTION

Last December, Congress passed the Civil Justice Reform Act of 1990 with the intent of decreasing cost and delays in civil litigation in federal courts. The Act recognizes that various participants in the judicial system--the courts, attorneys, litigants, Congress and the Executive Branch--contribute in some way to the ability of the system to offer timely and proper judicial relief. The Act charges each of those participants to make significant contributions to reducing cost and delays. This Court seeks to carry out its own charge through the implementation of the following Civil Justice Expense and Delay Reduction Plan ("Plan").

This Plan contains only actions or procedures which are within the jurisdiction of this Court to implement. Many procedures in the Plan have been used for years by various members of this Court. Those procedures are now formalized and given uniformity. Some procedures are new and represent the Court's recognition that improvements can be made even in the most efficiently run courtroom. Most of the measures require incremental, not radical change. They are in the nature of fine-tuning the system. It is not that the system requires only fine-tuning; rather, it is not within this Court's power to redress the primary factors which cause unreasonable cost and delay in this District.

The Court concurs with the finding of the Civil Justice Advisory Group that the two factors which have the greatest impact on the timely resolution of civil cases in this district are: (1) the failure to fill authorized judgeships within a reasonable time; and (2) the burgeoning criminal caseload. The Court hopes that Congress and the Executive Branch, in the course of carrying out their charges under the Act, will examine their actions which contribute to cost and delay and will address these two factors.

no order

CHAPTER 1

STATEMENT OF PURPOSE AND FINDINGS

1.0 Title.

The following is the Civil Justice Expense and Delay Reduction Plan for the United States District Court of the Southern District of Florida (the "Plan").

Reporter's Note: The Civil Justice Reform Act ("CJRA") refers to the plan as an "expense and delay reduction plan." 28 U.S.C. § 471.[78]

1.1 Statement of Purpose.

The purpose of this Plan is to "facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes."[79]

1.2 Findings.

The United States District Court for the Southern District of Florida (the "Court") makes the following findings:

(1) This Plan has been developed after careful consideration of the Report and recommendations of the Civil Justice Advisory Group ("Advisory Group") appointed pursuant to the Civil Justice Reform Act of 1990, 28 U.S.C. § 478. Public hearings on the Plan were held by the Advisory Group before it submitted a proposed Plan for the Court's consideration. All local and federal bars in this District in addition to the

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[78]Reporter's Notes will appear only in the draft version of the Plan and not in the final Plan. Footnotes will appear both in the draft and final Plan.

[79]See Fed. R. Civ. P. 1; Civil Justice Reform Act ("CJRA") § 471.

general public were invited to attend the public hearings and comment on the proposed Plan.

(2) In formulating the Plan, the Court and the Advisory Group have considered all the principles and guidelines of litigation management and cost and delay reduction techniques contained in Section 473 the Civil Justice Reform Act.

Reporter's Note: The CJRA requires the Advisory Group's Report to include an explanation of the manner in which the recommended plan complies with Section 473 which lists various case management techniques.

(3) The Court concurs in the finding of Congress that "[t]he courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties."[80]

(4) The Court additionally adopts the Congressional finding that "[t]he solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.[81]

(5) This Plan focuses specifically on actions and procedures which the Court shall take to reduce the time and cost involved in civil litigation in the Southern District of Florida.

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[80]CJRA §102(2).

[81]Id. § 102(3).

(6) The Court encourages the other participants in the civil justice system to likewise examine their actions or inactions which adversely affect the timely and fair resolution of civil cases and to take appropriate corrective measures.

(7) Consistency and uniformity in the management of civil cases throughout the District is one of the desired goals of this Plan. In unusual circumstances, a judicial officer may deviate from the procedures in this Plan as may be reasonably required for an individual case pending before that judicial officer.

1.3 Early Implementation District.

It is the intent of the Court to qualify as an Early Implementation District under the Act. The Court certifies that the Advisory Group has filed its Report required by 28 U.S.C. §472(b) and this Court has reviewed that Report. This Plan shall be considered to be adopted by the Court as of the date of the Administrative Order so stating. It is the Court's intent to make the various components of this Plan fully operational as promptly as feasible.

Reporter's Note: The statutory deadline for adopting a Plan is December, 1993. Any court, however, which "develops and implements" a civil justice expense and delay reduction plan two years earlier (December 31, 1991) shall be designated an Early Implementation District. Early Implementation Districts are eligible for additional resources, including technological and personnel support and information systems to assist in the implementation of the Plan. CJRA § 482(c).

The Judicial Conference Committee on Court Administration and Case Management has interpreted the statutory requirement of "implementing" a Plan before as satisfied if the following occur prior to December 31, 1991:

- *The Advisory Group has filed a Report and the Court has reviewed it;*
- *The Court has adopted a Plan;*
- *The Plan contains a schedule for its effectuation which shows a good faith effort to make the Plan fully operational as promptly as feasible; and*
- *The Plan and Report are transmitted to the Director of the Administrative Office; the Judicial Council of the 11th Circuit and the Chief Judge of each district court in the 11th Circuit.*

CHAPTER 2

PRETRIAL CASE MANAGEMENT PROCEDURES

2.0 Finding.

(1) This Court is ranked fourth among the 94 district courts nationwide in the median time for disposing of all civil cases.[82] The percentage of civil cases over 3 years old in this District is well below the national average of 10.4% and has steadily decreased from 5.8% in 1985 to 3.9% in 1990.[83]

(2) A cornerstone of the Court's ability throughout the years to process civil cases faster than the national average has been an informal case management system which relies on the following principles:

(a) The Court must assert early and ongoing control of the pretrial process;

(b) The Court must set early and firm pretrial conference and trial dates;

(c) A discovery schedule must be set according to the complexity of the case;

(d) The Court must rule promptly on all motions; and

(e) The Court should generally set civil trials on a fixed calendar of two or three weeks of duration with up to 12-14 civil and criminal cases per calendar.

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[82]See Federal Court Management Statistics for fiscal year 1991.

[83]Id.

(3) Setting realistic and firm discovery schedules and trial dates is a key element of an effective case management system.

(4) Counsel for the parties should have an opportunity to suggest an appropriate discovery schedule; the Court will consider that suggestion, along with other factors, in setting the discovery schedule.

2.1 Scheduling Order.

(1) Within 40 days after the filing of an answer, or within 120 days after the filing of the complaint (whichever shall first occur), each judge shall in all civil cases (except those expressly exempted below) enter a Scheduling Order.

(2) It is within the discretion of the judge whether to hold a Scheduling Conference with the parties prior to entering a Scheduling Order pursuant to the deadlines set forth in section 1 above.

(3) The Scheduling Order shall include a date certain for the following:

a) completion of all discovery;

b) filing all pretrial motions;

c) resolution of pretrial motions;

d) the pretrial conference (if one is to be held); and

e) trial date.

(4) Counsel for the parties (or any pro se party) may, pursuant to Local Rule 14, and prior to the time prescribed in section 1 above, submit a proposed Scheduling Order for the Court's consideration.

