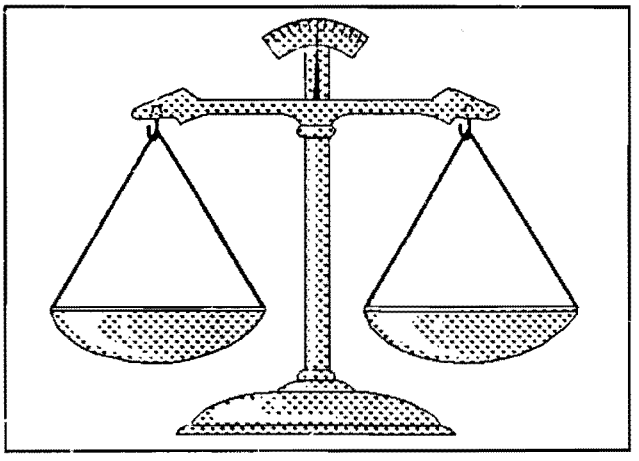
Report of the Advisory Group to the United States District Court For the Middle District of Georgia Pursuant to the Civil Justice Reform Act of 1990



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1. What is the Purpose of this Report?

This report attempts to identify the extent and causes of excessive cost and delay in the litigation of civil lawsuits in the United States District Court for the Middle District of Georgia. The report also proposes systemic reforms to help minimize cost and delay in civil lawsuits in this district. The report has been prepared in accord with the statutory mandate of the Civil Justice Reform Act of 1990, a federal law.

The Civil Justice Reform Act of 1990, also known as "the Biden bill" in deference to its primary senatorial sponsor, was enacted in the context of a growing sense of public dissatisfaction with the state of civil justice delivery in the United States. During the 1980s and continuing into the 1990s, public attention focused on apparent excesses in the cost and delay associated with adjudication of civil matters in both federal and state courts. One pivotal articulation of this perception was provided in 1989 by a diverse task force in Washington, which published its findings in a short book, Justice For All: Reducing Costs and Delay in Civil Litigation (Mark H. Gitenstein and Robert E. Litan, reporters). That work provided the particular blueprint for the Civil Justice Reform Act of 1990, and hence may be of special interest to a reader seeking a better understanding of the origins of the Civil Justice Reform Act. However, its message was not unique. A virtual tidal wave of concern about the adjudicatory process in general had by 1989 already begun to sweep through both the legal community and the national consciousness.

The Civil Justice Reform Act of 1990 was designed in large part as an attempt to attack problems of excessive cost and delay (rather than other potential impediments to

adjudicatory justice) in the handling of civil (not criminal) cases by fostering local (not national) reform primarily in the court system (rather than primarily among lawyers and/or litigants) at the federal (not state) level. In short, the Act is a selective attempt to address adjudicatory problems of potentially larger proportion.

Pursuant to the Act, each of the 94 federal district courts in the nation is obliged to conduct a study of various reform possibilities, draft a report, and ultimately begin the implementation of a plan for reform by December 1, 1993. This document is the report of the advisory group to the District Court in the Middle District of Georgia, memorializing the deliberations of the advisory group here and suggesting particular reforms in accordance with the Civil Justice Reform Act of 1990. A copy of the Act itself is attached hereto as Appendix A.

Several fundamental characteristics of this advisory group's effort may color or appear to color the results of this report, and should probably be noted at the outset to permit the reader better to gauge the tenor of the report.

Although Congressional attempts to control court operation are not unprecedented, it remains very unusual for the legislative branch of our federal government to become involved in the internal operation of the judicial branch (except to the extent that control is indirectly effected through Congressional funding decisions).

The Civil Justice Reform Act of 1990, an exception to the rule, dealt with this constitutionally awkward "meddling" by leaving substantial control of the reform process in the hands of the individual district courts. For instance, the chief judges of the various districts were empowered to select their advisory groups, and even after issuance of their

reports, the advisory groups' recommendations are not binding on the district courts. Moreover, the Act itself mandates no particular changes, only that the advisory groups and the district courts consider specific ideas outlined in the statute, after which the courts may adopt plans entirely of their own design.

But such legislative deference to the courts did not alleviate all tension between the courts and the legislatively mandated civil justice reform effort under the Civil Justice Reform Act. Indeed, in late April, 1993, the Supreme Court endorsed the most comprehensive changes to the Federal Rules of Civil Procedure since their adoption in 1938. The proposed changes, which would apply on a national basis, adopt several key reform measures that some districts had already begun to implement pursuant to the Civil Justice Reform Act, such as mandatory disclosure early in litigation, limits on the number of interrogatories and depositions, and discouragement of Rule 11 satellite litigation. Unless Congress intervenes (still a possibility at this writing in June, 1993), the changes will take effect on December 1, 1993 -- the same day that the district courts are obliged to begin implementing their local plans for reform pursuant to the Biden bill.

One expert commentator has recently suggested that the Supreme Court's proposed reforms are on a "collision course" with the Civil Justice Reform Act. Although this advisory group's deliberations have necessarily been affected by the proposed changes to the Federal Rules of Civil Procedure, however, serious conflicts have not developed. Any inconsistencies that have arisen have been resolved by deferring to the Supreme Court's proposed revisions to the Federal Rules. For the most part, this advisory group has found any potential conflicts to be insignificant to its work, because the thrust of the changes to the Federal

Rules of Civil Procedure are parallel to the advisory group's recommendations for reform.

The simultaneous implementation of significant federal court reform has also occurred locally. In 1992, for example, the Middle District proposed a complete set of local rules of civil procedure (which, as finally revised, are enclosed as Appendix B) to help formalize, streamline and elaborate on particular procedures left open for local variation by the Federal Rules of Civil Procedure. Most districts around the country had already adopted substantial sets of local rules, and the district court in the Middle District chose this occasion to join that trend. The advisory group on civil justice reform has carefully reviewed the proposed local rules, and considers them to be substantially in accord with its own findings and suggestions for reform. As with the Supreme Court's proposed changes to the general Federal Rules of Civil Procedure, therefore, the advisory group perceives no inherent conflict between its mission and the work of the district court in adopting local rules of civil procedure. On the contrary, the district court's initiative in pursuing the design and adoption of local rules is indicative of the district court's openness to reform.

2. What Generally Characterizes this District?

The Middle District of Georgia covers a wide swath stretching diagonally over 70 counties from northeast to southwest Georgia. A map of the district is attached hereto as Appendix C. It includes six divisions centered on six small- and mid-sized cities that dot the region -- Athens, Columbus, Macon, Albany-Americus, Thomasville and Valdosta.

The district has been assigned four judgeships, three of which are presently filled. The fourth judgeship, which was authorized by the Federal Judgeship Act of 1990, remained vacant throughout the course of this study. The district also has two full-time magistrate judgeships and one half-time magistrate judgeship. One of the full-time magistrate judgeships has been filled in 1993.

Because of the small number of judgeships in this district, the personal judging styles of the three sitting judges may naturally appear to have a substantial impact on this district's ways of achieving just results in civil cases. By way of contrast, in a hypothetical district with many more judges, the personal characteristics of individual judges would presumably tend to have less overall significance for a profile of such a district's justice delivery system.

Although this profile of our district may on the other hand appear in some ways to reflect the personalities of the individual judges here, the report's focus remains purposefully systemic. The advisory group has chosen this course because it feels that there is no substantial cause to believe that any individual judge in this district poses a significant impediment to reform in the delivery of inexpensive, speedy results in civil matters, and because a systemic approach is better suited to achieve long-lasting and uniform effects.

In fact, the individual judges in this district appear especially sensitive to concerns about reducing delays. Not only have they pursued the adoption of local rules; they also have acted unilaterally to improve their own speed in resolving civil matters long before this committee began seriously to consider systemic reforms. In calendar year 1991, the first year after the enactment of the Civil Justice Reform Act, the Middle District's judges increased their terminations of civil matters 24.2%, thereby becoming by one measure the

eleventh most responsive district in the country and the second most responsive district in the Eleventh Circuit to the Biden bill's new emphasis on reducing delays in resolving civil disputes. That occurred in a year when the Middle District's civil filings were increasing 7.9%. Again during the following year (calendar year 1992), the Middle District's three judges stepped up their pace of civil case terminations.

Thus, although all of the judges have strong and weak points when their respective performances are viewed through the lenses of cost and delay, and although any individual improvement in personal judicial efficiency would be lauded by the advisory group to the extent that decisional quality is not thereby sacrificed, the advisory group has felt justified in focusing on systemic reforms instead of on personal factors in the administration of justice here. In short, this report is not intended, and should not be read, as a veiled report card on the performance of the sitting judges, who are each plainly devoted to helping achieve just, speedy and inexpensive results in civil matters. This is instead a report about a system of justice delivery in a particular district.

In pursuing its work, the advisory group formally and informally surveyed the opinions of judges, magistrate judges, court personnel, lawyers, and litigants in the Middle District, taking into account their particular needs, circumstances, and suggestions.

3. What is the Character of the District's Docket?

The character of the district court's civil caseload is relatively simple and light, but is otherwise fairly typical of the caseloads encountered in other districts throughout the country.

In general, the typical filings in the district appear to be of slightly less-than-average complexity, based on weightings calculated by the Administrative Office of the United States Courts. In general, cases in a category that normally take half as long to resolve as the average for all cases nationally are awarded a 0.5 rating, while cases that take twice as long as the overall national average for all cases would receive a 2.0 rating. In the Middle District during the year ending June 30, 1991, 311 actual civil and criminal felony cases were filed per judgeship, but only 264 filings per judgeship were counted after weighting -- a ratio of 0.85 weighted cases per actual case filed. By way of contrast, the Northern District of Georgia, which includes Atlanta, had a relatively complex caseload mix, and showed a ratio of 1.17 weighted cases per actual case filed.

After weighting for complexity, the Middle District's civil filings are dominated in particular by a fairly conventional mix of (1) prisoner suits, (2) contract actions, (3) personal injury lawsuits, and (4) civil rights matters (listed in order of significance for the court's workload, as estimated by weighted case filing statistics). Together, these four categories of cases accounted for about 60 percent of the weighted workload of the district during the 1988-1990 period.

The prominence of prisoner actions presumably stems from the siting within the district of substantial state prisoner populations located in Baldwin County and elsewhere.

The abundance of cases involving contracts and personal injuries apparently results from a combination of two factors. First, a substantial number of litigants in lawsuits between citizens of this district and citizens of other states (i.e., in potential diversity matters) apparently perceive the Middle District as a favorable alternative to litigating in the district's companion Georgia state courts. Second, the federal government is a significant employer and contracting party in the area.

Finally, the significance of civil rights matters in the district's workload may reflect the importance that the federal courts have traditionally played in sorting out civil rights conflicts in the South.

But the civil docket does not stand in isolation. Criminal cases naturally tend to absorb any court's first attention, because they normally involve a potential deprivation of a person's liberty rather than a "mere" dispute over property, past injuries, lesser rights, etc..., and also because of statutory preferences given criminal cases. To the extent that the volume of a typical court's criminal caseload proves overwhelming, the civil docket can be expected to suffer some diminution of judicial attention. Thus, any study of civil justice naturally invokes considerations of criminal justice to evaluate whether civil cases are marginalized by a dominant criminal docket.

The criminal docket does tend to put limited pressure on the civil docket in the Middle District. In recent years, the Middle District seems to have become something of a hotbed for the commission of federal crimes and/or federal criminal prosecution. The

pressing nature of criminal matters in the district has existed at least since statistical year 1990 (ending June 30, 1990), when criminal felony filings -- a more judicially time-consuming form of criminal matter than misdemeanor filings -- spiked to 233, up from about 141 felony filings in 1989. (In 1990, the U.S. attorney targeted drug traffickers who were using Interstate 75 to funnel their contraband out of Florida and into the heart of the nation.) By statistical year 1991, those felony filings had retreated somewhat to 167, but by 1992, in the midst of another initiative by the U.S. attorney (this time to ferret out weapons violators), felony filings had risen again to 230. By way of comparison, the rate of felony filings per judgeship in 1990 placed the Middle District third in the Eleventh Circuit and seventeenth in the nation. The high rate of felony criminal filings has apparently had some impact on the district's ability to focus on its civil docket, although the anticipated addition of a fourth judge and an additional magistrate should substantially if not entirely alleviate such pressures. Even without the addition of the fourth judgeship, there is no evidence that the increase in the criminal docket has seriously diverted judicial attention from the civil docket.

The Middle District has one of the nation's highest rates of misdemeanor filings, but this high rate actually exerts minimal pressure on the civil docket, because it largely arises from a unique jurisdictional situation in the Columbus division. There, numerous traffic violations and petty offenses inside Fort Benning are referred to federal district court. That caseload is handled almost exclusively by a part-time magistrate in Columbus, leaving the remaining members of the Middle District's judiciary free to pursue both criminal felony matters and the civil docket.

4. In What Condition Do We Find the District's Docket?

As a statistical matter, the volume of the district's civil caseload appears relatively light, and the pace of its handling of that civil workload appears relatively slow. However, anecdotal evidence from a broad range of knowledgeable attorneys and litigants paints a satisfactory portrait of civil justice delivery in the Middle District. This contrast calls into question the central premise of the Civil Justice Reform Act of 1990, i.e., that faster lawsuits are invariably cheaper and/or "better."

In total civil filings per judgeship for the year ended June 30, 1991, the Middle District of Georgia ranked ninth out of nine districts in the Eleventh Circuit, and seventy-first out of ninety-five districts nationwide (269 total actions per judgeship). Admittedly, those statistics are calculated on the basis of a full complement of judges, and the Middle District has been short-handed since its fourth judgeship was authorized in 1990. Even so, statistics on filings per sitting judge would still have placed the Middle District's civil filings rate (322 per sitting judge) well below the 1991 national average civil filings rate per judgeship (368).

The pace of handling civil matters also appears slow. For the year ended June, 1991, the median time from filing to disposition of all civil matters in the Middle District was 13 months, which ranked ninth out of nine in the Eleventh Circuit and eight-first out of ninety-four nationwide. (The national average duration was nine months.) Criminal felonies for the same period were also handled in a comparatively slow fashion, with a median time

from filing to disposition of 8.7 months, which ranked the Middle District ninth out of nine districts in the Eleventh Circuit and eighty-eighth out of ninety-four nationwide.

The advisory group has carefully compiled, collected and reviewed a wide variety of additional statistics on the speed of civil litigation in the Middle District, which it includes hereto as Appendix D. Without belaboring the ins and outs of the various statistical perspectives on civil justice delivery in the Middle District, the advisory group feels confident in stating generally that, at about the time of the Biden Bill's passage, the Middle District was clearly below average in both the volume and pace of civil litigation.

But here the advisory group hesitates to rest, not content to confine its evaluation of the condition of the Middle District's docket solely or even primarily to measures of volume and quickness (as some have read the Civil Justice Reform Act to suggest).

It seems to us worth noting as a conceptual matter that the docket is actually comprised of individual cases, and that the measure of any court's efficacy in dealing with those individual cases should necessarily involve something more than a cursory statistical measure of their processing. Even as the twentieth century draws to a close, "justice" retains a subtlety that transcends being merely

> "expeditious [and] easily affordable . . . . [It must also be] substantively fair, . . . subjectively satisfying to all sides, and . . . afford parties an opportunity to be personally involved in and direct control of the entire process, to the extent desired. Dispute resolution techniques must lead to compliance and must have a positive impact on future party relationships. The ideal dispute resolution technique would not be premised on technicalities. It would teach parties to resolve future disputes and empower them as individuals, while reducing the likelihood of social conflict. It would reinforce public policy and leave courts free to attend to other cases. It would lead to an outcome that is completely satisfactory to all sides: a 'win-win' situation. . . . Trials also serve other important societal functions. The rule of law depends on trials as the lifeblood needed to provide its precedents. When those precedents are

> regularly updated to reflect the best, current thinking of society, they serve as a vital guide for future conduct . . . . The development of adequate legal precedents keeps cases out of court by providing parties and attorneys with clearer awareness of what the trial outcome would be." Raymond A. Noble, "Access to Civil Justice: Administrative Reflections From New Jersey," 45 Rutgers L. Rev. 49, 82-83 (1992).

In searching for a more complete sense of justice delivery in the Middle District, the advisory group undertook to survey the opinions of lawyers and litigants in 150 representative civil actions. The advisory group followed the same procedures and used the identical questionnaire previously used in the Southern District of Florida (a pilot district). (The Southern District of Florida's questionnaire had been recommended to advisory groups around the nation by Senator Biden in a memo dated June 4, 1991.) The Middle District of Georgia's survey, which is memorialized in Appendix E, provides some startling results, especially in comparison with the statistics generated by the same survey in the Southern District of Florida.

But before comparing the results of two opinion surveys, it is first critical to contrast the statistical pace of litigation in the two districts -- a contrast that could hardly be starker. As the report of the Southern District of Florida states proudly on its first page, "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. [sic] Indeed, we recommend that the practices and procedures of this District may serve as a model for other Districts . . . ." Meanwhile, as noted above, the Middle District of Georgia disposed of its civil cases about as slowly as any district in the nation (eighty-first out of ninety-four districts nationwide for the statistical year ending June 30, 1991). In a statistical sense, therefore, the Florida district represents the proverbial hare, while the Georgia district represents the tortoise.

From this vantage point, the results of the two opinion surveys were strongly counter-intuitive. While "[a]bout 50% of the attorneys surveyed [in the statistically swift Southern District of Florida] believe that their case took too long" (Report of the Advisory Group in the Southern District of Florida, p. 19), only 34.8% of the attorneys surveyed in the statistically sluggish Middle District of Georgia felt that their cases had taken too long. Similarly, in the Southern District of Florida,

> "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." Report of the Advisory Group in the Southern District of Florida, p. 20.[1]

By contrast, 46.15% of the litigants in the Middle District of Georgia felt that the amount of time that it took to resolve their dispute was "about right." The remainder included 3.85% who thought the time taken was "much too short," 17.31% who thought that the matter took "slightly too long," and only 28.85% (as opposed to 43% in the Southern District of Florida) who thought the matter had taken "much too long."

The surprising level of satisfaction expressed by the Georgia attorneys and litigants in the opinion survey was confirmed by a variety of anecdotal evidence that has separately

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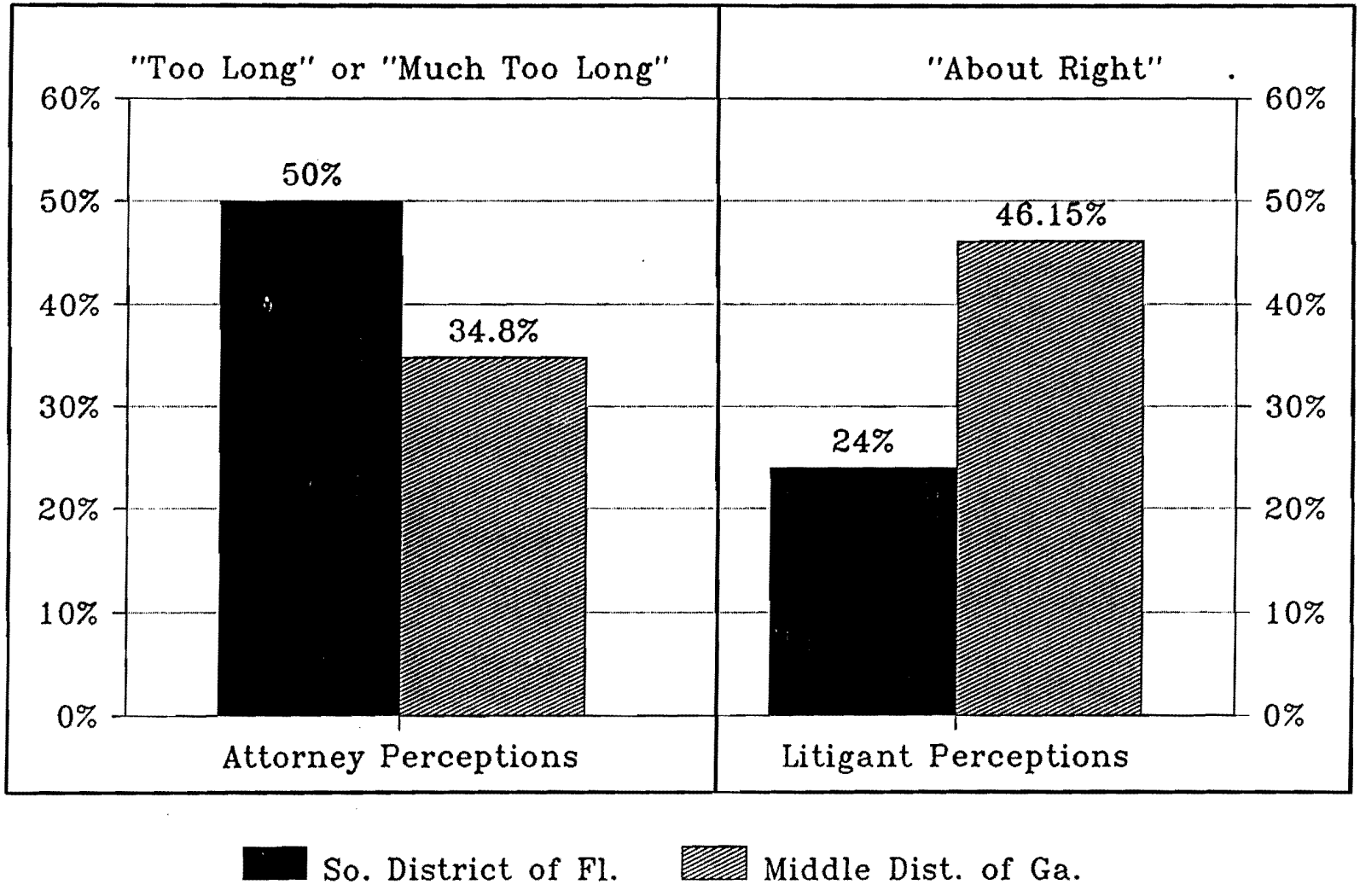
[1] With respect to the litigant respondents, the advisory group for the Southern District of Florida warned that, "[b]ecause of the small sample size [i.e., 23] . . . [the litigant] results should not be relied upon as being representative of the total population of civil litigants." Report of the Advisory Group in the Southern District of Florida, at 20. The litigant sample size in the Middle District was larger (52 respondents), and hence the results here may warrant greater reliance. To do a more detailed and thorough comparison of the results of the two surveys, the reporter for the Middle District of Georgia's advisory group contacted the reporter for the Southern District of Florida's advisory group. However, it appears that the Southern District of Florida's raw data was discarded, lost or misplaced by Price Waterhouse, which conducted the survey in the Southern District of Florida.

Timeliness of Litigation in Two Federal District Courts, 1991



come to the advisory group's attention. Except for dissatisfaction with one judge's handling of summary judgment motions in the Middle District, the overall tenor of remarks about the speed and efficiency with which civil justice is meted out in the Middle District is overwhelmingly positive. For example, both plaintiff and defense attorneys who also practice in the statistically fleet Northern District of Georgia expressed clear preferences for litigating in the Middle District of Georgia.

