United States District Court
Northern District of Georgia
2211 United States Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30335

Luther D. Thomas
Clerk of the Court

(404) 331-6496
FTS 841-6496

October 29, 1991

Mr. Abel Mattos
Administrative Office of the
United States Courts
Court Administration Division
Washington, D.C. 20544

Dear Mr. ~~Mattos~~: Abel

I am pleased to enclose a copy of the Civil Justice Reform Act Advisory Group's Report, which is currently under review by the judges of this Court.

As you know, against our vehement protests, the Northern District of Georgia was selected as a pilot court and, therefore, required to have its plan in place by the end of this year. Aside from being an ex-officio member of the advisory group, I feel that our members have done an excellent job, and I am quite proud of what they have accomplished. I thought that I would share it with you.

Sincerely,

Dan

Luther D. Thomas

LDT/cc

Enclosure Thanks for all your help!

REPORT OF THE ADVISORY GROUP OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

SEPTEMBER 30, 1991

REPORT OF THE ADVISORY GROUP
OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

September 30, 1991

ADVISORY GROUP

Trammell E. Vickery, Chairman
Attorney, Troutman, Sanders, Lockerman and Ashmore
American College of Trial Lawyers

MEMBERS

Walter H. Alford
Executive Vice President and
General Counsel, BellSouth Corporation

Lewis S. Andrews
Retired Executive, Textile Industries

Veronica Biggins
Executive Vice President
The Citizens and Southern
National Bank

Michael J. Bowers
Attorney General, State of Georgia

Myrtle Davis
Chairperson of Finance
Atlanta City Council

Foy R. Devine
Attorney, Past President of
Georgia Trial Lawyers Association

Steven Gottlieb
Executive Director
Atlanta Legal Aid Society

Robert S. Harkey
Vice President and General Counsel
Delta Airlines, Inc.

Herbert H. Mabry
President, Georgia State AFL-CIO

F. Abit Massey
Executive Director
Georgia Poultry Federation

William M. Schiller
Attorney, United States Fidelity
and Guaranty Company

Earl T. Shinhoster
Regional Director
National Association for the
Advancement of Colored People

J. Douglas Stewart
Attorney, Stewart, Melvin, and House
Past President of the
State Bar of Georgia

Luther D. Thomas
Clerk of Court
U. S. District Court
Northern District of Georgia

Walter J. Thomas
Secretary/Treasurer and Trustee
J. M. Tull Foundation

David H. Tisinger
Attorney, Tisinger, Tisinger,
Vance and Greer
Member, Bar Council for
U. S. District Court, N. D. of Georgia
American College of Trial Lawyers

Joe D. Whitley
United States Attorney
Northern District of Georgia

Jeanne J. Bowden, Reporter

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ATTACHMENTS

APPENDICES

PUBLIC LAW 101-650 [H.R. 5316]; December 1, 1990

JUDICIAL IMPROVEMENTS ACT OF 1990

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".

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

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

SEC. 102. FINDINGS.

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

(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.

"(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—

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

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

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) 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 the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 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.

"(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.

"(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.

"(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.".

(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.

(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).

(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.

(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.

(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

REPORT OF THE ADVISORY GROUP
OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
APPOINTED UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

I. Description of the Court

A. Structure

The Northern District of Georgia is a large metropolitan court comprised of 46 counties bordering Alabama, Tennessee, North Carolina, and South Carolina. There are four divisions: Atlanta, Rome, Gainesville, and Newnan. Of the eleven authorized district judgeships, ten judges sit in the Atlanta Division, with two of the judges also covering cases filed in the Gainesville and Newnan Divisions. The judge assigned to the Gainesville Division spends about 75% of his time in the Atlanta Division Courthouse, but his Gainesville Division caseload accounts for approximately 60% of his total caseload. The judge assigned to the Newnan Division spends about 30-40% of his time on Newnan Division business. His courthouse presence is also primarily in the Atlanta Division. The eleventh authorized judge sits full-time in the Rome Division.

The Atlanta Division has five full-time magistrate judges. The Gainesville and Rome divisions each have one part-time magistrate judge. Magistrate judge functions for the Newnan Division are handled by the Atlanta Division magistrate judges on an as-needed basis.

There is one vacant authorized judgeship in the Atlanta Division. Two other judges in the Atlanta Division have announced that they will take senior status, one judge on September 30, 1991, and the other judge on December 31, 1991. At present, there are two senior judges in the Atlanta Division. One senior judge carries a 100% caseload and the other senior judge carries a 30% civil caseload.

The Atlanta Division, which includes the ten county metropolitan area surrounding the city of Atlanta, an area that offers regional, national and international marketplaces, is characterized by sophisticated commercial litigation and criminal prosecutions which include *inter alia* drug and white collar crimes. The Gainesville and Rome divisions each have a significant industrial focus in the poultry and carpet industries, respectively. All three non-Atlanta divisions service a blend of rural, recreational, and smaller town communities.

B. Special Statutory Status

The Judicial Conference designated the Northern District of Georgia a pilot district under the Civil Justice Reform Act of 1990 in March 1991.

II. Assessment of Conditions in the District

A. Condition of the Docket

1. Status of the Civil and Criminal Dockets

The indexed average lifespan (IAL) for statistical years 1981-1990 for

all civil cases in the Northern District of Georgia has consistently been lower than the national indexed average lifespan. See Charts 1 and 2.

Chart 1: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY81-90

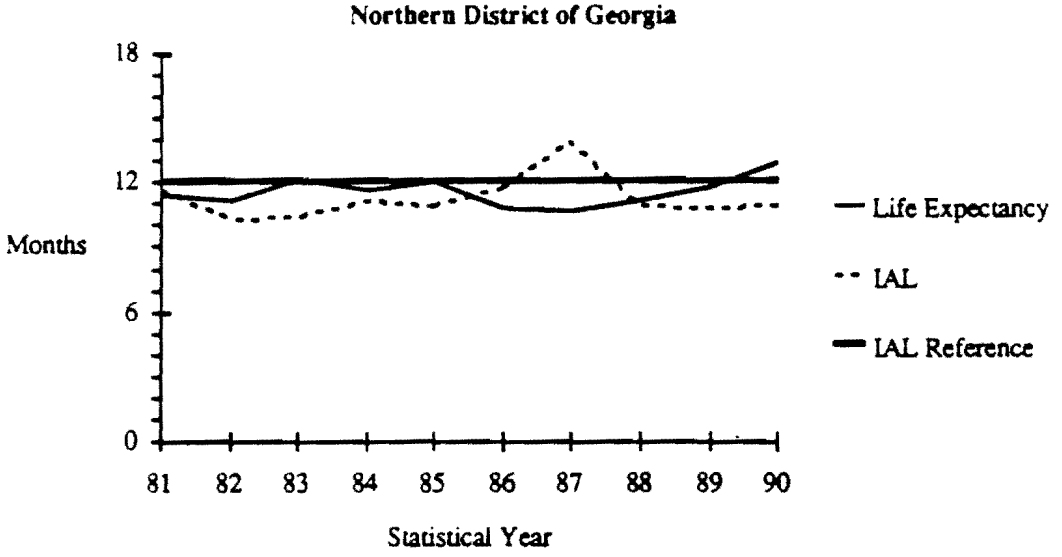
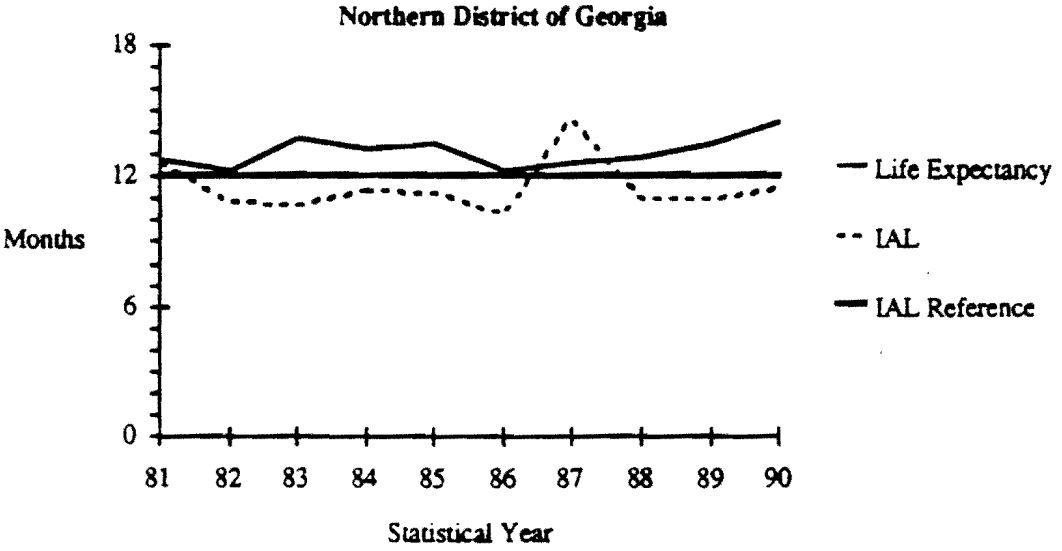


Chart 2: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY81-90



Average time for disposition of civil actions in the 94 United States District Courts is 12 months. Average lifespan is, for this reason, indexed at 12. In

SY1990, the indexed average lifespan for all civil cases in the Northern District of Georgia was 11 months. The indexed average lifespan in SY1990 for Type II civil cases, those civil cases which are more complex, was approximately 11.8 months. The indexed average lifespan is corrected for changes in caseload mix but not for changes in the filing rate. It is considered a reliable statistical tool for comparison of docket function among the district courts.

Although the Indexed Average Lifespan for civil cases in the Northern District of Georgia for 1991 is not yet available, the SY1991 figures for weighted case filings suggest that the Northern District of Georgia's Indexed Average Lifespan will continue to be better than average. Weighted caseload statistics, developed by the Judicial Conference of the United States, represent an attempt to adjust for differences among case types by assigning weights representing the relative amount of judge time necessary to resolve each type of case.

According to the 1991 Court Management Report compiled by the Administrative Office of the United States Courts (Attachment 1), the total case filings per judgeship in the Northern District of Georgia in SY1991 were 330 cases, a slight decrease from the SY1990 figure of 347 cases. When the filings for SY1991 were "weighted," the filings per judgeship figure increased to 389 cases, as contrasted with the SY1990 weighted filings figure of 379 cases. Since Indexed Average Lifespan is corrected for change in case mix, the Northern District of Georgia's SY1991 increase in heavier weighted cases

should result in the Indexed Average Lifespan for civil cases in the Northern District of Georgia remaining constant when contrasted with the SY1991 national Indexed Average Lifespan.

The ratios in Table 1 between weighted case filings and actual case filings for the Northern District of Georgia in SY1986-91 also reveal clearly the impact of heavier-weighted case filings on the Court's docket. In SY1986 through SY1989, weighted case filings were 5-7% greater than actual case filings. In SY1990 that percentage grew to 9% and in SY1991 it almost doubled to 18%.

Table 1: Comparison of Weighted Case Filings And Actual Case Filings Northern District of Georgia

	Weighted Filings	Actual Filings	Ratio	Percent Increases
SY1991	4279	3633	1.177	17.7%
SY1990	4169	3813	1.093	9.3%
SY1989	4356	4085	1.066	6.6%
SY1988	4169	3949	1.055	5.5%
SY1987	4235	3988	1.061	6.1%
SY1986	4312	4008	1.075	7.5%

Data supplied to the Advisory Group by the Federal Judicial Center Research Division in a memo dated August 13, 1991, allocated the effects of weighting on filings as being approximately 4:1, respectively, for civil and criminal cases.

The effect of case weighting is also illustrated by reference to the Management Report for 1991 (Attachment 1). Northern Georgia's unweighted filings ranking was 67th out of 94 courts nationally whereas its weighted filings ranked 35th nationally. The Northern District of Georgia's 1991 weighted filings ranking reflects a 28 position change from SY1990 when Northern Georgia's weighted filings were in the 63rd position nationally. See Attachment 2.

Viewed nationally or with regard to their local impact on the Northern District of Georgia, the weighted caseload statistics for this Court provide support for the widely-held perception that civil cases in the Northern District of Georgia are more complex than those filed in many other districts.

The median time from filing to disposition for criminal felony cases in the Northern District of Georgia in SY1991 was 6.2 months, an improvement over the 6.9 months median in SY1990. See Attachment 1. The SY1991 national median is 5.7 months, which represents a lengthening of the median time nationally over the SY1990 median of 5.3 months. See Attachment 3. Criminal filings in the Northern District of Georgia in SY1991 included 69 fraud cases, 63 narcotics cases, 31 weapons and firearms cases, 26 burglary and larceny cases, and 23 robbery cases for a total of 212 cases as compared to 124 cases in all other offense classifications combined.

In an August 13, 1991, memo prepared to assist this Advisory Group in its review of the criminal docket, the Federal Judicial Center Research

Division concluded that when preliminary estimated weights derived from a current time study (as opposed to the official 1979 time study) were used to weigh Northern Georgia's criminal cases for SY1990, the Northern District of Georgia's SY1990 total weighted filings figure increased by 28.5 filings. This example is illustrative of the present day demands being imposed on the overall docket of the Northern District of Georgia because of the criminal docket's caseload mix, which includes a large number of filings in higher weighted felony classifications.

2. Trends in Case Filings

For SY1986-1991, filings in the Northern District of Georgia decreased 9.3% from 4,008 to 3,633, total terminations decreased 18.7% from 4,229[1] to 3,437, and the pending caseload increased by 5.3% from 3,736 to 3,935. See Attachment 1. The 6.5% decline in the Northern District of Georgia's civil actions filed per judgeship, from 320 in SY1986 to 299 in SY1991, is consistent with a national trend of reduced civil action filings. On May 18, 1989, the jurisdictional amount for diversity cases increased from $10,000 to $50,000. The Court in the four year period following this change has "lost" 2,405 generally rapidly-terminating cases. See Table 2. This case reduction, representing an 82% decline in the number of diversity cases, has taken place at the same time that the case mix reflects an increase in more complicated

[1]Reflects terminations for SY1987. Statistics for SY1986 were distorted by mass terminations of habeas corpus petitions filed by Cuban detainees.

cases. These facts, along with the demonstrable increase in the demands of the criminal docket, explain in part the data showing a decline in case filings and in case terminations.

Table 2: Diversity Case Filings
SY1988-91 - Northern District of Georgia

SY1988	2,930 cases filed
SY1989	2,150 cases filed
SY1990	1,082 cases filed
SY1991	525 cases filed

Another statistic reflected in the decreased percentage of terminations is the simultaneous increase in pending cases.

Northern Georgia's percentage of pending cases 3 years old or older for SY1991 was 3.6% as compared to the SY1990 percentage of 4%. See Attachment 1. This figure resulted in a 20th place ranking nationally. More importantly, it has reversed the trend of increasing percentages of cases 3 years old or older which has existed since SY1987.

Over the six year period from SY1986-91, the true average duration (or life expectancy) of pending civil cases in the Northern District of Georgia, as calculated in Table 3, increased 5.58 months from 8.15 months in 1986 to 13.73 months in 1991. Life expectancy is determined by calculation of the ratio of pending cases to the annual case terminations. It is a timeliness measure, used to assess change in the actual case lifespan. It is corrected for

changes in the filing rate but not for changes in caseload mix. Northern Georgia's life expectancy increased at very moderate rates between SY1988-89 and SY1989-90, but the increase in life expectancy between SY1990-91 was more than twice as great at 1.26 months. Thus, even though the median time from filing to disposition for civil cases remained unchanged at 10 months between SY1990-91 (see Attachment 1), the actual life expectancy of cases increased approximately 40 days.

Table 3: True Average Duration (Life Expectancy)
All Cases SY1986-90 - Northern District of Georgia

Year	Pending Cases	Annual Case Terminations	Case Duration In Years	Case Duration In Months
1991	3,935	3,437	1.144	13.73
1990	3,853	3,707	1.039	12.47
1989	3,870	3,884	0.996	11.95
1988	3,669	3,776	0.971	11.65
1987	3,494	4,229	0.826	9.91
1986	3,736	5,495	0.679	8.15

John Shapard, Federal Judicial Center Research Division, writes that the way to tell if a court is staying abreast is to track the life expectancy of its cases. "If that ratio stays constant, the court is staying abreast; if it decreases, the court is gaining ground - disposing of cases faster; and if it

increases, the court is falling behind." J. Shapard, *How Caseload Statistics Deceive, at p. 3 (1991)*.

The Advisory Group concluded that while on average all pending cases are being expeditiously disposed of by the Court and while the data does not reflect excessive delay, the same data does suggest that the increase in the true average duration (life expectancy) of all cases needs to be reversed. This trend is addressed in the recommendations of the Advisory Group suggesting ways to improve the condition of the docket through implementation of the principles of litigation management suggested or mandated for pilot courts by the Civil Justice Reform Act of 1990.