Reporter's Note: The CJRA requires each court to consider assuming early and ongoing control of the pretrial process by setting early, firm trial dates, controlling the time for

compeletion of discovery, and setting a time framework for disposing of motions. CJRA § 473(2).

Local Rule 14 requires the parties to meet within 20 days after the filing of the answer (or within 90 days after the filing of the complaint) to exchange documents, witness lists, etc. and to agree on a discovery schedule. (This local rule satisfies the requirement under CJRA that there be "encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices.") CJRA § 473(a)(4). The parties have 10 days after this scheduling conference to file a proposed scheduling order. The deadlines set in this section are coordinated with the deadlines set in Local Rule 14 and Fed. R. Civ. P. 16.

2.2 Exempt Actions.

The following types of cases will generally be exempt from the requirements of this chapter:

a. Cases filed in or removed to this Court on or before the date of adoption of this Plan;

b. Habeas corpus cases;

c. Prisoner Civil Rights cases;

d. Motion to vacate sentence under 28 U.S.C. § 2255;

e. Social Security cases;

f. Foreclosure matters;

g. Civil forfeiture actions;

h. IRS summons enforcement actions;

i. Bankruptcy proceedings, including appeals and adversary proceedings;

j. Land condemnation cases;

k. Default proceedings;

l. Student loan cases;

m. VA loan overpayment cases;

n. Naturalization proceedings filed as civil actions;

o. Cases seeking review of administrative agency action;

p. Statutory interpleader actions;

q. Truth-in-Lending Act cases not brought as class actions;

r. Interstate Commerce Act cases (freight charges, railway freight claims, etc.);

s. Labor Management Relations Act and ERISA actions seeking recovery for unpaid employee welfare benefit and pension funds; and

t. Any other case expressly exempted by Court order.

A judge shall have the discretion to enter a Scheduling Order or hold a Scheduling Conference in any civil case even if such case is in an exempt category.

Reporter's Note: These exempt actions are identical to those actions exempted from the requirements of Local Rule 14. See Local Rule 14A.9.

2.3 Guidelines for Setting Deadlines in Scheduling Order.

(1) Uniform discovery schedules.

Each civil case shall be assigned a discovery deadline within one of the following three time periods:

- 90-179 days for expedited cases;
- 180-269 days for standard cases;
- 270-365 days for complex cases.

Discovery deadlines shall be set based on the complexity of the case, number of parties, volume of evidence, problems locating or preserving evidence, time reasonably required for discovery, time estimated by parties for discovery (in the Civil Cover Sheet,[84] and in the proposed scheduling order submitted by all parties pursuant to Local Rule 14) and time reasonably required for trial, among other factors. The Court shall consider the following general guidelines in determining the most appropriate and fair discovery period:

a. Expedited Cases (90-179 days).

A relatively non-complex case requiring only one to three days of trial may be assigned a discovery deadline within the period of 90 to 179 days from the date of the Scheduling Order.

---

[84]The Clerk of the Court is directed to amend civil cover sheet, Form JS-44, to include an estimate by the plaintiff for the number of months required for completion of discovery and for the days estimated for both sides to try the case. The civil cover sheet shall instruct plaintiff to select one of the following three periods for discovery: 90-179 days; 180-269 days; or 270-365 days.

b. Standard Cases (180-269 days).

A case requiring 3 to 10 days of trial may be assigned a discovery deadline within the period of 180 to 269 days from the date of the Scheduling Order. Examples of cases which may be included in this category are: torts, contracts, civil rights, discrimination cases, asbestos, admiralty, labor, copyright and trademark, etc. It is anticipated that the majority of civil cases subject to a Scheduling Order will be assigned a standard discovery deadline.

c. Complex Cases (279-365 days).

An unusually complex case requiring over 10 days of trial may be assigned a discovery deadline within the period of 270-365 days from the date of the Scheduling Order. Examples of cases which may be included in this category are: antitrust, patent infringement, class actions, major disasters, environmental, securities, and tax suits. It is anticipated that less than 10% of the civil cases subject to a Scheduling Order will be assigned to the complex discovery schedule.

Reporter's Note: The uniform discovery schedules rely on a modified form of "tracking" or "differential case management." This particular litigation management technique has been used quite successfully by individual judges of this Court and other Courts as well. CJRA directs each court to consider including some form of differential case management in its Plan and specifically requires two demonstration courts to experiment with tracking.

(2) Setting date certain for filing and disposition of pretrial motions.

The Scheduling Order shall set a date certain for filing all pretrial motions and a time framework for their disposition.

Reporter's Note: One of the case management techniques mentioned in the CJRA is "setting, at the earliest practical time, deadlines for filing motions and a time framework for their disposition." CJRA § 473(a)(2)(D). Currently, almost all scheduling orders now used by the Court set deadlines for the parties to file motions but do not contain a time for the disposition of those motions.

(3) **Setting date certain for pretrial conference and trial.**

The Scheduling Order shall set a date certain for a pretrial conference, if one is to be held, and trial.

Reporter's Note: Many judges do not currently hold a pretrial conference. The judges have varying deadlines after the completion of discovery for filing motions and setting pretrial conferences. It is critical that each judge's Scheduling Order have a pretrial conference date (if one is to be held) and the trial date in addition to a discovery deadline. The legislative history of the CJRA and the Act emphasize that the key to effective case management is the setting of early, firm trial dates. CJRA § 473(a)(2)(B).

2\4 **All Civil Trials Set Within 18 Months.**

The goal of the Court is to set a trial date in the Scheduling Order no later than 18 months after the filing of the complaint unless:

a. The complexity and demands of the case require a later trial date; or

b. The trial cannot reasonably be held within such time due to the pending criminal caseload of the Court; or

c. The trial cannot reasonably be held within such time due to the number of vacant authorized judgeships.

Reporter's Note: One of the case management guidelines set forth in the CJRA is to set early, firm trial dates occurring within 18 months after the filing of the complaint unless a judicial officer "certifies" that either subpara a. or b. above is applicable. This version adds subpara c. and deletes the certification requirement. The Advisory Group does not believe that setting trials in most cases within 18 months is an unrealistic goal for this Court. In fiscal year 1991, with only 11 out of 16 authorized judges, 90% of all civil cases were disposed of within 18 months.

2.5 Certificate of Counsel Regarding Discovery.

A Local Rule shall be enacted requiring all discovery motions to include a statement from movant's counsel that a good faith effort was made to resolve by agreement with opposing counsel the issues raised and whether there was any objection to the motion.

Reporter's Note: Under Local Rule 10I.7, counsel must now certify that a good faith effort has been made to resolve by agreement the issues raised prior to filing a motion to compel or motion for protective order. The CJRA suggests that courts consider requiring counsel to consult with opposing counsel prior to filing any discovery motion. CJRA §473(a)(5). The Advisory Group concurs with this suggestion.