In sum, although attorneys and litigants are by no means entirely happy with the pace of civil litigation in the Middle District, they remain markedly more satisfied than attorneys and litigants in at least one of the nation's statistically fastest districts. The Middle District's experience suggests that Professor Noble (the New Jersey court administrator quoted above) is on the right track in struggling to articulate a more fulsome measure of civil justice than simply "expeditious [and] easily affordable" dispute resolution -- that reductionist measure adopted by the Civil Justice Reform Act. In short, civil justice may take a while in the Middle District, but the results appear to be worth the wait, from the perspective of the population being served.

5. What Trends Do We Detect in Filings and Demands on Resources?

Over the longer run, the rate of civil filings in the Middle District appears more or less constant, averaging about 1100 civil filings per year since 1985.

The pace of handling civil matters in the Middle District, meanwhile, appears also to have remained fairly regular during that same period, with a median time from the filing

to disposition of all civil matters ranging from 10 to 13 months. The most recent available statistics covering the year ending September 30, 1992, indicate a median time of 11 months.

On the other hand, our more intimate review of particular measures of the adjudicatory process (for example, as noted previously, with respect to terminations of civil matters) indicates that since the Biden Bill's passage, the district court here has accelerated the pace of civil litigation by addressing variables within the judiciary's control. For example, the Middle District's judges appear to have reduced the amount of time required to rule on motions for summary judgment, a bottleneck that has been especially troubling.

Without any systemic reform at all, therefore, the advisory group expects that heightened judicial awareness of the issue of timeliness, combined with considerable effort by the individual sitting judges, will result in noticeable reductions in the time needed to achieve results in civil actions filed in the Middle District.

Demand on judicial resources seems likely to be alleviated in the near future, after the funding and filling of a new fourth judgeship. The addition of a fourth judgeship will doubtless help improve the district's ability to focus even more concertedly on its civil caseload.

Some of the most underutilized resources in the district are the three or four courthouses in divisions in which judges do not reside (Athens, Valdosta, Thomasville, and, until appointment of the fourth judge, Albany-Americus). Some economies to the government, although not to litigants, could probably be effected by consolidating the lesser-utilized divisions, e.g., by consolidating Valdosta and Thomasville either together or with Albany-Americus, and/or by consolidating Athens with Macon or incorporating Athens in

the Northern District. (Statistics on filings by division are included in Appendix F.) Another consolidation strategy might be to combine the Middle and Southern Districts of Georgia, both low-volume districts, to achieve possible administrative efficiencies. However, the advisory group has not carefully evaluated the broader effects of any such closures or consolidations on the local legal cultures, and makes no recommendation as to the ultimate desirability of divisional or district restructuring.

6. What Causes Excessive Cost and Delay in this District?

The relatively favorable level of attorney and litigant satisfaction with the pace of litigation in the Middle District does not mean that costs and delays are not still excessive here. However, the advisory group feels incapable of rendering an opinion as to the "ultimate" causes of costs and delays in the district given the insidiousness of the roots of the problems, and suspects that the causes to some extent probably transcend the local setting. Nevertheless, some simple observations can still be made.

With respect to the local judiciary, one prominent factor associated with delay is the excessive length of time often required to rule on dispositive motions, especially motions for summary judgment.

With respect to attorneys, one notable element of excessive expense in civil litigation involves high fees. High attorney fees presumably also contribute to the daunting economic barriers encountered by many potential litigants, effectively depriving them of access to the

civil justice system. In the Middle District as elsewhere, many middle income individuals can find no place in court.

With respect to litigants, one important cause of excessive expense and delay involves unreasonable attempts to avoid full disclosure of information relevant to the subject matter of the litigation. Delays and costs mount unnecessarily as the parties parry, often pointlessly, over information exchanges in the discovery process.

The few problems listed here obviously do not constitute an exhaustive list of the potential causes of all long delays and high costs in the Middle District. They are offered only as apparently significant facets of potentially deeper problems. In general, the advisory group shares the perception that numerous factors other than the apparent efficiency of the adjudicatory process may well play significant roles in the extent of cost and delay in federal civil litigation. Such incidental factors bearing on the adjudicative efficiency might well also include the perceived efficacy and availability of informal community dispute resolution techniques, the comparative effectiveness of the state court system, the propensity of citizens to evaluate their personal experience in legal terms, and the extent to which the legal profession does or does not set a cartelistic price for its services. Although all such factors may play roles in increasing or reducing the costs and delays associated with civil litigation, their significance is difficult to measure, and the advisory group ventures no firm opinions as to their significance relative to the more narrow subjects of reform targeted by the Civil Justice Reform Act.

7. What Impact Does New Legislation Appear to Have on Litigation Costs and Delays in this District?

The advisory group has found it difficult to gauge the effect of particular legislation, or even legislation as a whole, on overall litigation costs and delays in the Middle District. Certainly, new categories of litigation have been spawned by new enactments; the Americans with Disabilities Act of 1991 provides an obvious example. Our advisory group seconds the outstanding statement of the advisory group for the Eastern District of Pennsylvania that encourages legislators to consider the impact of their enactments on the judicial system, and to avoid inadvertent ambiguities in their enactments. See "Report of the Advisory Group of the United States District Court for the Eastern District of Pennsylvania Appointed Under the Civil Justice Reform Act of 1990," at 31-35. On the other hand, as noted previously, overall civil filings in this district have remained relatively constant despite periodic actions by Congress over the years, and such problems do not seem overwhelming as seen from the possibly narrow perspective of this district.

8. What Measures, Rules and Programs Do We Recommend, and Why Have We Declined to Recommend Some Particular Reforms Suggested by the Civil Justice Reform Act?

Pursuant to its charge under §§ 472 and 473 of the Civil Justice Reform Act, the advisory group has reviewed a variety of possible systemic changes that have been proposed

or employed elsewhere for the purpose of reducing cost and delay in civil litigation. In formulating its own recommendations, the advisory group for the Middle District has also been assisted by, among other things, the model plan alternatives for district court reform issued on October 30, 1992 pursuant to 28 U.S.C. § 477 by the Committee on Court Administration and Case Management on behalf of the Judicial Conference of the United States. As the Committee on Court Administration and Case Management noted in its report, "The Conference recognizes that no single method of case management is suitable for all courts." (Introduction.) The Middle District advisory group (which is obliged by 28 U.S.C. § 472(b)(2) to state "the basis for its recommendation that the district court develop a plan or select a model plan") bases its following district-specific recommendations on (1) its concurrence with the wisdom of the Judicial Conference that individuated plans are in general more appropriate, (2) the advisory group's factual evaluation of the particular conditions, problems and opportunities in this district, and (3) the advisory group's research into the efficacy of some of the early experimentation with these ideas elsewhere.

a. Differential case management.

The district court has already adopted a limited differential case management scheme with respect to prisoner petitions and social security appeals. The advisory group recommends that any such differential case management practices be fully articulated in the local rules for the benefit of litigants and their counsel.

The advisory group is concerned that procedures be adopted to ensure that differential case management in these substantive categories not be used to

discriminate against the litigants involved because of the nature of their claims. To facilitate the fair hearing of prisoner petitions in particular, the advisory group suggests that the district court establish and fund a position for a staff attorney to help pro se litigants develop their petitions in a sensible manner, thereby facilitating fair judicial review. Such a position could have among its responsibilities the development and maintenance of a handbook for pro se litigants.

The advisory group also notes that the heavy presence of prisoner petitions in the Middle District's civil docket is attributable in part to the absence of an effective administrative complaint mechanism in the state prison system. To the extent that such an administrative system is operational, the federal district court could substantially restrict its review to only those cases in which the complainants had already exhausted their administrative remedies. See 42 U.S.C. § 1997e. The advisory group thus recommends that the state government develop its own fair complaint-handling procedure to relieve unnecessary burdens imposed on the district court from the need to review matters more appropriately addressed in an administrative context.

Otherwise, the advisory group does not recommend an expansion of differential case management practices across all categories of cases. For example, the advisory group rejected the possibility of sorting cases on the general basis of complexity, in part because of the relative lack of complexity in the overall caseload in this district. The advisory group is also cognizant of reports that such schemes in other districts may force non-meritorious cases along too quickly before their lack of

merit is allowed to rise to the surface, and may push meritorious actions too quickly through discovery, when settlement might be effected anyway without such expense.

b. Early and ongoing control of the pretrial planning process through involvement of a judicial officer in case planning, setting of early and firm trial dates, control of discovery, and deadlines for motions.

The Middle District already exhibits a relatively high degree of judicial involvement in the pretrial process. For instance, Chief Judge Owens is well known for reading depositions filed with the court, and Judge Elliott is nationally recognized for his aggressive engagement in bringing discovery disputes to a head. Well over half of the attorneys who responded to the advisory group's questionnaire indicated that they received moderate, high or intensive levels of case management in their actions.

The advisory group is concerned that the level of judicial case management be more carefully systematized, however, to ensure that active judicial engagement occurs fairly and predictably across the board according to standard assumptions. For instance, the advisory group encourages the clear statement in the proposed local rules of early, firm deadlines at various junctures throughout the pretrial process, including a standard expectation as to the length of discovery.

In the Middle District, the filing of all discovery is presently required except when the requirement is lifted by the presiding judge -- surely an unusual rule in the modern era of paper wars, but one that the advisory group sees merit in, especially

to the extent that the judges actually use the material and/or the filing of discovery materials chills discoverers from asking for too much and discoverees from effecting retaliatory dumpings. The advisory group welcomes consistent judicial involvement in the factual development, as well as legal underpinning, of civil cases.

The advisory group considered and rejected the possibility of involving magistrate judges in the resolution of discovery disputes. Their workloads are already substantial, and judicial efficiencies are lost when more than one judge is obliged to become familiar with a single case.

As to the setting of firm trial dates, the advisory group recommends that the court establish a formal time and/or process by which the trial date shall ordinarily be set, and that the procedure be memorialized in the local rules.

The advisory group also suggests that the district court consider the possibility of establishing official terms of court, during which litigants could plan on judicial attention to a general category of cases in a specific locale. Even if a particular case is not disposed of in the term assigned, the litigants and their attorneys would presumably still have benefitted from an increased level of information about the prospects for a trial.

c. Case management conferences keyed to case specifics.

The advisory group generally supports the local rule 4.1 mandating the submission of a jointly proposed discovery plan and order. However, the advisory group recommends that the proposed rule be re-drafted to reduce the likelihood that

negotiation over the terms of the discovery plan and order will degenerate into just another battleground. One alternative might be to provide explicitly that, in the absence of a jointly proposed discovery plan and order, each side present a separate proposed discovery plan and order.

The advisory group encourages the district court to use the finalized discovery plan and order aggressively to tailor the court's supervision in keeping with the unique features of the individual cases.

d. Voluntary exchange of information.

If the Supreme Court had not recently proposed adoption of its own mandatory interrogatory rule, the advisory group would also endorse the inclusion of a local rule mandating all parties to file responses to mandatory interrogatories. In light of the Supreme Court's proposed rule 26 covering much of the same ground, however, the advisory group recommends that the district court refrain from additional rule-making to minimize confusion.

e. Pre-certification of discovery disputes.

The advisory group supports the proposed requirements in both proposed Federal Rule of Civil Procedure 37(a)(2) and Local Rule 3.6 that would oblige disgruntled discoverers to certify that they have attempted to resolve their differences with opposing counsel before filing motions to compel discovery.

f. Handling of dispositive motions.

The advisory group strongly recommends that the district court impose upon itself a rule that all dispositive motions, including motions for summary judgment, be ruled upon, if necessary in a short format, no later than 90 days after the filing of an opposition or the date on which the time to submit an opposition expires. The advisory group repeatedly heard from lawyers in this district that it is preferable to all litigants that the court issue a timely decision without comment, as opposed to a tardy decision accompanied by a fully articulated opinion.

g. Referral to alternative forms of dispute resolution (ADR).

The advisory group notes that the Middle District has hosted a pilot project for arbitration, and suggests that the results of this project be examined more carefully than the advisory group has been able to do before ascertaining whether to proceed further with the program.

The advisory group is optimistic about the possibilities for voluntary but court-supervised referral of civil cases to varieties of private dispute resolution techniques that are less analogous to traditional trials than are arbitral hearings, e.g., mediation, settlement masters, private hearings, etc. To facilitate this referral process, the advisory group recommends the training of judges and Middle District lawyers in the identification of the types of disputes that are most amenable to alternative dispute resolution techniques, and the establishment of a procedure by which civil matters could be routinely reviewed to ascertain their appropriateness for an alternative

mode of dispute resolution. Also, a data bank might be maintained by the district court of the identities of local providers of these services, the providers' qualifications, and their prices, in order to facilitate the referral process.

Additionally, the advisory group recommends that the district court itself continue experimentation with in-courthouse alternatives, such as early neutral evaluation, minitrials and summary jury trials in appropriate cases.

h. Settlement conferences.

The advisory group recommends that the district court consider establishing a local rule that would mandate a settlement conference before trial, perhaps as a portion of the pretrial conference. Alternately, such a local rule might require the parties and/or counsel to discuss settlement and alternative dispute resolution potential without court involvement at an early time in the case, certifying to the court the fact of the conference and the results.

i. Attendance of party representatives at key conferences.

The advisory group endorses the suggestion in § 473(b)(2) of the Civil Justice Reform Act and the Local Rule 5.1 requirement that the district adopt a local rule that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.

On the other hand, the advisory group considered and rejected the suggestion in § 473(b)(3) that parties be obliged to sign requests for extensions. It was felt that this step would unnecessarily encumber the process, and would not in itself result in any significant reduction in extensions. More effective limitations on extensions could be facilitated through a local rule limiting the number and/or duration of extensions.

j. Voir dire.

To facilitate trial efficiency, the advisory group suggests that the district court consider requiring submission of voir dire questions at the pretrial conference rather than at commencement of the trial. The advisory group incidentally notes that the questionnaire typically given to prospective jurors could be revised to make it better suited to civil (and not just criminal) cases.

k. Court reporting.

The advisory group heartily endorses the Supreme Court's proposal to permit electronic taping of depositions. Presently, the prices charged by court reporters (stenographic transcribers) for their services constitute a significant element of excessive costs in civil litigation. The introduction of a competitive mode of recordation could well return these prices to a lower, yet fair, price level.

Appendix A

Public Law 101-650
101st Congress

An Act

To provide for the appointment of additional Federal circuit and district judges, and for other purposes.

Dec. 1, 1990
[H.R. 5316]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".

Judicial Improvements Act of 1990.
Courts.
28 USC 1 note.

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

Civil Justice Reform Act of 1990.

SEC. 101. SHORT TITLE.

28 USC 1 note.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

28 USC 471 note.

The Congress makes the following findings:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The 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.

(3) The 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.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

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(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are 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.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

Reports.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) 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;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(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 appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

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

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

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

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

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

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

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

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

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

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer— Reports.

"§ 479. Information on litigation management and cost and delay reduction

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives. Reports.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual. Government publications.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

Records. "(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

28 USC 471 note. (b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

28 USC 471 note. (c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated 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. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

Reports. (3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans..... 471".

SEC. 104. DEMONSTRATION PROGRAM. 28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall 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 timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM. 28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

SEC. 106. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

Federal Judgeship Act of 1990.
28 USC 1 note.

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

President.
28 USC 44 note.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

Appendix B

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF GEORGIA

LOCAL RULES

(Effective June 2, 1993)

TABLE OF CONTENTS

RULE PAGE

RULE PAGE

LOCAL RULE ONE

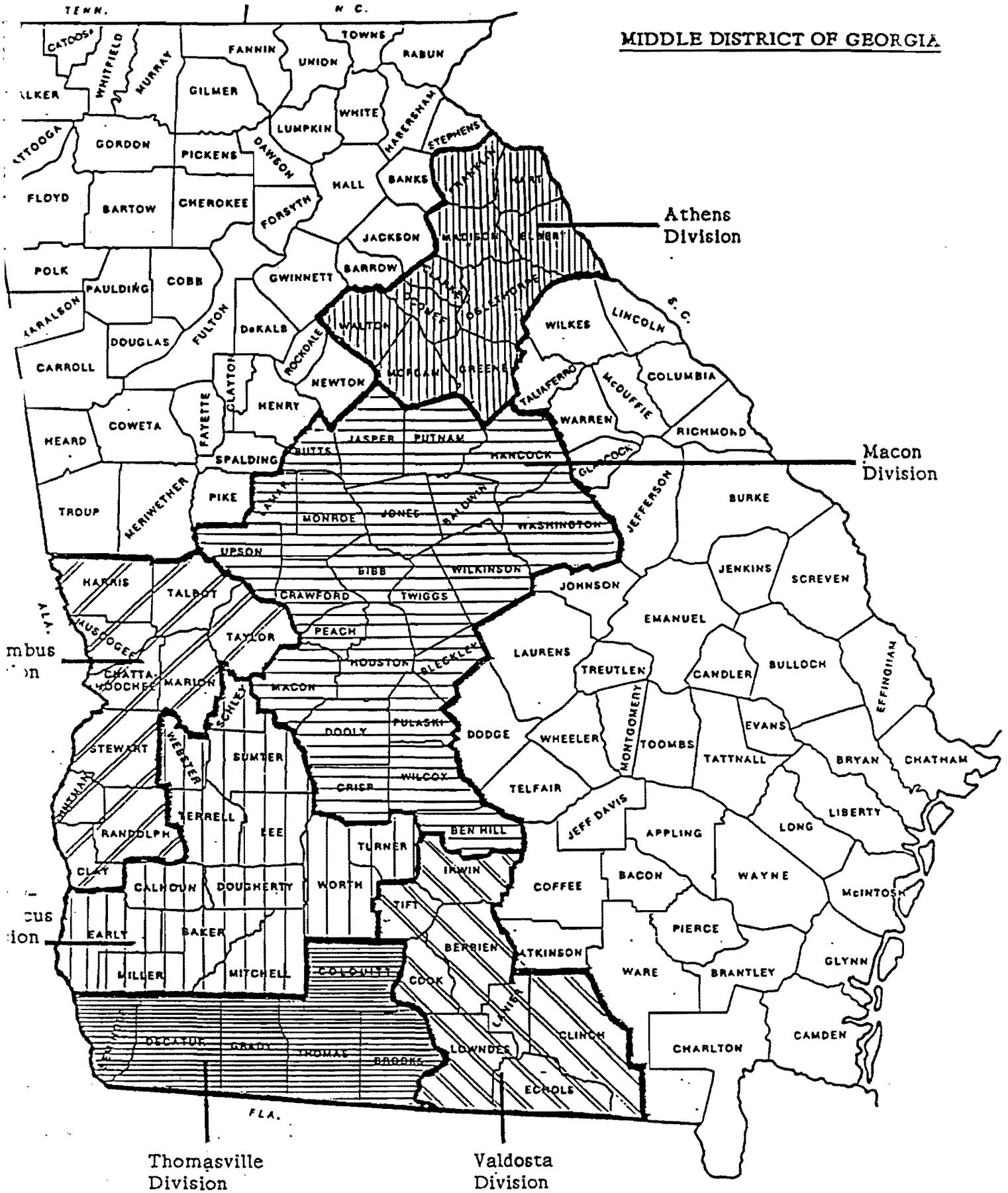
DIVISIONS OF THE COURT

1.1 SIX DIVISIONS. The United States District Court for the Middle District of Georgia is divided into six divisions: Macon, Columbus, Albany/Americus, Athens, Valdosta, and Thomasville. See attached map of district.

1.2 DIVISIONAL CLERK'S OFFICES. Divisional Clerk's Offices are staffed and open at all times in Albany, Columbus, Macon and Valdosta. When court is in session, Athens and Thomasville Clerk's Offices are staffed and open. Athens case files are maintained in Macon; Thomasville case files are maintained in Valdosta.

1.3 DIVISION FILINGS. Although it is recommended that all pleadings and papers in civil and criminal cases be filed in the divisional office in which the case file is maintained, such pleadings and papers may be filed in any divisional clerk's office within this district. In such event, the clerk of the court shall receive and mark the pleadings and papers filed and promptly forward such pleadings and papers to the divisional office in which the case file is maintained.

1.4 VENUE IN CIVIL CASES. Plaintiff may file a civil case in the division in which the plaintiff resides, the defendant resides or the claim arose. The clerk of the court is directed to transfer to the appropriate division any civil case that is filed in a division in which neither the plaintiff or defendant resides nor the claim arose.


MIDDLE DISTRICT OF GEORGIA
TENN.
N. C.
S. C.
FLA.
FLA.
Athens Division
Macon Division
Thomasville Division
Valdosta Division
CATOOSA
WHITFIELD
MURRAY
FANNIN
UNION
TOWNS
RABUN
GILMER
WHITE
HABERSHAM
STEPHENS
LUMPKIN
DAWSON
GORDON
PICKENS
HALL
BANKS
FRANKLIN
HART
FLOYD
BARTOW
CHEROKEE
FORSYTH
JACKSON
MADISON
ELBERT
POLK
PAULDING
COBB
GWINNETT
BARROW
OGLETHORPE
WILKES
LINCOLN
DOUGLAS
FULTON
DeKALB
ROCKDALE
WALTON
OCONEE
GREENE
CARROLL
CLAYTON
NEWTON
MORGAN
TALIAFERRO
McDUFFIE
COLUMBIA
HEARD
COWETA
FAYETTE
HENRY
WARREN
RICHMOND
SPALDING
BUTTS
JASPER
PUTNAM
HANCOCK
GLASCOCK
TROUP
MERIWETHER
PIKE
LAMAR
MONROE
JONES
BALDWIN
WASHINGTON
JEFFERSON
BURKE
UPSON
HARRIS
TALBOT
CRAWFORD
TWIGGS
WILKINSON
JOHNSON
JENKINS
SCREVEN
TAYLOR
PEACH
EMANUEL
CHATTAHOOCHEE
MARION
HOUSTON
BLECKLEY
LAURENS
TREUTLEN
CANDLER
BULLOCH
EFFINGHAM
SCHLEY
MACON
DODGE
WHEELER
MONTGOMERY
TOOMBS
EVANS
STEWART
WEBSTER
SUMTER
DOOLY
PULASKI
TATTNALL
BRYAN
CHATHAM
SHERMAN
CRISP
WILCOX
TELFAIR
JEFF DAVIS
LIBERTY
TERRELL
RANDOLPH
LEE
TURNER
BEN HILL
APPLING
LONG
CLAY
CALHOUN
DOUGHERTY
WORTH
IRWIN
COFFEE
BACON
WAYNE
McINTOSH
TIFT
EARLY
BAKER
BERRIEN
ATKINSON
PIERCE
GLYNN
MILLER
MITCHELL
COLQUITT
COOK
WARE
BRANTLEY
DECATUR
GRADY
THOMAS
BROOKS
LOWNDES
LANIER
CLINCH
CHARLTON
CAMDEN
ECHOLS

(70 counties)

LOCAL RULE TWO

ATTORNEYS - ADMISSIONS, ABSENCES AND DUTIES

2.1 ADMISSIONS

a. ROLL OF ATTORNEYS. The bar of this Court shall consist of those persons heretofore admitted to practice in this court and those who may hereafter be admitted in accordance with this rule.

b. ELIGIBILITY. To be admitted to practice in this court an attorney must have been admitted to practice in the trial courts of the State of Georgia and be a member of the State Bar of Georgia. Only attorneys who are admitted to practice in this Court, or who have otherwise obtained permission under Rule 2.2c, may appear as counsel.

c. PROCEDURE FOR ADMISSION.