The Federal Courts have for some years analyzed filings by category and developed statistical information differentiating between Type I cases, i.e., those cases which are generally disposed of by the same or substantially the same procedures, and Type II cases which are disposed of by a greater variety of methods. Type II cases generally involve more judicial time and more involvement of the judges in the myriad of details of case management.

The Advisory Group focused upon the data that has been developed for Type I and Type II cases filed in the Northern District of Georgia. Particular attention was paid to the data contained on Chart 3 which indicates the historical relationship between filings of Type I and Type II cases over time and Table 4 which differentiates by year the number of cases filed in each case type for each year. While useful in focusing on trends in the nature of

the cases filed and for examining the present case mix in this District, such data reflected quantitative changes in the case mix that were too small to be statistically significant. Chart 3 indicated very little fluctuation in the filing patterns by broad category. Table 4 indicated a decrease in Type I cases in its last two reported statistical years. Type II cases also experienced a slight decrease of cases over the same period, with the greatest decline being in the number of personal injury actions (139) and contract actions (67).

Preliminary examination of data for SY1991 does not appear to reflect quantitative changes in the case mix of Type I cases. Type II cases reflected increases in labor and antitrust cases, although other Type II classifications remained consistent with SY1990. See Attachment 1.

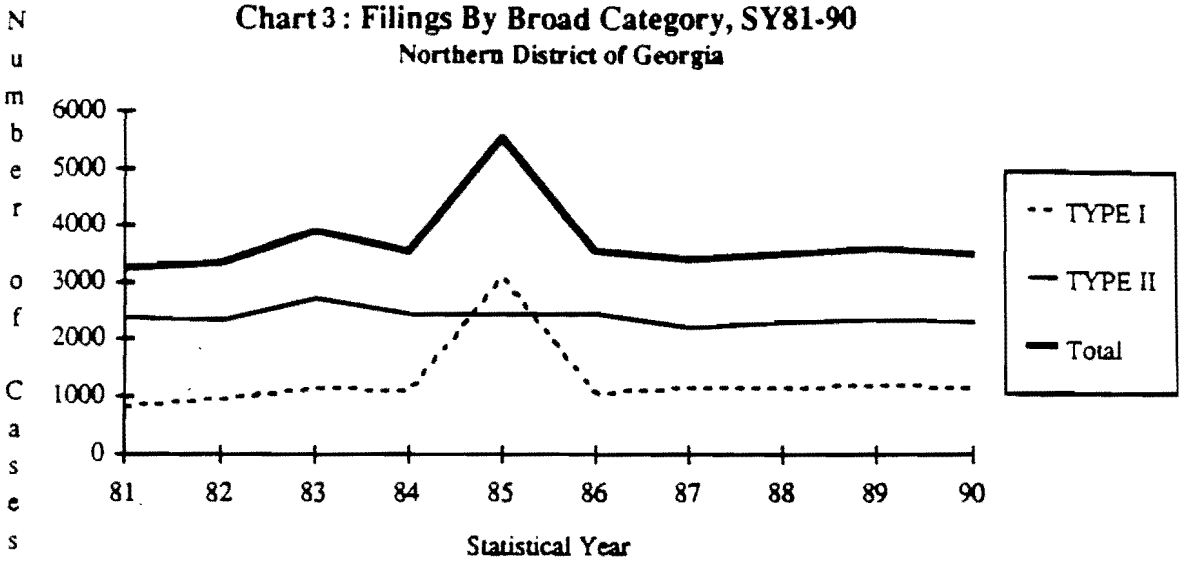


Table 4: Filings by Case Types, SY1981-90

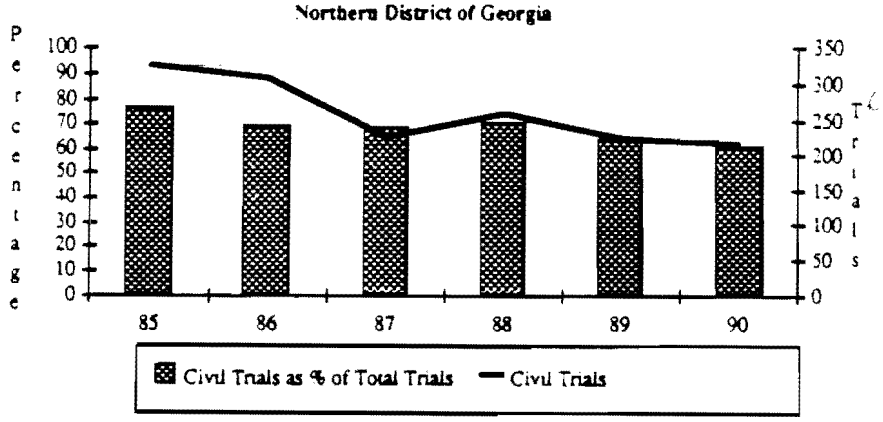
Northern District of Georgia	81	82	83	84	85	86	87	88	89	90	Filings > 1989-1990	Filings < 1989-1990
Type I Cases												
Asbestos	0	1	6	11	51	40	152	15	48	110	62	
Bankruptcy Matters	48	91	133	135	93	62	61	71	130	85		45
Land Condemnation, Foreclosure	51	30	14	19	36	49	5	35	40	48		8
Prisoner*	535	577	487	372	2148	443	587	610	603	534		89
Social Security	181	199	364	409	313	219	226	208	130	128		2
Student Loans & Veterans	0	57	156	124	419	237	144	216	249	221		28
											62	152
Type II Cases												
Banks & Banking	6	7	2	3	2	2	1	2	1	14	13	
Commerce: ICC Rates, etc.	15	11	2	5	7	5	15	10	8	20	12	
Contracts	637	941	1042	825	752	831	718	754	673	606		87
Copyright, Patent & Trademark	84	72	68	64	104	96	81	126	138	115		23
ERISA	15	20	23	30	45	30	35	36	57	92	35	
Forfeiture & Penalty (excl. drugs)	29	27	35	89	56	78	98	104	96	167	71	
Fraud	345	132	82	70	94	73	86	70	64	106	42	
Labor	74	73	56	60	54	62	60	42	50	48		2
Non-Prisoner Civil Rights	385	398	428	472	486	390	377	372	441	455	14	
Personal Injury	358	310	617	436	466	473	378	412	510	371		139
RICO	0	0	0	0	0	47	59	28	16	30	14	
Securities, Commodities	39	42	46	56	78	53	31	41	33	38	5	
Tax	42	34	44	52	49	51	56	41	26	23		3
											206	234
All Other	402	285	261	253	257	260	230	252	233	221		12
All Civil Cases	3226	3307	3866	3485	5510	3501	3380	3445	3546	3432		114

** Prisoner Civil Rights - These cases are classified Type I, but Table 2 provided by the FJC does not provide a breakdown between prisoner civil rights and all other civil rights cases.*

The Advisory Group observed that there was a reduction in the actual number of civil trials between SY1986 and SY1991. The trend, up through SY1990, is graphed in Chart 4, below.

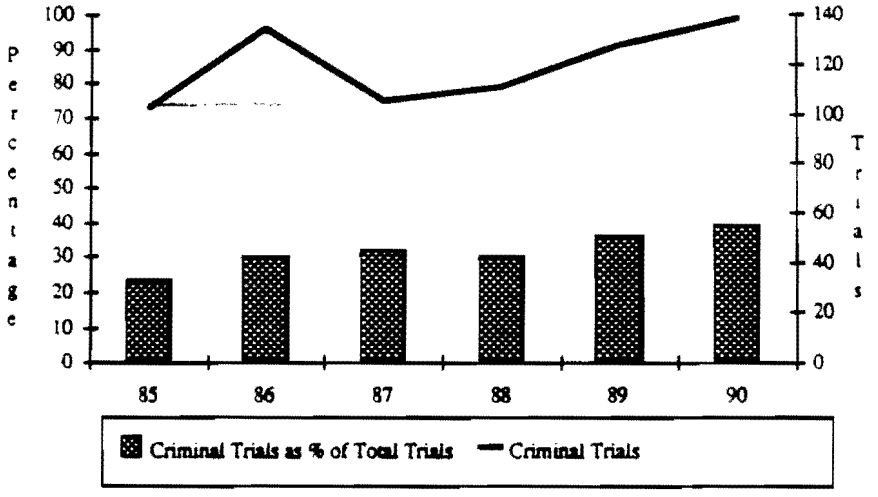
For example, in SY1986, there were 305 civil trials which comprised about 69.4% of the total number of trials conducted in the District. In SY1990, there were only 215 civil trials conducted. These civil trials accounted for 60.7% of the total trials held in the District.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY85-90
Northern District of Georgia



The trends with regard to criminal trials developed conversely. The trend is graphed in Chart 5.

Chart 5 : Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY85-90
Northern District of Georgia



In SY1987, there were 105 criminal trials which accounted for 31.8% of the total trials conducted. In SY1990, the number of criminal trials rose to 139 trials, accounting for 39.2% of the trials held.

The number of criminal trials increased again in SY1991 to 155 trials which was 42.2% of the total number of 367 trials conducted. The number of civil trials in SY1991 declined by 3 trials for a decrease to 57.7% of the total trial calendar. Thus, over a six year period, the number of civil trials in the Northern District of Georgia decreased by 11.7% and the number of criminal trials increased by 10.4% for an overall impact of 22.1% in the makeup of the Court's trial calendar.

The two largest classifications of felony filings in the Northern District of Georgia are narcotics and fraud[2]. These cases constitute a very important factor in the tremendous growth in the burden imposed by criminal prosecutions on the overall resources of the Northern District of Georgia.

The growth in the narcotics cases has ranged from 17 cases in SY1986 to a high of 75 cases in SY1990 and back to 63 cases in SY1991. As Table 5 develops, this represents a growth for narcotics cases from 3.73% of the total number of felony filings in SY1986 to a present year percentage of 18.75%. Over the same time period, fraud filings increased from 18 cases

[2]The 1991 Civil and Criminal Felony Filings By Nature of Suit and Offense table included on Attachment 1 provides the numbers of cases filed in each felony classification for SY1991. Type "G" criminal cases are narcotics. Type "I" criminal cases are fraud. The legend for the other filing classifications is provided at the bottom of Attachment 3.

to 69 cases in SY1991. This growth represents a 16.58% increase in fraud cases among the overall criminal filings from SY1986 to SY1991.

Table 5: Criminal Felony Filings, With Number and Percentage Accounted for by Narcotics and Fraud Filings SY1986-90 - Northern District of Georgia

	Total Felonies Filed*	Narcotics Filings	% Narcotics Filing	Fraud Filings	% Fraud Filings
SY1986	455	17	3.73%	18	3.95%
SY1987	456	27	5.92%	39	8.55%
SY1988	455	20	4.39%	28	6.15%
SY1989	515	31	6.01%	21	4.07%
SY1990	377	75	19.89%	82	21.75%
SY1991	336	63	18.75%	69	20.53%

*The Management Report does not include criminal transfers in the By Nature of Offense table.

The Advisory Group concluded that while there had been an overall decrease of 29.5% in all felony criminal filings since SY1986 (from 484 cases to 341 cases), the data reflecting dramatic growth in narcotics and fraud cases and in the overall number of criminal trials in this District warrants consideration by the Court of procedures and techniques to shorten criminal proceedings and trials.

None of the figures or statistical measures discussed in this section track the length of trials. The reduction since 1986 in the number of trials per

judgeship in the Northern District of Georgia, as reported in Attachment 1, does not necessarily establish that there has been a corresponding reduction in the judges' trial time. Research by the Advisory Group has determined that in calendar year 1986, the Northern District of Georgia held five trials that lasted between 10 and 19 days and two trials that lasted 20 days or longer. By contrast, in calendar year 1990, the number of trials lasting between 10 and 19 days increased to nine trials while the number of trials 20 days or longer remained at two trials.

3. Trends in Court Resources

The number of authorized judgeships in the Northern District of Georgia increased to eleven judges in the late 1970s. There are no pending requests for additional authorized judgeships. The potential number of judges available to receive assignment of cases in the Northern District of Georgia is, however, increasing as experienced judges elect to take senior status.

In SY1988, the Northern District of Georgia experienced 4.8 vacant judgeship months resulting from one judge's decision to take senior status. The judge has continued to carry a 30% civil docket. The Advisory Group found no evidence that this short-term partial loss in judicial resources was reflected in any of the Court's statistical reports for SY1988.

A second judge assumed senior status on January 1, 1991, and that authorized judgeship has not been filled, although a nominee is presently

before Congress for confirmation. The senior judge has continued to receive civil and criminal assignments at the 100% level so there has not been any real net loss in judicial resources, although the Management Report (Attachment 1) for SY1991 correctly shows six vacant judgeship months through June 30, 1991. Another judge will assume senior status as of September 30, 1991. This judge also intends to continue receiving a 100% civil and criminal case assignment.

In Statistical Year 1992, the Northern District of Georgia has already experienced vacant authorized judgeship months for July, August, and September, 1991, and is likely to experience additional vacant authorized judgeship months as a result of the two authorized judgeship vacancies (one existing and one impending) in the Court.

It is also reasonable to predict that the Northern District of Georgia will, beginning January 1, 1992, experience more vacant authorized judgeship months since another judge has already announced his intention to take senior status as of December 31, 1991. A prolonged vacancy in this authorized judgeship offers greater potential for adverse impact on the Court's judicial resources since this judge intends, as senior judge, to accept a 70% caseload.

While historically the Court has only been marginally affected by vacant judgeship months, the number of additional judges taking senior status could result in an adverse impact on the availability of judicial resources if there is delay by the Congress in filling vacant judgeships. A diminution in judicial

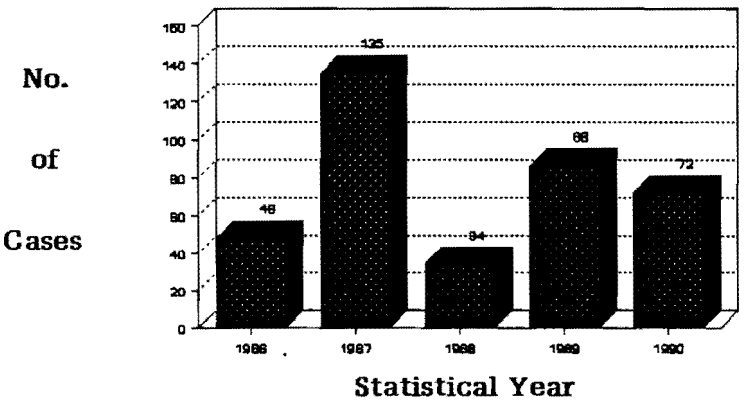
resources could adversely impact the ability of the Court to timely dispose of its pending caseload, both civil and criminal. This would increase the discernible trend toward an increase in the true average duration (life expectancy) of civil cases and the median life of criminal cases.

Two judges on the Northern District of Georgia have been involved in special litigation affecting the judicial resources of the Northern District of Georgia. Since 1987, asbestos products liability cases have constituted approximately 44% of one Atlanta Division judge's caseload, ranging from, as shown in Chart 6, a high of 135 cases in SY1987 to 72 cases in SY1990.

CHART 6

ASBESTOS CASES

FILED BY YEAR



In July 1991, the asbestos cases were transferred, pursuant to an order of reference consolidating all asbestos cases nationwide for multi-district litigation of pretrial procedures in the Eastern District of Pennsylvania. It is possible that these cases will at some point be returned to the Northern District of Georgia for trial.

The Northern District of Georgia's judge assigned to the Rome Division has been appointed by the Chief Judge of the Eleventh Circuit to hear a case involving the University System of Alabama. Between late October 1990 and late April 1991, the judge spent 79 days in Birmingham, Alabama, conducting the trial of this case. During this period, two Atlanta criminal cases which the judge normally would have handled were reassigned to an Atlanta Division judge. The same Atlanta judge also agreed to accept a criminal case set for trial in Rome during January 1991, but trial in that case was ultimately avoided because the defendant entered into a plea agreement.

The Advisory Group has studied the dockets of the Atlanta and Rome Divisions for any evidence that these two litigation matters have adversely impacted the Court's attention to other litigation and has found no such evidence. The Advisory Group suspects these two special circumstances may have "stretched" the Court's judicial resources, but careful institutional planning and cooperation among the judges have limited their impact.

The Advisory Group has also determined three other groups of pending cases that are presently making greater than normal demands on the Court's judicial and clerk's office resources. The first group is a multi-district case involving airline ticket price fixing. The second group, also a multi-district case, involves the denial of insurance benefits for chiropractic care. The third group consists of 150 companion cases, called "The Renaissance litigation," that evolved out of a public investment offering. The Advisory Group's

observations with regard to these three groups of cases are that the Court should continue to monitor these cases for any upward trends in their impact on judge time and clerk's office time. If such a trend becomes observable, the Court may wish to utilize the proposals of the Advisory Group relative to complex and protracted litigation discussed in Section III of this Report.