2.6 Mandatory Hearing for Motions Pending Longer than 90 Days.

The Court encourages counsel and litigants to follow the provisions of Local General Rule 10B.3 which requires the Court to set a hearing on any motion or other matter which has been pending and fully briefed with no hearing for 90 days or longer upon written notice by counsel at the expiration of 60 days.

CHAPTER 3

TRIAL PROCEDURES

3.0 Setting Civil Trial Calendars.

(1) In general, civil trial shall be scheduled on a fixed calendar no longer than 2-3 weeks duration.

(2) In general, no more than 12-14 criminal and civil trials shall be set on any trial calendar of 2-3 weeks duration.

3.1 Consent to Trial by Magistrate Judge.

Pursuant to 28 U.S.C. § 636(c), parties in civil cases are encouraged to consent to trial before a Magistrate Judge.

CHAPTER 4

ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

4.0 Findings.

(1) The Civil Justice Reform Act of 1990 authorizes the Court to make available certain alternative dispute resolution programs including mediation.[85]

(2) The Local Rules Committee of this Court has made a separate recommendation consistent with the recommendation of the Advisory Group that the Court adopt a voluntary mediation program.

(3) The approval of adoption of a voluntary mediation program does not represent a departure from the Court's conviction that trial by jury remains the bedrock of this nation's dispute resolution system.

(4) Nonetheless, to the extent that voluntary mediation has become an increasingly useful tool by which parties may resolve their differences in an expeditious and less costly fashion, the Court desires to have such a program available.

(5) Nothing contained in this chapter shall limit or otherwise discourage an individual judges' use of any type of alternative dispute resolution procedure currently permitted under the law.

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[85]CJRA § 473(a)(6).

4.1 Implementation of Mediation.

The chief judge, after consultation with the other judges of the Court, shall by December 1, 1991 appoint a Mediation Committee. The Mediation Committee shall include judges, magistrate judges, lawyers, and others who are representative of those categories of civil litigants who may utilize the mediation program.

The Mediation Committee shall by April 1, 1992 deliver a report and recommended plan to the Court for implementing a mediation program in this District. The Mediation Committee shall consider the following issues:

(a) The proposed local rule for court annexed mediation;

(b) Goals of a mediation program;

(c) Projected budget for cost of program;

(d) Cost, if any, to the user of the program;

(e) Criteria for identifying cases appropriate for referral to mediation;

(f) Juncture in the case when referral to mediation is appropriate;

(g) Rules governing the mediation;

(h) Whether the program should be voluntary or mandatory;

(i) Whether the program should carry incentives for participation;

(j) Who should administer the program;

(k) Where should the sessions be held;

(l) Who should serve as mediators;

(m) Who should determine the eligibility of mediators;

(n) Who should select the mediators;

(o) Education of the bar and the public about the program;

(p) Training of mediators;

(q) Collecting data and assessing efficacy of program;

(r) Consider the use of mediation in prisoner civil rights cases; and

(s) Recommendations for any other types of alternative dispute resolution programs or procedures for the Court's consideration.

Reporter's Note: The CJRA directs all courts to consider a Plan which includes "authorization to refer appropriate cases to alternative dispute resolution programs that . . . the Court may make available, including mediation, mini-trial, and summary jury trial." CJRA § 473(a)(6).

CHAPTER 5

JUDICIAL OFFICERS

5.0 Judicial Vacancies.

(1) The Court concurs with the finding of the Advisory Group that a primary cause for any cost and delay in civil litigation in this District is the failure to fill the authorized vacant judgeships within a reasonable period of time.

(2) The Court adopts the recommendations made to Congress and the Executive Branch by the Advisory Group regarding more expeditious filling of judicial vacancies, and will assist as may be appropriate in the effort to carry out those recommendations.

(3) In recognition of the burdens borne by the entire Court and the attorneys and litigants in the District as a result of the slow process of filling vacancies, the individual judges of this Court severally have agreed to give at least six months' written notice, whenever reasonably possible, to the appropriate person or authorities of his or her decision to take senior status, resign, or in the case of Magistrate Judges, to not seek reappointment.

CHAPTER 6

CIVIL CASE ASSIGNMENT SYSTEM

6.0 Objectives of the Civil Case Assignment System.

The Civil Case Assignment System procedures set forth in this Chapter are designed to meet the following objectives:

- Assign all cases on an impartial basis, free from any influence or manipulation by any litigant, counsel, or member of the court system;
- Allocate the work of the District equitably among all District Judges and Magistrate Judges;
- Encourage the development of specialized expertise in particular areas of law by Magistrate Judges.

6.1 Random Case Assignment.

Except as indicated elsewhere in this Chapter, all civil cases will continue to be randomly assigned to both a District Judge and Magistrate Judge under the blind assignment system currently in use.

6.2 Consideration of Direct Criminal and Certain Civil Case Assignments.

The Chief Judge, after consultation with the other judges of the Court, shall by December 1, 1991 appoint a committee to consider whether criminal cases in the Southern Division of this District should be assigned directly to certain Magistrates and whether certain civil actions such as social sercurity, ERISA, forfeitures, employment discrimination, or other approperiate types of civil cases, should be assigned directly to certain Magistrates.

CHAPTER 7

AUTOMATED CASE MANAGEMENT INFORMATION SYSTEM

7.1 Findings.

(1) The Administrative Office of the United States Court has developed an automated Integrated Case Management System ("ICMS") for both civil and criminal cases. Various Case Management Reports may be generated under this computerized docketing system.

(2) The civil ICMS System was implemented in this District in October 1990, replacing another automative system (SIRS) formerly used. Because of inadequate funding, not all pending cases were transferred to the new civil ICMS System. The Clerk's office has been forced to work with both systems, resulting in duplication of effort, inefficiencies, and delays in docketing.

(3) Various case management reports are available on civil ICMS which would be useful to the Court in monitoring the progress of civil cases. These reports are currently unavailable because the entire civil case docket has not been transferred to ICMS.

7.2 Implementation of Civil ICMS.

The Court directs the Clerk of the Court to take whatever measures are necessary and reasonably available to implement fully the civil ICMS including, but not limited to the following:

a) Transfer all open civil dockets to ICMS;

b) Ensure accuracy of civil ICMS database;

c) Provide training for Courtroom deputies, law clerks and secretaries on use of civil ICMS and reports available;

d) Become current on all civil docketing and ICMS; and

e) Docket all pleadings, motions, orders, and other papers in civil cases within at least 48 hours of the file date on such documents.

Reporter's Note: A recent report by the Administrative Office of the U.S. Courts indicated the Clerk's office was, in general, making favorable progress toward implementing the Civil ICMS. The report noted that 22% of all papers filed were not docketed until a week later. The report contained recommendations that the Court begin to take advantage of Civil ICMS as a case management tool in addition to using it as a computer docketing system.

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APPENDIX 1
MEMBERS OF THE CIVIL JUSTICE ADVISORY GROUP

The following are members of the Civil Justice Advisory Group appointed for four-year terms:

CHESTERFIELD SMITH, Chairman, is a senior partner with Holland & Knight in Miami and is a former President of the American Bar Association and The Florida Bar. Mr. Smith served as Chairman of the Florida Constitution Revision Commission.