1. Each applicant for admission to the bar of this Court shall file with the clerk a written petition on the form provided by the clerk setting forth his state bar number and reciting the fact that he is now a member in good standing of the State Bar of Georgia. Each applicant shall also sign an AO 153 Oath of Admission card.

2. The applicant for admission, after completing the petition and oath card, shall submit the same to the clerk of the court with the prescribed enrollment fee. If the petition and oath card are in proper form, the Clerk for the judges of this court or a judge will sign an order admitting petitioner to

practice in this court. A certificate will issue from the clerk's office. Unless requested by the court, petitioner will not be required to make a personal appearance before the court.

2.2 DUTIES

a. DESIGNATION OF LEAD COUNSEL. Counsel shall designate the name, address, and telephone number of the attorney who shall act as lead counsel in the case on the signature page of the first pleading filed in every action. In the absence of such designation, the first name appearing on the pleading shall be designated lead counsel. Any subsequent change in lead counsel shall be noted by the filing of a notice.

b. BAR NUMBERS. All counsel are required to designate their State Bar of Georgia Number on the signature page of each pleading filed.

c. PERMISSION TO PRACTICE IN A PARTICULAR CASE. Any member in good standing of the bar of any other district court of the United States who is not a member of the State Bar of Georgia and who does not reside in or maintain an office in this state for the practice of law, may be permitted with prior approval of the court to appear and participate in a particular case, civil or criminal, in this court subject to the following provisions:

1. In a civil case in which a party is represented only by counsel not a member of the bar of this court, such counsel must designate in writing some willing member of the local bar of this court upon whom motions and papers may be served and who will be designated as local counsel. That designation shall not become

effective until such local counsel has entered a written appearance therein.

In addition, in any case in which an attorney makes an appearance in any action or case pending in this court and said attorney is not a member of the bar of this court, he shall certify that he is a member in good standing of a district court of the United States and shall file a certificate of good standing from that court with the clerk of this court.

2. Any attorney representing the United States government, or any agency thereof, may appear and participate in particular actions or proceedings in his official capacity without a petition for admission or certificate of good standing, provided he is a member of a bar of a district court of the United States.

2.3 **LEAVES OF ABSENCE.** Formal applications by attorneys for leaves of absence should not be filed and will not be acted upon unless the attorney has been notified by the court to appear during the time he wishes to be absent.

LOCAL RULE THREE

MOTIONS

3.1 **FILING.** Unless the assigned judge prescribes otherwise, every motion filed in civil and criminal proceedings shall be accompanied by a memorandum of law citing supporting authorities. Civil motions that include allegations of fact must be supported by a statement of fact. This rule does not apply to motions for enlargement of time.

3.2 **RESPONSE.** Respondent's counsel desiring to submit a response, brief, or affidavits shall serve the same within twenty (20) days after service of movant's motion and brief.

3.3 **REPLY.** Movant's counsel shall serve any desired reply brief, argument, or affidavit within ten (10) days after service of respondent's response, brief, or affidavit.

3.4 **PAGE LIMITATION.** Except upon good cause shown and leave given by the court, all briefs in support of a motion or in response to a motion are limited in length to twenty (20) pages; the movant's reply brief may not exceed ten (10) pages.

3.5 **HEARINGS.** All motions shall be decided by the court without a hearing unless otherwise ordered by the court on its own motion or in its discretion upon request of counsel.

3.6 **MOTIONS TO COMPEL.** Motions to compel disclosure or discovery will not be considered unless they contain a statement certifying that movant has in good faith conferred or attempted to

confer with the opposing party in an effort to secure the information without court action.

3.7 SUMMARY JUDGMENTS - STATEMENT OF FACTS REQUIRED. Upon filing any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions, and affidavits which support such contentions shall be filed with the motion and supporting memorandum.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue of material fact to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file and affidavits which support such contentions.

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

Failure to comply with this rule by the moving party may result in denial of the motion.

3.8 MOTIONS FOR ATTORNEY'S FEES. In all cases in which the prevailing party is entitled to an award of attorney's fees, a motion for attorney's fees must be filed within fourteen (14) days from the entry of judgment by the clerk unless otherwise provided

by statute. Failure to file such a motion within the prescribed time period will be deemed a waiver of attorney's fees.

All motions for attorney's fees when filed shall include, the following:

a. An itemized bill in which all segments of time are identified as to the nature of the work performed;

b. A breakdown of time for <u>each</u> attorney working on the case;

c. The hourly rate applicable and an explanation of how that hourly rate was arrived at; and

d. A certification by the requesting attorneys that the work performed was reasonably necessary to the preparation and presentation of the case.

LOCAL RULE FOUR

DISCOVERY

4.1 DISCOVERY PLAN AND ORDER.

a. After responsive pleadings are filed in civil cases (except those hereafter identified as exempt), the court by letter may direct all counsel to confer in person to discuss the nature and basis of their claims and defenses; the possibilities for a prompt settlement; the disclosures required by Rule 26, Federal Rules of Civil Procedure; and to develop a proposed discovery plan. The contents of the discovery plan will be described in the court's letter. Within ten (10) days after the meeting, plaintiff's counsel shall submit to the court a proposed, combined order detailing the results of the meeting and the plan for discovery.

b. After receiving the proposed, combined order, the court may consult with counsel by conference, telephone or mail before entering an order.

c. The following categories of civil cases are exempt from this rule:

1. Prisoner civil rights cases brought under 42 U.S.C. Section 1983 in which all plaintiffs are unrepresented by an attorney;

2. Appeals from orders entered by a bankruptcy judge or a magistrate judge;

3. Social Security cases;

4. Habeas corpus cases arising under 28 U.S.C Section 2254 or 2255.

4.2 **FILING OF DISCOVERY. ALL DISCOVERY MATERIAL SHALL BE FILED** unless the presiding judge gives permission for it to be retained by counsel.

4.3 **INTERROGATORIES.** Except with written permission of the court first obtained, interrogatories may not exceed twenty-five (25) to each party. Form, canned, excessive-in-number interrogatories are not usually approved. The answering party must retype the questions with the answers and/or objections following immediately thereafter.

4.4 **REQUESTS FOR PRODUCTIONS OF DOCUMENTS AND THINGS.** Except with written permission of the court first obtained, requests for production under Rule 34 Fed. R. Civ. P., may not exceed ten (10) requests to each party.

4.5 **REQUESTS FOR ADMISSIONS.** Except with written permission of the court first obtained, requests for admissions under Rule 36 Fed. R. Civ. P., may not exceed ten (10) requests to each party.

LOCAL RULE FIVE

PRETRIAL CONFERENCES AND PROCEDURES

5.1 **PRETRIAL CONFERENCE.** A civil case may be scheduled for pretrial conference anytime after the expiration of the discovery period. Counsel who will actually try the case and other counsel of record with authority to define issues, make stipulations and discuss settlement, shall attend the pretrial conference.

5.2 **PRETRIAL ORDER.** The parties shall submit a jointly proposed pretrial order in the form prescribed by the assigned judge on the date specified in the notice of the pretrial conference. When entered by or at the direction of the assigned judge, the pretrial order shall supersede all prior pleadings, shall control the trial of the case, and shall be amended only by order of the court and only upon a showing of good cause.

LOCAL RULE SIX

CONTINUANCES AND EXTENSIONS OF TIME

6.1 GENERALLY. A continuance of any trial, pretrial conference, or other hearing will be granted only by the court on its own motion or on motion of any party. Continuances may not be obtained by stipulation between counsel.

Any extensions of time within which to answer, plead or respond by affirmative defenses or otherwise may be done by written, filed stipulations of counsel, not to exceed more than thirty (30) days from the original answer deadline without approval of the court. Any further extensions must be made by motion to the court.

6.2 EXTENSIONS BY CLERK FOR FILING OF BRIEFS. In civil cases, the clerk of the court and his deputies are authorized to permit extensions of time not to exceed fourteen (14) days for the filing of briefs. No more than one (1) such extension may be granted for the same brief. Permission of the court must be obtained for any further extensions.

LOCAL RULE SEVEN

FACSIMILE TRANSMISSIONS OF PLEADINGS

7.1 ACCEPTANCE OF FACSIMILE TRANSMISSIONS. Filings by facsimile transmission will only be accepted in compelling circumstances and **only with prior authorization** from any district judge, magistrate judge, the clerk or chief deputy of the court. The routine filing of pleadings, will not be authorized by facsimile transmission.

7.2 AFTER FILING FACSIMILE TRANSMISSIONS. After receiving authorization to file pleadings by facsimile transmission, counsel shall immediately file the original pleading by conventional means. Upon receipt in the Clerk's Office the original will be filed nunc pro tunc to the receipt date of the facsimile transmission copy. The court may, at its election, act upon the facsimile transmission copy prior to receipt of the original.

In the event that a document is transmitted by facsimile machine without prior authorization, the filing party will be notified that the documents will not be accepted for filing and that filing must instead be accomplished by conventional means.

LOCAL RULE EIGHT

FILES AND EXHIBITS AND REMOVAL THEREOF

8.1 **REMOVAL OF ORIGINAL PAPERS.** Original papers in the custody of the clerk shall not be removed except by permission of the clerk and then, only after a receipt provided by the clerk has been signed by the removing party.

8.2 **EXHIBITS AND DOCUMENTS.** All exhibits received into evidence at any trial or hearing shall be retained by the clerk who shall keep them in custody. All such exhibits, including models, diagrams, books or other exhibits other than contraband received into evidence or marked for identification in an action or proceeding shall be removed by the filing party at the expiration of the time for the filing of a Notice of Appeal, or if an appeal is filed, after the final adjudication of the action and disposition of the appeal. Said exhibits if not so removed may be destroyed or otherwise disposed of as the clerk may deem appropriate after ten (10) days notice to counsel.

Sensitive exhibits received in evidence, which shall include but are not limited to, drugs, articles of high monetary value, weapons or contraband of any kind shall be entrusted to the custody of the United States Attorney or to the arresting or investigative agency of the government, who will maintain the integrity of these exhibits pending disposition of the case and for any appeal period thereafter.

LOCAL RULE NINE

TAXATION OF COSTS

9.1 GENERALLY. The clerk of the court shall tax costs as authorized by the law in all civil cases. See Rule 54(d) Fed. R. Civ. P. The requests for taxation of costs by the prevailing party shall be made on a Bill of Costs form provided by the clerk. The Bill of Costs form shall be supplemented with citations of authority and copies of invoices and other supporting documentation. Opposing counsel will be given the opportunity to respond to the prevailing party's Bill of Costs.

9.2 TIME FOR FILING. A Bill of Costs must be filed by the prevailing party within thirty (30) days from the entry of the judgment that awarded the costs. Opposing counsel shall have twenty (20) days from the service of the Bill of Costs to file a response.

LOCAL RULE TEN

SOCIAL SECURITY APPEALS

10.1 **JUDICIAL REVIEW.** Judicial review of any final decision of the Secretary is obtained by filing a civil action pursuant to 42 U.S.C. § 405(G) alleging that the Secretary's decision should be modified, reversed, or remanded. As the term "review" indicates the court in such cases is acting as a quasi appellate court. Its task is to affirm, modify, remand, or reverse the Secretary's decision, and the standard for doing so is as set forth in the statute. Motions for summary judgment are not appropriate since the issue is not whether there is any genuine issue as to any material fact; instead, it is whether the Secretary's findings of fact are supported by substantial evidence.

10.2 **BRIEFING SCHEDULE.** After service of an answer by the Secretary, claimant will have thirty (30) days within which to file his brief. The Secretary must then submit a brief within thirty (30) days after receipt of claimant's brief. Within five (5) days after receiving the Secretary's brief, claimant may submit a reply brief if so desired.

10.3 **EXTENSIONS OF TIME.** The Clerk of court and his deputy clerks are authorized to grant one extension of time for filing briefs in social security appeals. The party seeking the extension must make his request in writing with a copy to opposing counsel. Reasonable requests for extensions of time will be granted. If either party needs any additional extensions of time for filing

briefs, they must make their request by way of a motion to the court.

LOCAL RULE ELEVEN

COURT ANNEXED ARBITRATION

11.1 STATEMENT OF PURPOSE. It is the purpose of the Court, through adoption and implementation of this rule, to provide an alternative mechanism for the resolution of civil disputes (a Court annexed, voluntary arbitration procedure) leading to an early disposition of many civil cases with resultant savings in time and costs to the litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial de novo on demand.

11.2 CERTIFICATION OF ARBITRATORS.

(a) The Chief Judge or his designee judge shall certify those persons who are eligible and qualified to serve as arbitrators under this rule, in such numbers as he shall deem appropriate, and shall have complete discretion and authority to thereafter withdraw the certification of any arbitrator at any time.

(b) An individual may be certified to serve as an arbitrator under this rule if:

(1) He has been for at least ten years a member of a State Bar;

(2) He is admitted to practice before this Court or any other United States District Court;

(3) He is determined by the Chief Judge to be competent to perform the duties of an arbitrator.

(c) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. Section 453 before serving as an arbitrator. Current lists of all persons certified

as arbitrators in each Division of the Court, respectively, shall be maintained in the office of the Clerk. Depending upon the availability of funds from the Administrative Office of the United States Courts, or other appropriate agency, arbitrators shall be compensated for their services in such amounts and in such manner as the Chief Judge shall specify from time to time by standing order; and no arbitrator shall charge or accept for his services any fee or reimbursement from any other source whatever absent written approval of the Court given in advance of any such payment. Any member of the bar who is certified and designated as an arbitrator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

(d) Any person selected as an arbitrator may be disqualified for bias or prejudice as provided in 28 U.S.C. Section 144, and shall disqualify himself in any action in which he would be required to do so if he were a justice, judge, or magistrate judge governed by 28 U.S.C. Section 455.

11.3 CASES TO BE ARBITRATED.

(a) Any civil action shall be referred by the Clerk to arbitration in accordance with this rule if:

(1) The United States is a party; and

(A) The action is of a type that the Attorney General has provided by regulation may be submitted to arbitration; or

(B) The action consists of a claim for money damages not in excess of $150,000, exclusive of interest and costs (and the Court determines in its discretion that any non-monetary claims are

insubstantial), and is brought pursuant to the Miller Act, 40 U.S.C. Section 270(a) et seq., or the Federal Tort Claims Act, 28 U.S.C. Sections 1346(b) and 2671 et seq.

(C) The action is not based on an alleged violation of the right secured by the Constitution of the United States, and jurisdiction is not based in whole or in part on 28 U.S.C. Section 1343.

(2) The United States is not a party; and

(A) The action consists of a claim or claims for money damages not in excess of $150,000, individually, exclusive of punitive damages, interest, costs and attorneys fees (and the Court determines in its discretion that any non-monetary claims are insubstantial), and is brought pursuant to

(i) 28 U.S.C. Section 1331 and the Jones Act, 46 U.S.C. Section 688, or the FELA, 45 U.S.C. Section 51;

(ii) 28 U.S.C. Sections 1331 or 1332 arising out of a negotiable instrument or a contract; or

(iii) 28 U.S.C. Sections 1332 or 1333 and Rule 9(h), Fed.R.Civ.P., to recover for personal injuries or property damage.

(B) The action is not based on an alleged violation of a right secured by the Constitution of the United States, and jurisdiction is not based in whole or in part on 28 U.S.C. Section 1343.

(3) The parties consent to arbitration as provided in this rule with respect to any case not within the provision of subsections (a)(1) and (2) above, and agree to pay a reasonable fee to the arbitrator. The written consent to arbitration shall include a statement of understanding that:

(A) Consent to arbitration is freely and knowingly obtained; and

(B) No party or attorney can be prejudiced for refusing to participate in arbitration by consent.

(b) Cases pending at the time of implementation of the arbitration program may be put into the program if the case has not already been pretried and if the presiding judge so directs.

(c) The arbitration process will not interfere with the normal progression of a case through the discovery process. Federal Rules of Civil Procedure, Rule 16(b) Scheduling Orders will still be requested of the parties and it is expected that a certain amount of discovery will have been completed prior to the arbitration hearing.

11.4 PROCEDURE.

(a) In any civil action subject to arbitration pursuant to Rule 11.3, the Clerk shall notify the parties within twenty (20) days after an answer has been filed that the action is being referred to arbitration in accordance with these rules. [If a motion to dismiss is filed in lieu of an answer the case will be referred to arbitration after the motion has been ruled on. Pending motions other than motions to dismiss will not delay arbitration.] Within twenty (20) days thereafter, by written notice to the Clerk, either party may exercise its right to opt-out of arbitration. Upon the expiration of such twenty (20) day period and in absence of timely notice of desire to withdraw from arbitration; the Clerk will begin the arbitrator selection process. First, three (3) names will be chosen from the arbitrator list and mailed to the parties. Each party will be allowed to confidentially strike or reject one of the three names. The one

name remaining (or the first name on the list if more than one name is left) will be selected as the arbitrator.

(b) Upon selection and designation of the arbitrator, the Clerk shall communicate with the parties and the arbitrator in an effort to ascertain a mutually convenient date for a hearing, and shall then schedule and give notice of the date and time of the arbitration hearing which shall be held in space to be provided in a United States Courthouse. The hearing shall be scheduled within ninety (90) days from the date of the selection and designation of the arbitrator on at least twenty (20) days notice to the parties. Any continuance of the hearing beyond that ninety (90) day period may be allowed only by order of the Court for good cause shown.

(c) The award of the arbitrator shall be filed with the Clerk within ten (10) days following the hearing, and the Clerk shall give immediate notice to the parties.

(d) At the end of thirty (30) days after the filing of the arbitrator's award the Clerk shall enter judgment on the award if no timely demand for trial de novo has been made. If the parties have previously stipulated in writing that the award shall be final and binding, the Clerk shall enter judgment on the award when filed.

(e) Within thirty (30) days after the filing of the arbitration award the Clerk, any party may demand a trial de novo in District Court. Written notification of such a demand shall be filed with the Clerk and a copy shall be served by the moving party upon all other parties.

11.5 ARBITRATION HEARING.

(a) The arbitration hearing may proceed in the absence of a party who, after due notice fails to be present; but an award of damages shall not be based solely upon the absence of a party.

(b) At least ten (10) days prior to the arbitration hearing each party shall furnish to every other party a list of witnesses, if any, and copies (or photographs) of all exhibits to be offered at the hearing. The arbitrator may refuse to consider any witness or exhibit which has not been so disclosed.

(c) Individual parties or authorized representative of corporate parties shall attend the arbitration hearing unless excused in advance by the arbitrator for good cause shown. The hearing shall be conducted informally; the Federal Rules of Evidence shall be a guide, but shall not be binding. It is contemplated by the Court that the presentation of testimony shall be kept to a minimum, and that cases shall be presented to the arbitrator primarily through the statements and argument of counsel.

(d) Any party may have a recording and transcript made of the arbitration hearing at his expense.

11.6 AWARDS.

(a) The award shall state the result reached by the arbitrator without necessity of factual findings or legal conclusions. The amount of the award, if any, shall not be limited to the sum stated in Rule 11.3 if the arbitrator determines that an

award in excess of that amount is just and is in keeping with the evidence and the law.

(b) The contents of any arbitration award shall not be made know to any judge who might be assigned to the case --

(1) Except as necessary for the Court to determine whether to assess costs or attorney fees under 28 U.S.C. Section 655,

(2) Until the District Court has entered final judgment in the action or the action has been otherwise terminated, or

(3) Except for purposes of preparing the report required by Section 903b of the Judicial Improvements and Access to Justice Act.

11.7 TRIAL DE NOVO.

(a) Upon a demand for a trial de novo the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, and any right of trial shall be preserved inviolate.

(b) At the trial de novo the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the award or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Federal Rules of Evidence, or the Federal Rules of Civil Procedure.

(c) No penalty for demanding a trial de novo shall be assessed by the Court.

LOCAL RULE TWELVE

UNITED STATES MAGISTRATE JUDGES

12.1 **DUTIES UNDER 28 U.S.C. § 636(a).** Each full-time United States Magistrate Judge for the Middle District of Georgia is authorized and empowered (except as otherwise ordered by a district judge) to conduct proceedings in the following matters and to enter such orders, verdicts, judgments, sentences, findings and/or recommendations relating thereto, consistent with the Constitution and laws of the United States:

1. All criminal proceedings of a grade of misdemeanor or less, provided the defendant consents thereto, in accordance with applicable provision of law including, but not limited to, 18 U.S.C. §3401;

2. All cases brought by prisoners under 42 U.S.C. § 1983 or Bivens vs. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), challenging conditions of confinement;

3. All applications for post-trial relief made by individuals convicted of criminal offenses, including, but not limited to, motions for writs of habeas corpus under 28 U.S.C. § 2241 et. seq., § 2254 and § 2255;

4. All social security appeals;

5. All actions filed pursuant to provisions of Title VII of the Civil Rights Act of 1964, as amended; and,

6. Such other civil actions referred by a judge of this court for trial and/or disposition provided all parties therein consent.

12.2 **NONDISPOSITIVE PRETRIAL MATTERS.** In accordance with 28 U.S.C. § 636(b)(1)(A), magistrate judges shall hear and determine all pretrial criminal and civil matters assigned by the judges of this court except a motion of injunctive relief, for

judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

12.3 **DISPOSITIVE PRETRIAL MATTERS.** In accordance with 28 U.S.C. § 636(b)(1)(B), magistrate judges are hereby authorized and empowered at the election of the district judge to conduct hearings, including evidentiary hearings, and to submit to the judges of this court PROPOSED FINDINGS OF FACT AND RECOMMENDATIONS for the disposition by said judges of the following motions: a motion of injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

12.4 **SPECIAL MASTER REFERENCES AND TRIAL BY CONSENT.**

a. In accordance with 28 U.S.C. § 636 (b)(2), magistrate judges are hereby authorized and empowered to serve as a special master upon specific designation by the judge to whom said matter is assigned.

b. Under 28 U.S.C. § 636(c), and with the consent of all parties, magistrate judges are specifically authorized and

empowered to conduct any and all proceedings in a jury or non-jury civil matter and to order the entry of judgment therein.