As mentioned in Section I(A) of this Report, the Atlanta Division is served by five full-time magistrate judges who are appointed for terms of eight years. The magistrate judge in Rome is appointed at a 40% of full-time level to a four-year term that expires in 1994. The magistrate judge in Gainesville is also appointed for a term of four years, expiring in 1994, but his appointment is only for 12% of a full-time appointment. There are no pending requests for additional magistrate judge appointments in the Northern District of Georgia.

The magistrate judges district-wide handled 4,896 matters in SY1990. The magistrate judges handle all petty offenses arising out of the federal parks and other federal properties in the District. The magistrate judges also handle, on a rotational basis, preliminary proceedings in all criminal cases. Frequently, the magistrate judges are involved in subsequent proceedings in those cases that arose during the period of their service as duty magistrate judge. All motions in criminal cases are referred to the magistrate judges, who issue reports and recommendations to the district judges regarding the disposition

of those motions. A summary showing the magistrate judges' workload for SY1986 - December 1990 is attached as Attachment 4.

Local Rule 260 sets forth the matters which are handled by magistrate judges in this District and Internal Operating Procedure 920 addresses the assignment of cases and duties to the magistrate judges. These rules are included as Attachment 5. They reveal that magistrate judges in the Northern District of Georgia are authorized to perform the full range of duties permitted under the Federal Magistrate Act.

While they are authorized to do so, magistrate judges in the Northern District of Georgia do not routinely try civil cases upon consent of the parties. Internal Operating Procedure 920-1(b) provides that "[i]t is the intention of the judges of this Court that the handling of the other duties assigned to the magistrates by the Court take priority over the trial of civil cases."

In 1986, the district judges, under the authority of 42 USC§2000e-5(f)(5), directed that Title VII cases brought in the Atlanta and Newnan Divisions of the Northern District of Georgia be referred at the time of filing to the full-time magistrate judges who, acting as special master, would hear and decide those cases in their entirety. Title VII cases in the Gainesville and Rome divisions would continue to be tried by the district judge assigned to these divisions.

The Advisory Group does not classify this referral of Title VII cases to the magistrate judges as being indicative of a "trend" toward increased

assignment of civil trials to the magistrate judge division. Rather, it is the opinion of the Advisory Group that it is better to characterize the referral as affirming the District Judges' confidence in the competency of the magistrate judge division to handle civil matters whenever the caseload obligations of the District Court render it impossible for the district judges to try civil cases within statutory or otherwise reasonable time periods.

The Clerk of Court's office in this District has served as a pilot nationally for the development of three computer programs since 1987. These computer programs have benefited clerk's office employees, the judges and their staffs, and attorneys with cases pending before the Court. These programs include:

(1) CIVIL: an on-line civil docketing program;

(2) CRIMINAL: an on-line criminal docketing program; and

(3) PACER: a public access program which allows attorneys and other members of the public access by telephone line to Court dockets 21 hours each day.

The CIVIL and CRIMINAL programs are part of an electronic docketing and case management system, called Integrated Case Management System (ICMS), that replaced the Court's manual paper system. ICMS automated the maintenance of the docket sheet, provides case status, document, and deadline tracking; serves as a central, up-to-date information resource throughout the Court or wherever a terminal is linked to the Court's computer;

automates production of notices and other standard correspondence, case and party indices, and the case opening and closing reports; provides standard reports to assist the judges and court administrators in monitoring case activity; and enables the Court to customize reports to address special needs as they arise.

The Advisory Group was informed that another system called CHASER is planned for the Northern District of Georgia but that an implementation date has not yet been set. CHASER will provide case management data directly to the judges and their staffs in chambers.

The number of employees in the Clerk of Court's office has remained at approximately 65 employees over the past five years. The District Court Executive's office staff has grown from three to five persons since establishment of the District Court Executive position in October 1984. Implementation of an alternative dispute resolution program, such as the one recommended by the Advisory Group in Section III, will require the hiring of additional staff persons.

B. Cost and Delay

1. Existence and Causes of Delay

True average duration (or life expectancy) for civil cases in the Northern District of Georgia increased by 1.26 months between SY1990 and 1991,

after two years of much more moderate increase. Life expectancy is now 13.73 months. Refer to Section II(A)(2) of this Report for the data supporting these figures.

Even though the civil trials which were conducted in SY1991 proceeded more quickly from issue to termination than those conducted in prior years (see Attachment 1), fewer civil trials were held because of the demands of the criminal docket and the corresponding increase in the number of criminal trials. Effective reduction in life expectancy is impacted when the number of civil trials declines.

John Shapard has written that an increase in the life expectancy of a court's civil cases indicates that the court has failed to stay abreast of its civil caseload. He explains that to reverse this trend the court must make substantial gains in reducing its number of pending cases. J. Shapard, *How Caseload Statistics Deceive, at pp. 2-3.* Mr. Shapard explains further at p. 3 that if the methods necessary to accomplish this reduction " . . . require a drastic increase in trials or other activities that place major demands on court resources, then the pending caseload cannot be quickly cut in half without a major increase in those resources." Table 6 presents the growth in the Northern District of Georgia's pending caseload from SY1986 to SY1991 (with the one year exception of SY1987.)

Table 6: Pending Cases In
The Northern District of Georgia
SY1986-91

	Number of Pending Cases
SY1991	3935
SY1990	3853
SY1989	3870
SY1988	3669
SY1987	3494
SY1986	3736

The SY1991 life expectancy of 13.73 months for civil cases in the Northern District of Georgia reflects the true average duration (i.e., actual life span) and does not take into account data reflecting the national indexed average life span discussed and explained in Section II(a)(1) of this Report. This data for SY1991 has not yet been prepared and will be included in a supplement to this Report when available.

The Advisory Group has determined that the increase in life expectancy in civil cases does not lead to the conclusion that there is "excessive delay" in the disposition of civil cases in the United States District Court for the Northern District of Georgia. Indeed, the Advisory Group concluded that the Northern District of Georgia's increase in life expectancy is symptomatic of

two major factors negatively affecting the management of civil litigation in the Northern District of Georgia. These factors are the increasing difficulty of the Court's civil caseload, as demonstrated by the percentage increase in Type II (heavier weighted) civil cases between SY1988-1991 and the escalating toll on judicial resources imposed by the documented increase in percentage of trial time being consumed by criminal cases. The criminal docket's effect on the civil docket is further evidenced by developments in the law, practices, and procedures relating to the sentencing of guilty defendants, which is discussed below in Section II(B)(4) of this Report.

The Advisory Group examined carefully Court procedures and rules, motion practice, and the Court's scheduling practices. The object was to ascertain whether singly or in combination existing procedures and rules contributed to increasing cost or delay.

Existing rules provide for each judge to use the same form of pretrial order. Existing rules also provide for time limits on discovery, limit the number of interrogatories that may be served upon an adverse party, limit the duration of depositions, require an early consideration of settlement, require the parties to confer to resolve discovery disputes among themselves, and in general reflect a studied attempt by the Court to incorporate into the local rules widely accepted practices designed to insure the proper balance between judicial involvement in the pretrial process and the flexibility of the litigants to develop

the facts of the case through a wide variety of means, freed from any attempt by the Court to over manage the case.

While there were criticisms by some attorneys who responded to the Attorney Questionnaire developed by the Advisory Group (Attachment 6) complaining of delay in ruling upon motions, accompanied by the suggestion that a failure to rule upon pending motions had contributed to cost and delay, the Advisory Group was not able to conclude from its studies and the evidence before it that failures by the judges of this Court to timely rule upon pending motions was a significant contribution to cost and delay. While practices between the judges vary and some judges are better case managers and rule more promptly than others, the inclusion within the Civil Justice Reform Act of 1990 of §476 should stimulate the judges to decide motions within a six month period. Section 476 of the Act provides:

> "(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--
>
> "(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;
>
> "(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and
>
> "(3) the number and names of cases that have not been terminated within three years after filing.
>
> "(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semi-annual report prepared under subsection (4)."

The Advisory Group noted the absence from local rules and procedures of provisions concerning alternative dispute resolution procedures such as arbitration and mediation. Also omitted from existing rules and practices are any requirements requiring the setting by the Court of a fixed trial date or any requirement that a trial be held in civil cases within 18 months absent a specific finding by the Court that that 18 month rule should be inapplicable. Since each of these requirements are mandatory for pilot courts, each is discussed in the following sections discussing the six principles of litigation management to be implemented by pilot courts and their implementation within the framework of existing rules.

2. Costs

The Advisory Group could find no evidence that expediting the pace of civil cases will necessarily reduce costs. Indeed, responses to the Questionnaire (Attachment 6) reflected some views that high costs were at least in part attributable to:

- short discovery deadlines;
- unnecessary filing requirements; and
- too much Court supervision prior to attorneys and clients being ready for trial.

The Advisory Group concluded after consideration of the conflicting viewpoints and the available literature discussing the nexus, if any, between

delay and cost that existing rules and procedures do in most cases strike a reasonable balance between the understandable desire of litigants and attorneys to have maximum flexibility in the management of their cases and the Court's interest in assuring that cases assigned to the judges of the Court are disposed of promptly. The Court has developed local rules with time limits and other requirements which are designed to expedite the pace of the litigation, discourage delay, and encourage an early discussion of settlement. At the same time the Court has incorporated flexibility into the application of its rules in order to allow adjustments to the rules whenever the complexity of a case renders adjustment appropriate as well as whenever realistic assessment of the time needed for the judge's determination of the case renders strict adherence to the rules inappropriate.

There is a widely held perception between the litigants in this District and the attorneys who represent these litigants that while civil litigation in the United States District Court for the Northern District of Georgia is costly, just as it is elsewhere, the costs problem is not a structural problem arising out of the Court's rules and procedures nor can it be rightly remedied by amendments thereto. Indeed, reducing costs is and should be the primary responsibility of the litigants and their attorneys with Court involvement limited to the correction of abuses by the litigants.

The statute directs the Advisory Groups to "identify the principal causes of cost and delay . . . " and suggests that the role of court procedures

and the conduct of both litigants and their attorneys in cost and delay be considered. 28 USC§472(c)(1)(C). It is the view of the Advisory Group that efforts at controlling costs should be directed toward understanding how litigation decisions are made by the litigants and their attorneys and how litigation tactics and choices impact costs. The principal problem in this District is, as elsewhere, the costs associated with discovery. The problems include, among others, costs associated with (1) the number and length of depositions, (2) the use of expert witnesses and their associated costs, (3) the volume of documents sought in discovery and the subsequent use or attempted use of those documents, and (4) discovery with respect to parties, witnesses, and issues that are marginally involved in the litigation. The manner in which litigation is conducted and its impact on cost and delay is further discussed in the following Section 3 of this Report.

3. Effect of Litigation Practices and Procedures

The Civil Justice Reform Act of 1990 requires the Advisory Group not only to analyze court procedures and their impact on cost and delay but also to examine the way litigants and their attorneys approach and conduct litigation. A broad review of litigation practices and procedures, both in and out of court, was undertaken by the Advisory Group to ascertain how existing practices could be modified to reduce cost and delay. The Advisory Group found itself unable to accomplish this task with the degree of precision that

it achieved when addressing other topics in the Report. The broad experience of the members of the Advisory Group, both in the business community and as attorneys representing individual interests, corporate interests, plaintiffs, and defendants, enabled, however, the Advisory Group to focus on specific practices of litigants and their attorneys which affect the cost and pace of litigation. In order to obtain a broader cross section of views on these issues the Advisory Group utilized a questionnaire directed to attorneys in 90 selected cases. Attachment 6 is a copy of the questionnaire along with a brief outline of the methodology employed by its formulation.

The Advisory Group paid particular attention to discovery practices as well as to motion practice, relationships among counsel, and trial practices which impact or potentially impact the length of trials. Consistent with today's legal practice, clients are increasingly involved in the conduct of litigation, frequently through their in-house attorneys, and in the decision making process involving such critical areas as the sequence and timing of discovery initiatives, the timing and content of settlement offers, the use of experts, and the preparation and filing of motions which are potentially case dispositive, i.e., motions to dismiss or motions for summary judgment.

The Advisory Group was persuaded that while there is no single cause for the cost and delay attributable to civil litigation in this District, discovery practices impact directly on both cost and delay and are in some cases a

contributing factor to cost and delay. The Advisory Group concluded after reviewing both the attorneys' responses to the Questionnaire (Attachment 6) and after studying portions of the relevant literature on the subject of cost and delay that a reduction in cost and delay attributed to discovery could and should be achieved through more communication between attorneys for litigants and through agreements between litigants reflecting heightened sensitivity to the cost and pace of litigation. Such an approach might include consideration of the following practices:

- a reciprocal and early voluntary exchange of information known to be relevant and/or discoverable;
- early use of admissions and stipulations to establish facts not genuinely in dispute;
- interview of witnesses in lieu of depositions particularly where the witnesses' knowledge is as to discrete and identifiable subject matter areas;
- early discussions and agreements between counsel establishing an overall litigation plan consistent with the time limitations of the local rules and the need to obtain prompt and fair disposition of the case; and
- early identification of potentially dispositive issues as to a claim or defense which if resolved by the Court will either terminate the case or materially limit the scope of the litigation.

The Advisory Group believes that implementation of these suggestions can be achieved consistent with the existing local rules. However, the Advisory Group has included in its recommendations a proposed amendment to the local rules (discussed in detail in the following section of this Report) which will require plaintiff and defendant to exchange certain basic information which is relevant to their claims and defenses, respectively, by filing answers to court mandated interrogatories and requests for production of documents. Such an approach has been followed with some success in other courts. At a minimum, the interrogatories have resulted in the parties focusing on and exchanging useful factual information sooner than they otherwise would have, thereby promoting an earlier identification of the legal basis of claims and defenses.

The Advisory Group considered, but rejected, inclusion of a rule that would require the attorneys to develop and submit for court approval a comprehensive management plan for each case as part of their pretrial efforts which would contain early identification of witnesses and documents and limits on (1) the number of witnesses; (2) the number of documentary exhibits; (3) the number of experts; (4) the time within which a deponent can be deposed; and (5) the time to be allotted to the trial of the case.

While many of these ideas may be particularly useful in the handling and disposition of complex and protracted litigation, cases which present special case management problems to the Court, and while the practices

suggested might be useful in any case, the Advisory Group concluded that there is sufficient flexibility under the existing rules for the litigants to develop these and other appropriate techniques for controlling the cost and time of litigation. In short, the Advisory Group was not persuaded that mandating a specific management plan in each case and requiring court supervised implementation would be helpful to reducing cost and delay and, indeed, concluded that requiring such an approach might increase cost and delay by requiring more time of the judge in making case management decisions better left to the litigants and their attorneys.

Under the Court's existing motions practice, motions filed with the Court are required to be submitted in writing and supported by a brief. Oral argument on motions is the exception rather than the rule. While there was some discussion among the Advisory Group as to whether greater flexibility in permitting oral argument of motions might reduce delay and possibly costs as well, the Advisory Group was, again, not persuaded that the available evidence together with the demands on the judges' time warranted modification of existing rules and practices.

The Advisory Group also considered whether lack of civility between the parties or between counsel has added appreciably to cost and delay. Some of the judges of the Court met with the Advisory Group and were questioned as to whether a demise in professionalism has impacted negatively

on either cost or delay. The Advisory Group found, based on its inquiries to the Court and on the information furnished by attorneys either in their answers to the Questionnaire or in relating their experiences to the Advisory Group, that there is, in most instances, reasonable cooperation between the litigants and their attorneys regarding compliance with the provisions of the local rules, and in cooperating with the Court to reduce cost and delay. There are, to be sure, exceptions, but existing local rules and available sanctions for dilatory tactics and lack of professionalism are adequate to insure that relationships among counsel do not adversely affect either the cost of litigation or the time within which it is conducted.

The Advisory Group's examination of the condition of the docket as discussed herein, as well as information provided by the United States Attorney and other members of the Advisory Group, contributed to the Advisory Group's conclusion that the length of trials is increasing both for civil and criminal cases. This trend is important in understanding both cost and delay. The trend toward longer trials seems to reflect the case mix in this District and may, therefore, be unavoidable. However, the Advisory Group is persuaded that greater efforts and cooperation by attorneys to narrow the issues for trial by limiting the use of testimonial and documentary evidence, which while admissible is merely cumulative, would be useful in reducing the length of trials. The Advisory Group also determined that the litigants and their attorneys should endeavor to make realistic estimates of time necessary

for trial and then to stay within that estimate. The Advisory Group believes that if each attorney will focus upon his or her responsibility to expedite termination of the party's case at the lowest possible cost that is consistent with the attorney's professional responsibility to the client, the trend toward longer trials can be curtailed.