TRACY NICHOLS, Reporter, is a lawyer with Holland & Knight in Miami. She was formerly a law clerk to a judge in the United States District Court for the Middle District of Florida.

ANA BARNETT is a partner at Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson in Miami. She was formerly Executive Assistant United States Attorney and Chief of the Civil Division.

RANDALL C. BERG, JR. is Executive Director of the Florida Justice Institute.

RICHARD CAPEN is Vice Chairman of Knight-Ridder, Inc. and was formerly publisher of The Miami Herald.

ROBERT H. COORDS is Chairman and Chief Executive Officer of Sun Bank/Miami, N.A.

WILLIAM O. CULLOM is President of the Greater Miami Chamber of Commerce. He was formerly Executive Vice President of Marketing for Ryder, Inc.

JUDGE EDWARD DAVIS is a District Court Judge in the Southern District of Florida.

DEAN MARY DOYLE is Dean of the University of Miami School of Law.

ROBERT L. DUBE is President of Dube & Wright, P.A. in Miami. He is a past Chairman of the Florida Chapter of the Federal Bar Association and currently serves as National Delegate and Secretary to the Federal Bar Association.

ELIZABETH J. DU FRESNE is a partner with Steel, Hector & Davis in Miami.

JAMES R. GAILEY is the Federal Public Defender for the Southern District of Florida.

ALAN G. GREER is a partner with Floyd, Pearson, Richman, Greer, Weil & Brumbaugh.

JAMES J. HOGAN is a partner with Hogan, Greer & Shapiro in Miami.

JUDGE JAMES L. KING is a District Court Judge in the Southern District of Florida, and as the former Chief Judge appointed this Advisory Group.

ROBERT KRAWCHECK is an Assistant County Attorney in Dade County and was formerly a law clerk to the Honorable James Lawrence King.

IRA KURZBAN is a partner in Kurzban, Kurzban & Weinger and specializes in immigration law.

HENRY LATIMER is a partner with Fine, Jacobsen, Schwartz, Nash, Block & England in Fort Lauderdale.

IRA LEESFIELD is a partner with Leesfield & Blackburn in Miami.

DEXTER LEHTINEN is the United States Attorney for the Southern District of Florida.

JUDGE STANLEY MARCUS is a United States District Court Judge in the Southern District of Florida.

JAMES FOX MILLER is a partner with Miller, Schwartz, & Miller of Hollywood, Florida. He is the Immediate Past President of The Florida Bar.

EDWARD A. MOSS is a partner with Anderson, Moss, Parks, Meyers & Sherouse of Miami.

JACK PASTOR is Partner in Charge of Management and Consulting Services for Price Waterhouse in Florida.

AARON S. PODHURST is a partner with Podhurst, Orseck, Josephsberg, Meadow, Olin & Perwin of Miami.

RAUL L. RODRIGUEZ is an architect with Rodriguez & Guiroga in Coral Gables, Florida.

SHELDON SCHNEIDER is Partner in Charge of the Southeast Group of Price Waterhouse in Miami.

THOMAS E. SCOTT is a partner with Steel, Hector & Davis. He was formerly a judge in the United States District Court for the Southern District of Florida.

MARTIN L. STEINBERG is a Managing Partner with Holland & Knight in Miami. He was formerly an Assistant United States Attorney in Miami and Chief Counsel for the Senate Permanent Subcommittee on Investigations.

JUDGE CHARLENE H. SORRENTINO is the Chief Magistrate Judge for the Southern District of Florida and is the architect and supervisor of the pro se division in the District.

T.G. CHELEOTIS is the Clerk of the Court and an ex officio member of the Advisory Group.

ADVISORY STAFF

JOE OBERMEYER is a Manager with Price Waterhouse's Litigation and Reorganization Services Group in the Southeast.

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MISSION OF THE CIVIL JUSTICE ADVISORY GROUP

The mission of this Group is to develop a Civil Justice Expense and Delay Reduction Plan for the Southern District of Florida by October 31, 1991. The Plan shall recommend measures, rules, and programs to facilitate fair and efficient adjudication of civil cases, to monitor discovery, to improve litigation management, and to ensure just, speedy and inexpensive resolutions of civil disputes. The Plan shall be based on existing successful practices when possible.

In developing the Plan, the Group shall consider the particular needs and circumstances of the Court, the litigants in this Court, and the litigants' attorneys. To carry out this mission, the following steps are contemplated:

1. Prepare a thorough assessment of the District's civil and the criminal docket, to the extent it impacts upon the civil docket.

2. Identify trends in case filings and the demands placed on the Court's resources.

3. Identify the principal causes of cost and delay in civil litigation.

4. Assess existing rules, measures, programs, and practices in this District which facilitate fair and efficient adjudication of civil cases.

5. Evaluate existing rules, measures, programs and practices in other Districts or other Courts which facilitate fair and efficient adjudication of civil cases.

6. Tailor other rules, measures, programs, or practices to meet the needs of this District.

7. Examine the impact of federal legislation and the practice of federal legislators and staff on the costs and delays of civil litigation.

8. Recommend measures for federal legislators to consider for reducing the costs and delays of civil litigation.

9. Solicit comment on the Plan from the Court, attorneys, litigants, and the public before finalization.

10. Examine the current methodology by which federal judicial vacancies are established and filled. Recommend local and national regulations and laws that can expedite the process.

CHARGE TO OVERSIGHT COMMITTEE

Committee Members:

Sheldon Snyder, Chairman
Hon. Edward Davis, Vice Chairman
Randall Berg
Richard Capen
Aaron Podhurst
Hon. Charlene Sorrentino

Responsibility of Oversight Committee:

1. Coordinate and assemble data provided by the other three committees throughout the course of phase 1.

2. Prepare an overall analysis of the existing condition of the civil and criminal dockets.

3. Identify and catalog existing case management programs, rules or standing orders in this court and other courts.

4. Assess general trends in this court over the past five years relying on data already prepared by this court and submitted to the Administrative Office of the U.S. courts.

5. Analyze system for filling judicial vacancies.

Interview the following judges:

Hon. James Lawrence King
Hon. James C. Paine
Hon. Lenore C. Nesbitt
Hon. Norman C. Roettger, Jr.

CHARGE TO COMMITTEE A

Members of Committee:

Edward Moss, Chairman
Thomas Scott, Vice Chairman
Robert Coords
James Fox Miller
Ira Kurzban
Anna Barnett

Committee Responsibilities:

1. Study cases terminated within the past 5 years with a life span of greater than 3 years. A sample of 50 cases will be provided.

2. Analyze the docket sheet of each case, diagramming the case on a standardized form to be provided to you.

3. Send out questionnaires to the attorneys and litigants involved in each of your cases, using the standardized form provided to you.