12.5 **OTHER DUTIES OF MAGISTRATE JUDGES.** A magistrate judge is also authorized to:

a. Conduct arraignments in cases not triable by the magistrate judge to the extent of taking a not guilty plea;

b. Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;

c. Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings;

d. Order the exoneration or forfeiture of bonds;

e. Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure; and

f. Any and all other duties of a judicial officer of this court as are not inconsistent with the Constitution and laws of the United States; it being the express intention of the court to authorize magistrate judges to conduct any and all proceedings in this court permitted by 28 U.S.C. § 636 whether or not specifically set forth in these rules.

LOCAL RULE THIRTEEN

RULES GOVERNING ATTORNEY DISCIPLINE

Prefatory Statement

Nothing contained in these rules shall be construed to deny the Court its inherent power to maintain control over the proceedings conducted before it nor to deny the Court those powers derived from statute, rule of procedure, or other rules of court.

When alleged attorney misconduct is brought to the attention of the Court, whether by a Judge of the Court, any lawyer admitted to practice before the Court, any officer or employee of the Court, or otherwise, the Court may, in its discretion, dispose of the matter through the use of its inherent, statutory, or other powers; refer the matter to an appropriate state bar agency for investigation and disposition; refer the matter to the local grievance committee as hereinafter defined; or take any other action the court deems appropriate including referring the matter for possible investigative and criminal prosecution. These procedures are not mutually exclusive.

13.1 Standards for Professional Conduct

A. Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility or Rules of Professional Conduct adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an

attorney/client relationship. Attorneys practicing before this Court shall be governed by this Court's Local Rules, by the Rules of Professional Conduct adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, and, to the extent not inconsistent with the preceding, the American Bar Association Model Rules of Professional Conduct, except as otherwise provided by specific Rule of this Court.

B. Discipline for misconduct defined in these rules may consist of (a) disbarment, (b) suspension, (c) reprimand, (d) monetary sanctions, (e) removal from this Court's roster of attorneys eligible for practice before this Court, or (f) any other sanction the Court may deem appropriate.

13.2 Grievance Committee

A. The Court, consisting of the active Judges thereof, may appoint a [at least one] standing committee consisting of at least five members of the bar to be known as the "Grievance Committee." One of those first appointed shall serve a term of one year; two for two years; and the remainder and all thereafter appointed for a term of three years. Each member shall serve until his or her successor has been appointed. The Court may vacate any such appointment at any time. The Court shall designate one of the members to serve as chairman. A majority of the committee shall constitute a quorum.

B. Purpose and Function

The purpose and function of the Committee is to conduct, upon referral by the Court, investigations of alleged misconduct of any member of the Bar of this Court, or any attorney appearing and participating in any proceeding before the Court; to conduct, upon referral by the Court, inquiries and investigations into allegations of inadequate performance by an attorney practicing before the Court, as hereinafter provided; to conduct and preside over disciplinary hearings when appropriate and as hereinafter provided; and to submit written findings and recommendations to the Court for appropriate action by the Court, except as otherwise described herein. The members of the Grievance Committee, while serving in their official capacities, shall be considered to be representatives of and acting under the powers and immunities of the Court, and shall enjoy all such immunities while acting in good faith and in their official capacities.

C. Jurisdiction and Powers

(1) The Court may, in its discretion, refer to the Committee any accusation or evidence of misconduct by way of violation of the disciplinary rules on the part of any member of the bar with respect to any professional matter before this Court for such an investigation, hearing, and report as the Court deems advisable. The Committee may, in its discretion, refer such matters to an appropriate State Bar for preliminary investigation, or may request the Court to appoint special counsel to assist in or exclusively conduct such proceedings, as hereinafter provided in

these rules. (See Rule 13.11, infra.). The Court may also, in its discretion, refer to the Committee any matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court, as hereinafter provided. (See Rule 13.8, infra.). The Committee may under no circumstances initiate and investigate such matters without prior referral by the Court.

(2) The Committee shall be vested with such powers as are necessary to conduct the proper and expeditious disposition of any matter referred by the Court, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of any witnesses, and to order the production of books, records, or other documentary evidence, and those powers described elsewhere in these rules. The Chairman, or in his or her absence each member of the Committee, has the power to administer oaths and affirmations to witnesses.

13.3 Disciplinary Proceedings

A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by complaint or otherwise, the Judge may, in his or her discretion, refer the matter to the Grievance Committee for investigation and, if warranted, the prosecution of formal disciplinary proceedings or the formulation of such other recommendation as may be appropriate.

Court rescind its previously issued order to show cause. If the show cause order is not rescinded, and upon at least ten days notice, the cause shall be set for hearing before the Committee. A record of all proceedings before the Committee shall be made, and shall be made available to the attorney. That record, and all other materials generated by or on behalf of the Committee or in relation to any disciplinary proceedings before the Committee, shall in all other respects remain strictly confidential unless and until otherwise ordered by the Court. In the event the attorney does not appear, the Committee may recommend summary action and shall report its recommendation forthwith to the Court. In the event that the attorney does appear, he or she shall be entitled to be represented by counsel, to present witnesses and other evidence on his or her behalf, and to confront and cross examine witnesses against him. Except as otherwise ordered by the Court or provided in these Rules, the disciplinary proceedings before the Committee shall be guided by the spirit of the Federal Rules of Evidence. Unless he or she asserts a privilege or right properly available to him under applicable federal or state law, the accused attorney may be called as a witness by the Committee to make specific and complete disclosure of all matters material to the charge of misconduct.

D. Upon completion of a disciplinary proceeding, the Committee shall make a full written report to the Court. The Committee shall include its findings of fact as to the charges of misconduct, recommendations as to whether or not the accused

attorney should be found guilty of misconduct justifying disciplinary actions by the Court, and recommendations as to the disciplinary measures to be applied by the Court. The report shall be accompanied by a transcript of the proceedings before the Committee, all pleadings, and all evidentiary exhibits. A copy of the report and recommendation shall also be furnished the attorney. The Committee's written report, transcripts of the proceedings, and all related materials shall remain confidential unless and until otherwise ordered by the Court.

E. Upon receipt of the Committee's finding that misconduct occurred, the Court shall issue an order requiring the attorney to show cause why the Committee's recommendation should not be adopted by the Court. The Court may, after considering the attorney's response, by majority vote of the active Judges thereof, adopt, modify, or reject the Committee's findings that misconduct occurred, and may either impose those sanctions recommended by the Committee or fashion whatever penalties provided by the rules which it deems appropriate.

13.4 Attorneys Convicted of Crimes

A. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth, or possession of the United States of any serious crime as herein defined, the Court shall enter an order

immediately suspending that attorney, whether the conviction resulted from a plea of guilty, nolo contendere, verdict after trial, or otherwise, and regardless of the pendency of any appeal. The suspension so ordered shall remain in effect until final disposition of the disciplinary proceedings to be commenced upon such conviction. A copy of such order shall be immediately served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

B. The term "serious" crime shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction in which it was entered, involves false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or the use of dishonesty, or an attempt, conspiracy, or solicitation of another to commit a "serious crime."

C. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based on the conviction.

D. Upon the filing of a certified copy of a judgment of conviction of any attorney for a serious crime, the Court may, in addition to suspending that attorney in accordance with the provisions of this rule, also refer the matter to the Grievance Committee for institution of disciplinary proceedings in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in

bar of any state, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending shall, upon the filing with this Court of a certified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the role of attorneys admitted to practice before this Court.

13.7 Disbarment on Consent While Under Disciplinary Investigation or Prosecution

A. Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

1. The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
2. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;
3. the attorney acknowledges that the material facts so alleged are true; and

4. the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

B. Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.

C. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required pursuant to the provisions of this rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

13.8 Incompetence and Incapacity

A. When it appears that an attorney for whatever reason is failing to perform to an adequate level of competence necessary to protect his or her clients' interests, the Court may take any remedial action which it deems appropriate, including but not limited to referral of the affected attorney to appropriate institutions and professional personnel for assistance in raising the affected attorney's level of competency. The Court may also, in its discretion, refer the matter to the Grievance Committee for further investigation and recommendation.

B. A referral to the Grievance Committee of any matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court is not a

the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

E. An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement will not terminate any disciplinary proceedings then pending against the attorney, the disposition of which shall be determined by the Committee on the basis of all available evidence pertaining to both guilt and the extent of the discipline to be imposed.

13.5 Discipline Imposed By Other Courts

A. An attorney admitted to practice before this Court shall, upon being subjected to suspension or disbarment by a court of any state, territory, commonwealth, or possession of the United States, or upon being subject to any form of public discipline, including but not limited to suspension or disbarment, by any other court of the United States or the District of Columbia, promptly inform the Clerk of this Court of such action.

B. Upon the filing of a certified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court as described above, this Court may refer the matter to the Grievance Committee for a recommendation for appropriate action, or may issue a notice directed to the attorney containing:

1. A copy of the judgment or order from the other court, and

2. An order to show cause directing that the attorney inform this Court, within thirty days after service of that order upon the attorney, of any claim by the attorney predicated upon the grounds set forth in subsection E, supra, that the imposition of identical discipline by the Court would be unwarranted and the reasons therefor.

C. In the event that the discipline imposed in the other jurisdiction has been stayed there, any reciprocal disciplinary proceedings instituted or discipline imposed in this Court shall be deferred until such stay expires.

D. After consideration of the response called for by the order issued pursuant to subsection B, supra, or after expiration of the time specified in that order, the Court may impose the identical discipline or may impose any other sanction the Court may deem appropriate.

E. A final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purpose of a disciplinary proceeding in this Court, unless the attorney demonstrates and the Court is satisfied that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears that:

1. The procedure in that other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
2. there was such an infirmity of proof establishing misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
3. the imposition of the same discipline by this Court would result in grave injustice; or
4. the misconduct established is deemed by this Court to warrant substantially different discipline.

F. This Court may at any stage ask the Grievance Committee to conduct disciplinary proceedings or to make recommendations to the Court for appropriate action in light of the imposition of professional discipline by another court.

13.6 Disbarment on Consent or Resignation in Other Courts

A. Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from any other bar while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

B. An attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the

disciplinary matter and does not implicate the formal procedures previously described in these Rules. Upon a referral of this sort, the Grievance Committee may request that the attorney meet with it informally and explain the circumstances which gave rise to the referral and may conduct such preliminary inquiries as it deems advisable. If after meeting with the attorney and conducting its preliminary inquiries the Committee determines that further attention is not needed, the Committee shall notify the referring Judge and consider all inquiries terminated.

C. If after meeting with the attorney and conducting its preliminary inquiries the Committee deems the matter warrants further action, it may recommend to the attorney that the attorney take steps to improve the quality of his or her professional performance and shall specify the nature of the recommended action designed to effect such improvement. The attorney shall be advised of any such recommendation in writing and be given the opportunity to respond thereto, to seek review or revocation of the recommendation, or to suggest alternatives thereto. The Committee may, after receiving such response, modify, amend, revoke, or adhere to its original recommendation. If the attorney agrees to comply with the Committee's final recommendation, the Committee shall report to the referring Judge that the matter has been resolved by the consent of the affected attorney. The Committee may monitor the affected attorney's compliance with its recommendation and may request the assistance of the Court in

ensuring that the attorney is complying with the final recommendation.

D. If the Committee finds that there is a substantial likelihood that the affected attorney's continued practice of law may result in serious harm to the attorney's clients pending completion of the remedial program, it may recommend that the Court consider limiting or otherwise imposing appropriate restrictions on the attorney's continuing practice before the Court. The Court may take any action which it deems appropriate to effectuate the Committee's recommendation.

E. Any attorney who takes exception with the Committee's final recommendation shall have the right to have the Court, consisting of the active Judges thereof, consider the recommendation and the response of the affected attorney. The Court may, after considering the attorney's response, by majority vote of the active Judges thereof, adopt, modify, or reject the Committee's recommendations as to the necessary remedial actions and may take whatever actions it deems appropriate to ensure the attorney's compliance.

F. All information, reports, records, and recommendations gathered, possessed, or generated by or on behalf of the Committee in relation to the referral of a matter concerning an attorney's failure to maintain an adequate level of competency in his or her practice before this Court shall be confidential unless and until otherwise ordered by the Court.

G. Nothing contained herein and no action taken hereunder shall be construed to interfere with or substitute for any procedure relating to the discipline of any attorney as elsewhere provided in these rules. Any disciplinary actions relating to the inadequacy of an attorney's performance shall occur apart from the proceedings of the Committee in accordance with law and as directed by the Court.

13.9 Reinstatement

A. After Disbarment or Suspension

An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with this Court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume the practice of law before this Court until reinstated by order of the Court.

B. Time of Application Following Disbarment

An attorney who has been disbarred after hearing or consent may not apply for reinstatement until the expiration of at least five years from the effective date of disbarment.

C. Hearing on Application

Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. The Chief Judge may submit the petition to the Court or may, in his or her discretion, refer the petition to the Grievance Committee which shall within thirty days of the referral

schedule a hearing at which the petitioner shall have the burden of establishing by clear and convincing evidence that he or she has the moral qualifications, competency, and learning the law required for admission to practice before this Court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive of the public interest. Upon completion of the hearing, the Committee shall make a full report to the Court. The Committee shall include in its findings of fact as to the petitioner's fitness to resume the practice of law and its recommendations as to whether or not the petitioner should be reinstated.

D. Conditions of Reinstatement

If after consideration of the Committee's report and recommendation the Court finds that the petitioner is unfit to resume the practice of law, the petition shall be dismissed. If after consideration of the Committee's report and recommendation the Court find that the petitioner is fit to resume the practice of law, the Court shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, an don the making of partial or complete restitution to all parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the Court, upon the furnishing of proof of competency and

learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment. Provided further that any reinstatement may be subject to any conditions which the Court in its discretion deems appropriate.

E. Successive Petitioners

No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

F. Deposit for Costs of Proceeding

Petitions for reinstatement under this Rule shall be accompanied by a deposit in an amount to be set from time to time by the Court in consultation with the Grievance Committee to cover anticipated costs of the reinstatement proceeding.

13.10 Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct arising in the course of or in the preparation for such a proceeding which is a violation of this Court's Local Rules and/or the Rules of Professional Conduct adopted by this Court as provided in these Rules.

13.11 Appointment of Counsel

Whenever, at the direction of the Court or upon request of the Grievance Committee, counsel is to be appointed pursuant to these rules to investigate or assist in the investigation of misconduct, to prosecute or assist in the prosecution of disciplinary proceedings, or to assist in the disposition of a reinstatement petition filed by a disciplined attorney, this Court, by a majority vote of the active Judges thereof, may appoint as counsel any active member of the bar of this Court, or may, in its discretion, appoint the disciplinary agency of the highest court of the state wherein the Court sits, or other disciplinary agency having jurisdiction.

13.12 Service of Paper and Other Notices

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the affected attorney at the address shown on the role of attorneys admitted to practice before this Court. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the attorney at the address shown on the role of attorneys admitted to practice before this Court; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or document filed by them in the course of any proceeding.

13.13 Duties of the Clerk

A. Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.

B. Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

C. Whenever it appears that any person who has been convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, this Court shall, within ten days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence address of the disciplined attorney.

D. The Clerk of this Court shall, likewise, promptly notify the National Discipline Bank operated by the American Bar Association of any order imposing public discipline on any attorney admitted to practice before this Court.

LOCAL RULE FOURTEEN

PROBATION

14.1 PROCEDURES REGARDING PREPARATION AND SUBMISSION OF PRESENTENCE INVESTIGATION REPORTS. The following procedures shall apply in all divisions of the court effective on November 1, 1987, for offenses committed after October 31, 1987:

a. Ordinarily, sentencing will occur within 60 calendar days following the defendant's plea of guilty or nolo contendere, or upon being found guilty.

b. Not less than 25 days prior to the date set for sentencing, the probation officer shall provide a copy of the presentence investigation report to the defendant and to counsel for the defendant and the government. Within 10 days thereafter, counsel (or the defendant if acting pro se) shall communicate in writing to the probation officer and to each other any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

c. After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The officer may require counsel for both parties as well as the defendant and/or the case agent to meet with the officer to discuss unresolved factual and legal issues. All counsel shall make

themselves available to the officer for this purpose on short notice regardless of place of residence.

d. No later than 5 days prior to the date of the sentencing hearing the probation office shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. The probation officer shall certify that the contents of the report, including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and the government, that the content of the addendum has been communicated to the defendant and to counsel, and that the addendum fairly states any remaining objections.

e. Except for any objections made under subdivision (b) that has not been resolved, the report of the presentence investigation may be accepted by the court as accurate. The court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact the court may consider any reliable information presented by the probation officer, the defendant or the government.

f. Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Rule 32 of the Federal Rules of Criminal Procedure.

g. The presentence report shall be deemed to have been disclosed (1) when a copy of the report is physically delivered; or

(2) one day after the report's availability for inspection is orally communicated; or (3) three days after a copy of the report or notice of its availability is mailed.

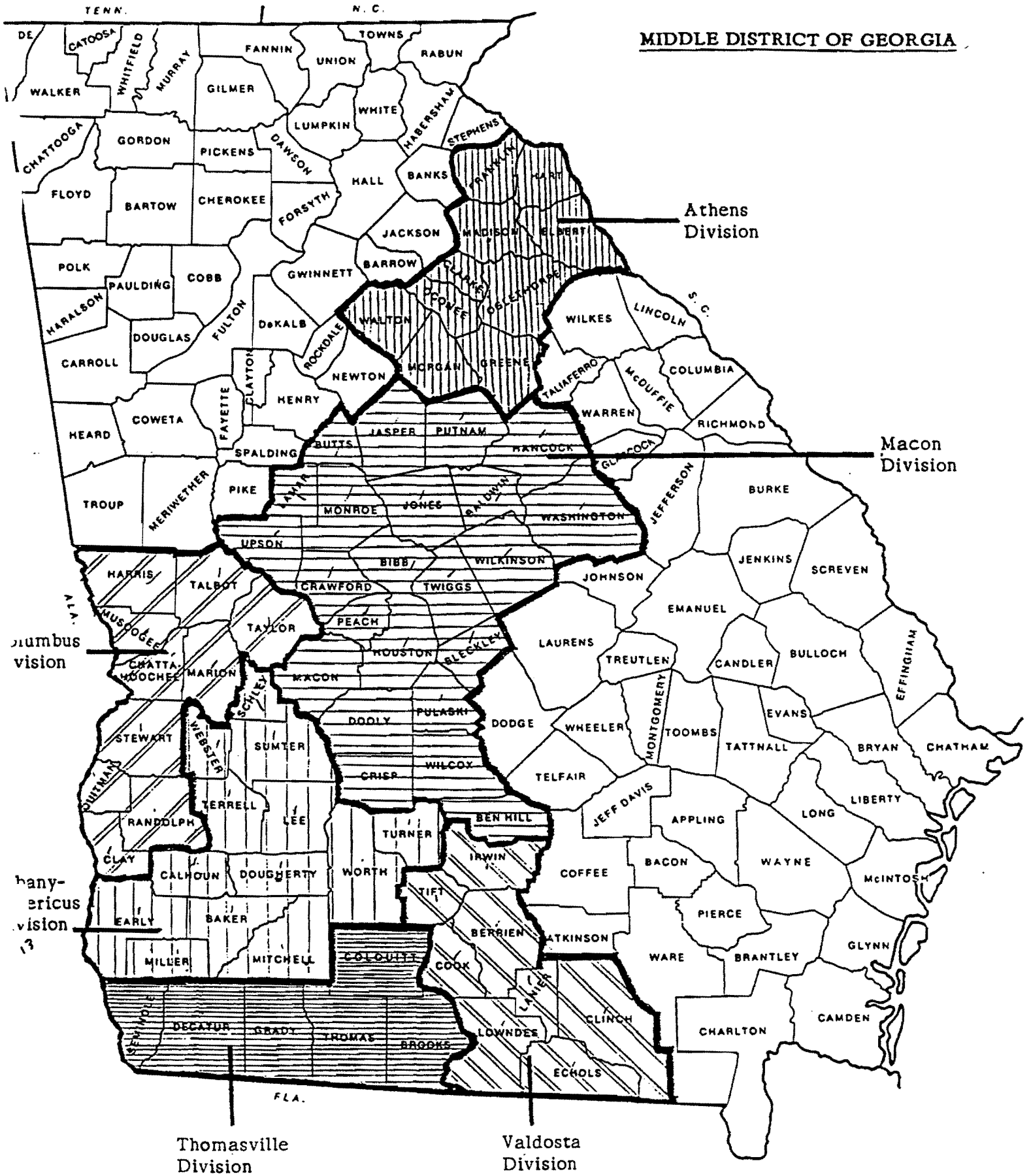
14.2 DISCLOSURE OF PRESENTENCE REPORTS OR PROBATION RECORDS.

a. No person shall otherwise disclose, copy, reproduce, deface, delete from or add to any report within the purview of this rule.

b. No confidential records of the court maintained at the probation office, including presentence reports and probation supervision reports, shall be sought by any applicant except by written petition to the court establishing with particularity the need for specific information believed to be contained in such records. When a demand for disclosure of such information or such records is made by way of subpoena or other judicial process served upon a probation officer of this court, the probation officer may file a petition seeking instruction from the court with respect to the manner in which he should respond to such subpoena or such process.

c. Any party filing an appeal or cross appeal in any criminal case in which it is expected that any issue will be asserted pursuant to 18 U.S.C. § 3742 concerning the sentence imposed by the court shall immediately notify the probation officer who shall then file with the clerk for inclusion in the record in camera a copy of the presentence investigation report.