4. Effect of Legislation and Executive Policies

The Advisory Group assessed the impact of key legislation and actions taken by the executive branch upon the Court's ability to dispose of civil cases. Included in this assessment was examination of the following areas:

- Speedy Trial Act
- Sentencing Guidelines
- Firearms Prosecutions
- Drug Prosecutions

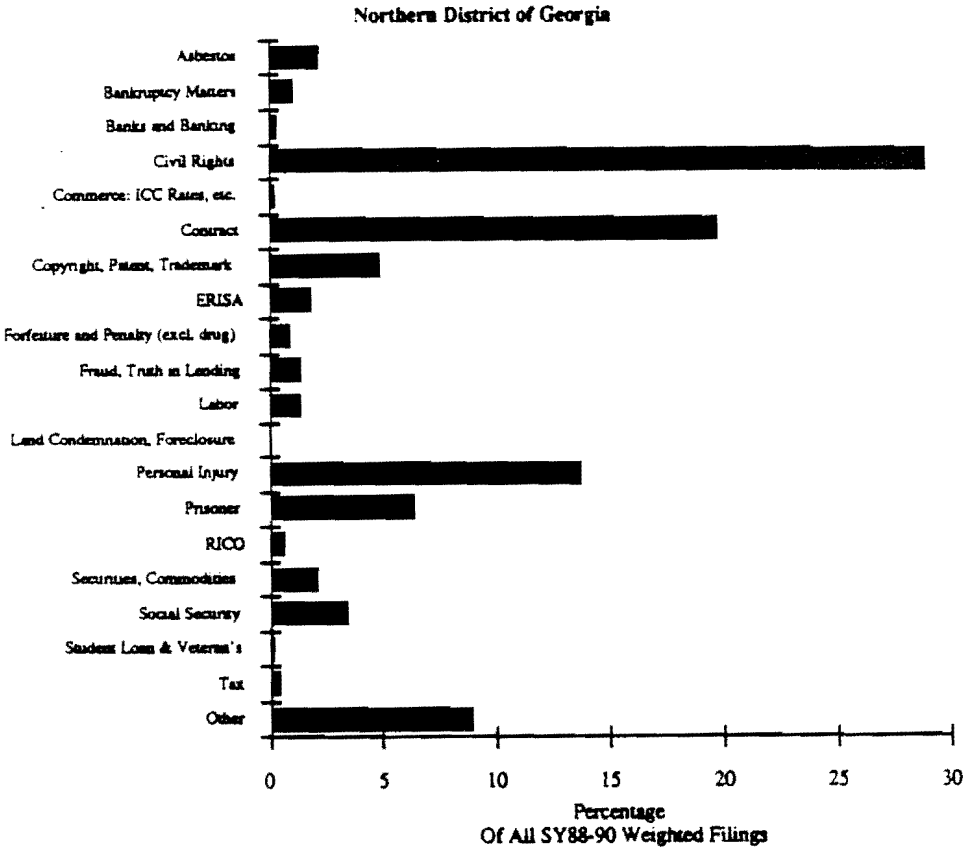
The findings of the Advisory Group in these areas are discussed in some detail below. In addition, the Advisory Group considered the following legislatively created causes of action:

- ERISA
- RICO
- FIRREA

ERISA, the Employment Retirement Income Security Act of 1974, 29 USC§§1001-1461, is a comprehensive federal scheme for regulating pension

and other employee benefit plans. ERISA filings in the civil docket increased more than six times in statistical years 1981-90 (from 15 cases in SY1981 to 92 cases in SY1990). See Table 4, Report, p. 12. Between SY1988-1990, the increase in ERISA filings was 155%. Nevertheless, Chart 7 on weighted civil case filings indicates that over this same time period only 3% of the judges' time in the Northern District of Georgia was required to handle ERISA filings. Based on this information, it appears that, despite their increasing numbers, ERISA cases have not had significant impact on the civil docket of the United States District Court.

Chart 7: Distribution of Weighted Civil Case Filings, SY88-90



In 1970, Congress enacted the Organized Crime Control Act, Title IX of which is known as the Racketeer Influenced and Corrupt Organization Act (RICO). The number of civil RICO cases in this District has decreased from a high of 59 cases in SY1987 to 30 cases in SY1990. See Table 4, Report, p. 12. The amount of judge time devoted to civil RICO cases in the Northern District of Georgia in 1988-90 was 1%. See Chart 7 above. The conclusion drawn from this available data is that RICO legislation also does not significantly impact the civil docket of the Northern District of Georgia.

On August 9, 1989, President Bush signed into law the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law No. 101-73, 103 Stat. 183 (1989). This legislation significantly affects all financial institutions, including banks, thrift (savings and loan) institutions, and federal credit unions, but the FIRREA legislation was primarily a response to the deteriorating state of the nation's thrift industry.

The current impact of this legislation on the Northern District of Georgia does not appear to be significant. The Advisory Group reviewed the two categories of civil case types that FIRREA legislation could possibly come under: Bank and Banking, and Fraud, Truth in Lending. See Table 4, Report, p. 12. As shown in Chart 7 above, these two categories combined require only slightly more than 2% of the judges' time in this District, which, again, does not indicate a significant legislative impact on the Court's civil docket.

Congress enacted the Speedy Trial Act of 1974 in an effort to protect criminal defendants against prejudicial delay. The Speedy Trial Act established

specific time limitations for completion of key stages in a federal criminal prosecution.

The Speedy Trial Act requires that a criminal indictment or information be filed within 30 days of arrest or service of a summons upon the defendant in connection with the criminal charges. 18 USC§3161(b). In addition, a criminal trial must commence not more than 70 days from the date of the filing of the information or indictment, or from the date of the defendant's arraignment, whichever is later. 18 USC§3161(c)(1). The only exceptions to this 70-day trial requirement are certain periods of "excludable time" which by statute are deemed permissible periods of delay and are excluded from computation of the time limits of the Speedy Trial Act. 18 USC§3161(h). If a defendant is not indicted within the 30-day time limitation, the charges must be dropped. 18 USC§3162(a)(1). If a defendant is not tried within the 70-day time limitation, the defendant may move to have the indictment dismissed. 18 USC§3162(A)(2).

The Advisory Group found that the ramification of the Speedy Trial Act for civil litigants is that it results in criminal matters being accorded priority over civil cases. Civil cases included on a trial calendar that also includes criminal cases may never be reached by the Court during that calendar duration because of the amount of time consumed by the criminal cases, which having been accorded priority over the civil cases, were tried first.

Through the enactment of the Sentencing Reform Act of 1984, and the establishment of the United States Sentencing Commission, Congress created

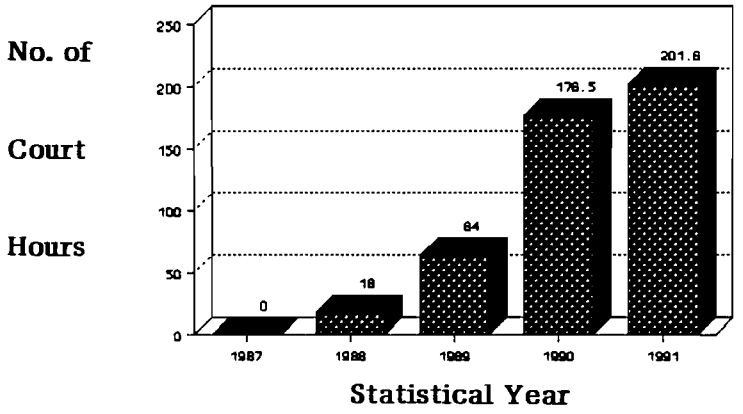
a sentencing guideline system which went into effect on November 1, 1987. In essence, the Sentencing Commission has developed guidelines to be used by the district courts in sentencing federal criminal defendants. The Sentencing Guidelines, which are contained in the Federal Sentencing Guidelines Manual, describe a step-by-step process to be followed in calculating a determinate sentence, taking into consideration pertinent factors which include the nature of the offense, the defendant's role in the offense, any prior criminal record and whether the defendant has accepted responsibility for his or her conduct. With input from the United States Probation Office, the defendant, and the prosecution, the District Court determines the sentence within the applicable guidelines range, subject to certain authorized departures. Both the defendant and the prosecution are authorized to appeal the Guidelines sentence.

The Advisory Group observed that the Sentencing Guidelines have greatly complicated the sentencing process by requiring the Court to consider, and where appropriate hold evidentiary hearings on, specific factual details which figure into the computations under the guidelines. The result appears to be that considerably more time is spent on the sentencing phase of the case than was spent prior to the existence of the guidelines[3]. See Chart 8. Absence of a significant body of case law to resolve issues raised by the defense or the prosecution further contributes to the demand on judicial

[3]Even more time on the sentencing phase of a case is likely to be required by the newly-enacted Organizational Sentencing Guidelines which are to take effect on November 1, 1991.

resources. Moreover, the increase in criminal trials, dealt with in other sections of this Report, is attributable, in part, to the chilling effect the Sentencing Guidelines have had upon terminations of criminal proceedings through plea bargaining. The Advisory Group concluded that this trend is likely to continue.

CHART 8
CONTESTED SENTENCING HEARINGS
COURT HOURS



The enactment of several statutes providing for mandatory minimum sentences for weapons possession evidences Congress' present emphasis on firearms prosecutions. Section 924(c) of Title 18 of the United States Code provides for a mandatory minimum sentence of five years without parole for any person who uses or carries a firearm in connection with a crime of violence or a drug-trafficking offense. A second or subsequent conviction under this section carries a minimum mandatory sentence of 20 years without parole. Similarly, Section 924(e) of Title 18, the Armed Career Criminal Statute, provides that a felon in possession of a firearm, who has three previous convictions for violent felonies or serious drug offenses, faces a

minimum mandatory sentence of 15 years without parole and a maximum sentence of life without parole.

These legislative efforts have created sentences which are more predictable and, in many cases much stiffer, for individuals who utilize firearms while committing crimes. The unanticipated result of these sentencing requirements has been to provide a considerable disincentive for defendants to plead guilty. This impact, together with the recent drug legislation discussed below, may well have contributed to the rising percentage in trials which are criminal rather than civil.

The Advisory Group was also informed that the state of Georgia has experienced serious problems with overcrowding in its penal facilities, and, as a consequence, jail sentences for many firearms related offenses have decreased. This problem has manifested itself in publicity identifying the Atlanta area as one of the nation's most violent cities. As a result, the United States Attorney's Office in the Northern District of Georgia has undertaken initiatives, one of which is operation "Triggerlock," to ensure that violent criminals do not go free as a result of the state's jail overcrowding problems. The United States Attorney informed the Advisory Group that as a result of these overcrowding problems and the availability of harsher sentences under the federal system, the United States Attorney's Office has made, and will continue to make, a concerted effort to prosecute firearms offenses which historically have been prosecuted by the state. The United States Attorney

anticipates that these initiatives will result in increased criminal filings and more criminal trials in the Northern District of Georgia.

Enactment of the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986 by Congress have enhanced the Justice Department's "war on drugs" through the potential sentences they provide. Distribution of more than 100 grams of heroin, 500 grams of cocaine or 5 grams of "crack" cocaine carries a mandatory minimum sentence of five years and a maximum of 40 years, without parole. A subsequent similar drug offense carries a mandatory minimum of ten non-parolable years and a maximum of life imprisonment without parole. 21 USC§841(b)(1)(B). Other factors such as the distribution of larger quantities of drugs, organized criminal activity and the involvement of minors also enhance the potential available penalty.

Similar to the impact of harsher penalties for firearms violations, the imposition of mandatory minimum sentences based upon the amount of controlled substances involved in a particular drug transaction or other factors has created a substantial disincentive for drug defendants to plead guilty. The use of "related conduct" in the Sentencing Guidelines, computations which consider the drug activities of co-conspirators, has also resulted in much longer sentences and a higher incidence of defendants choosing to take their chances with a jury's verdict. Thus, a case which may have previously resulted in a plea, particularly in the case of first offenders in drug cases, will

now result in a trial which will occupy a more substantial portion of the Court's time. This trend is likely to continue.

III. Recommendations and Their Basis

A. Recommended Measures, Rules, and Programs and How They Would Reduce Cost and Delay

In reviewing the practices and procedures of the Northern District of Georgia and in conducting its analysis of the Court's docket, the Advisory Group focused not only on local rules and procedures that needed to be added to promulgate the cost efficiency and delay reduction goals of the Civil Justice Reform Act of 1990 but also on those rules and procedures which are now in place on the Court that promote those goals.

Several existing local rules that promote judicial involvement in case management were described in Section II(b)(1) of this Report. As the Advisory Group studied more closely the Local Rules of Practice for the Northern District of Georgia, which were totally revised by the Court between 1983 and 1985, the Advisory Group recognized that the case management scheme implemented by the Court at that time addressed many of the concerns of the Civil Justice Reform Act of 1990 relating to the conduct of civil litigation.

The Northern District of Georgia's local rules are structured to keep litigation moving. Key stages in the litigation are identified and very specific directives are given in the local rules for completing the requirements and

moving through that stage. These procedures which are followed by each judge on the Court not only keep litigation moving at a reasonable pace, but the uniformity in the rules also avoids duplication of effort whenever a case, for reasons of conflict or whatever, must be transferred from one judge to another. The Advisory Group also learned that the Court's decision to adopt uniform pretrial procedures was motivated by the Court's recognition that the bar needed predictability and uniformity in its practice before the eleven judge Court, even though adoption of these practices restricted the individualized preferences of the judges as to how cases assigned to them were managed.

The Advisory Group commends the judges of the Northern District of Georgia for the local rules they have developed and recommends that these rules be retained. The Advisory Group also proposes six new local rules or rule modifications which it commends to the Court for adoption. These proposed rule additions and modifications relate to early identification of complex cases or specific needs within cases which may require individualized attention by the Court; procedures to provide for the early exchange of relevant documents and information among counsel; the setting of a trial date at an earlier time in the pretrial phase of the case than is now the Court's practice and, consistent with the Civil Justice Reform Act of 1990, suggested procedures for setting the trial date for a time within 18 months from the case's filing date; and implementation of both a court-annexed arbitration

program and an optional alternative dispute resolution program utilizing a special master. The Advisory Group is also recommending three statutory changes which it believes are appropriate and consistent with the Civil Justice Reform Act of 1990.

The recommendations of the Advisory Group are as follows:

1. Amend Local Rule 200-1(g), Civil Cover Sheet, to require plaintiffs to indicate on the civil cover sheet whether the case is complex. An appropriate modification should also be made in the Court's civil cover sheet;

2. Add new Local Rule 201-2, Mandatory Interrogatories for All Parties, which is included as Attachment 7.

3. Amend Local Rule 235-3(7), Preliminary Statement and Scheduling Order and Item 7(b) of the corresponding Form II in Appendix B of the local rules by addition of the following provision regarding requests for extensions of discovery: "If the parties anticipate that additional time will be needed to complete discovery, please state those reasons in detail below: [space for response];"

4. Amend Local Rule 235-3(10), Preliminary Statement and Scheduling Order and corresponding Form II in Appendix B, by addition of a provision to the Scheduling Order setting a date for trial which provision includes the presumption that the case will be ready for trial within 18 months of the filing date of the complaint. The Advisory

Group recommends that the trial date set in the Scheduling Order be specific as to month and that a more precise trial date be set upon entry of the pretrial order. For those cases in which a pretrial order has not been entered 16 months after the date of filing, compliance with §473(a)(2) can be achieved by the assigned judge's entry of an order directing the attorneys to conclude pretrial proceedings and prepare for trial on a date certain or stating that the trial cannot reasonably be scheduled within 18 months of filing due to the complexity of the case.

5. Add a new Local Rule 227 creating a mandatory court-annexed arbitration program which is nonbinding and which during the first three years of operation will be implemented in the Atlanta Division only, according to a specified selection process set forth hereinafter in Section III(C).

6. Add a new Local Rule 228 authorizing the parties in complex litigation to agree jointly upon the selection, appointment, and payment of a Special Master.

The Special Master would be authorized under a specially tailored Order of Reference to control and manage discovery, conduct a trial of the action, and enter Findings of Fact and Conclusions of Law dispositive of the case and render a decision which would be binding on the parties. The rulings and findings of a Special Master would be reviewable by the Court and could be reversed if clearly erroneous.

Otherwise the Finding of Facts and Conclusions of Law of the Special Master would be entered as the final judgment in the case.

7. That the Court recommend the following statutory changes to the Judicial Conference's Committee on Rules of Practice and Procedure:

- that diversity jurisdiction for resident plaintiffs be abolished;
- that the jurisdictional amount for diversity cases be increased to $75,000 from the current level of $50,000; and
- that Rules 8 and 12 of the Federal Rules of Civil Procedure be amended to eliminate the provision providing for tolling the time for answering a complaint in cases where a motion to dismiss is filed in lieu of an answer.

Current data, particularly comparison of weighted case filings between SY1990 and 1991 (see Report, p. 5), demonstrates that the Northern District of Georgia's civil caseload mix consists increasingly of Type II cases, those cases which are more demanding of judge time because of their complexity. Recommendations 1, 2, and 3 relate to that condition by promoting early identification of complex cases and by incorporating procedures which will enable both the attorneys for the litigants and the judge to focus on issues

and problems in those cases at an earlier stage of litigation, thereby reducing litigation delays which might otherwise occur.