4. Interview the following judges, using the standardized form provided to you:

   Hon. James W. Kehoe
   Hon. Stanley Marcus
   Hon. William J. Zloch

CHARGE TO COMMITTEE B

Members of Committee:

Alan Greer, Chairman
Dean Mary Doyle, Vice Chairman
Henry Latimer
Dexter Lehtinen
Hon. Stanley Marcus
Jack Pastor

Responsibilities of Committee B:

1. Study cases terminated within the last 5 years that have lasted longer than 2 years but less than 3 years. A sample of 50 cases will be provided.

2. Analyze the docket sheet of each case, diagramming the case on a standardized form to be provided to you.

3. Send out questionnaires to the attorneys and litigants involved in each of your cases, using the form provided to you.

4. Interview the following judges, using the standardized form provided to you:

   Hon. William M. Hoeveler
   Hon. Eugene P. Spellman
   Hon. Kenneth L. Ryskamp

5. Identify the policies of the United States Attorney in this District in charging decisions and other policies which affect the number of criminal cases filed.

CHARGE TO COMMITTEE C

Members of Committee:

William Cullom, Chairman
Robert Dube, Vice Chairman
Elizabeth DuFresne
Robert Krawcheck
James J. Hogan
Raul Rodriguez

Responsibilities of Committee C:

1. Study cases terminated within the last 5 years that had a life span of more than one year but less than two years. A sample of 50 cases will be provided.

2. Review the docket sheet of each case and diagram the case on the standardized form to be provided.

3. Send out a questionnaire to the attorneys and litigants involved in each case, using the standardized form provided.

4. Interview the following judges, using the standardized form provided:

   Hon. Jose A. Gonzalez, Jr.
   Hon. Edward B. Davis
   Hon. Frederico A. Moreno

COURT SYSTEMS COMMITTEE

COMMITTEE MEMBERS:

William Cullom, Chairman
Randall Berg
Tom Cheleotis
Robert Coords
Hon. Edward Davis
Dean Mary Doyle
Robert Dube
James Fox Miller
Jack Pastor
Raul Rodriguez
Charlene Sorrentino

JURISDICTION OF THE COURT SYSTEMS COMMITTEE:

The Court Systems Committee will have jurisdiction to examine the following areas:

1) Judicial Staffing:

- assess adequacy of current number of Judges and Magistrates;
- assess adequacy of current number of law clerks to Judges and Magistrates;
- assess adequacy of current staffing levels of other personnel in Judges' and Magistrates' Chambers (i.e., secretarial, deputy clerks);
- assess adequacy of current number of court reporters and interpreters.

2) Court Facilities and Resources:

- assess adequacy of court personnel.
- assess adequacy of court space and facilities.

3) New Technology:

- assess adequacy of computer resources including software and hardware systems;
- evaluate use of video or computer records by court reporters;

- evaluate use of paperless system/laser disc technology.

4) Prisoner Civil Rights:

- assess current system of handling prisoner civil rights suits;
- analyze current staffing levels;
- analyze need for legal representation of pro se plaintiffs.

Possible contacts for information and interviews should include:

1) The Eleventh Circuit's liaisons to the Judicial Conference;

2) John Howell, Chief Article III Section of the Administrative Office;

3) John Thomas Jones, Chief Magistrate Section of the Administrative Office;

4) Scott Liddle, Regional Administrator for the Eleventh Circuit, Court Administration Division;

5) Chief Judge James Lawrence King;

6) Clerk of Court, T.G. Cheleotis;

7) District Court Executive, Keenan Cassady;

8) Chief Magistrate Judge Charlene Sorrentino;

9) Chief Probation Officer, Carlos Juenke;

10) Chief, Pretrial Services Officer, Roberto Febles.

ALTERNATIVE DISPUTE RESOLUTION ("ADR") COMMITTEE

COMMITTEE MEMBERS:

Alan Greer, Chairman
Robert Krawcheck
Ana Barnett
Elizabeth Dufresne

JURISDICTION OF COMMITTEE:

This Committee will perform the assessments mandated by Sections 473 (a)(6) and 473 (b)(4)-(5) of the Civil Justice Reform Act of 1990, and make proposals based on assessments as mandated by Section 472 (b)(3). In carrying out its charge, this Committee should examine the following:

1. Any form of alternative dispute resolution which would materially decrease the costs and length of civil litigation in the Southern District of Florida;

2. If the Committee recommends that the full Advisory Group consider a particular form of ADR, substantiate the recommendation with current examples of the successful use of the ADR recommended.

This Committee should coordinate its activities with the Pretrial Management Committee.

PRETRIAL MANAGEMENT COMMITTEE

COMMITTEE MEMBERS:

Edward Moss, Chairperson
Henry Latimer
Ira Leesfield
Ira Kurzban

JURISDICTION OF COMMITTEE:

This committee will perform the assessments mandated by Sections 473(a)(1) - (5) and 473(b)(1)-(3) of the Civil Justice Reform Act of 1990, and make proposals based on these assessments as mandated by Section 472(b)(3) of the Act. Carrying out this charge, the Committee will have jurisdiction to study pretrial practices or procedures, including but not limited to the following:

1. Differentiated case management or tracking of civil cases;

2. Uniform scheduling order;

3. The Court's motion practice;

4. Any other pretrial practices or procedures which may substantially decrease the cost and time associated with discovery procedures in this District.

This Committee should coordinate its activities with the ADR Committee and Committee on the Impact of the Criminal Docket on Civil Litigation.

GENERAL COMMITTEE

COMMITTEE MEMBERS:

Sheldon Schneider, Chairperson
Richard Capen
Aaron Podhurst
Thomas Scott

JURISDICTION OF THE GENERAL COMMITTEE:

The General Committee will have jurisdiction over the following:

1. Working with reporter in drafting a plan;

2. Correlation of Committee reports in preparation of statistical backup to a company plan;

3. Create measures of performance which can be used in post-assessment evaluations of the plan;

4. Evaluate current selection of Chief Judge (28 U.S.C. § 136);

5. Evaluate legislative actions which may reduce costs and delays in civil litigation including but not limited to action regarding diversity jurisdiction and jurisdiction over social security cases; and

6. Accept general assignments from the Chairman.

COMMITTEE ON THE IMPACT OF THE CRIMINAL DOCKET ON CIVIL LITIGATION

COMMITTEE MEMBERS

Hon. Stanley Marcus, Chairperson
James Gailey
Jay Hogan
Dexter Lehtinen
Martin Steinberg

JURISDICTION OF THE COMMITTEE:

This Committee will have jurisdiction over the following:

- Examine the impact of the criminal docket on civil litigation in the Southern District of Florida;
- Consider what contributions can be made by the courts, the litigants, attorneys, and by Congress and the Executive Branch in reducing costs and delays in civil litigation;
- Examine differential case management or tracking as it applies to criminal cases.