Appendix C


MIDDLE DISTRICT OF GEORGIA
TENN.
N. C.
S. C.
ALA.
FLA.
DE
CATOOSA
WHITFIELD
MURRAY
WALKER
FANNIN
UNION
TOWNS
RABUN
GILMER
WHITE
HABERSHAM
STEPHENS
LUMPKIN
DAWSON
CHATTOOGA
GORDON
PICKENS
HALL
BANKS
FRANKLIN
HART
FLOYD
BARTOW
CHEROKEE
FORSYTH
JACKSON
MADISON
ELBERT
Athens Division
POLK
PAULDING
COBB
GWINNETT
BARROW
CLARKE
OCONEE
OGLETHORPE
HARALSON
FULTON
DeKALB
ROCKDALE
WALTON
WILKES
LINCOLN
DOUGLAS
CARROLL
CLAYTON
NEWTON
MORGAN
GREENE
TALIAFERRO
McDUFFIE
COLUMBIA
FAYETTE
HENRY
WARREN
RICHMOND
HEARD
COWETA
JASPER
PUTNAM
BUTTS
SPALDING
HANCOCK
GLASCOCK
Macon Division
TROUP
MERIWETHER
PIKE
LAMAR
MONROE
JONES
BALDWIN
WASHINGTON
JEFFERSON
BURKE
UPSON
BIBB
WILKINSON
JOHNSON
JENKINS
SCREVEN
HARRIS
TALBOT
CRAWFORD
TWIGGS
EMANUEL
MUSCOGEE
TAYLOR
PEACH
LAURENS
Columbus Division
CHATTAHOOCHEE
MARION
SCHLEY
MACON
HOUSTON
BLECKLEY
TREUTLEN
CANDLER
BULLOCH
EFFINGHAM
STEWART
WEBSTER
DOOLY
PULASKI
DODGE
WHEELER
MONTGOMERY
TOOMBS
EVANS
TATTNALL
BRYAN
CHATHAM
QUITMAN
SUMTER
CRISP
WILCOX
TELFAIR
TERRELL
LEE
BEN HILL
JEFF DAVIS
APPLING
LIBERTY
LONG
RANDOLPH
TURNER
IRWIN
CLAY
CALHOUN
DOUGHERTY
WORTH
COFFEE
BACON
WAYNE
McINTOSH
TIFT
Albany-Americus Division
EARLY
BAKER
BERRIEN
ATKINSON
PIERCE
MILLER
MITCHELL
COLQUITT
COOK
WARE
BRANTLEY
GLYNN
LANIER
DECATUR
GRADY
THOMAS
BROOKS
LOWNDES
CLINCH
CHARLTON
CAMDEN
ECHOLS
Thomasville Division
Valdosta Division

(70 counties)

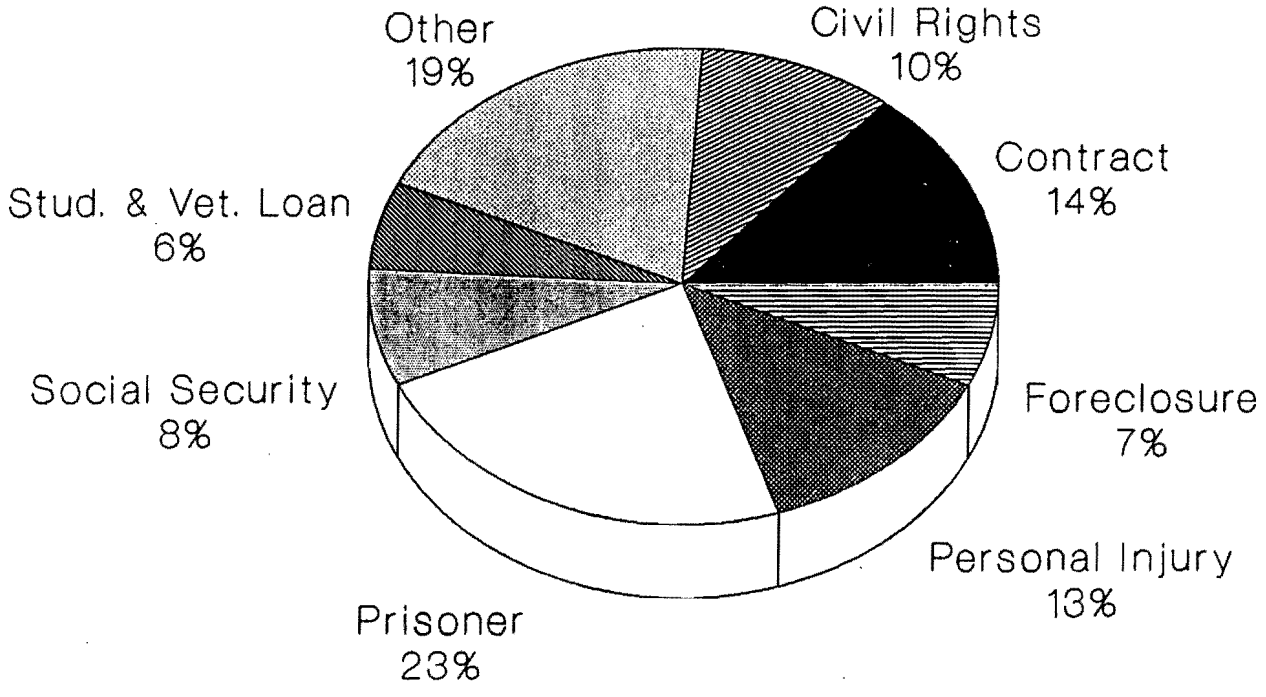
Appendix D

STATISTICAL PROFILE OF CIVIL LITIGATION IN THE MIDDLE DISTRICT OF GEORGIA, 1980 - 1992

STATISTICAL PROFILE OF CIVIL LITIGATION IN THE MIDDLE DISTRICT OF GEORGIA, 1980 - 1992

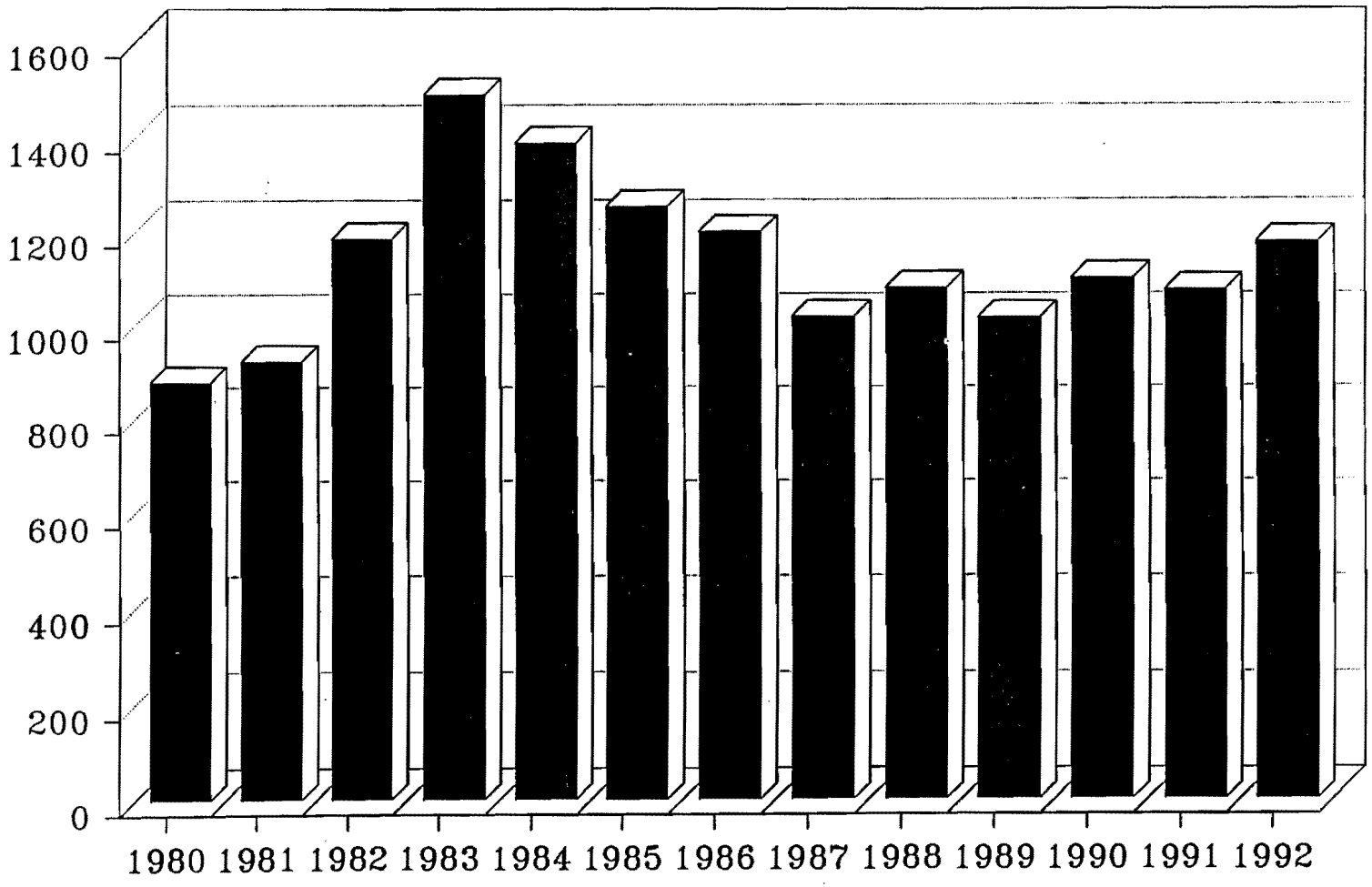
TABLE OF CONTENTS

Distribution of Civil Case Filings
Statistical Years 88-90
Middle District of Georgia



Figures Represent Approx. Percentages

Civil Filings
Middle District of Georgia



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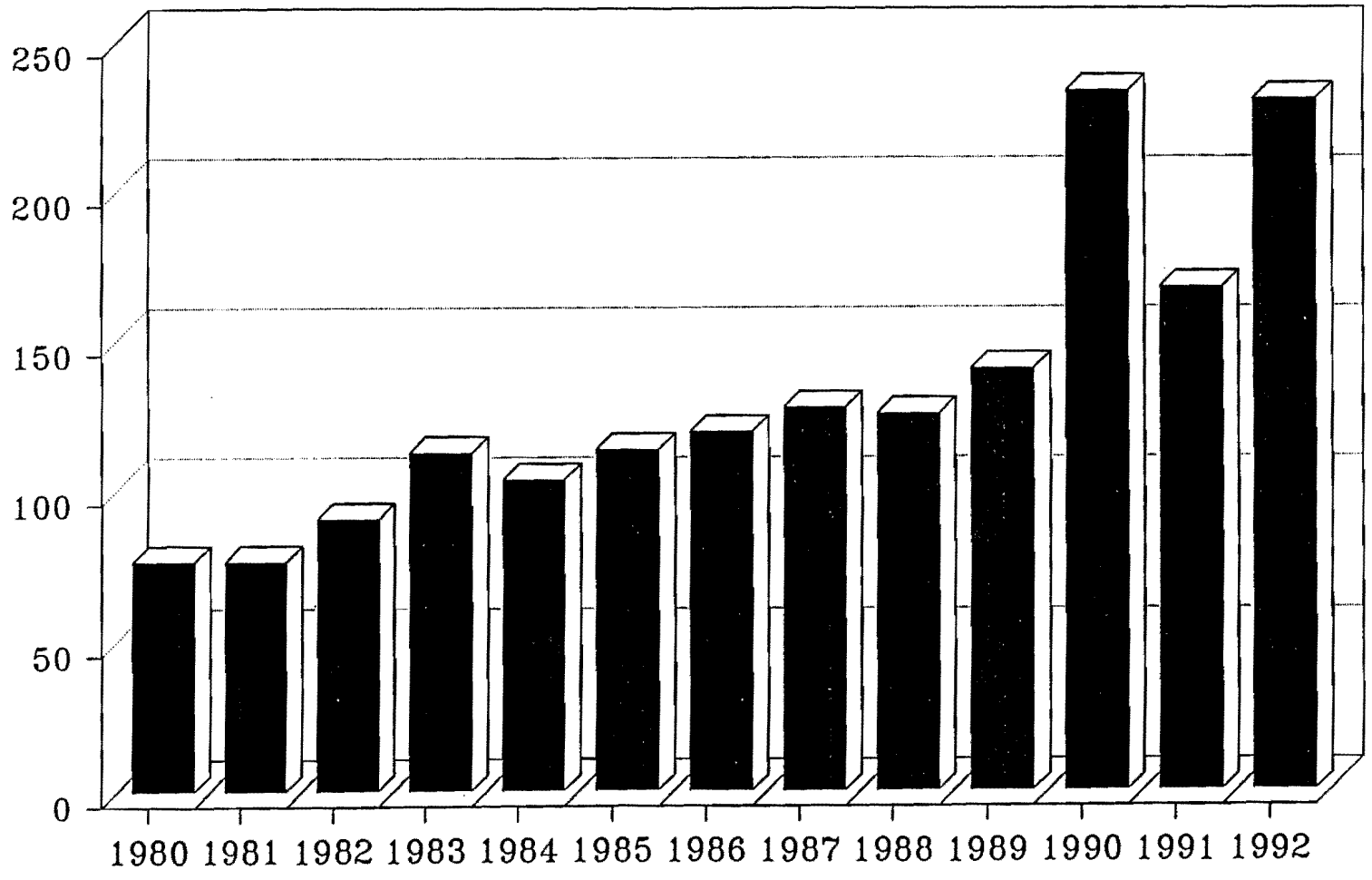
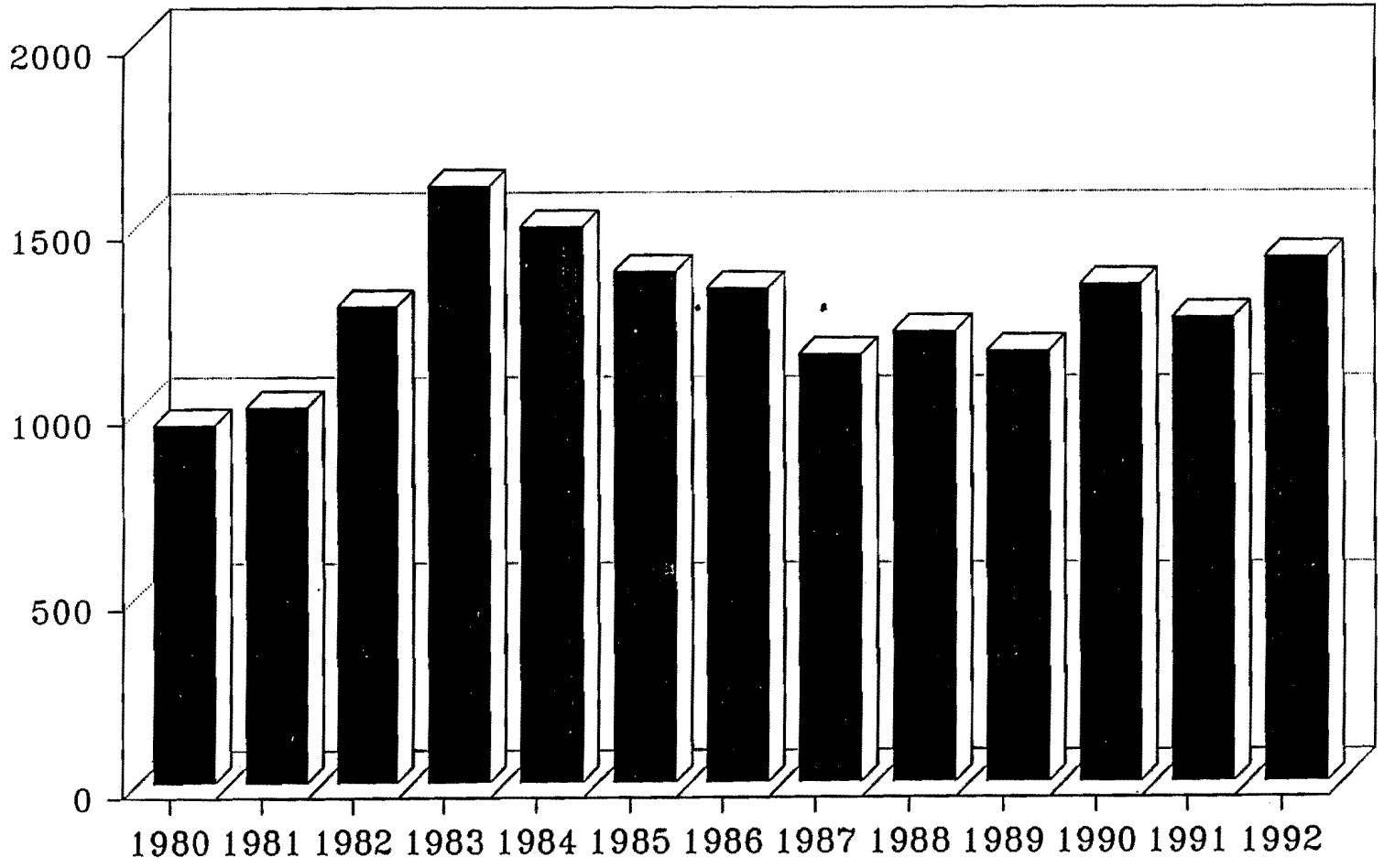
Middle District of Georgia



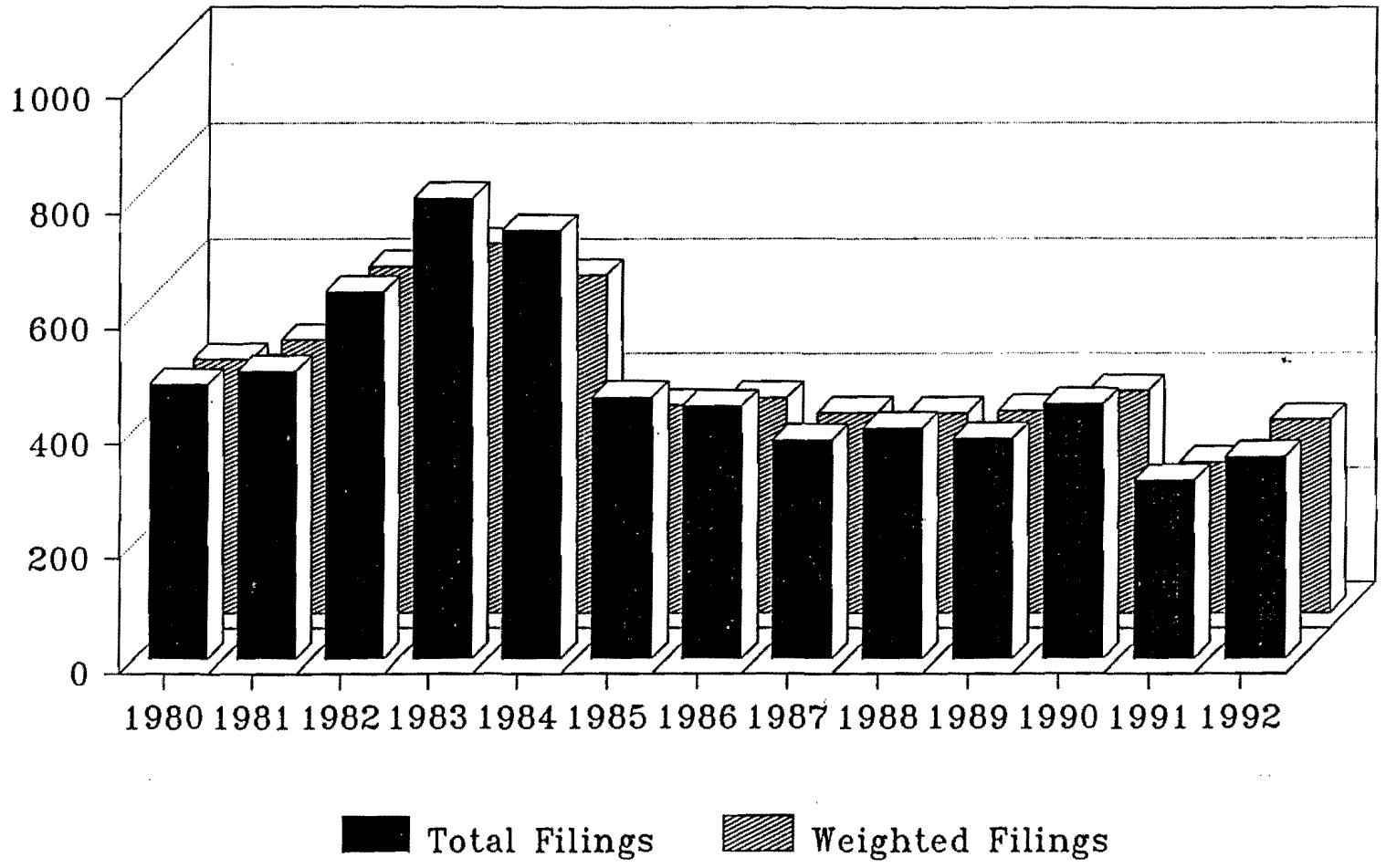
Total Filings

Middle District of Georgia



Total Filings v. Weighted Filings

Per Judgeship, Middle Dist. of Georgia



QUESTIONS FOR LITIGANTS (PLAINTIFFS)

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

A. plaintiff (23 responses)
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	$7,657.50 average	(10 responses)
B.	Attorneys' Expenses (photocopying, postage, travel expenses, etc.)	$1,515.08 average	(6 responses)
C.	Consultants	$165.00 average	(2 responses)
D.	Expert Witnesses	$17.00 average	(2 responses)
E.	Court Reporters	$191.06 average	(2 responses)
F.	Other (please describe)	$792.05 average	(5 responses)
F.	Total Cost of Litigation	$8,364.83 average	(20 responses)

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

$235,962.68

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

		5/23	21.74%	Did Not Respond
A.	hourly rate	3/23	13.04%	
B.	hourly rate with a maximum	1/23	4.35%	
C.	hourly rate with a minimum	1/23	4.35%	
D.	set free	1/23	4.35%	
E.	contingency	10/23	43.48%	
F.	Other - please describe:	2/23	8.69%	

1. I handle this case pro se in forma pauperis. F Lit 8 CR.

2. Contingency to be determined. F Lit 9 CR.

3. None! I did my own litigants or litigations work. F Lit 19 CR.

4. Before I was fired from my part time job in Feb, 1990, I paid my attorney half his fee. He subsequently sought and obtained permission from Superior Court Judge Johnson to quit my case. F Lit 49 CR.

5. United States Attorney's Office represented plaintiff. F Lit 18 C.

V. In your opinion, did this arrangement result in a reasonable fee? (circle one)

		5/23	21.74%	Did Not Respond
A.	yes	15/23	65.22%	
B.	no	1/23	4.35%	
C.	do not know	2/23	8.69%	

Comments:

1. I believe, if others people did their own litigants, and legal work, money would not be a factor. F Lit 19 CR (y).

2. I regarded my attorney's abandonment after taking my hard earned money as a sleazy breach of faith as well as very unethical. F Lit 49 CR (n).

3. Do not have a set fee program, therefore cannot compare set fee to hourly rate used. O Lit. 2 C.

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

		3/23	13.04%	Did Not Respond
A.	Much too high	4/23	17.39%	
B.	Slightly too high	1/23	4.35%	
C.	About right	15/23	65.22%	
D.	Slightly too low			
E.	Much too low			

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

1. The court didn't even allow me to file this case. F Lit 8 CR (c).

2. The costs incurred were with a former attorney. The case was initially filed in October, 1987. F Lit 9 CR (b).

3. The cost of mail's; stamp's and do my own paper work was the only problem in money matter. F Lit 19 CR (c).

4. The court should not have permitted my attorney to abscond with my money leaving me defenseless. The court should not have fined an indigent $780. F Lit 49 CR (a).

5. Unknown. The cost of obtaining copies of my records from the doctors was too high. F Lit 8 T (a).

6. Attorney couldn't help - insurance co. lawyers forced a costly defense. F Lit 35 C (a).

7. Any litigation cost was too high on this case which should not have been in the legal or

court system. It was an obvious no liability/coverage case. O Lit. 2 C.