Recommendations 2 and 3 also address the issue of litigation costs by obviating the need for the parties to conduct certain routine discovery (Recommendation 2) and by creating an opportunity for the judge to assess potential discovery problems early in the discovery period (Recommendation 3). The Advisory Group, as reported in Section II(B)(2) of this Report, found that prior actions by the judges on the Court have helped to control discovery costs and these recommendations simply build on those efforts.

Recommendation 4, implementation of which is required in the Northern District of Georgia as a pilot court under Section 105(b) of the Civil Justice Reform Act of 1990, assures that those civil cases which do not settle will continue to reach trial within a reasonable time after entry of the pretrial order, thereby keeping delay in litigation within acceptable limits.

Recommendation 5 is particularly responsive to the increasing dominance of the criminal docket in the Court's overall trial calendar. Arbitration will provide the parties an adjudicatory forum which, based on recent figures for Indexed Average Lifespan and Life Expectancy of civil cases, will provide an opportunity for termination of a civil case, or an increased likelihood of settlement, at a date much earlier than trial.

Recommendation 6 is particularly responsive to the needs of the parties and the Court in managing complex and protracted litigation. The

Subcommittee making recommendations as to ADR heard evidence from an attorney in a very protracted complex case in which a Special Master functioned as a viable alternative to a jury trial in a particularly complex case. This option might be especially attractive to parties in a case requiring day to day management of complex issues.

Recommendation 7 proposes abolishing diversity jurisdiction for resident plaintiffs. This recommendation is consistent with a recommendation contained in the Report of the Federal Court Study Committee. Recommendation is also made that the jurisdictional amount for diversity cases be increased. These recommendations address cost and delay by relegating to the state courts cases that should have originated there in the first instance. The last increase in the jurisdictional amount from $10,000 to $50,000 had a demonstrable effect in reducing the number of diversity cases filed in this District. See Table 2, Report, p. 8.

The final statutory change proposed seeks to avoid the delay in joinder of issues that occurs when motions to dismiss delay the time for answering a complaint. The Advisory Group prefers and recommends the existing state practice which permits filing motions to dismiss at the inception of the case but does not permit the filing of such a motion to delay the filing of an answer. The Advisory Group has concluded that the state practice in this regard is superior to the Federal Rules of Civil Procedure and would prevent delay.

B. Contributions that the Recommendations Would Require, and How They Account for the Particular Needs and Circumstances of the Court, the Litigants, and their Attorneys

Recommendation 1. Attorneys will need to be instructed as to the features that make a case "complex" within the meaning of the check-off on the civil cover sheet and not to interpret the term as being synonymous with an inquiry as to a case's suitability for multidistrict litigation. The judge to whom the case is assigned will make the decision as to whether the case is complex by virtue of the legal issues it presents; is complex, but only because of the number of parties or some other non-legal, case management issue; or does not in fact call for judicial involvement over and above that provided for by the local rules. A high degree of inaccuracy among the attorneys in evaluating their cases could actually create delay either by wasting judge time or by not alerting a judge to the appropriateness of increased intervention.

This procedure takes account of the particular needs and circumstances in the Court in that it reflects a need arising out of the civil case mix in this District.

Recommendation 2. Recommended Local Rule 201-2, Mandatory Interrogatories for All Parties, takes one step further the cooperation in discovery that is already required of attorneys practicing in the Northern District of Georgia. See Report, p. 26. It is a recommendation that is intended for the mutual benefit of all attorneys in the case.

This reciprocal discovery procedure is particularly suited to the needs and circumstances of this Court where discovery is often extensive due to the sophisticated nature of the litigation.

Recommendation 3. Existing Local Rule 225-1 imposes a four-month discovery period and permits extension of the discovery period only by order of the Court. Review of the docket reveals, however, that requests for extensions of time are common and that at least one extension of time is usually granted.

The recommendation that the attorneys be asked to indicate on the preliminary statement the reasons why they anticipate needing additional discovery time is particularly well suited to the needs of this Court and its bar. The bar of the Northern District of Georgia is large and lawyers frequently do not know each other. The Preliminary Statement is a jointly submitted document submitted 40 days after issue is joined which means it is submitted just over one month into the discovery period. This recommendation will require lawyers to confer about discovery and, hopefully, anticipate problems. The recommendation also provides the Court an opportunity to address potential "snags" in discovery well before most of the standard four month period has expired.

Recommendation 4. Historical data available to the Advisory Group does not reveal any major problem with delay in setting civil cases for trial once the pretrial phase of litigation has been concluded. The recently received

statistics for SY1991 allude to the likelihood that this might be changing, but the Advisory Group lacks hard data to confirm that this is so.

The Advisory Group's recommendation of this procedure does not arise out of an awareness of known needs and circumstances affecting the bar and the Court. Rather, as a pilot court, the Advisory Group is required to include this recommendation.

Recommendation 5. The establishment of a successful alternative dispute resolution (ADR) program will depend on the concerted efforts of the Court and the attorneys and litigants whose cases proceed through the program. Among the respondents to the Attorney Questionnaire (Attachment 6) which the Advisory Group mailed out, 57% of the respondents indicated that they did not think an ADR option would have been beneficial to them in their recently terminated cases while 43% indicated that an ADR program would have been beneficial. When asked which ADR program they would have liked to have utilized in their cases, more attorneys preferred arbitration (41) over mediation (35) or other ADR programs (8).

The only category where the number of respondents who expressed an interest in ADR was greater than the number who did not was that of contracts cases exceeding more than 29 months at termination. The survey, however, represents too small a response pool to be conclusive and may reflect a lack of knowledge about ADR in general rather than an informed preference against such programs. Regardless of what existing attitudes may

be, the Northern District of Georgia, as a pilot court, is required under the Civil Justice Reform Act to implement or make available programs providing alternative means of dispute resolution.

The recommended mandatory court-annexed arbitration program reflects the particular needs and circumstances of this legal community in that arbitration, like a trial, is adjudicatory in nature. The bar of the Northern District of Georgia is not particularly experienced in ADR. Arbitration, being a more familiar type of proceeding, should result in a more successful transition to ADR. As will be explained more fully in Section III(C), the Advisory Group's arbitration proposal suggests that the magistrate judges of the Court serve as arbitrators. This proposal, if adopted by the Court, will increase the duties relative to the Court's civil docket performed by the magistrate judges. The Advisory Group recommends, therefore, that support services for the Magistrate Judge Division be increased by the addition of two courtroom deputy clerks so that each of the five full-time magistrate judges in the Atlanta Division has a courtroom deputy who is assigned to work only with that magistrate judge. Provision also needs to be made to assure that adequate numbers of court reporters are available. The arbitration proposal does not suggest requiring that arbitration proceedings be recorded, but it is contemplated that the litigant may elect that service, at the litigant's own expense.

Recommendation 6. The litigants themselves and their attorneys may best be the judge in the first instance of special needs in complex and

protracted litigation. If the parties can agree upon a Special Master and involve the Court in approving an appropriate order of reference, such a practice might benefit the Court and the litigants in expediting the disposition of complex cases that have special problems. The parties would have to weigh the complexity of the litigation and its anticipated pace against a preference for a jury trial in complex cases. The use of a Special Master would not be mandated in these cases but would be an available option specifically authorized by a new local rule.

Recommendation 7. The legislative changes proposed regarding diversity jurisdiction in the Federal Courts address concerns that have been debated nationally. While the changes proposed are modest and stop short of recommending that diversity jurisdiction be abolished, the Court has a need to reduce the life expectancy of civil litigation, and a corresponding need to devote scarce judicial resources to civil cases having a greater claim to such resources. Litigants and their lawyers can easily adapt to these modest changes and an incremental improvement in the condition of the docket should result. This would be consistent with the Court's efforts to reduce cost and delay.

Conforming federal practice regarding motions to dismiss to existing state practices which do not permit dispensing with an answer when motions to dismiss are filed should avoid delay in the parties joining issue.

None of the changes proposed should affect adversely litigants or their attorneys and are in the view of the Advisory Group responsive to the needs and circumstances of the Court.

C. How the Recommendations Fulfill the Mandate of Section 473 of The Civil Justice Reform Act of 1990

In undertaking its review, the Advisory Group has kept constantly in mind the six principles and guidelines of litigation management and cost and delay reduction set forth in Section 473 (a) of the Civil Justice Reform Act. The Advisory Group recognized that as a pilot court the Northern District of Georgia is required, to the extent they are not already provided for by local rule or other Court procedure, to incorporate those principles in its civil justice expense and delay reduction plan. The Advisory Group has also considered the suitability of the cost and delay reduction techniques suggested in §473(b) for implementation in this Court. Set forth below are the Advisory Group's comments and conclusions regarding the six principles and suggested litigation techniques.

1. Section 473(a) Principles of Litigation Management and Cost and Delay Reduction

1. **Individualized Case Management.** The Court's scheduling order, which is based on the information contained in the Preliminary Statement submitted jointly by counsel 40 days after the joinder of issue, provides an adequate vehicle for the judge to tailor the individual case management plan of a case, early in the life of the case, according to the specific needs of that case. See LR235-3, Preliminary Statement and Scheduling Order, NDGa.

The Northern District of Georgia does not utilize formalized "tracks" for cases at various levels of complexity. The Court established years ago management procedures that were specific for certain groupings of cases. For example, habeas corpus petitions are initially screened by a staff law clerk who checks the record for completion and then prepares a recommendation regarding disposition for the judge to whom the case is assigned.

As mentioned earlier in this Report on p. 21, the Court developed a unique management scheme for Title VII cases in recognition that the caseload in two divisions of the Court rendered the judges unable to schedule Title VII cases for trial within the statutorily-imposed time framework. The Court has also tailored the requirements or exempted certain categories of cases, namely administrative appeals and cases involving pro se litigants, from its requirements regarding settlement conferences (LR235-2(c)) and filing of a joint preliminary statement (LR235-3) in recognition of the unique posture of those cases. Lastly, the Court has adopted procedures whereby truth in lending actions (LR305), Internal Revenue Service proceedings (LR325), and social security actions (LR310) are initially referred to the magistrate judges who prepare a report and recommendation for the district judge assigned to the case. See also LR260, NDGa.

In light of these procedures already in operation on the Court, the Advisory Group concludes that additional structuralization of management

procedures for categories or classifications of cases in the Northern District of Georgia is not necessary.

2. Judicial Officer's Active Control of Pretrial Process.

(A) Judge's Continuing Involvement. Local Rule 235-3, the Preliminary Statement and Scheduling Order, together with LR235-4, Consolidated Pretrial Order, assure the judicial officer's continuing participation in "assessing and planning the progress of a case."

(B) Early Trial Date. The information made available to the judges through these pretrial documents and any related conferences provide the judge adequate information on which to determine the case's readiness (or lack of readiness) for trial "within eighteen months after the filing of the complaint" and the orders entered based on those documents provide a suitable means for informing the parties of the case's trial date.

The Advisory Group has already presented its suggestion of a procedure for setting the dates for trial that complies with this principle on p. 47 of the Report.

(C) Reasonable and Timely Discovery. Local Rule 225 limits the discovery period to 4 months and establishes procedures for shortening or lengthening the discovery period as appropriate in a particular case (LR225-1); controls the extent of discovery by limiting the number of interrogatories to 40 and the length of deposition to 6 hours (LR225-2); and provides for

timely compliance of discovery requests by requiring initiation of discovery sufficiently early in the discovery process to allow reasonable time for response prior to expiration of the discovery period (LR225-1), by requiring the parties to file with the Court certificates of service relating to the discovery process so that the Court can monitor the progress of discovery (LR225-3(a)), and by requiring the parties to make a good faith effort to resolve discovery disputes before filing motions to compel (LR225-4).

These local rule provisions accomplish the goals set forth in this portion of principle 2.

(D) Motion Deadlines. Local Rule 220 sets specific filing times for certain motions, namely motions pending on removal (LR220-2), motions for summary judgment (LR220-5(c)), motions to compel discovery (LR220-4 and LR225-4(d)), and motions for reconsideration (LR220-6). All other motions are required to be filed within 100 days after the complaint is filed unless the filing party has obtained prior permission of the Court to file later (LR220-1(a)(2)). The consolidated pretrial order requires in provision (1) that the parties list any pending motions and prohibits in provision (2) the filing of any further motions to compel discovery. See LR235-4(b)(1)(2). These provisions provide a mechanism for the Court to assure that trial of an action is not delayed by unresolved motions. Timely decision of motions is addressed by §476 of the Act which requires publication of all motions

pending for more than six months. Further provisions at the local level are unnecessary.

3. Management of Complex Cases. The procedures described above relating to the Judicial Officer's Active Control of Pretrial Process apply fully to complex cases and the information provided by the attorneys in the joint preliminary statement provides a basis for introduction of additional, individualized management of the case. Advisory Group Recommendation 1 regarding indication that a case is complex on the civil cover sheet is, as explained earlier, directed at assuring the early involvement of the assigned judge in the case. Such early assessment of the extent of a case's complexity would permit the judge and the parties to determine any interest in the use of the Special Master option to be provided for in Recommendation No. 6.

4. Voluntary Exchange of Discovery. The Advisory Group's recommendation that the Northern District of Georgia adopt proposed Local Rule 201-2, Mandatory Interrogatories for All Parties, is a direct response to Principle 4 of Section 473(a). The proposed local rule requires the parties to respond automatically to eight interrogatories and one request for production of documents at the time of filing the complaint for plaintiffs and within a specified time after service of the complaint for defendants. This Court-initiated discovery will require the parties to analyze the merits of their cause of action or defense early on and to begin an early assessment of the strength of the opposing party's case.

5. Limiting Motions to Compel. No additional Court procedures or local rules are needed to satisfy this principle of Section 473(a). As discussed above, LR225-4, NDGa requires counsel in Section (a), " . . . to make a good faith effort to resolve by agreement among themselves any disputes which arise in the course of discovery." Section (b) requires counsel to attach to any motion to compel a statement certifying that this good faith effort to resolve the discovery dispute was undertaken.

6. Alternative Dispute Resolution Programs. Section 473(a)(6) of the Civil Justice Reform Act directs each United States District Court that does not have an alternative dispute resolution (ADR) program in effect to, in consultation with an advisory group, consider implementation of such a program to which appropriate cases may be referred. As a pilot court under the Act, alternative dispute resolution is not a voluntary option which may be considered by the Northern District of Georgia but a mandatory program which must be implemented.

The Advisory Group, therefore, approached its review of ADR options inquiring not whether ADR was appropriate for the Northern District of Georgia, but rather which type of ADR program best suits the Northern District of Georgia and the attorneys and litigants who come before it.

A subcommittee composed of four Advisory Group members undertook the task of studying the features which distinguish the various ADR programs. The subcommittee looked first to the other district courts in the Eleventh

Circuit to determine what ADR options, if any, were offered to civil litigants in those courts. Members of the subcommittee talked with court personnel in the Middle District of Florida regarding that Court's experience with its mandatory court-annexed arbitration program and its more recently adopted mediation program. The subcommittee also gathered information from the Middle District of Georgia regarding its voluntary court-annexed arbitration program implemented in mid-summer 1991. In addition, analysis was made of the attorney responses to Questions 6 and 7 of the Attorney Questionnaire (Attachment 6) developed by the Advisory Group in order to achieve some idea of the preferences and level of understanding among the federal court bar for the functions to be served by alternative dispute resolution programs.

Discussions were also held with former State Superior Court Judge Jack Etheridge regarding the objectives and status of the state task force on which he serves which is investigating ADR options for use in the state judicial system. The subcommittee had limited discussions with judges and staff of the Fulton County Superior Court regarding its mandatory arbitration program. Based on these conversations and review of Fulton County's program, the subcommittee concluded that any arbitration program implemented in the Northern District of Georgia would need to encompass cases with significantly higher prayers for damages than those designated for arbitration in Fulton County and that the time constraints under which this

Advisory Group is functioning made it impractical to consider coordinating efforts at this time with the state ADR task force.

The subcommittee then focused its review on ADR programs established throughout the country. Particular study was made of the Eastern District of Pennsylvania's new early mediation program; ADR programs and materials developed by the Center for Public Resources, a private organization located in New York City; and materials developed by Magistrate Judge Wayne D. Brazil from the United States District Court for the Northern District of California, a nationally recognized authority on issues relating to ADR. Both Magistrate Judge Brazil's writings and the 1990 Federal Judicial Center publication, Court-Annexed Arbitration in Ten District Courts, authored by Barbara S. Meierhoefer, contributed greatly to the subcommittee's understanding of the distinctions among ADR programs.