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

	FLORIDA SOUTHERN		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1991	1990	1989	1988	1987	1986		
OVERALL WORKLOAD STATISTICS	Filings*		6,318	6,427	5,557	6,036	5,691	5,781		
	Terminations		5,371	5,646	5,678	5,691	5,974	7,315		
	Pending		7,132	6,281	5,542	5,667	5,317	5,599		
	Percent Change in Total Filings Current Year	Over Last Year...	-1.7						42	4
		Over Earlier Years...			13.7	4.7	11.0	9.3	10	2
	Number of Judgeships		16	15	15	15	15	15		
	Vacant Judgeship Months		35.4	24.0	19.9	12.0	.0	17.9		
ACTIONS PER JUDGESHIP	FILINGS	Total	395	428	370	402	379	385	31	6
		Civil	297	340	287	301	286	298	59	7
		Criminal Felony	98	88	83	101	93	87	8	1
	Pending Cases		446	419	369	378	354	373	31	4
	Weighted Filings**		394	402	363	385	374	377	31	5
	Terminations		336	376	379	379	398	488	60	6
	Trials Completed		40	46	43	53	54	50	17	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	7.5	6.5	6.2	5.3	5.2	5.3	83	8
		Civil**	6	7	8	7	8	6	4	1
	From Issue to Trial (Civil Only)		12	11	11	11	12	13	18	3
OTHER	Number (and %) of Civil Cases Over 3 Years Old		229 5.0	161 3.9	145 4.1	153 4.2	158 4.5	194 5.0	32	5
	Average Number of Felony Defendants Filed per Case		1.8	1.7	2.0	1.8	1.9	1.9		
	Jurors	Avg. Present for Jury Selection	45.62	42.85	46.90	48.25	44.46	43.11	85	9
		Percent Not Selected or Challenged	36.1	33.9	38.4	40.1	36.3	36.0	68	8

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

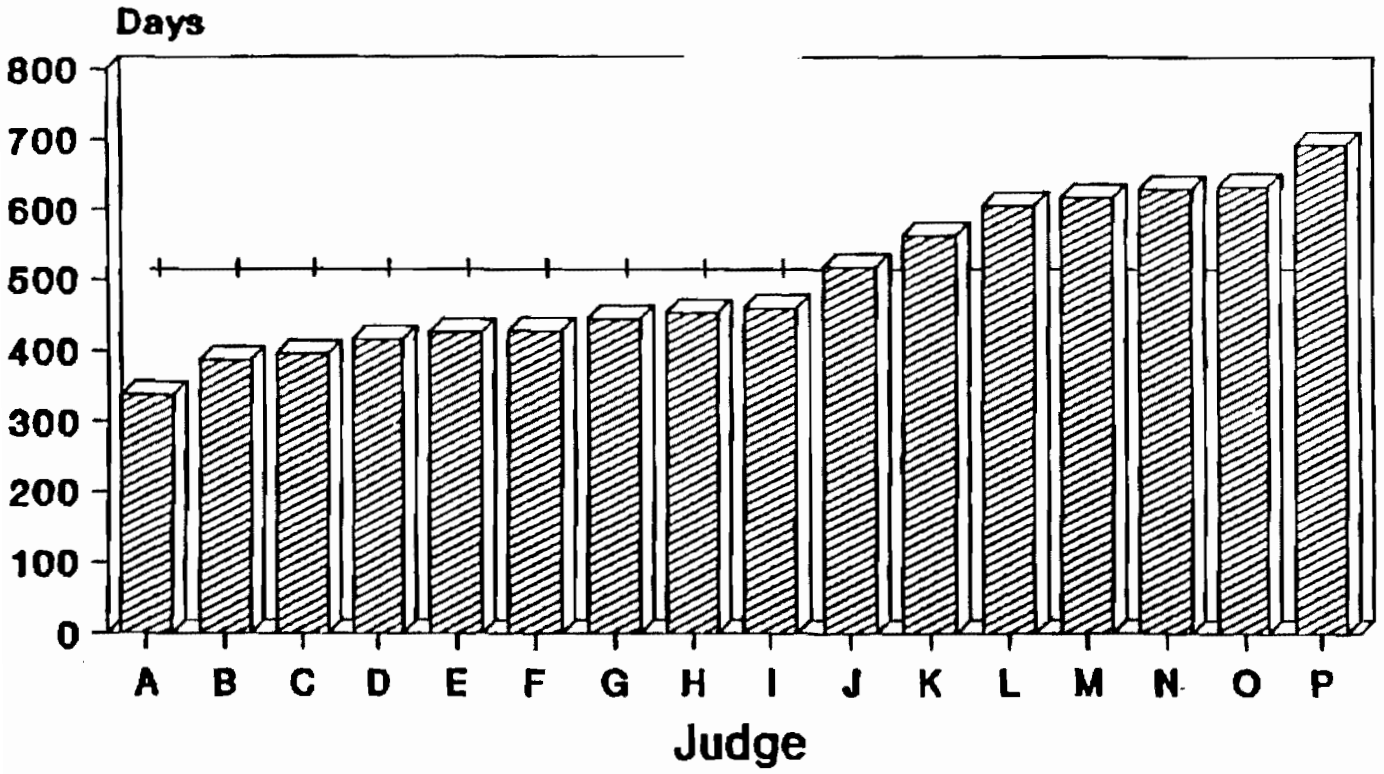
1991 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	4748	45	306	747	383	111	271	1103	654	198	337	11	582
Criminal*	1510	66	86	167	27	65	56	583	57	197	13	46	147

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

*See Page 167.

Southern District of Florida
Case Disposal Time by Judge



For cases over 6 months old
Sample average of 496 days

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY81-90

Southern District of Florida

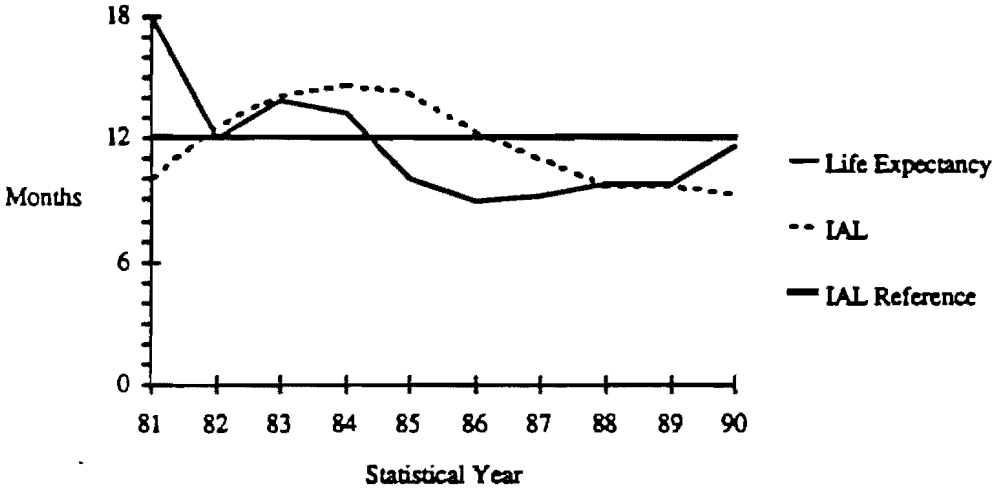
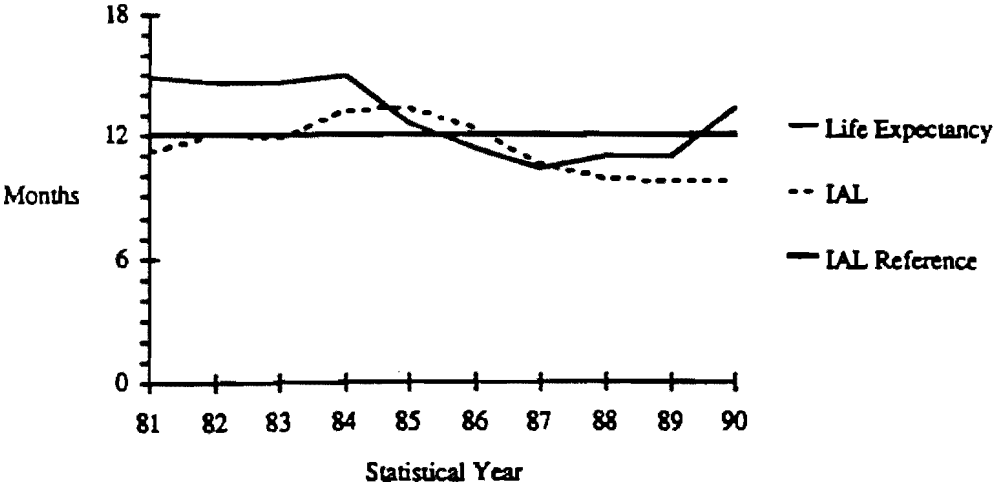