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

		1/23	4.35%	Did Not Respond
A.	Much too long	6/23	26.09%	
B.	Slightly too long	5/23	21.74%	
C.	About right	10/23	43.48%	
D.	Slightly too short			
E.	Much too short	1/23	4.35%	

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?

1. The case has been sent to Superior Court in Albany and is still pending. It took about 2.5 years before the court first issued a ruling. F Lit 9 CR (a).

2. Well personally, I feel that the Judge Duross Fitzpatrick reliable for not serving justice in a negligence case situation. F Lit 19 CR (a).

3. Instead of destroying state's evidence more attention should have been exerted toward having a speedy trial. F Lit 49 CR (a).

4. Unknown; but it took a long time to get a response from the defendant to our settlement demand. F Lit 8 T (b).

5. Don't know. F Lit 35 C (b).

6. They couldn't help - delay caused by ins. co. trying to beat us by money. F Lit 35 C (b).

7. Tracked the case more closely and made an effort to accelerate litigation. F Lit 38 C (a).

8. Set trial date sooner. O Lit. 48 C (b).

9. The plaintiff's attorney should never have pursued litigation on this case - he went the extra step which prolonged resolution. O Lit. 2 C.

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

		2/23	8.70%	Did Not Respond
A.	No	16/23	69.57%	
B.	Yes	5/23	21.76%	

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

1. Base on both my complaints and Mrs. Cox reverse discrimination entrapment and rejection of medical assistance, the case was dismissed. F Lit 19 CR.

2. An out court settlement was agreed upon by the parties. F Lit 38 C.

3. Attorneys for plaintiff and defendant came to an agreement after discussing offer with plaintiff. E 40 Civ.

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

1. I feel that I've lost a total of 6 years of my time involved in the courts and on postage and telephone calls approximately $2,000. Also, $3,000 on typing of briefs, interrogatories, production of documents and other expenses I incurred over the past 6 years in the federal courts. F Lit 8 CR.

2. I first filed the law suit in Oct., 1987. To date there has not been any discovery or depositions taken. I have suffered a great deal during this time. I feel that the Court took much too long in making its ruling. I am not a wealthy person, therefore I'm very fortunate to have my current attorney working for me on a contingency basis. If not for him, I would have been forced to abandon my suit because of the time and costs involved. F Lit 9 CR.

3. Have federal funds for client who qualify. Base on employment, income, advantage and disadvantage - racial ground. Sure ethic factors concerning discrimination by govt. dept. and state govt.. Also if person have not transportation of expense pertaining to his or her case load - available funds. F Lit 19 CR.

4. This was not exactly my debut. I have been in federal court before. I am an unemployed indigent black man. No money, no justice. In America, money talks. F Lit 49 CR.

5. Plaintiff settled out of court because of other business matters at hand. E 40 Civ.

6. More ADR and mediation should be used on cases such as this to clear up our back-logged court system. O Lit. 2 C.

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

QUESTIONS FOR LITIGANTS (DEFENDANTS)

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

A. plaintiff
B. defendant (29 Responses)

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	$14,359.95 average	(17 responses)
B.	Attorneys' Expenses (photocopying, postage, travel expenses, etc.)	$ 1,084.29 average	(13 responses)
C.	Consultants	$0.00 average	(0 responses)
D.	Expert Witnesses	$ 1,062.50 average	(1 responses)
E.	Court Reporters	$ 910.13 average	(4 responses)
F.	Other (please describe)	$ 167.24 average	(3 responses)
F.	Total Cost of Litigation	$14,933.15 average	(20 responses)

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

$ 369,880.00

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

A.	hourly rate	22/29	75.86%
B.	hourly rate with a maximum	0/29	
C.	hourly rate with a minimum	0/29	
D.	set fee	1/29	3.45%
E.	contingency	0/29	
F.	Other - please describe:	6/29	

1. City attorney for the consolidated court represents county sheriff and jail warden and other officials (as well as the government) without charge. E Lit. 16 Cr (f).

2. Postal attorney liaison with AUSA. F Lit 9 T.

3. Provided by the Dept. of Law, State of Ga. O Lit. 6 Cr.

4. The U.S. Attorney's office represented defendant agency along with agency counsel. O Lit. 47 Cr (f).

5. Federal agency represented by Dept. of Justice, U.S. Attorney bears litigation costs, experts, etc. O Lit. 41 T (f).

V. In your opinion, did this arrangement result in a reasonable fee? (circle one)

A.	yes	20/29	68.97%
B.	no	2/29	6.89%
C.	do not know	7/29	24.14%

Comments:

1. Cost was somewhat high for amount at issue (realistic exposure) in case. E Lit 40 C.

2. Wal-Mart cases in Federal Court average approximately $12,000 - $15,000. E Lit. 29 T.

3. Probably slightly too high. F Lit 13 T (did not know).

4. For me yes, for taxpayers? O Lit. 6 Cr.

5. No fee involved. O Lit 47 Cr.

6. Due to the complexity of the issue, several attorneys with special knowledge had to be retained. 0 Lit 15 C.

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

		3/29	10.34%	Did Not Respond
A.	Much too high	3/29	10.34%	
B.	Slightly too high	9/29	31.03%	
C.	About right	13/29	44.83%	
D.	Slightly too low	1/29	3.45%	
E.	Much too low			

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

1. Trial date within one year. F Lit 37 CR (b).

2. Set firm trial date early in case, e.g. Jan. answer - set trial for one month after discovery closes - July 15. F Lit 13 T (b).

3. Our costs were high, in my opinion, due to uncooperative nature of plaintiff. Fortunately, she turned case over to another attorney and the case was resolved. F Lit 17 T (a).

4. Case was frivolous. F Lit 38 C (b).

5. Avoid duplication of attorney time. More efficient research and limit to key legal issues. Earlier depositions and more concentrated (P's dep. took two sessions). Settlement

should have been reached for same amount earlier in case. E Lit. 40 C (b).

6. As underinsured motorist carrier we were compelled to extend dollars on defense even though the plaintiff (our insured) settled the case within the limits of the defendants liability insurance carrier. E Lit. 47 T (c).

7. The courts should be more conservative concerning planning discovery requests; provide stricter sanctions for frivolous lawsuits. E Lit. 29 T (b).

8. Any cost was too high for having to respond to a frivolous lawsuit. The judge should have ordered plaintiff to pay our attorney fees in Federal Court when they withdrew. O Lit. 6 Cr (a).

9. All appropriate attempts to reduce costs were made. O Lit. 47 Cr (c).

10. AUSA proposed a motion for summary judgment which was refused. If dispositive, this would have expedited conclusion of the case. O Lit. 41 T (b).

11. Reduce discovery. O Lit. 23 C (b).

12. The judge should have sent this case to arbitration. The injunction should never have been granted. O Lit. 15 C (a).

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

		1/29	3.45%	Did Not Respond
A.	Much too long	9/29	31.03%	
B.	Slightly too long	4/29	13.79%	
C.	About right	14/29	48.28%	
D.	Slightly too short			
E.	Much too short.	1/29	3.45%	

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?

1. Court could have filed more quickly. Filed 5/90. Ruled 6/91. F Lit 38 CR (a).

2. Trial date within one year. F Lit 37 CR (a).

3. The problem was not with our attorney so I do not know what could have been done to speed up process. F Lit 17 T (a).

4. Set it for trial. F Lit 38 C (a).

5. Early involvement of court in merits of case may have dispelled plaintiff's unrealistic expectations. E Lit. 40 c (b).

6. Plaintiff forced to dismiss initial suit to refile in proper venue. E Lit. 47 T (a).

7. Case is still pending for me as I am still subject to another suit in a different court. Time allowed for discovery was too long. O Lit. 6 Cr (a).

8. Never let this trash be filed in the first place. O Lit. 11 Cr (c).

9. None, defendants made reasonable attempts to resolve the case quickly. Lit. 47 Cr (b).

10. Entertain summary judgment motion . O Lit. 41 T (a).

11. The Federal Court system should have an immediate appeal. You have made a local federal judge "God". When he is wrong, as in the present case, imposing such a hardship on innocent people is wrong. To require such a long wait for appeal, and then to have the Court of Appeals worry about stepping on Owen's toe, is a travesty. O Lit. 15 c (a).

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

		1/29	3.45%	Did Not Respond
A.	No	27/29	93.10%	
B.	Yes	1/29	3.45%	

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

1. Plaintiff's counsel refused good faith settlement, lost at trial. F Lit 37 CR.

2. Owens granted an injunction when arbitration was called for in the plaintiff's contract. O Lit. 15 C.

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

1. Need to force parties (and their lawyers) to make realistic evaluations of risk of litigation at very early stage. F Lit 37 CR.

2. AUSA Randolph Aderhold did an excellent job keeping costs and time within reasonable limits. F Lit 9 T.

3. Too much time on discovery, too long for case to go to trial, damage expectation for plaintiff's too high based on farfetched theories that create risk only because jury creates "role of dice", risk in any case going to the jury, lack of effective use by the court of summary procedures to dispose of some or all of claims in case. E Lit. 40 C.

4. Judge's should grant summary judgment where the facts are not in dispute and law is clear. Also should limit discovery and not allow broad and unnecessary discovery to occur. E Lit. 1 C.

5. Federal Court should be more liberal concerning motions for summary judgment. E Lit. 29 T.

6. Lawyers fees are much too high - U.S. has 75% of the World's lawyers - why - they have a self protection society. This is a disgrace. O Lit. 28 Civ.

7. The length of time greatly limited the availability of potential witnesses as well as hampered the accuracy of recall for witnesses who had no reason to make written notes of events, dates, etc. Therefore, availability of thorough, accurate information to make effective, fair decisions is missing. O Lit. 6 Cr.

8. While the time and cost of litigation is often onerous, it would be just as bad to force federal agencies into binding arbitration. Arbitration normally results in compromise settlements. Even partial success for plaintiffs with frivolous cases breeds more cases. O Lit. 47 Cr.

9. My case involved the granting of an injunction which effectively stopped my livelihood. Once the injunction was granted in the District Court there seemed to be no way to force an arbitration or an expedited appeal to the 11th circuit. I would not have been anxious to settle had I found a speedier method to receive a hearing. It seems odd to a layman that an injunction can be granted by the District Court in a very short order. (1 week) But can take several months to be appealed or remanded to arbitration. Certainly there is a better way. 0 Lit. 15 C.

10. The system over which the controls are in the hands of the judges seems to forget that

people's lives and careers are at stake. My life and livelihood was held hostage with the full agreement and complicity of the federal bench. Only when we succumbed to legal blackmail, again with the complicity of the bench, were we freed. How can you hope to create justice from callous injustice? Either require arbitration when called for by facts or completely delete it from the law. Then, have the guts to require the federal judge to adhere to fairness, or delete him too. 0 Lit. 15 C.

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

Appendix F

CIVIL & CRIMINAL FILINGS BY DIVISION PER YEAR

		1985	1986	1987	1988	1989	1990
ALBANY/ AMERICUS	Civil	263	213	234	233	175	165
	Criminal	17	37	24	23	41	28
	Total	280	250	258	256	216	193
ATHENS	Civil	131	96	102	94	99	103
	Criminal	34	15	18	10	15	11
	Total	165	111	120	104	114	114
COLUMBUS	Civil	224	188	170	161	143	130
	Criminal	26	23	50	28	31	40
	Total	250	211	220	189	174	170
MACON	Civil	446	413	379	389	420	397
	Criminal	53	39	39	37	102	84
	Total	519	452	418	426	522	481
THOMASVILLE	Civil	92	117	73	61	84	143
	Criminal	9	15	10	9	12	11
	Total	101	132	83	70	96	154
VALDOSTA	Civil	123	105	79	114	130	99
	Criminal	17	16	25	20	35	25
	Total	140	121	104	134	165	124
TOTALS	Civil	1299	1132	1037	1052	1051	1037
	Criminal	156	145	166	127	236	199
GRAND TOTAL		1455	1277	1203	1179	1287	1236

15. An additional delay was necessary due to an illness on the part of plaintiff's counsel. F Att 17 T.

16. Logistical problems in scheduling several out of state depositions. F Att 49 T.

17. In my opinion the case didn't take longer than I believe reasonable. F Att 40 T.

18. The case was disposed of timely and was handled expeditiously by the court. F Att 12 Con.

19. It took approximately one and a half months to serve defendant because plaintiff did not supply accurate information so the marshall could serve defendant. F Att 18 Con.

20. Insurance Co. lawyers are making whore of the Rules of Civil Procedure. F Att 35 Con.

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?

1. Delay was not a problem. In the employment discrimination area a sole practitioner should have 5-6 active cases - hundreds of interviews and one trial every eighteen months. One case can take twelve weeks of 60 hour weeks to resolve. So eighteen months is not unusual. It is difficult to finish depositions in six months because three of those six months may involve one case. E Att 10 CR.

2. Same answer as above. E Att 36 CR.

3. I've only had a very few cases filed in Federal District Court, all of which I have settled prior to trial. E Att 12 T.

4. Promptly fill at least one additional judgeship for the Middle District to minimize the necessity for circuit riding by the sitting judges. Consider referral of civil disputes involving less than $100,000 to non-binding arbitration/mediation. E Att 19 T.

5. Mandatory and prompt mediation/arbitration. My case was a straight forward wreck case. Defense and I knew where we would end up on the front end of the case, but the usual depos, etc. had to be taken - prompt and perhaps "hands on" court mediation/arbitration would have made this a three month case. E Att 26 T.

6. Delay is not a problem. E Att 29 T.

7. Delay is not a problem in the U.S. District Court, Middle District of Georgia, Columbus Division. Judge Elliott moves his case load very and efficiently. E Att 34 T.

8. Same answer as in E Att 19 T. E Att 42 T.

9. Delay not a problem. E Att 47 T.

10. Delay is not a problem in this division (Columbus div.). In my opinion, the approach taken by judge Elliott allows the lawyers to prepare a case for trial on a reasonable time table. He does not impose artificial time restraints that are meaningless in terms of what is realistically needed for a given case. In my experience, cases always proceed expeditiously through his court because he does not allow unreasonable delay - if either side wants to try the case, he will put it down for trial if there has been a reasonable time to prepare. The lawyers know that they cannot delay because the case will be tried. E Att 1 C.

11. No delays. E Att 9 C.

12. I do not believe that delay is a problem in this district; although, it is a sever problem in many other districts. E Att 29 C.

13. Delay was not a problem in this case because the lawyers worked well together sharing legal theories that would be put forward in dispositive motions and from those discussions settling the case. On the other hand, I have a case pending in the Middle District. Summary judgment has been pending for over two years. E Att 40 C.

14. I have not experienced delay as a problem. E Att 43 C.

15. Court should weed out frivolous cases such as this. Plaintiff's counsel acknowledged the weakness of his case but said his client wanted him to file suit in hopes of prompting a settlement offer. Ultimately, plaintiff never bothered to respond to discovery, leading to order to compel and then to dismissal. O Att 3 CR.

16. Cases move quickly in the Middle District. I do not believe delay is a problem. O Att 1 CR.

17. No problem with delay in this district. O Att 11 CR.

18. Not a problem to my knowledge. O Att 12 CR.

19. Delay is not generally a problem in this district in cases represented by serious lawyers. O Att 22 CR.

20. Adding a fourth judgeship which is in the process of being accomplished at this date. In the area of civil rights, perhaps additional law clerks or a specific team of clerks who primarily address this area for all of the District Judges. This might expedite rulings on motions and aid the progress of cases through the courts. O Att 35 CR.

21. Under the circumstances of this case, I do not feel there was unreasonable delay. Ms. Mitchell originally proceeded pro se and I was appointed after the suit was initiated. A discovery order was executed and followed. O Att 47 CR.

22. First and most importantly, this case was frivolous. Plaintiff should never have been allowed to file in forma pauperis. More screening should take place in the future. This Plaintiff was allowed to file for free, was provided appointed counsel, and has now on appeal been allowed to have a transcript of the trial provided at government expense. All of this despite the

fact that she has lost at every level of her complaint of unemployment discrimination. Cases like this prevent those cases which do have merit from being adjudicated in a timely fashion. O Att 47 CR.

23. Delay is not a problem U.S.D.C., Middle District, Valdosta Division. O Att 48 CR.

24. This case of mine is not really appropriate for your purposes. Defense counsel had it removed from Crisp Superior Court to Federal Court, I filed a motion to remand and the court ruled that it should be remanded to Crisp County. Litigation continues, etc... My client did not even know of these proceedings. Therefore I did not send the questionnaire in to her. In other cases I have felt that the court's management of the case load was adequate. O Att 15 T.

25. There are no delays in this district except those requested or caused by counsel for the parties. Case management here is very effective. O Att 22 T.

26. Delay is no problem in this division (Valdosta). O Att 37 T.

27. Delay is not a problem in this district. O Att 41 T.

28. No problem. O Att 48 T.

29. Not normally a problem; however, in this case, court made quick TRO ruling, law changed and we could not get quick review of earlier ruling. O Att 15 C.

30. I have never experienced a delay in this district. O Att 15 C.

31. Not a problem in my practice. O Att 28 C.

32. Not a problem with Judge Owens. O Att 47 C.

33. None. O Att 48 C.

34. The delay in obtaining rulings on motions is tremendous. Also, the present system of scheduling conferences is actually adding to delay. The parties are asked to provide detailed discovery information before they have the information. If we were allowed to file interrogatories and then schedule discovery it would speed things up. Finally, amending the FRCP to allow service of requests for production on 3rd parties could save a great deal of deposition time. F Att 46 Con.

35. The courts use of discovery orders helps tremendously. F Att 18 T.

36. Face to face conference with court within 4 months of suit. F Att 13 Civ.

37. Cases move faster in the Middle District than in the Northern District, except when motions for summary judgement are filed before Judge Fitzpatrick -- he can take a long time to rule. F Att 18 Civ.

38. The most obvious problem in all districts is the lack of judges and the preferences

which must be given to criminal cases, and as noted below, the abuse of discovery. F Att 3 Civ; 4 Con.

39. I believe that the new judgeship will help. F Att 38 Civ. F Att 37 Civ.

40. Time for ruling on motions, such as motions to dismiss and motions for summary judgment can be excessive in some cases. F Att 50 Civ; 34 Con.

41. My only suggestion would be mandatory binding arbitration for certain classes of cases. In particular, where the only controversy concerns the amount of damages to be awarded, arbitration should be mandatory. F Att 14 Con.

42. If the court would rule more promptly on motions it would help. The initial scheduling order is not effective. The scheduling order of the Northern District is much more effective. In product liability cases, a status conference should be held at 12 months. F Att 49 T.

43. I think that periodic conference calls to discuss status of cases and to attempt to narrow issues would be extremely helpful. I think court rule requiring permission to file summary judgment motions should be abolished. F Att 49 T.

44. That in order to facilitate a more prompt ruling on Motions, that a motion day be held int he various cities in the district and that rulings be made within a week of said hearings on the Motions. F Att 17 T.

C. COSTS OF LITIGATION IN THIS CASE

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

$567,539 (average of 92 responses)

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

a.	Hourly rate.	53/124	(42.74%)
b.	Hourly rate with a maximum.		
c.	Hourly rate with a minimum.		
d.	Set fee.	1/124	(0.8%)
e.	Contingency.	33/124	(26.61%)
f.	Other. (please describe)	13/124	(10.48%)
	Didn't Respond	24/124	(19.35%)

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

a.	much too high.	5/124	(4.03%)
b.	slightly too high.	13/124	(10.48%)
c.	about right.	75/124	(60.48%)
d.	slightly too low.	5/124	(4.03%)
e.	much too low.	1/124	(.81%)
f.	not applicable	25/124	(20.16%)

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

1. Unfortunately, since all witnesses do not tell the truth, the search for additional witnesses/evidence is time consuming and costly. The ability of the government to potentially absorb numerous expert witness fees can result in a plaintiff having to incur substantial costs in response and discovery. E Att 19 T (b).

2. Several attorneys who responded that their fees were about right complained about the high cost of court reporters. E Att 12 T, 9, 43 C.

3. And one attorney wanted to use informal depositions. 36 C.

4. Weed out frivolous cases early on, so that meritorious cases can be reached earlier. O Att 3 CR (a).

5. Cost and fees should have been assessed against plaintiff after she sought to voluntarily dismiss upon receiving defendants' motion for summary judgment. O Att 6 CR (a).

6. Cut out frivolous cases where plaintiffs can haul defendants into court and require them to expend money and precious time. O Att 47 CR (a).

7. I do not know that fees are too high in this district composed of largely rural and middle size towns. I have practiced for 16.5 years and still charge $85.00 per hour. It is my impression that many of my contemporaries charge likewise. O Att 35 CR (b).

8. Cut down on discovery. O Att 23 C (b).

9. Too high in this case due to jurisdictional argument engaged in. O Att 28 C (b).

10. More informal discovery procedures - i.e. making witnesses available without deposition, etc. O Att 22 T (c).

11. Set firm trial dates earlier; subject to change only under unexpected conditions. F Att 13 T.

12. Costs are not the problem, paperwork is the problem. Just let us practice law and we can dispose of cases. F Att 46 Con.

13. A time limit on depositions or 6 hours without the court's permission or agreement or parties. F Att 8 T.

14. Limitations should be placed on discovery into "prior similar acts evidence." F Att 18 Civ.

15. Discovery reform. F Att 3 Civ.

16. Taking of depositions can be excessive. Mandatory pre-deposition joint interviews for non-party witnesses might help. F Att 50 Civ; F Att 35 Con.

17. Court ordered mediation at early juncture. Face to face conference with court within 4 months of filing lawsuit. F Att 37 Civ.

. . . . . .

In which Division of the District was this case litigated?

_____

Thank you for your time and comments.

Please Return by _____, 1991 in the Enclosed Envelope.

f.	Backlog of cases on court's calendar.	10/67	(14.92%)
g.	Other. (please specify)	21/67	(31.34%)

1. Plaintiff's claims settled 8-89 and dismissal motion sent to defendant's counsel. Cross-claims remain between defendants. [Duration of the case improperly reported] E Att 29 C.

2. This case was delayed because the defendant filed a bankruptcy action. The case ultimately was resolved in the Bankruptcy Court. For this reason, case was unusual and does not fit the normal pattern. It was proceeding satisfactorily prior to bankruptcy. E Att. 29 C.

3. With set times for trial terms, you manage cases to fit that schedule - not the most expeditious schedule E Att 26 T.

4. Pro se litigant letting case sit. Government has no interest in pressing. E Att 40 CR.

5. Case was disposed of in a reasonable period of time in view of the parties and case loads of attorneys for parties. E Att 34 T.

6. Plaintiff failed to respond to written discovery request, ultimately resulting in dismissal. O Att 3 CR.

7. This case should not have been filed in federal court. No federal cause of action. O Att 6 CR.

8. Court appointed counsel to plaintiff after defendant filed answer, which led to longer period of discovery than otherwise might have been. O Att 47 CR.

9. The issue of qualified immunity was hotly contested. An unfavorable order by the District Court was appealed to the Eleventh Circuit. This, along with the fact that the court's criminal calendar backlog interfered with the case getting to trial were the reasons for delay. O Att 35 CR.