Ms. Meierhoefer's book proved to be particularly helpful in that she helped the subcommittee focus on the distinctions that separate ADR programs into two major categories, alternative adjudicative programs and alternative negotiative programs, while keeping in mind that the overall " . . . goals of all alternative dispute resolution programs are to reduce court burden and its associated costs and delays while maintaining or improving the quality of justice by assuring that cases receive the attention that litigants expect and deserve from the court system." B. Meierhoefer, *Court-Annexed Arbitration in Ten District Courts, p. 16, Federal Judicial Center (1990).*

The most common forms of alternative adjudicative techniques are court-annexed arbitration and summary jury trials. Arbitration programs may either be mandatory or voluntary and provide an advisory adjudication of the parties' case by either one arbitrator or a panel of arbitrators. In summary jury trials, the litigants briefly present their cases to a jury which returns an advisory verdict. Common examples of alternative negotiation programs are court-sponsored settlement conferences, in which the litigants meet with a judicial officer other than the trial judge to whom the case is assigned to discuss settlement, and court-annexed mediation. In mediation, the litigants meet with a neutral mediator who directs discussions among the litigants to assist them in identifying the underlying issues and in developing a creative and responsible settlement package. Alternative negotiation programs, according to Ms. Meierhoefer, are aimed at increasing both parties' satisfaction with the outcome of the process whereas in alternative adjudicative programs the focus is on satisfaction with the process through which a determination was reached.

The ADR subcommittee carefully studied programs implementing court-annexed arbitration, summary jury trial, court-annexed mediation, and court-sponsored settlement conferences to determine how well these programs would address the needs and conditions of the Northern District of Georgia, as well as lesser utilized programs such as early neutral evaluation, case valuation, and settlement weeks. As mentioned earlier in Section III, the

subcommittee also received a presentation from an attorney who had had a positive experience in this Court with voluntary alternative litigation before a special master. The entire Advisory Group also met formally with four judges on the Court to exchange views and questions relating to alternative dispute resolution in the Northern District of Georgia.

Having completed this study, the subcommittee then reviewed very carefully Local Rule 235-2, Settlement Conferences and Certificates to determine whether this procedure satisfied the principles enunciated in the Civil Justice Reform Act. Although this rule has many positive features which promote a negotiative approach to termination of civil cases, the ADR subcommittee concluded, and so reported to the Advisory Group, that participation of a designated neutral in the alternative process is an integral feature which should be present in order for a procedure to qualify as an alternative dispute resolution program.

Upon concluding its review, the subcommittee presented its findings to the Advisory Group along with interim recommendations for an alternative dispute resolution program in the Northern District of Georgia. The following recommendations now presented to the Court for establishment of a nonbinding, mandatory, court-annexed arbitration program in the United States District Court for the Northern District of Georgia represent the efforts and recommendations of the entire Advisory Group. The Advisory Group hereby

recommends an Alternative Dispute Resolution Program having the following features:

1. That the optimal size for the pilot alternative dispute resolution (ADR) program is approximately 250-300 civil actions per year. The Advisory Group believes this number of civil actions will provide a significant, yet manageable, sampling of all civil actions filed.

2. That for administrative ease and because the divisions outside Atlanta do not have full-time magistrate judges, the pilot program is recommended for implementation in the Atlanta division only.

3. That the sampling of civil actions required to go through ADR include civil actions in all filing categories, without regard to the size of the relief sought or to the number of parties, except it is recommended that agency appeals, prisoner petitions for habeas corpus or for relief, in whole or in part, under 28 USC§1343, and actions, regardless of category, in which one or more parties is proceeding pro se be excluded.

4. That actions should be randomly selected from each civil assignment wheel. Figures for the statistical year ending June 30, 1991, indicate that the desired statistical sampling of 250-300 civil actions can be achieved by random selection of every tenth (unexcluded) civil action filed in the Atlanta Division.

5. That a meaningful body of statistical information be developed so that analysis can be made at regular intervals during the pilot program to determine which types and sizes of civil actions do or do not benefit from ADR.

6. That the form of ADR be court-annexed arbitration. It is recommended that participation in the program for those actions selected be mandatory, except that the judge to whom the action is assigned may sua sponte or upon motion filed by a party within 30 days after notification of selection for the arbitration program order an action exempted from arbitration upon a finding that the objectives of arbitration would not be realized because (a) the action involves complex legal issues (b) because legal issues predominate over factual issues or (c) for other good cause.

7. That upon the mutual consent of all parties, a civil action not randomly selected for the ADR program will be permitted to participate, provided there are arbitrators and staff personnel available to process the action in addition to those civil actions randomly selected. Actions voluntarily included in the ADR program should be assigned to a separate category for statistical purposes.

8. That a civil action assigned to or permitted to participate in the ADR program would continue to be subject to the overall management control of the assigned judge during the pendency of the

arbitration process, and the parties would not be precluded from filing pretrial motions or pursuing discovery.

9. That the arbitration hearing would be a one-time, summary proceeding which, except in unusual situations, would have a duration of not more than four to six hours. Parties would be allowed to present documentary evidence and other exhibits, provided that at least ten days prior to the arbitration hearing each party furnished to every other party copies or photographs of all exhibits to be offered at the hearing. The Advisory Group recommends that evidence be presented primarily through the attorneys rather than by testimony of witnesses.

10. That the parties are to be encouraged to attend the arbitration hearing, but it is not recommended that the presence of parties be required.

11. That the award of the arbitrator should be advisory and non-binding. The Advisory Group recommends that the judge to whom the case is assigned shall not be informed of the arbitrator's decision.

12. That any party dissatisfied with the arbitration award should be entitled to a trial de novo, without any prejudice whatsoever to the party's case.

13. That the full-time magistrate judges in the Atlanta Division constitute a well qualified pool of arbitrators.

14. That in the event the caseload of the full-time magistrate judges prevents the magistrate judges from serving, then an attorney satisfying the criteria stated in Item 15, below, and approved by the Court should be selected to serve as arbitrator.

15. That to qualify as an arbitrator, it is recommended that a private attorney: (1) must have been admitted to the practice of law by the State Bar of Georgia for a period of not less than ten years; (2) must have committed, for not less than five years, 50 percent or more of his or her professional time to matters involving litigation; (3) must have litigated on a regular basis in the United States District Court for the Northern District of Georgia or be a former judge of a United States District Court or of a United States Court of Appeals or be a former judge in a Georgia state court of general jurisdiction or a former judge on a Georgia appellate court; and (4) must have satisfactorily completed a training program for arbitrators approved by the judges of the Northern District of Georgia.

16. That it is recommended that the Court apply to the United States Government for funds to compensate private attorneys who serve as arbitrators during the term of the pilot ADR program.

17. That the administration of the ADR program would best be centralized in the office of the Clerk of Court for the United States

District Court for the Northern District of Georgia, and it is recommended that application be made to the United States Government to provide funds for the hiring of an administrator during the term of the pilot ADR program.

18. That the administrator should notify the parties within 20 days after filing of the inclusion of an action in the arbitration program. The administrator should also be responsible for scheduling the arbitration hearings to occur at the United States Courthouse approximately six months after the civil action is filed or at the close of the original discovery period, whichever occurs first. Once set, it is recommended that the date for the arbitration hearing should be a firm date.

19. That in the event a magistrate judge is not available to serve as arbitrator, the administrator would provide the parties to the civil action with a list of approved attorney arbitrators. It is recommended that the parties be permitted to submit a joint listing of three preferred arbitrators, ranked in order of preference. The administrator should endeavor to schedule an arbitrator for the hearing in accordance with the preference indications of the parties.

20. That the administrator of the ADR program should be assigned responsibility for developing and carrying out a data collection

and evaluation program to determine whether the ADR program is increasing the number of cases which settle; is causing settlements to occur at an earlier time; has had any affect, either increased or decreased, upon the costs associated with litigation in the Northern District of Georgia; and whether the ADR program has reduced delays associated with litigation in the Northern District of Georgia or otherwise improved the administration of justice.

The Advisory Group recommends that the Court promulgate new local rules 227 and 228 to implement the non-binding, mandatory, court-annexed arbitration program presented above and the voluntary, optional ADR procedure utilizing a special master described earlier in Section III of this Report at pp. 43-44, 50.

The Advisory Group's recommendations as to ADR and its implementation might require statutory approval to include the United States District Court for the Northern District of Georgia as a court authorized to implement a non-binding, mandatory, court-annexed arbitration program. An opinion letter from the general counsel of the Administrative Office of the United States Court indicates, as a matter of statutory interpretation, that this may be necessary. See Attachment 8.

2. Section 473(b)
Voluntary Litigation Techniques

1. **Joint Discovery Plan.** The Advisory Group's recommendation that Item 7 of the Preliminary Statement and Scheduling Order be amended to allow attorneys to explain matters affecting the progress of discovery is a response to the litigation technique set forth in §473(b)(1). If the parties require a discovery plan other than that contemplated by the local rules, the judge can authorize an individualized plan in the Scheduling Order.

2. **Attorney Empowered to Bind Party.** The local rules for the Northern District of Georgia already incorporate adequate safeguards to assure that lead counsel, authorized to bind the parties, participate in pretrial conferences. The settlement conference provisions of LR235-2(a)(b) require lead counsel to participate in both settlement conferences. The Preliminary Statement and the Consolidated Pretrial Order require that the Court be given the names of lead counsel for each party. See LR235-3(2) and 235-4(b)(5).

3. **Parties' Approval of Delays.** The Advisory Group is not persuaded that this technique is best implemented by requiring the actual signature of the party. The Advisory Group suggests that the better procedure is for the attorney to obtain the consent of the client regarding any requests for extensions of time for discovery and for delay of trial, or, in the alternative, to require the attorney to certify that he or she has his client's approval to

seek the extension or postponement. Misrepresentation by the attorney of his or her authority would be a disbarrable offense.

4. Early Neutral Evaluation Program. Early neutral evaluation of cases is adequately covered by the local rules which make obligatory an early settlement evaluation. Given the emphasis on settlement in the local rules, the subcommittee doubts the feasibility of requiring inclusion of a neutral into the process.

5. Party Availability for Settlement Conferences. The current local rules for the Northern District of Georgia do not require that authorized parties be available in person or by telephone during settlement conferences. If the Court so chooses, this suggestion can easily be implemented by incorporation into LR235-2.

6. Other Recommended Features. The Advisory Group has no recommendations for additions to the local rules or any other features, other than those formally listed as recommendations in Section III(A) of this Report.

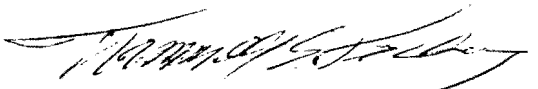
D. Development of A Civil Justice Expense and Delay Reduction Plan

The Advisory Group presents this Report and the recommendations contained herein to the judges of the Northern District of Georgia for their consideration in formulating a Civil Justice Expense and Delay Reduction Plan.

Because the Court is a pilot court and thus must file its plan by the end of 1991 (§105(b)), and because 28 USC§477(a) contemplates that the

Judicial Conference will base any model plans that it may promulgate on plans submitted within the same deadline, we regard as inapplicable to pilot courts the mandate of 28 USC§472(b)(2) to explain why we recommend that the Court develop a plan in accordance with these recommendations as opposed to adopting a model plan.

Respectfully submitted,



Trammell E. Vickery
For the Advisory Group
Civil Justice Reform Act of 1990

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

	GEORGIA NORTHERN		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1991	1990	1989	1988	1987	1986		
OVERALL WORKLOAD STATISTICS	Filings*		3,633	3,813	4,085	3,949	3,988	4,008		
	Terminations		3,437	3,707	3,884	3,776	4,229	5,495		
	Pending		3,935	3,853	3,870	3,669	3,494	3,736		
	Percent Change in Total Filings Current Year		Over Last Year	-4.7					56	6
			Over Earlier Years		-11.1	-8.0	-8.9	-9.4	38	7
	Number of Judgeships		11	11	11	11	11	11		
	Vacant Judgeship Months		6.0	.0	.0	4.8	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	330	347	371	359	363	364	67	8
		Civil	299	312	322	314	319	320	54	6
		Criminal Felony	31	35	49	45	44	44	80	8
	Pending Cases		358	350	352	334	318	340	59	8
	Weighted Filings**		389	379	396	379	385	392	35	6
	Terminations		312	337	353	343	384	500	72	7
	Trials Completed		32	32	32	33	30	39	40	8
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	6.2	6.9	5.3	4.7	4.4	3.7	59	6
		Civil**	10	10	9	9	10	9	46	4
	From Issue to Trial (Civil Only)		17	19	18	18	15	15	49	7
OTHER	Number and % of Civil Cases Over 3 Years Old		127 3.6	138 4.0	104 3.0	88 2.6	80 2.5	329 9.4	20	4
	Average Number of Felony Defendants Filed per Case		1.5	1.7	1.7	1.7	1.5	1.5		
	Jurors	Avg. Present for Jury Selection	31.10	31.02	33.55	27.68	27.82	25.77	36	6
		Percent Not Selected or Challenged	25.1	25.6	31.3	25.6	25.0	23.1	33	3

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

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

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3291	102	139	549	170	48	162	582	604	118	456	54	307
Criminal*	336	10	21	31	11	26	22	75 63	21	12 69	9	23	30

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

ATTACHMENT 1

U.S. DISTRICT COURT -- JUDICIAL WORKLOAD PROFILE

GEORGIA NORTHERN

			TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1990	1989	1988	1987	1986	1985		
OVERALL WORKLOAD STATISTICS	Filings*		3,813	4,085	3,949	3,988	4,008	5,869		
	Terminations		3,707	3,884	3,776	4,229	5,495	4,169		
	Pending		3,853	3,870	3,669	3,494	3,736	5,222		
	Percent Change in Total Filings Current Year		Over Last Year -6.7 Over Earlier Years.		-3.5	-4.4	-4.9	-35.0	[illegible]	[illegible]
	Number of Judgeships		11	11	11	11	11	11		
	Vacant Judgeship Months		.0	.0	4.8	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	347	371	359	363	364	534	77	9
		Civil	312	322	314	319	320	499	70	9
		Criminal Felony	35	49	45	44	44	35	79	8
	Pending Cases		350	352	334	318	340	475	68	3
	Weighted Filings**		379	396	379	385	392	435	63	8
	Terminations		337	353	343	384	500	379	78	9
	Trials Completed		32	32	33	30	39	38	53	9
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal Felony	6.9	5.3	4.7	4.4	3.7	3.5	85	9
		Civil	10	9	9	10	9	9	45	6
	From Issue to Trial (Civil Only)		19	18	18	15	15	16	63	8
OTHER	Number (and %) of Civil Cases Over 3 Years Old		138 4.0	104 3.0	88 2.6	80 2.5	329 9.4	105 2.1	30	5
	Triable Defendants** in Pending Criminal Cases Number (and %)		507 (72.7)	328 (48.4)	243 (49.5)	276 (77.1)	247 (57.6)	195 (56.4)		
	Jurors**	Avg. Present for Jury Selection	31.02	33.55	27.68	27.82	25.77	30.08	40	5
		Percent Not Selected or Challenged	25.6	31.3	25.6	25.0	23.1	31.6	36	5

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

1990 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3432	128	225	586	193	66	140	608	626	115	455	12	278
Criminal*	377	7	19	27	18	47	18	75	15	82	6	23	40

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

ATTACHMENT 2

United States District Courts — National Judicial Workload Profile

		ALL DISTRICT COURTS					
		1991	1990	1989	1988	1987	1986
OVERALL WORKLOAD STATISTICS	Filings[1]	241,420	251,113	263,896	269,174	268,023	282,074
	Terminations	240,952	243,512	262,806	265,916	265,727	292,092
	Pending	274,010	273,542*	265,035	268,070	264,953	262,637
	Percent Change in Total Filings – Current Year		-3.9	-8.5	-10.3	-9.9	-14.4
	Number of Judgeships	649	575	575	575	575	575
	Vacant Judgeship Months	988.7	540.1	374.1	485.2	483.4	657.9
AVERAGE PER JUDGESHIP	FILINGS — Total	372	437	459	467	466	491
	FILINGS — Civil	320	379	406	417	416	444
	FILINGS — Criminal Felony	52	58	53	51	50	47
	Pending Cases	422	476*	461	466	461	457
	Weighted Filings	386	448	466	467	461	461
	Terminations	371	423	457	462	462	508
	Trials Completed	31	36	35	35	35	35
MEDIAN TIMES (MONTHS)	From Filing to Disposition — Criminal Felony	5.7	5.3	5.0	4.3	4.1	3.9
	From Filing to Disposition — Civil	9	9	9	9	9	9
	From Issue to Trial (Civil Only)	15	14	14	14	14	14
OTHER	Number (and %) of Civil Cases Over 3 Years Old	28,421 11.8	25,207 10.4	22,391 9.2	21,487 8.8	19,782 8.1	19,252 7.9
	Average Number of Felony Defendants Filed per Case	1.6	1.4	1.4	1.4	1.4	1.4
	Jurors — Present for Jury Selection	36.79	35.84	35.89	32.7	31.1	32.0
	Jurors — % Not Selected, Serving, or Challenged	34.0	34.2	35.8	33.7	32.1	34.3

1990 CIVIL AND FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

TOTAL CIVIL	207,742	TOTAL CRIMINAL FELONY[1]	32,928
A-Social Security	7,882	A-Immigration	2,320
B-Recovery of O.	7,933	B-Embezzlement	1,606
C-Prisoner Petitions	42,462	C-Weapons and Firearms	2,872
D-Forfeitures and Penalties and Tax Suits	8,227	D-Escape	732
E-Real Property	9,794	E-Burglary and Larceny	1,769
F-Labor Suits	14,686	F-Marihuana and Controlled Substances	3,768
G-Contracts	34,465	G-Narcotics	7,575
H-Torts	37,309	H-Forgery and Counterfeiting	988
I-Copyright, Patent, Trademark	5,236	I-Fraud	6,218
J-Civil Rights	19,340	J-Homicide and Assault	569
K-Antitrust	881	K-Robbery	1,577
L-All Other Civil	18,886	L-All Other Criminal Felony Cases	3,194

[1] Filings in the "Workload Statistics" section include criminal felony transfers, which in this table are future

[illegible]

ATTACHMENT 3

(Final Report in Draft Form)

The following table sets forth the reported workload of the full-time magistrates at Atlanta.