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY81-90

Southern District of Florida



QUESTIONS FOR ATTORNEYS

A. MANAGEMENT OF THIS LITIGATION

1. "Case management" refers to oversight and supervision of litigation by a judge or magistrate or by routine court procedures such as standard scheduling orders. Some civil cases are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motions practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left to counsel and with court intervention only when requested.

   How would you characterize the level of case management by the court in this case? Please circle one.

   a. Intensive
   b. High
   c. Moderate
   d. Low
   e. Minimal
   f. None
   g. I'm not sure

2. Listed below are several case management actions that could have been taken by the court in the litigation of this case. For each listed action, please circle one number to indicate whether or not the court took such action in this case.

		Was Taken	Was Not Taken	Not Sure	Not Applicable
a.	Hold pretrial activities to a firm schedule.	1	2	3	4
b.	Set and enforce time limits on allowable discovery.	1	2	3	4
c.	Narrow issues through conferences or other methods.	1	2	3	4
d.	Rule promptly on pretrial motions.	1	2	3	4

		Was Taken	Was Not Taken	Not Sure	Not Applicable
e.	Refer the case to alternative dispute resolution, such as mediation or arbitration.	1	2	3	4
f.	Set an early and firm trial date.	1	2	3	4
g.	Conduct or facilitate settlement discussions.	1	2	3	4
h.	Exert firm control over trial.	1	2	3	4
i.	Other (please specify):				
	_____	1	2	3	4

B. TIMELINESS OF LITIGATION IN THIS CASE

3. Our records indicate this case took about _____ months from filing date to disposition date. Please circle the one answer below that reflects the duration of the case for your client.

   a. The duration given above is correct for my client.

   b. The duration given above is not correct for my client. My client was in this case for approximately _____ months.

   c. I don't recall the duration of this case for my client.

4. How long should this case have taken from filing to disposition under circumstances in which the court, all counsel, and all parties acted reasonably and expeditiously, and there were no obstacles such as a backlog of cases in the court.

5. If the case actually took longer than you believed reasonable, please indicate what factors contributed to the delay: (circle one or more)

a. Excessive case management by the court.
b. Inadequate case management by the court.
c. Dilatory actions by counsel.
d. Dilatory actions by the litigants.
e. Court's failure to rule promptly on motions.
f. Backlog of cases on court's calendar.
g. Other. (please specify)

6. If delay is a problem in this district for disposing of civil cases, what suggestions or comments do you have for reducing those delays.

C. COSTS OF LITIGATION IN THIS CASE

7. Please estimate the amount of money at stake in this case. $_____.

8. What type of fee arrangement did you have in this case? (circle one)

   a. Hourly rate.
   b. Hourly rate with a maximum.
   c. Set fee.
   d. Contingency.
   e. Other. (please describe)

9. Were the fees and costs incurred in this case by your client (circle one)

   a. much too high.
   b. slightly too high.
   c. about right.
   d. slightly too low.
   e. much too low.

10. If costs associated with civil litigation in this district are too high, what suggestions or comments do you have for reducing the costs?

Thank you for your time and comments.

Please Return by May 6, 1991 in the Enclosed Envelope.

QUESTIONS FOR LITIGANTS

I. Were you the plaintiff or defendant in the case noted on the cover letter? (circle one)

A. plaintiff
B. defendant

II. Please indicate the total costs you spent on this case for each of the categories listed below. If you are unable to categorize your costs, please indicate the total cost only.

A. Attorneys' Fees _____
B. Attorneys' Expenses (photocopying, postage, travel expenses, etc.) _____
C. Consultants _____
D. Expert Witnesses _____
E. Other (please describe) _____

F. Total Cost of Litigation _____

III. Please estimate the amount of money which was at stake in this case.
$_____

IV. What type of fee arrangment did you have with your attorney? (circle one)

A. hourly rate
B. hourly rate with a maximum
C. set fee
D. contingency
E. Other – please describe:

V. Did this arrangement in your opinion result in reasonable fees being paid to your attorney? (circle one)

A. yes
B. no
C. do not know

Comments:

VI. Were the costs incurred by you on this matter (circle one)

A. Much too high
B. Slightly too high
C. About right
D. Slightly too low
E. Much too low

VII. If you believe the cost of litigation was too high, what actions should your attorney or the court have taken to reduce the cost of this matter?

VIII. Was the time that it took to resolve this matter (circle one)

A. Much too long
B. Slightly too long
C. About right
D. Slightly too short
E. Much too short

IX. If you believe that it took too long to resolve your case, what actions should your attorney or the court have taken to resolve your case more quickly?

X. Was arbitration or mediation used in your case? (circle one)

A. No
B. Yes

If arbitration or mediation was used, please describe the results.

XI. Please add any comments or suggestions regarding the time and cost of litigation in the federal courts.

Thank you for your time and comments. Please return in the enclosed envelope by May 6, 1991.

If you have any questions, please call Tracy Nichols in Miami at 374-8500.

QUESTIONS FOR DISTRICT COURT JUDGES

We suggest two people meet with the individual Judge for an informal conference regarding the issues being studied by the Advisory Group. For the sake of uniformity, please try to discuss the questions listed below. You, of course, should add to these questions as may be needed. Your draft report of your informal conference with the Judge should correspond to the outline below (with a narrative summary at the end to cover discussions of questions not listed below). Your draft report of your conference with the Judge is due to the Chairman of your Committee by April 30, 1991.