10. Plaintiff attended college out of state. Plaintiff's attorney had several conflicts. O Att 48 T.

11. This case was remanded to Crisp Superior Court. It is still pending there. Trial is expected in the Spring of 1992. O Att 22 T.

12. Seven months between filing of complaint and disposition was good in this case. O Att 13 C.

13. The parties settled their dispute. O Att 15 C.

14. Although the black man is free to die in Vietnam, Korea and Desert Storm for the Constitution, few if any Blacks really believe that we have Constitutional protection. F Att 49 Civ.

QUESTIONS FOR ATTORNEYS

A. MANAGEMENT OF THIS LITIGATION [Q #] [*Category of Case*]

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; some 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	8/124	6.45%
b.	High	24/124	19.4%
c.	Moderate	40/124	32.3%
d.	Low	13/124	10.5%
e.	Minimal	17/124	13.7%
f.	None	2/124	1.6%
g.	I'm not sure	5/124	4.0%
	Did Not Answer	15/124	12.1%

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	Did Not Respond
a. Hold pretrial activities to a firm schedule.	51/124 41.13%	21/124 16.94%	5/124 4.03%	34/124 27.42%	13/24 10.48%
b. Set and enforce time limits on allowable discovery.	51/124 41.13%	23/124 18.55%	6/124 4.84%	29/124 23.39%	15/124 12.10%
c. Narrow issues through conferences or other methods.	43/124 34.68%	31/124 25.00%	2/124 1.61%	32/124 25.81%	16/124 12.90%
d. Rule promptly on pretrial motions.	45/124 36.29%	14/124 11.29%	4/124 3.23%	49/124 39.52%	12/124 9.68%
e. Refer the case to alternative dispute resolution, such as mediation or arbitration.	4/124 4.03%	41/124 33.06%	1/124 0.81%	62/124 50.00%	15/124 12.10%
f. Set an early and firm trial date.	23/124 18.55%	28/124 22.58%	4/124 3.23%	53/124 42.74%	16/124 12.90%
g. Conduct or facilitate settlement discussions.	23/124 18.55%	40/124 32.26%	1/124 0.81%	44/124 35.48%	16/124 12.90%

	Was Taken	Was Not Taken	Not Sure	Not Applicable	Did Not Respond
h. Exert firm control over trial.	23/124 18.55%	6/124 4.84%	0/124 0.00%	78/124 62.90%	17/124 13.71%

i. Other (please specify):

1. Frivolous case government not interested in pressing. E Att 40 CR.

2. All that was necessary was the prompt ruling on the motion to dismiss. E Att 16 CR.

3. This lawsuit was settled so quickly that there was no time for the court to initiate any case management actions. E Att 11 T.

4. I represented an excess Insurer for defendants. Case was settled by primary carrier without much pre-trial procedure. There was no pre-trial or trial. E Att 47 T.

5. Case settled prior to pre-trial conference after discovery. E Att 9 C.

6. Case was dismissed for plaintiff's failure to prosecute. E Att 24 C.

7. This case was delayed because the defendant filed a bankruptcy action. The case ultimately was resolved in the Bankruptcy Court. For this reason, case was unusual and does not fit the normal pattern. It was proceeding satisfactorily prior to bankruptcy. E Att 29 C.

8. The plaintiff was deposed in this case and thereafter settlement negotiations ensued resulting in a settled resolution of this matter. No court involvement was ever required. E Att 40 C.

9. This was an unusual case. It was discovered, after initial discovery, that the named plaintiff was dead at the time the case was filed. The defendant moved to dismiss because there was no case. This motion was granted after the plaintiff filed a motion to substitute another plaintiff. O Att 48 CR.

10. In this particular case, the court managed the case well. An appeal slowed down the process. Subsequently heavy criminal calendars placed civil litigation back by months. This was through no fault of the court or counsel. O Att 35 CR.

11. The judge raised jurisdictional issues before the defendant's answer was filed. O Att 22 CR.

12. Case dismissed on motion of defendants. O Att 22 CR.

13. Case was dismissed by court, upon motion of defendant, for failure of plaintiff to respond to discovery requests. O Att 3 CR.

14. F - Client was pro se until I was appointed. This caused some delay. O Att 47 CR.

15. Disposed by summary judgment O Att 2 C.

16. This was an interpleader of insurance proceeds. Defendants settled shortly after answers were filed. O Att 11 C.

17. This civil action was subject to binding arbitration by agreement. O Att 15 C.

18. Conduct prompt hearings or give prompt rulings on matters which were filed. O Att 15 C.

19. Note: Jurisdictional questions brought this case out of regular time limits. Otherwise, to that point, the limits were enforced. O Att 28 C.

20. This was frivolous pro se case in which dispositive motions were filed early and no discovery was undertaken. F Att 49 Civ.

21. Disposed by Summary Judgment. F Att 2T.

22. Case was voluntarily dismissed by plaintiff in response to Rule 11 challenge. F Att 5 T.

23. The biggest time problem in this case was the Court's lengthily delay from the time of filing the motion to the ruling on the motion for Summary Judgment. F Att 17 T.

24. The case had a motion for summary judgment pending nearly 2 years. F Att 49 T.

25. My client, the Irvin County Hospital was a co-defendant in the beginning of this case. After discovery which revealed no insurance and no liability, the plaintiff dismissed her action against the hospital. I have no complaints or criticisms regarding any of the injuries you seek and everything was most satisfactory to me. F Att 40 T.

26. Case handled entirely on TRO basis then settled. Court's decisive action instrumental in outcome. F Att 12 Con.

27. This was an action seeking temporary and permanent injunctions. The matter was heard promptly by the Court and Judge Fitzpatrick ruled on the matter without delay. Judge Fitzpatrick was very knowledgeable of the issues and rendered a very reasonable decision. F Att 12 Con.

28. This case was handled properly and expeditiously. F Att 14 Con.

29. This case was settled after routine discovery and settlement negotiations. Court involvement was minimal. F Att 45 Con.

30. This case was settled after an answer was filed. Thus, the only action taken by the court was to sign the order of dismissal. F Att 48 Con.

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. [See Table Below]

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

c. I don't recall the duration of this case for my client. [See Table Below]

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? _____ Months

[The following table is based on the attorney's responses to questions 3 and 4]

TIMELINESS OF LITIGATION IN THIS CASE								
OWENS			ELLIOTT			FITZPATRICK		
Too Long	*Too Short*	*About Right*	*Too Long*	*Too Short*	*About Right*	*Too Long*	*Too Short*	*About Right*
10	2	22	7	1	22	22	2	24
29.41%	5.88%	64.71%	23.33%	3.33%	73.33%	45.83%	4.17%	50.0%

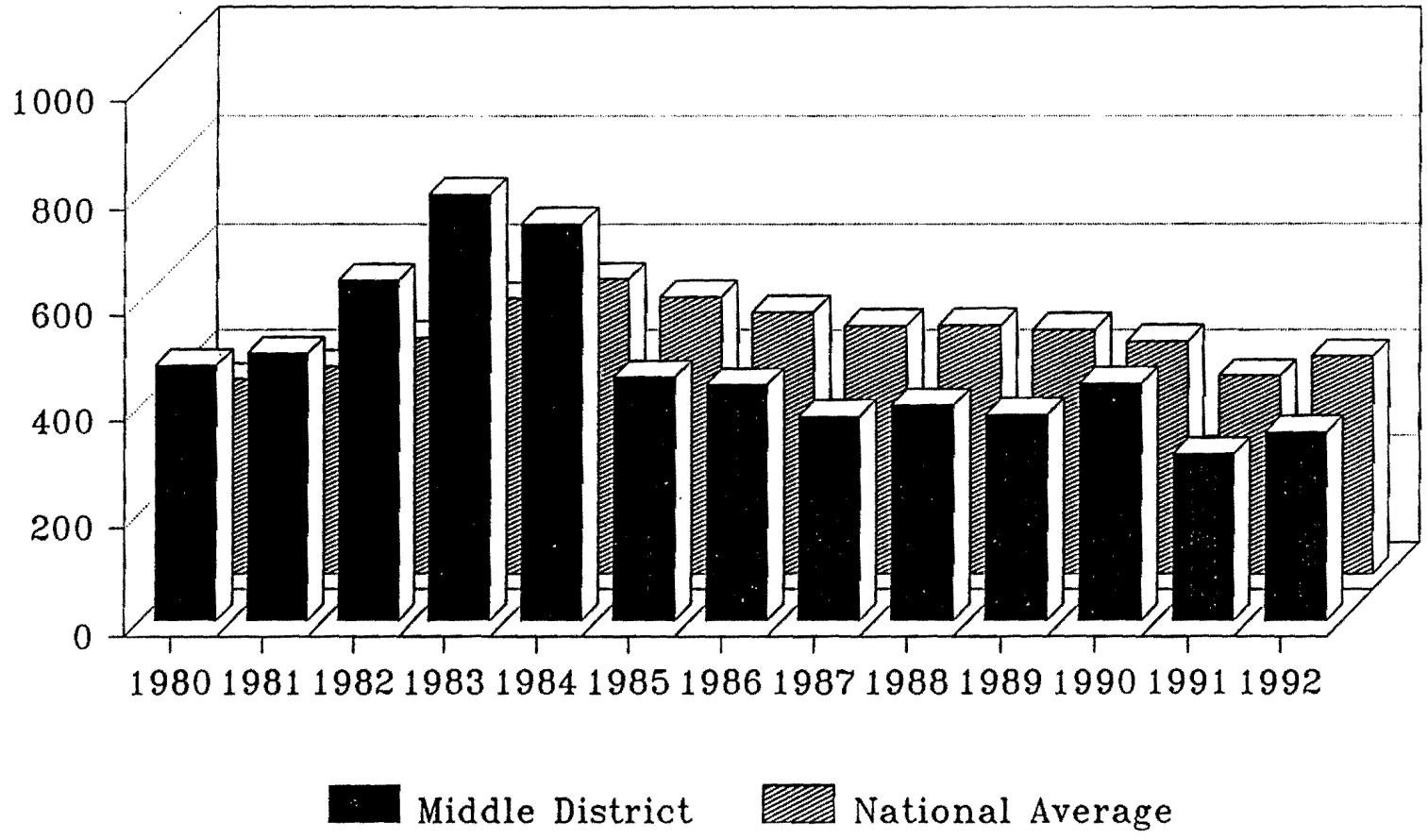
SUMMARY		
For All Judges in the Middle District of Georgia		
Too Long	*Too Short*	*About Right*
39	*5*	*68*
34.82%	*4.46%*	*60.71%*

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

a.	Excessive case management by the court.	1/67	(1.49%)
b.	Inadequate case management by the court.	3/67	(4.48%)
c.	Dilatory actions by counsel.	16/67	(23.88%)
d.	Dilatory actions by the litigants.	5/67	(7.46%)
e.	Court's failure to rule promptly on motions.	11/67	(16.41%)