MAGISTRATE WORKLOAD - Atlanta (5 F/T)

	1986	1987	1988	1989	1990
MISDEMEANORS	367	233	155	150	96
Traffic	272	126	70	49	41
Other	95	107	85	101	55
(Total Trials)	(46)	(34)	(17)	(19)	(8)
PETTY OFFENSES	554	619	344	239	191
Traffic	302	177	189	136	90
Immigration	1	0	16	12	8
Other	251	442	139	91	93
(Total Trials)	(79)	(71)	(52)	(72)	(30)
PRELIMINARY PROCEEDINGS	1779	1931	2098	2518	2353
Search Warrants	165	111	203	277	319
Arrest Warrants	164	252	205	269	159
Initial Appearances	476	526	565	588	577
Detention Hearings	118	139	148	213	191
Bail Reviews	77	57	89	132	90
Preliminary Exams	67	113	114	131	164
Arraignments	524	505	535	699	595
Other	188	228	239	209	258
ADDITIONAL DUTIES	2810	3396	4365	1986	1859
Criminal					
Motions §636(b)(1)(A)	1033	1073	1468	407	244
Motions §636(b)(1)(B)	133	141	131	179	202
Pretrial Conferences	229	247	303	347	274
Evidentiary Hearings	85	55	73	78	93
Other	49	83	67	52	66
Prisoner Litigation					
State Habeas	183	246	295	157	160
Federal Habeas	44	53	60	55	67
Prisoner Civil Rights	246	404	540	87	113
(Evidentiary Hearings)	(10)	(12)	(10)	(5)	(12)
Civil					
Motions §636(b)(1)(A)	572	810	1048	176	201
Motions §636(b)(1)(B)	30	68	99	105	118
Pretrial Conferences	32	72	65	107	80
Evidentiary Hearings	17	8	11	11	13
Special Masterships	6	56	80	125	134
Social Security	147	69	104	75	55
Other	4	12	21	25	39
CIVIL CASES ON CONSENT	4	5	4	19	10
Without Trial	1	5	3	4	0
Jury Trial	0	0	0	8	5
Nonjury Trial	3	0	1	6	5
TOTAL ALL MATTERS	5514	6184	6966	4912	4509

ATTACHMENT 4

MAGISTRATE WORKLOAD - Rome (P/T)

	1986	1987	1988	1989	1990
PETTY OFFENSES	81	75	85	136	112
Traffic	45	57	69	61	53
Immigration	0	0	0	0	0
Other	36	18	16	75	59
(Total Trials)	(33)	(11)	(20)	(8)	(23)
PRELIMINARY PROCEEDINGS	52	49	66	56	39
Search Warrants	1	6	0	6	2
Arrest Warrants	24	10	18	13	16
Initial Appearances	20	24	39	15	11
Detention Hearings	3	6	6	2	2
Bail Reviews	0	0	0	20	7
Preliminary Exams	4	3	3	0	1
Arraignments	0	0	0	0	0
Other	0	0	0	0	0
ADDITIONAL DUTIES	97	91	62	65	23
Criminal					
Motions §636(b)(1)(A)	0	0	0	1	0
Motions §636(b)(1)(B)	0	0	0	0	0
Pretrial Conferences	0	0	0	0	0
Evidentiary Hearings	0	0	0	1	0
Other	0	0	0	0	0
Prisoner Litigation					
State Habeas	0	0	0	0	0
Federal Habeas	0	0	0	0	0
Prisoner Civil Rights	0	0	0	0	0
(Evidentiary Hearings)	(0)	(0)	(0)	(0)	(0)
Civil					
Motions §636(b)(1)(A)	5	0	2	3	2
Motions §636(b)(1)(B)	0	0	0	3	7
Pretrial Conferences	10	0	0	1	0
Evidentiary Hearings	0	0	0	0	0
Special Masterships	0	0	0	0	0
Social Security	82	91	60	56	13
Other	0	0	0	0	1
CIVIL CASES ON CONSENT	0	1	0	0	0
Without Trial	0	0	0	0	0
Jury Trial	0	0	0	0	0
Nonjury Trial	0	1	0	0	0
TOTAL ALL MATTERS	230	216	213	257	174

MAGISTRATE WORKLOAD - Gainesville (P/T)

	1986	1987	1988	1989	1990
MISDEMEANORS	1	0	0	2	0
Traffic	0	0	0	0	0
Other	1	0	0	2	0
(Total Trials)	(0)	(0)	(0)	(0)	(0)
PETTY OFFENSES	42	46	48	37	65
Traffic	7	11	5	9	6
Immigration	0	0	0	0	0
Other	35	35	43	28	59
(Total Trials)	(34)	(30)	(22)	(22)	(25)
PRELIMINARY PROCEEDINGS	24	35	67	112	103
Search Warrants	0	0	2	4	6
Arrest Warrants	0	10	10	17	4
Initial Appearances	12	13	34	43	26
Detention Hearings	0	0	4	2	3
Bail Reviews	0	3	0	5	18
Preliminary Exams	4	1	4	4	7
Arraignments	6	8	11	31	37
Other	2	0	2	6	2
ADDITIONAL DUTIES	0	0	2	24	45
Criminal					
Motions §636(b)(1)(A)	0	0	0	0	10
Motions §636(b)(1)(B)	0	0	0	0	2
Pretrial Conferences	0	0	0	16	25
Evidentiary Hearings	0	0	0	6	4
Other	0	0	0	2	0
Prisoner Litigation					
State Habeas	0	0	0	0	0
Federal Habeas	0	0	1	0	2
Prisoner Civil Rights	0	0	0	0	2
(Evidentiary Hearings)	(0)	(0)	(0)	(0)	(1)
Evidentiary Hearings	0	0	0	0	0
Special Masterships	0	0	0	0	0
Social Security	0	0	0	0	0
Other	0	0	1	0	0
TOTAL ALL MATTERS	67	81	117	175	213

RULE 260
MAGISTRATES: CIVIL JURISDICTION AND DUTIES

260-1. Trials of Civil Cases Upon Consent of Parties.

(a) **Jurisdiction.** In accordance with 28 U.S.C. §636(c) (1982), the magistrates are authorized, upon the consent of all parties, to conduct any and all proceedings in any civil case filed in this Court, including a jury or nonjury trial, and to order the entry of a final judgment. The magistrates shall be authorized to do and perform any act which could be done by a judge. A record of the proceedings shall be made in accordance with the requirements of 28 U.S.C. §636(c)(7) (1982). See also Rule 73, Federal Rules of Civil Procedure.

(b) **Procedure.**

(1) Concurrently with the filing of a complaint in a civil case, the clerk shall notify the plaintiff or plaintiffs of the opportunity to consent to have the case heard, determined, and final judgment on the case entered by a magistrate. The notice shall be served with the complaint upon all other parties. At the direction of a judge, additional notices may be sent by a courtroom deputy at later stages of the proceedings. The notice used by the clerk shall conform to Form 33, Federal Rules of Civil Procedure Appendix of Forms.

(2) The parties shall have 30 days after the joinder of issue in which to execute and file a joint form consenting to the exercise of jurisdiction by a magistrate. If parties consenting to reference to a magistrate elect to take any appeal in the case to a district judge, their election must be affirmatively indicated on the consent form. Consent forms complying with Form 34, Federal Rules of Civil Procedure Appendix of Forms are available at the Public Filing Counter in each division.

(c) **Compliance with Federal Rules.** All transactions relating to the parties' option to consent to the exercise of jurisdiction by a magistrate shall comply with Rule 73, Federal Rules of Civil Procedure. Appeals from orders by a magistrate to a district judge shall be conducted in accordance with the procedures set forth in Rules 74, 75, and 76, Federal Rules of Civil Procedure.

260-2. Pretrial Matters on Reference from Judge.

(a) **Nondispositive Matters.** Nondispositive matters in a civil action referred to a magistrate by a judge shall be heard and an order entered in compliance with Rule 72(a), Federal Rules of Civil Procedure.

(b) **Dispositive Motions.** A magistrate shall promptly conduct any such proceedings as may be required in connection with a dispositive pretrial motion referred to the magistrate by a judge. Objections to the magistrate's recommendation for disposition shall be processed in accordance with Rule 72(b), Federal Rules of Civil Procedure. A listing of dispositive motions is contained in 28 U.S.C. §636(b)(1) (1982).

(c) **Default Judgments.** The magistrates may, in appropriate cases, enter default judgments and review motions to set aside default judgments.

260-3. Prisoner Petitions.

Except in cases in which the death penalty has been imposed, the magistrates may, unless otherwise directed:

(1) Review habeas corpus petitions filed by state prisoners under 28 U.S.C. §§2241, 2254 (1982) to determine the petitioner's eligibility to proceed in forma pauperis, issue orders to show cause, and any other orders necessary to obtain a complete record and issue orders pursuant thereto; conduct evidentiary hearings; and submit a report and recommendation to the judge as to the proper disposition of the petition.

(2) Review habeas corpus petitions and motions filed by federal prisoners under 28 U.S.C. §§2241, 2255 (1982) to determine the petitioner's eligibility to proceed in forma pauperis, issue orders to show cause, and orders pursuant thereto; conduct evidentiary hearings; and submit a report and recommendation to the judge as to the proper disposition of the petition or motion.

(3) Review civil suits challenging conditions of confinement and for deprivation of rights filed under 42 U.S.C. §1983 (1982) to determine the petitioner's eligibility to proceed in forma pauperis, and issue orders pursuant thereto; conduct evidentiary proceedings; and submit a report and recommendation to the judge as to the proper disposition of the case. Such proceedings shall be conducted in compliance with Rule 72(b), Federal Rules of Civil Procedure.

260-4. Service as Special Master.

Pursuant to 28 U.S.C. §636(b) (1982), a judge may designate a magistrate to serve as a special master in a civil case assigned to that judge. Appointments of magistrates as special masters are subject to Rule 53, Federal Rules of Civil Procedure only when the order referring the matter expressly provides that the reference is made under Rule 53.

260-5. Enforcement of Internal Revenue Laws.

In accordance with 26 U.S.C. §7402 (1982), the magistrates are authorized to issue orders, warrants, or other processes as may be necessary or appropriate for the enforcement of Internal Revenue Laws including, but not limited to, warrants for seizure of property in satisfaction of tax assessments.

260-6. Cases to Be Referred for Report and Recommendation.

(a) Truth-in-Lending Actions.

(1) Except for Truth-in-Lending actions brought as class actions under Rule 23, Federal Rules of Civil Procedure, jurisdiction of all cases brought under the Truth-in-Lending statute in which a civil penalty under 15 U.S.C. §1640 (1982), rescission under 15 U.S.C. §1635 (1982), or both a civil penalty and rescission is sought shall be automatically referred to the magistrates once the answer and counterclaims have been filed. The judge to whom a case was assigned retains jurisdiction prior to the joinder of issue and retains responsibility for the case at all times.

(2) The magistrates shall be authorized to conduct hearings and to submit proposed findings of fact and recommendations to the Court for final action on any dispositive motions. All other prejudgment matters shall be determined by the magistrates to the extent permitted by 28 U.S.C. §636(b) (1982). Objections to the recommendations of the magistrates shall be processed in accordance with Rule 72, Federal Rules of Civil Procedure.

(b) Social Security Actions. Jurisdiction of all actions brought under Section 205(g) of the Social Security Act, 42 U.S.C. §405(g) (1982), and related statutes to review administrative determinations which have come before the Court on a developed administrative record shall automatically be referred to the magistrates of this Court for report and recommendation once issue has been joined. Prior to the joinder of issue, jurisdiction remains in the judge to whom the action is assigned. In all actions brought under 42 U.S.C. §405(g) (1982), the government shall automatically be granted an additional forty days in which to answer, for a total response time of 100 days.

(c) Enforcement of Internal Revenue Summonses. The magistrates are authorized under 26 U.S.C. §7604 (1982) to hear petitions for the enforcement of Internal Revenue Summonses and to submit a report and recommendation regarding enforcement to the judge.

(d) Other Administrative Appeals. The magistrates are authorized to review the following categories of cases which have come before the Court on a developed administrative record and to submit a report and recommendation regarding the case to the judge to whom the case has been assigned:

(1) Actions to review the administrative award of licenses and similar privileges.

(2) Civil Service cases involving matters such as adverse action, retirement questions, and reductions in force.

RULE 920

ASSIGNMENT OF CASES AND DUTIES TO MAGISTRATES

920-1. **Civil Cases Upon Consent of the Parties.**

(a) **Method of Assignment.** Civil cases referred to magistrates upon consent of the parties shall be assigned to the magistrates in the same manner as cases assigned to judges. No case shall be referred to a specific magistrate nor shall any party be told prior to the filing of the joint consent and reference the name of the magistrate to whom the case will be assigned.

(b) **Relief of Magistrates.** It is the intention of the judges of this Court that the handling of the other duties assigned to the magistrates by the Court take priority over the trial of civil cases. Accordingly, the Chief Judge shall, on his own motion or upon the request of any judge, relieve any magistrate from the rotation for assignment of civil trials if such appears necessary to enable the magistrate to perform his other duties expeditiously. A magistrate so relieved shall not be assigned any further civil cases until he satisfies the Chief Judge that he is current in the performance of his other duties.

920-2. **Title VII Actions Brought In Atlanta and Newnan Divisions.**

(a) **Method of Assignment.** All cases brought in the Atlanta and Newnan Divisions pursuant to 42 U.S.C. §2000e-2 (Title VII of the Civil Rights Act of 1964) shall be referred at the time of filing to the full-time magistrates under the authority of 42 U.S.C. §2000e-5(f)(5) who shall, acting as special masters, hear and decide said cases in their entirety. Class actions shall not be assigned under this rule. Where there are additional causes of action arising under federal or state law in a referred case, such action shall also be referred to the magistrates, under Rule 53 of the Federal Rules of Civil Procedure if the parties do not consent to the trial of such issues by the magistrate pursuant to 28 U.S.C. §636(c).

(b) **Relief of Magistrates.** The operation of this rule may be suspended at any time by order of the Chief Judge if it appears after consultation with the Magistrates Committee that:

(1) The docket of the courts permits the trial of such cases within 120 days after issue has been joined; and

(2) At any other time when the efficient disposition of other work of the Court so requires.

An individual judge may withdraw any reference made under this rule at any time when in his discretion the issues are unique, novel, or such withdrawal would otherwise be in the public interest.

920-3. **Duties Assigned to Magistrates.**

(a) **Civil Proceedings.**

(1) Conduct calendar and status calls; determine motions to expedite or postpone the trial of cases for the judges.

(2) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pre-trial proceedings.

(3) Hear and determine procedural and discovery motions and conduct any required hearings in connection therewith.

(4) Conduct voir dire and select petit juries for the court.

(5) Accept petit jury verdicts in civil cases in the absence or disability of a trial judge.

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

(7) Conduct proceedings for the collection of civil fines and penalties for boating violations assessed pursuant to the relevant provisions of Title 46, United States Code Annotated, as amended 1983.

(8) Conduct examinations of judgment debtors, in accordance with Rule 69 of the Federal Rules of Civil Procedure.

(9) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

(b) **Criminal Proceedings.**

(1) Supervise, under the direction of the Chief Judge, implementation of the Speedy Trial Act of 1974, 18 U.S.C. §§3161-74 (1982), and this Court's Plan for Achieving Prompt Disposition of Criminal Cases.

(2) Administer the Court's Criminal Justice Plan, by supervising attorney lists, appointing attorneys, and examining vouchers.

(3) Supervise the criminal calendar, including calendar calls and motions to expedite or postpone the trial of criminal cases.

(4) Conduct post-indictment arraignments; accept not guilty pleas; and order a presentence report on a defendant who signifies the desire to plead guilty. A magistrate may not accept pleas of guilty or nolo contendere in cases outside his statutory jurisdiction.

(5) Conduct pretrial conferences, omnibus hearings, and related proceedings.

(6) Issue writs of habeas corpus ad testificandum and habeas corpus ad prosequendum. Issue warrants for commitment to another district in accordance with Rule 40(d)(3), Federal Rules of Criminal Procedure.