A. Civil Case Processing

1. Time Limits

(a) What is your practice regarding monitoring service of process?

(b) What is your practice regarding extensions of time to respond to complaints or motions?

(c) What procedures have you found most effective in enforcing time limits?

2. Rule 16 Conferences

(a) Do you hold Rule 16 conferences?

(b) What is the format of your conference?

(c) Do you use a scheduling order? (if so, obtain copy of order)

(d) Are any types of cases exempted from Rule 16 conferences?

(e) Do you find the conferences effective? If so, why or why not?

(f) Describe your use of magistrate judges in your Rule 16 conferences.

3. Discovery Procedures

(a) Do you set cut-off dates for discovery? (If so, obtain copy of any scheduling order)

(b) Describe your procedures and practices regarding controlling the scope and volume of discovery.

(c) Do you use a Rule 26(f) discovery conference? If so, describe the scope of the conference.

(d) Describe your use of magistrate judges for resolving discovery disputes.

4. Motion Practice

(a) Describe your practice regarding requests for oral argument.

(b) What is your criteria for granting oral argument?

(c) Describe your procedure for monitoring the filing of motions, responses and briefs.

(d) Do you use proposed orders from attorneys?

(e) What is your opinion of a motion day practice similar to the state court's use of motion days?

(f) Do you make oral rulings on motions? If so, describe frequency, type of case, effectiveness, etc.

(g) Describe your internal policies for handling motions which are ready for ruling -- (i.e., priority of ruling, policies for written opinions; policies regarding published opinions).

5. Final Pretrial Conferences

(a) Describe your procedures regarding final pretrial conferences.

(b) Do you send out a pretrial conference order? (If so, attach copy)

(c) How do you structure the sequence of trial issues, i.e., do you bifurcate trials and under what conditions?

(d) Describe your role in exploring settlement possibilities.

6. Setting Trial

(a) Describe your method for scheduling trials (i.e., date certain, trailing, etc.).

(b) Describe procedures you have found to be most effective in scheduling trials.

7. Alternative Dispute Resolution

(a) What are your opinions of the effectiveness of alternative forms of dispute resolution?

(b) Have you ever used any forms of alternative dispute resolution, and if so, what forms?

8. Impact of Criminal Caseload

(a) How do criminal cases impact the processing of civil cases?

(b) What criminal cases should or should not be handled by the U.S. Attorney (i.e. are there categories or types of cases by group or size which should not be handled by the U.S. Attorney in the District Court?)

(c) What can the U.S. Attorney do to expedite the handling of criminal cases?

9. General Comments

(a) Do you think civil cases take too long in this District? If so, are there certain types of cases which take longer than others.

(b) Do you think it costs too much to litigate civil cases in this District? If so, what can be done to decrease the costs of litigation?

(c) What, in your opinion, is the most effective tool or process to expedite civil cases.

(d) What difficulties have you encountered in moving your civil case docket?

(e) What other recommendations or suggestions do you have for addressing the cost or delay of civil cases?

COMPARATIVE ANALYSIS
STATISTICAL YEARS *
1982-1991

		1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	AVG.
CRIMINAL CASES FILED **	(D-3)	815	1,187	1,124	1,362	1,372	1,409	1,476	1,178	1,262	1,517	1,270
CRIMINAL CASES PENDING *****		N/A	N/A	607	754	659	655	762	717	837	1,064	757
CRIMINAL DEFENDANTS	(D-3)	2,026	2,318	2,408	2,690	2,493	2,727	2,769	2,306	2,230	2,719	2,469
CRIMINAL TRIALS COMPLETED	(C-7)	352	383	416	360	418	468	481	338	398	425	406
CRIMINAL TRIAL HOURS ***		5,238.0	6,297.0	3,088.0	6,564.5	7,797.0	8,632.5	7,341.0	7,596.0	6,664.5	8,208.0	6,762.7
CIVIL TRIALS COMPLETED	(C-7)	321	332	294	321	334	340	318	313	297	212	308
CIVIL TRIAL HOURS ***		3,494.0	3,784.5	6,971.5	3,224.0	3,339.0	3,880.0	3,695.0	3,568.0	3,567.0	2,633.5	3,815.7
TOTAL TRIAL HOURS		8,732.0	10,081.5	10,059.5	9,788.5	11,136.0	12,712.5	11,036.0	11,164.0	10,231.5	10,841.5	10,578.3
OTHER HOURS (NON-TRIAL) ****		3,147.0	3,113.0	3,473.5	3,697.5	4,723.5	4,445.0	4,041.5	3,653.0	3,846.0	4,182.0	3,832.2
TOTAL HOURS		11,879.0	13,194.5	13,533.0	13,486.0	15,859.5	17,157.5	15,077.5	14,817.0	14,077.5	15,023.5	14,410.5
CRIMINAL TRIAL HOURS AS % OF TOTAL TRIAL HOURS		59.99%	62.46%	30.70%	67.06%	70.02%	69.48%	66.52%	68.04%	65.14%	75.71%	63.51%
CIVIL TRIAL HOURS AS % OF TOTAL TRIAL HOURS		40.01%	37.54%	69.30%	32.94%	29.98%	30.52%	33.48%	31.96%	34.86%	24.29%	36.49%
OTHER HOURS AS % OF TOTAL HOURS		26.49%	23.59%	25.67%	27.42%	29.78%	25.91%	26.80%	24.65%	27.32%	27.84%	26.55%
DEFENDANTS PER CASE		2.49	1.95	2.14	1.98	1.82	1.94	1.88	1.96	1.77	1.79	1.97

SOURCE: REPORTS C-7 AND D-3 ARE CONTAINED IN APPENDIX I OF THE ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS FOR STATISTICAL YEARS 1982-1990

NOTE: 1991 FIGURES FOR REPORTS C-7 AND D-3 HAVE BEEN OBTAINED DIRECTLY FROM THE AO AND ARE NOT CONTAINED IN ANY PUBLISHED FORM

* STATISTICAL YEARS RUN FROM JULY 1 TO JUNE 30

** INCLUDES ALL CRIMINAL OFFENSES BUT EXCLUDES TRANSFERS

*** FIGURES FOR TRIAL HOURS DO NOT INCLUDE HOURS SPENT ON MATTERS SUCH AS PLEAS, SENTENCINGS, MOTION HEARINGS, PRETRIAL CONFERENCES, GRAND JURY PROCEEDINGS, SENTENCING HEARINGS, ETC.

**** FIGURES FOR NON-TRIAL HOURS ARE DERIVED FROM THE QUARTERLY TRIALS AND TRIAL HOURS REPORT OF THE ADMINISTRATIVE OFFICE, AND MAY NOT CORRESPOND PRECISELY WITH FIGURES MAINTAINED LOCALLY BY THE CLERK'S OFFICE.

***** PENDING CASE INFORMATION AND TRIAL HOURS INFORMATION DERIVED FROM MONTHLY WORKLOAD ANALYSIS REPORTS OF THE DISTRICT CLERK'S OFFICE