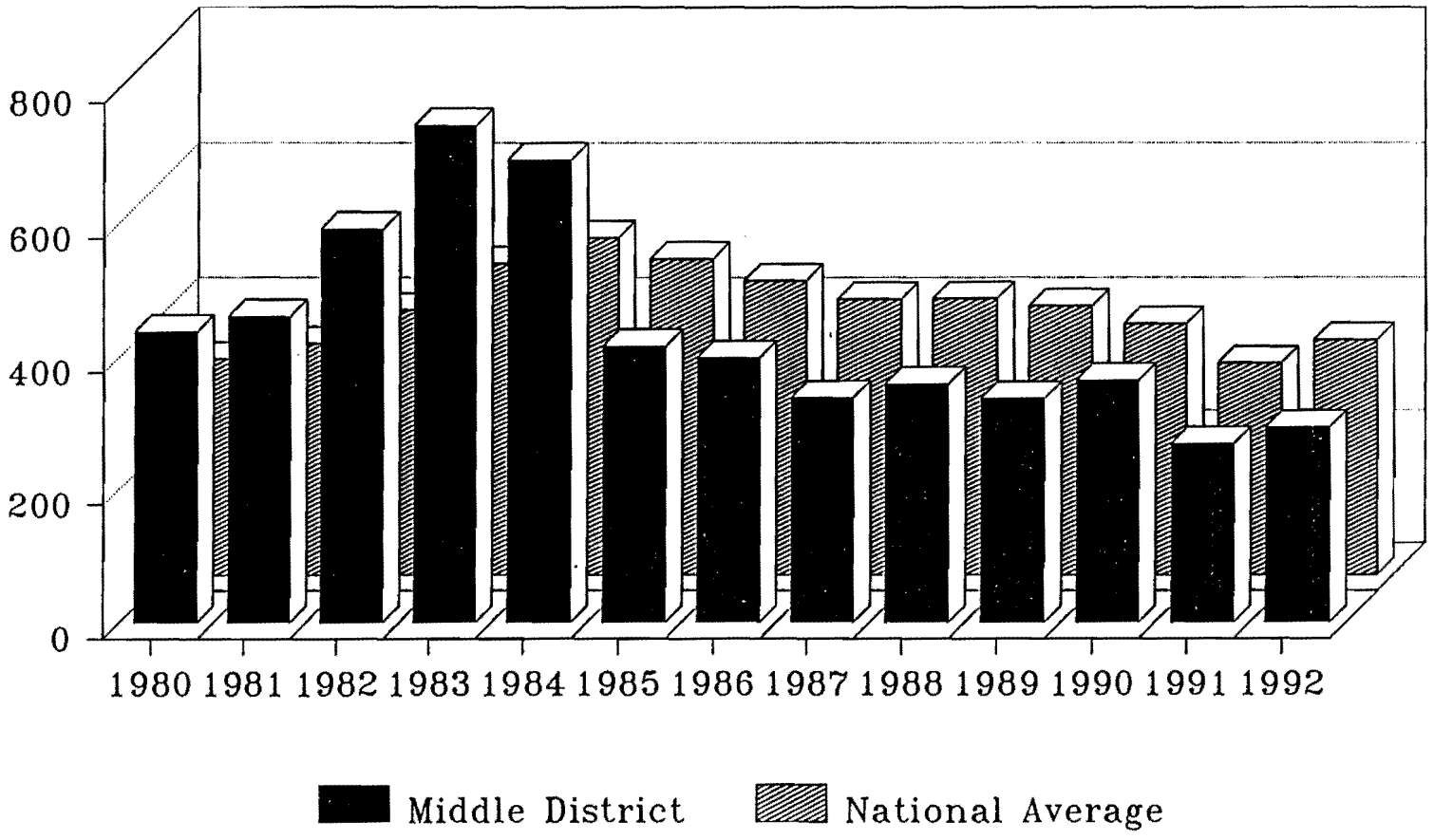
Total Filings Per Judgeship

Middle District of Georgia v. National Average



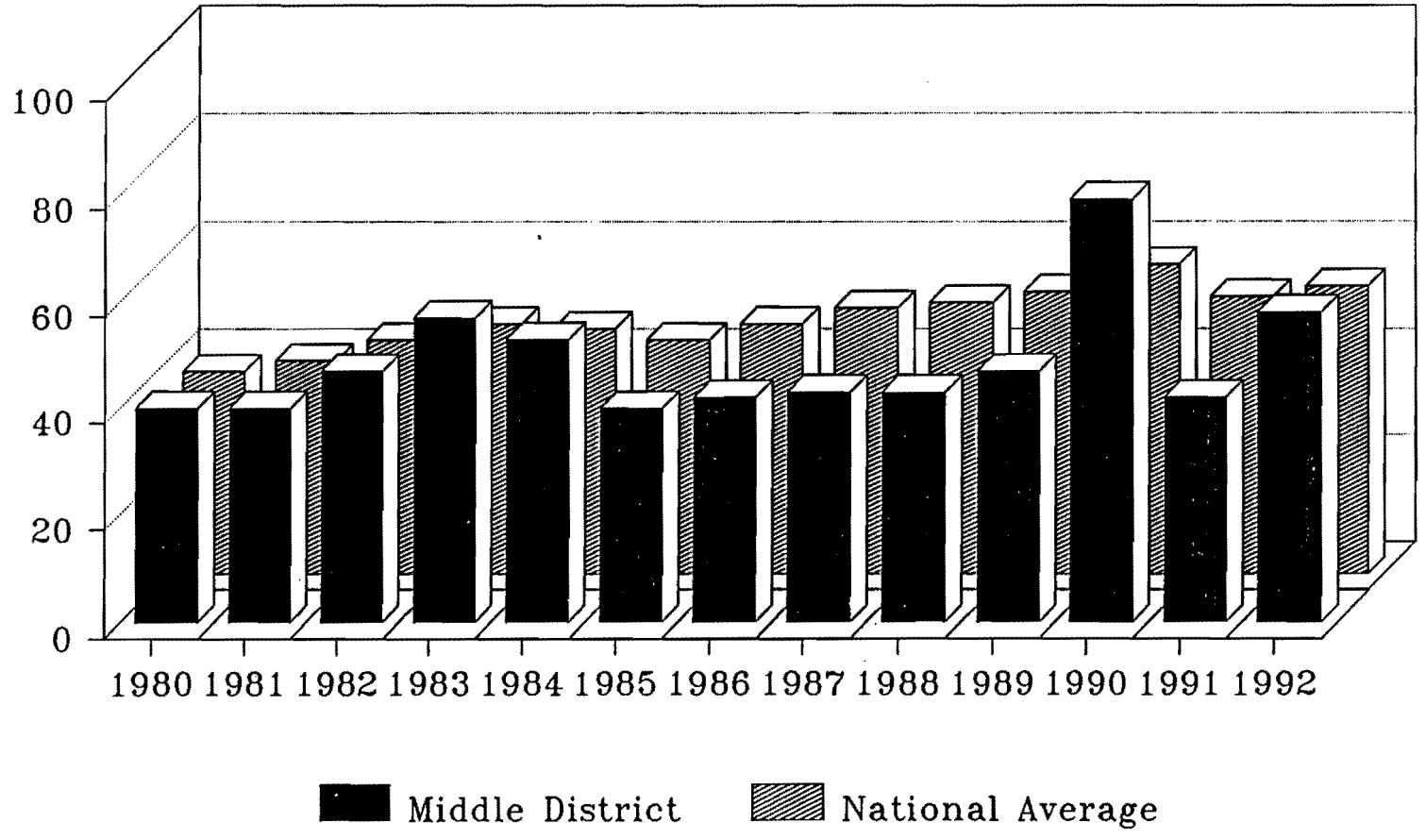
Civil Filings Per Judgeship

Middle District of Georgia v. National Average



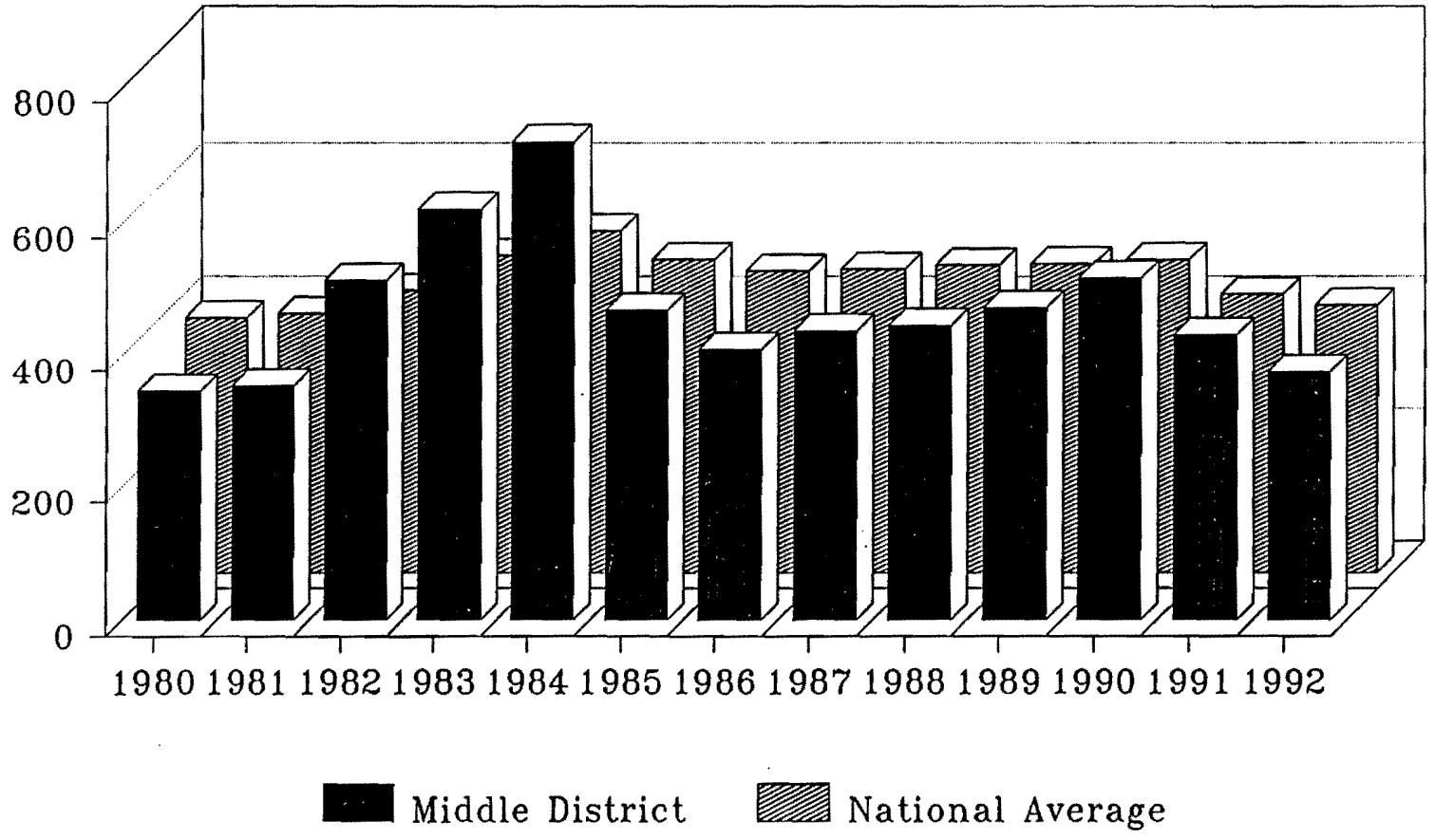
Criminal Felony Filings Per Judgeship

Middle District of Georgia v. National Average



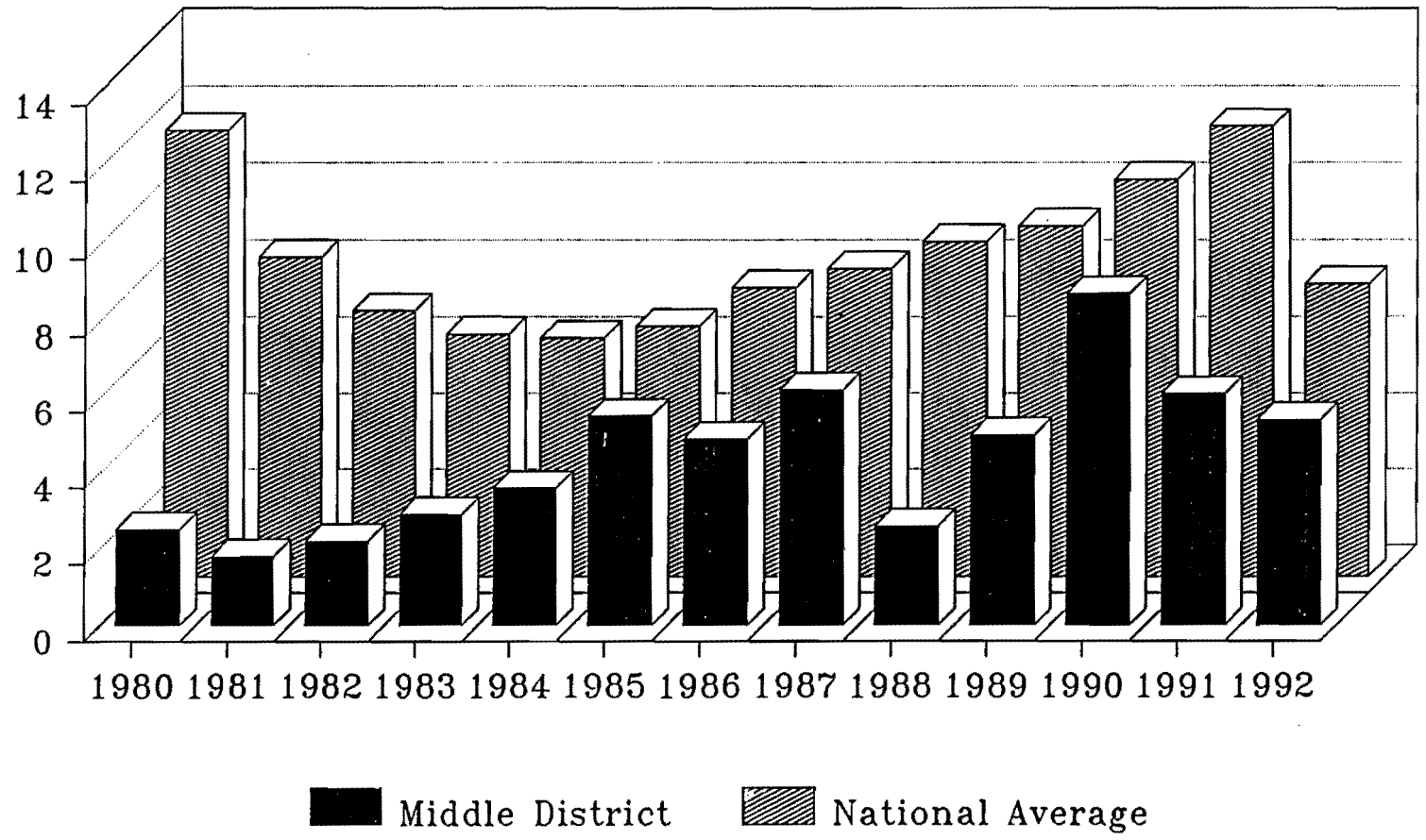
Pending Cases Per Judgeship

Middle District of Georgia v. National Average



Percent of Civil Cases Over 3 Years Old

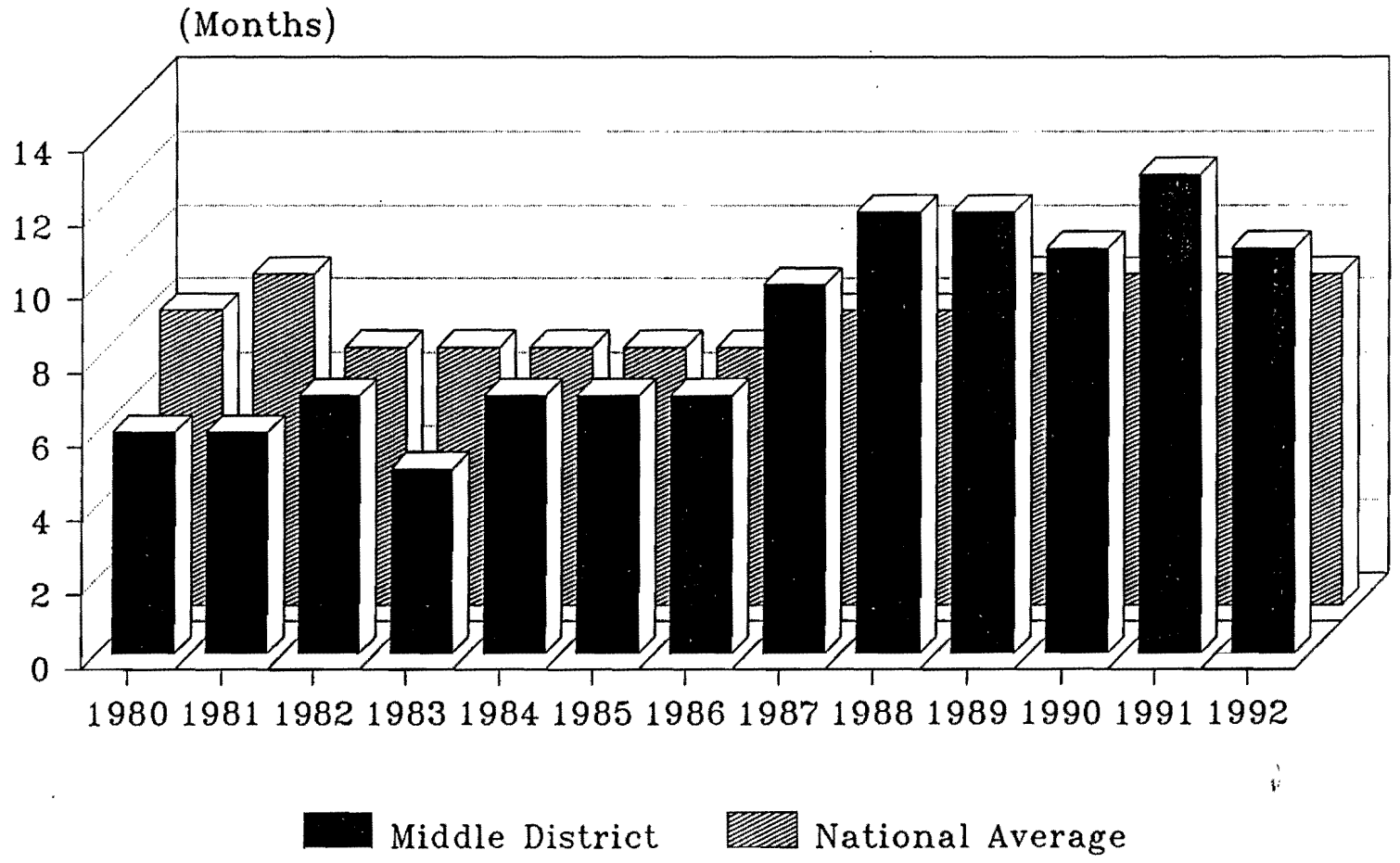
Middle District of Georgia v. National Average



Median Time From Filing to Disposition

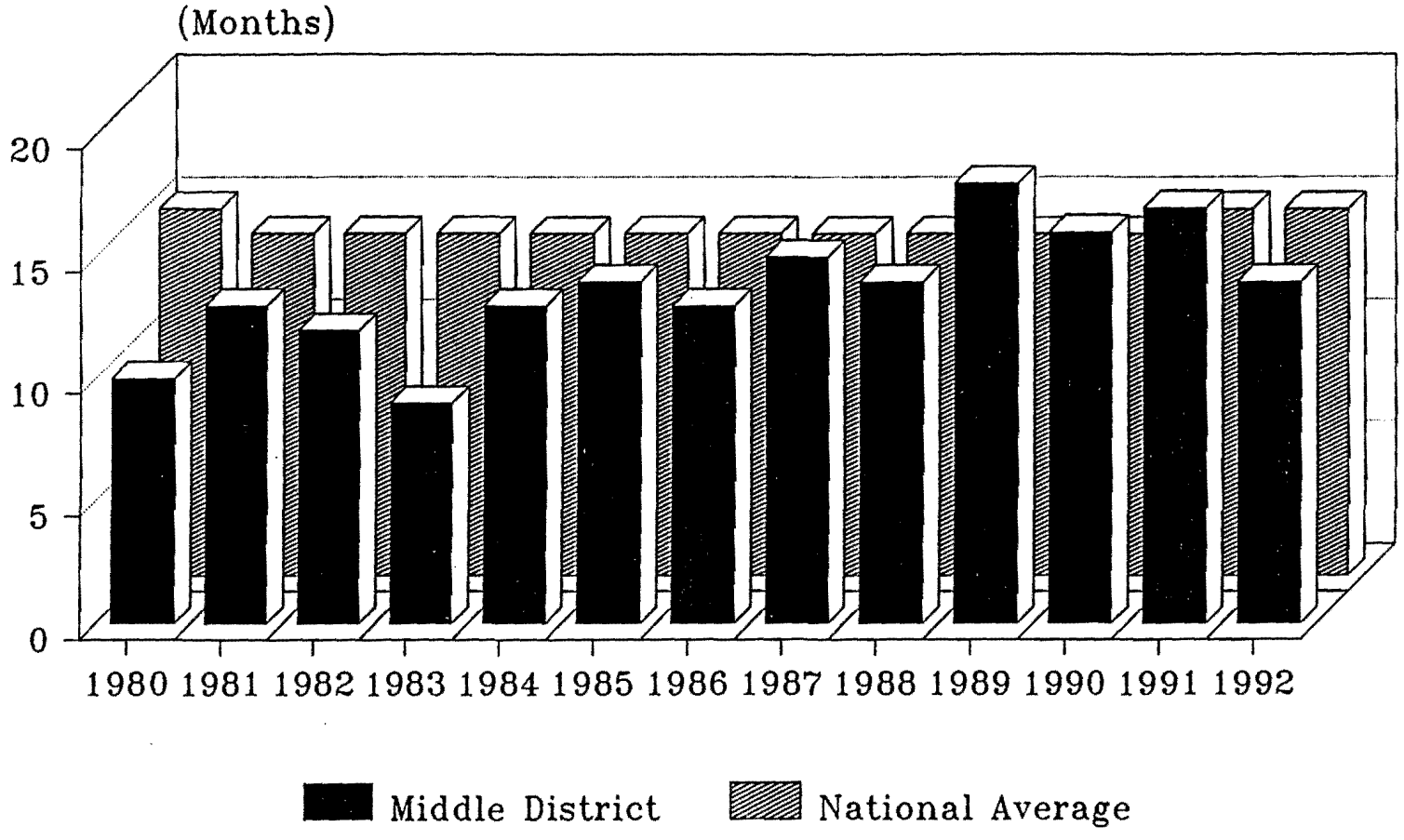
In Civil Actions

Middle Dist. of Ga. v. National Average



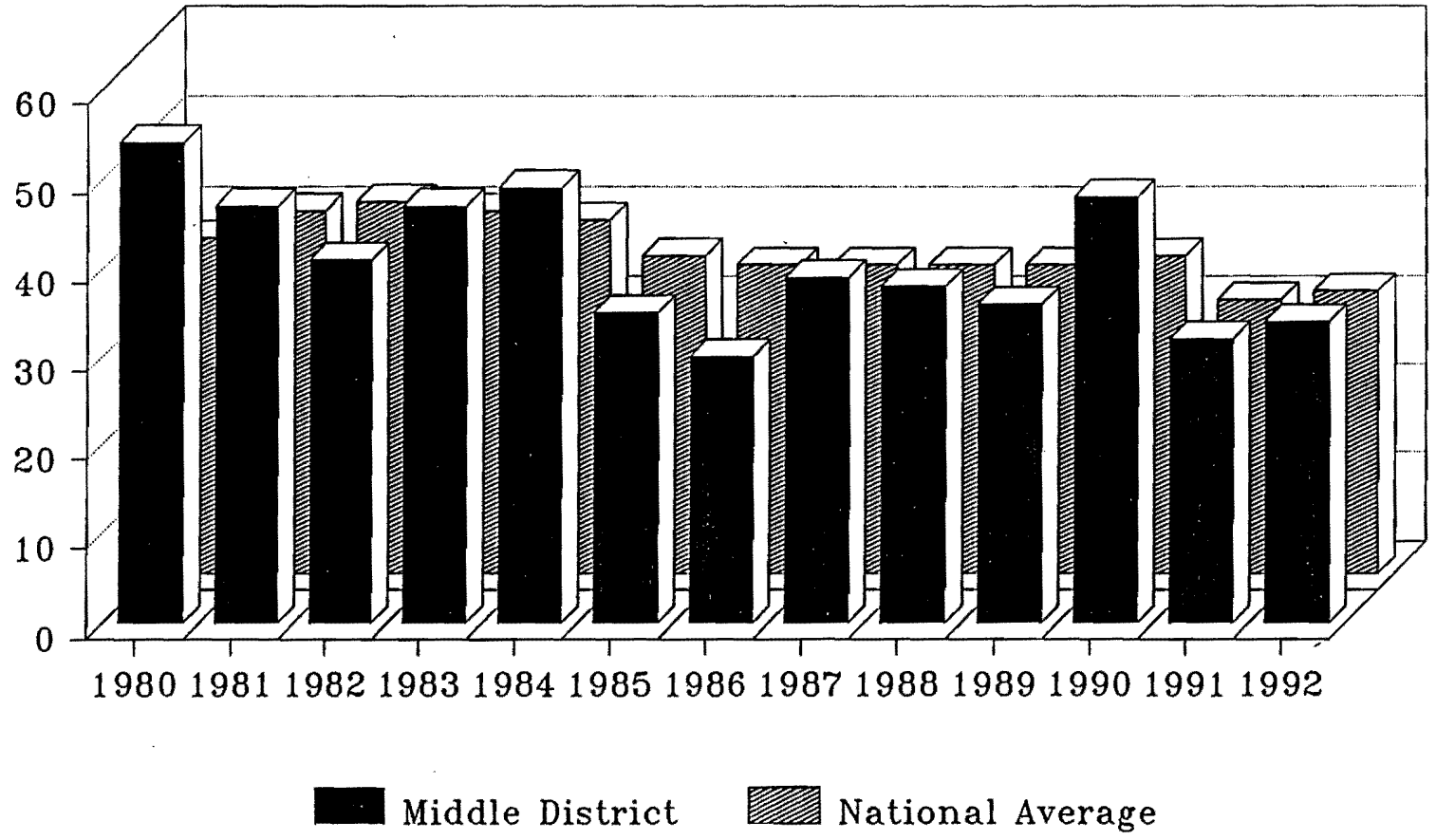
Median Time From Issue to Trial

Middle District of Georgia v. National Average

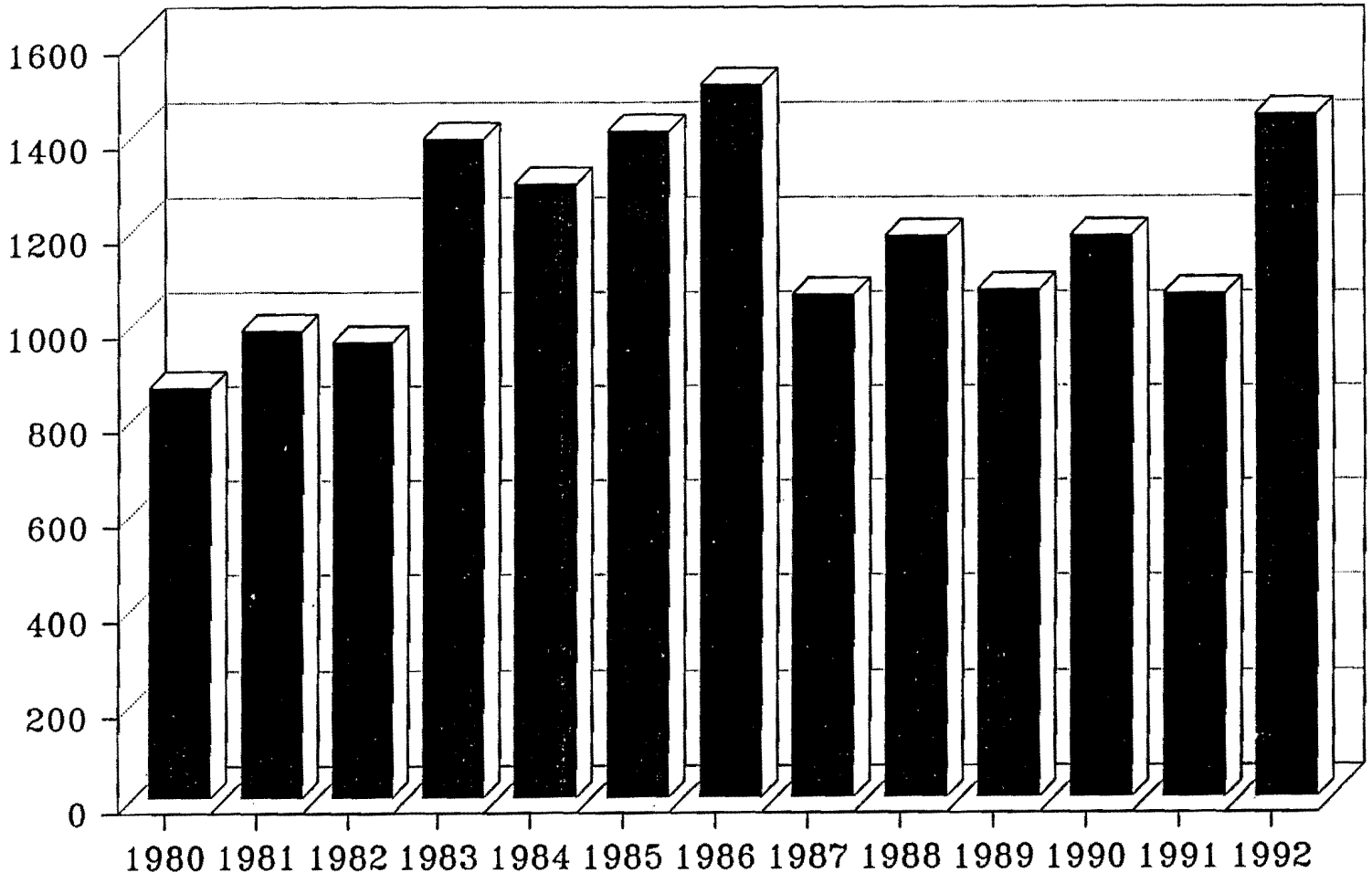


Trials Completed Per Judgeship

Middle District of Georgia v.
National Average

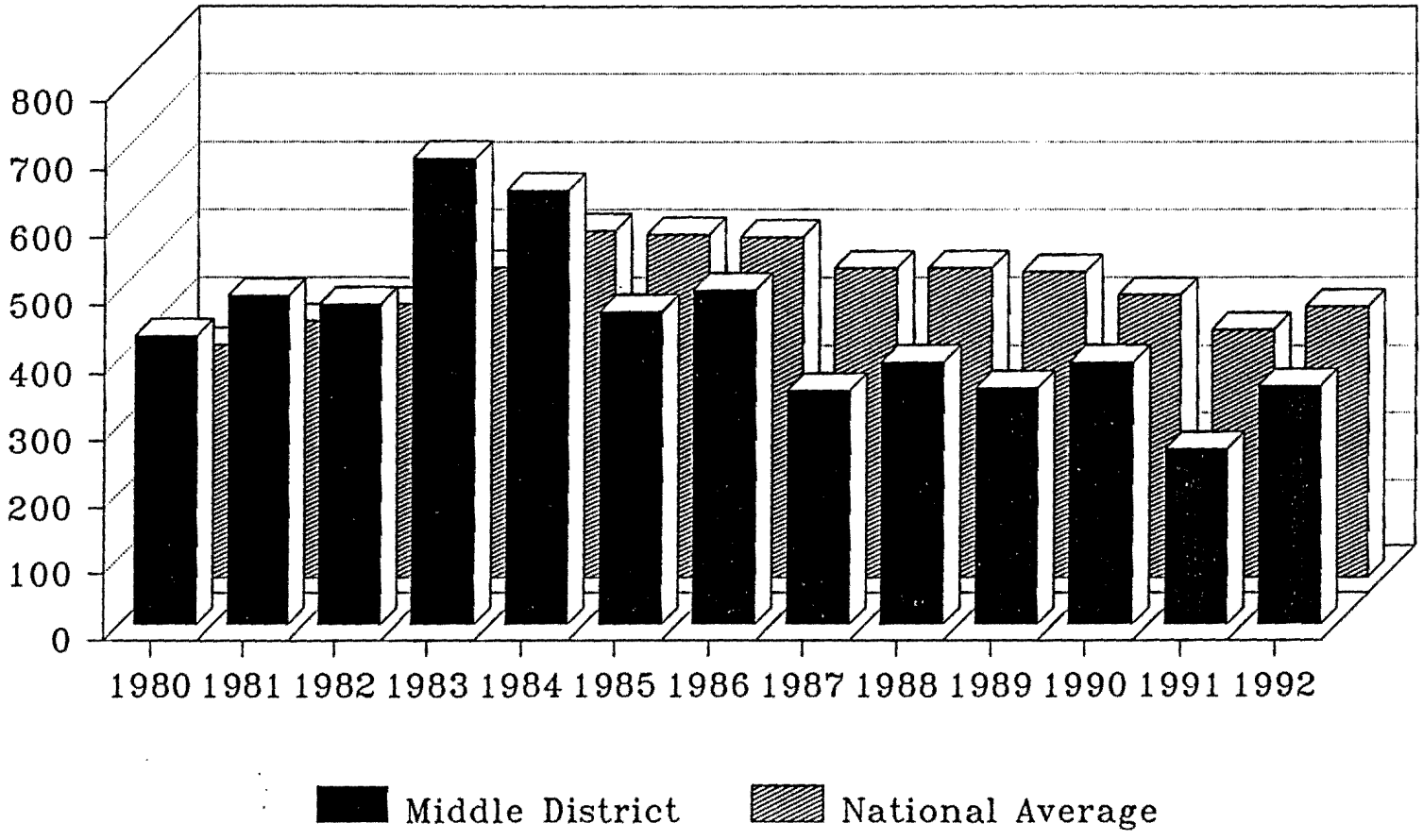


Total Terminations, All Cases
Middle District of Georgia



Total Terminations Per Judgeship

Middle District of Georgia v. National Average



Appendix E

RESULTS OF QUESTIONNAIRE SURVEYING THE OPINIONS OF ATTORNEYS AND LITIGANTS IN 150 CIVIL ACTIONS COMPLETED IN THE MIDDLE DISTRICT OF GEORGIA DURING 1991