(7) Hear and determine motions relating to discovery and inspection and for a bill of particulars.

(8) Hear and determine motions relating to depositions, subpoenas, and for the appointment of interpreters or expert witnesses, including approval of payment vouchers for them.

(9) Hear and determine motions regarding the availability of the defendant for identification or handwriting exemplars.

(10) Receive grand jury returns, in accordance with Rule 6(f), Federal Rules of Criminal Procedure.

(c) **Miscellaneous Duties.**

(1) Coordinate the Court's efforts in such areas as the promulgation of local rules and procedure and administration of the collateral forfeiture system.

(2) Supervise proceedings on request for letters rogatory in civil and criminal cases, upon special designation by the district court.

(3) Receive complaints made under 18 U.S.C. §3184 (1982) for international extradition; issue warrants for the apprehensions of persons so charged; set conditions of release; hear and consider evidence of criminality; and, where the evidence is sufficient, certify the evidence together with a copy of all the testimony taken to the Secretary of State of the United States of America.

(4) Issue administrative inspection warrants.

(5) Issue orders prior to ratification of sale and mortgage foreclosure proceedings on properties financed through government loans (Veterans Administration and Federal Housing Administration).

(6) Conduct research for the Court in specific areas of the law or on individual projects.

(7) If designated, serve as a member of the district's Speedy Trial Act Planning Group, including service as the reporter, if designated. (18 U.S.C. §3168 (1982)).

(8) Perform such other duties as may be assigned by the Court.

METHODOLOGY OF QUESTIONNAIRE

The questionnaire, entitled "Civil Justice Reform Act of 1990, Questions for Attorneys," utilized by the Advisory Group was patterned upon the questionnaire developed in the United States District Court for the Southern District of Florida. Certain questions, for example Question 2, were modified to reflect case management practices in the Northern District of Georgia. The Advisory Group also added a section relative to alternative dispute resolution.

The sampling of 90 recently closed civil cases was achieved in accordance with directions provided the Southern District of Florida by The Federal Judicial Center Research Division. The sampling is designed to provide a reasonably comprehensive portrait of the range of civil litigation in the Northern District of Georgia. The sampling included 90 cases in nine groups of 10 cases each, as illustrated in the following diagram:

Time from filing to disposition	Contracts	Real Property, Torts & Civil Rights	All Other
6-17 months	10 Cases	10 Cases	10 Cases
18-29 months	10 Cases	10 Cases	10 Cases
30 or more months	10 Cases	10 Cases	10 Cases

The questionnaire was mailed to 342 attorneys. The response rate was 51%, with 147 attorneys returning completed questionnaires and 28 attorneys responding that, for miscellaneous reasons, they were unable to complete the questionnaire.

CIVIL JUSTICE REFORM ACT OF 1990

QUESTIONS FOR ATTORNEYS

Case No. (Set)

A. MANAGEMENT OF THIS LITIGATION

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

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

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

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

		WAS TAKEN	WAS NOT TAKEN	NOT SURE	NOT APPLICABLE
a.	Hold pretrial activities to a firm schedule.	1	2	3	4
b.	Limit and enforce time periods on allowable discovery.	1	2	3	4
c.	Narrow issues through conferences or other methods.	1	2	3	4
d.	Rule promptly on pretrial motions.	1	2	3	4

		WAS TAKEN	WAS NOT TAKEN	NOT SURE	NOT APPLICABLE
e.	Explore settlement potential beyond conferences required by local rules.	1	2	3	4
f.	Set a timely and firm trial date.	1	2	3	4
g.	Exert firm control over trial.	1	2	3	4
h.	Other (please specify): _____	1	2	3	4

B. TIMELINESS OF LITIGATION IN THIS CASE

3. Our records indicate this case took about _____ months from filing date to disposition date. How long do you think this case should 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? _____

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

   a. Excessive case management by the court.
   b. Inadequate case management by the court.
   c. Dilatory actions by counsel.
   d. Dilatory actions by the litigants.
   e. Court's failure to rule promptly on motions that were not case dispositive.
   f. Court's failure to rule promptly on motions that were case dispositive.
   g. Backlog of cases on court's calendar.
   h. Delay in scheduling trial date, other than "g" above.

C. GENERAL COMMENTS ON TIMELINESS

5. If you have observed that there are general problems with delay in disposing of civil cases in this district, what are those problems and what suggestions or comments do you have

for reducing the delays? In what ways, if any, do you believe lawyers can help improve the timeliness of litigation?

_____

_____

_____

_____

_____

D. ALTERNATIVE DISPUTE RESOLUTION

6. As a pilot court under the *CIVIL JUSTICE REFORM ACT OF 1990*, the Northern District of Georgia will adopt a nonbinding alternative dispute resolution (ADR) program to become effective early in 1992. A decision has not yet been made as to the type of ADR program that is best suited for this Court or as to whether it should apply to all or certain categories of cases.

   a. Would an alternative dispute resolution option have been beneficial to you in this case?

      _____ Yes _____ No

   b. At what stage in the case do you think alternative dispute resolution would have been most beneficial?

      _____ Before completion of discovery.

      _____ After the close of discovery.

      _____ After submittal of the pretrial order but before trial.

7. Mediation programs focus on negotiation techniques to help the parties reach a settlement in the case. Arbitration programs are adjudicative in nature and a decision, subject to the losing party's right to demand a trial de novo, is announced in favor of one party over the other.

   a. _____ Was your case best suited for mediation? If so, why?

      _____

      _____

b. _____ Was your case best suited for arbitration? If so, why?

_____

_____

c. _____ Was your case better suited to another form of alternative dispute resolution? If so, what type of program?

_____

_____

E. COSTS OF LITIGATION IN THIS CASE

8. Please estimate the amount of money at stake in this case.

$_____

9. Transactional costs are expenses incurred by a party resulting from filing fees, costs associated with the development of evidence, etc. Were the transactional costs incurred in this case by your client (circle one):

a. Much too high.
b. Slightly too high.
c. About right.
d. Slightly too low.
e. Much too low.

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

_____

_____

_____

_____

_____

_____
Signature (Optional)

Please return by July 29, 1991, in the enclosed envelope.

ATTORNEY QUESTIONNAIRE SUMMARY

Question #1

LEVEL OF CASE MANAGEMENT	CONTRACTS			TORTS, PROP, CIVIL RIGHTS			ALL OTHERS			CONF.
	6-17 mos.	18-29 mos.	>29 mos.	6-17 mos.	18-29 mos.	>29 mos.	6-17 mos.	18-29 mos.	>29 mos.	
No. Responses	14	16	31	12	19	18	13	12	13	1
Intensive	1	1	0	1	0	1	0	0	1	0
High	3	3	4	2	4	6	1	0	4	0
Moderate	4	4	11	7	11	6	4	3	3	0
Low	1	4	7	1	4	4	2	4	3	0
Minimal	2	1	7	2	0	0	2	3	2	0
None	2	3	2	0	0	0	3	0	0	1
Not sure	1	0	0	0	0	0	0	2	0	0

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #2

CASE MANAGEMENT ACTIONS

CONTRACTS 6-17 MOS.
(No. Responses - 14)

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NA
Hold pretrial activities to firm schedule	6	4	0	3
Limit and enforce time periods on allowable discovery	10	1	0	3
Narrow issues through conferences or other methods	3	6	1	3
Rule promptly on pretrial motions	8	1	1	4
Explore settlement potential beyond conferences required by local rules	1	6	3	4
Set timely and firm trial date	6	0	0	7
Exert firm control over trial	1	0	1	11

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #2

CASE MANAGEMENT ACTIONS

CONTRACTS 18-29 MOS.
(No. Responses - 16)

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NA
Hold pretrial activities to firm schedule	8	4	2	2
Limit and enforce time periods on allowable discovery	6	5	0	5
Narrow issues through conferences or other methods	7	7	0	2
Rule promptly on pretrial motions	11	1	0	3
Explore settlement potential beyond conferences required by local rules	6	9	0	1
Set timely and firm trial date	8	6	1	1
Exert firm control over trial	11	1	0	4

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #2

CASE MANAGEMENT ACTIONS

CONTRACTS >29 MOS.
(No. Responses - 31)

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NA
Hold pretrial activities to firm schedule	17	13	0	0
Limit and enforce time periods on allowable discovery	18	7	3	3
Narrow issues through conferences or other methods	14	14	1	0
Rule promptly on pretrial motions	14	11	4	1
Explore settlement potential beyond conferences required by local rules	5	21	2	1
Set timely and firm trial date	4	17	4	4
Exert firm control over trial	10	3	3	13
Case referred to special master upon motion due to counsel's action in unnecessarily complicating the case	1			

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #2

CASE MANAGEMENT ACTIONS

TORTS, PROPERTY, CIVIL RIGHTS 6-17 MOS.
(No. Responses - 13)

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NA
Hold pretrial activities to firm schedule	10	1	1	1
Limit and enforce time periods on allowable discovery	9	2	1	1
Narrow issues through conferences or other methods	6	4	1	1
Rule promptly on pretrial motions	7	1	0	5
Explore settlement potential beyond conferences required by local rules	3	7	2	1
Set timely and firm trial date	10	1	1	1
Exert firm control over trial	9	0	1	3
Injunction Request	1			

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #2

CASE MANAGEMENT ACTIONS

TORTS, PROPERTY, CIVIL RIGHTS 18-29 MOS.
(No. Responses - 19)

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NA
Hold pretrial activities to firm schedule	9	4	0	5
Limit and enforce time periods on allowable discovery	8	4	1	5
Narrow issues through conferences or other methods	8	7	0	2
Rule promptly on pretrial motions	15	1	0	2
Explore settlement potential beyond conferences required by local rules	0	16	1	1
Set timely and firm trial date	6	5	1	6
Exert firm control over trial	8	1	1	7
Submit to magistrate	1			

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #2

CASE MANAGEMENT ACTIONS

TORTS, PROPERTY, CIVIL RIGHTS >29 MOS.
(No. Responses - 18)

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NA
Hold pretrial activities to firm schedule	12	4	0	0
Limit and enforce time periods on allowable discovery	12	1	2	2
Narrow issues through conferences or other methods	9	5	0	1
Rule promptly on pretrial motions	12	3	0	1
Explore settlement potential beyond conferences required by local rules	6	10	0	1
Set timely and firm trial date	12	2	0	3
Exert firm control over trial	8	0	0	7

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #2

CASE MANAGEMENT ACTIONS

ALL OTHERS (EXCEPT BANKRUPTCY, PRISONER, SOCIAL SECURITY) 6-17 MOS.
(No. Responses - 13)

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NA
Hold pretrial activities to firm schedule	2	4	1	5
Limit and enforce time periods on allowable discovery	1	4	1	6
Narrow issues through conferences or other methods	3	5	1	3
Rule promptly on pretrial motions	7	1	1	3
Explore settlement potential beyond conferences required by local rules	1	6	1	4
Set timely and firm trial date	3	3	1	5
Exert firm control over trial	3	2	1	6

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #2

CASE MANAGEMENT ACTIONS

ALL OTHERS (EXCEPT BANKRUPTCY, PRISONER, SOCIAL SECURITY) 18-29 MOS.
(No. Responses - 12)

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NA
Hold pretrial activities to firm schedule	2	6	3	1
Limit and enforce time periods on allowable discovery	3	2	5	2
Narrow issues through conferences or other methods	3	7	2	0
Rule promptly on pretrial motions	6	2	2	2
Explore settlement potential beyond conferences required by local rules	0	8	4	0
Set timely and firm trial date	1	3	3	5
Exert firm control over trial	2	2	1	7
Held TRO/PI hearing and promptly ruled expediting settlement	1			

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #2

CASE MANAGEMENT ACTIONS

ALL OTHERS (EXCEPT BANKRUPTCY, PRISONER, SOCIAL SECURITY) >29 MOS.

(No. Responses - 13)

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NA
Hold pretrial activities to firm schedule	6	5	0	2
Limit and enforce time periods on allowable discovery	8	3	1	1
Narrow issues through conferences or other methods	7	5	0	1
Rule promptly on pretrial motions	7	5	0	1
Explore settlement potential beyond conferences required by local rules	4	8	0	1
Set timely and firm trial date	9	2	0	2
Exert firm control over trial	8	1	0	4
Judge Vining's willingness to provide informal conferences and preliminary rulings facilitated the resolution of this case	1			
Rule on motions		1		
Rule promptly on post-trial motions		1		

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #2

CASE MANAGEMENT ACTIONS

CONFIDENTIAL
(No. Responses - 1)

	WAS TAKEN	WAS NOT TAKEN	NOT SURE	NA
Hold pretrial activities to firm schedule	0	0	0	1
Limit and enforce time periods on allowable discovery	0	0	0	1
Narrow issues through conferences or other methods	0	1	0	0
Rule promptly on pretrial motions	0	1	0	0
Explore settlement potential beyond conferences required by local rules	0	1	0	0
Set timely and firm trial date	0	0	0	1
Exert firm control over trial	0	0	0	1

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTIONS #3 AND #4

	CONTRACTS			TORTS, PROP, CIVIL RIGHTS			ALL OTHERS			CONF.
	6-17 mos.	18-29 mos.	>29 mos.	6-17 mos.	18-29 mos.	>29 mos.	6-17 mos.	18-29 mos.	>29 mos.	
No. Responses	14	16	31	12	19	18	13	12	13	1
How long should case have taken?										
A little less time	0	0	3	1	3	0	1	3	1	0
Much less time	7	8	23	0	7	9	7	4	11	1
Same time	2	6	1	11	6	6	2	2	1	0
What factors contributed to delay?										
Excessive case mgmt. by Court	0	0	0	0	0	0	0	0	0	0
Inadequate case mgmt. by Court	0	1	6	0	0	2	0	1	2	0
Dilatory actions by counsel	4	5	8	0	2	5	1	5	1	0
Dilatory actions by litigants	4	2	6	0	2	0	1	0	3	0
Court's failure to rule promptly on motions that were not case dispositive	0	1	5	0	0	1	1	0	1	0
Court's failure to rule promptly on motions that were case dispositive	3	1	11	0	0	2	0	1	5	1
Backlog of cases on Court's calendar	3	3	19	2	5	3	2	3	7	0
Delay in scheduling trial other than backlog	1	1	7	0	2	1	0	2	0	0

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #5

GENERAL COMMENTS ON TIMELINESS

Contracts 6-17 Mos.

Comments

* Experiences good; no excessive delays (2 commented)

Causes of Delay

* Too many unnecessary forms
* Obtaining court's permission to extend discovery period
* Because of parties, witnesses and evidence, some cases cannot be made ready for trial on pre-set schedule

Suggestions

* Create separate criminal division to speed civil calendar
* Eliminate ready docket
* Judges need to rule on pretrial motions in a reasonably prompt manner
* Lawyers must respond to discovery and represent clients appropriately

Contracts 18-29 Mos.

Comments

* Continuing calendars rather than specified trial terms unfair

Causes of Delay

* Ruling on pending motions (sometimes)
* Court is placing cases on the "ready" calendar rather than the attorneys
* Too many unnecessary filing requirements

Suggestions

* Have oral motions calendar where motions are heard and disposed of without hearing

* Have page limits on briefs

* Set aside more time on court calendar for civil cases

* Separate civil and criminal calendars

* Lawyers should stop filing unnecessary objections and engaging in other dilatory actions concerning compliance with discovery requests

* Court should involve itself in pretrial settlement conferences and should readily assess attorney fees when results greatly deviate from settlement expectation

* Judges' reluctance to become involved in discovery disputes should be replaced by sanctioning misuses of the process by attorneys

Contracts >29 Mos.

Causes of Delay

* Criminal cases take priority over civil cases (3 commented)

* Court backlog (2 commented)

* Judges overworked by court's workload (2 commented)

* Cross motions for summary judgment

* Counsel is given too much latitude in managing litigation

* Discovery extensions

* Delay in reaching trial date after pretrial orders are submitted

Suggestions

* Rule on motions promptly (7 commented)

* Lawyers complete discovery during prescribed period (3 commented)

* Greater accessibility of judge for status and settlement conferences (2 commented)

* Earlier court involvement via scheduling orders (2 commented)

* Have one additional pretrial conference prior to pretrial order (to narrow the issues)

* Court set a sure trial date at close of discovery

* Limit discovery

* Keep strict time schedule for disposition of all pretrial motions

* Curb unreasonable expansion of cases

* Early trial dates or early pretrial conferences by fixed dates

* Avoid discovery disputes (more stringent sanctions)

* Fixed trial date (not floating calendars)

* Shorter standard discovery periods

* More attention to and emphasis on substantive motions, such as by oral argument

* Strict deadlines

* Hold settlement conferences to push settlement discussions beyond obligatory discussions lawyers hold under the rules

Torts, Property, And Civil Rights 6-17 Mos.

Comments

* Litigation moves in a timely fashion in this district (2 commented)

Causes of Delay

* Rulings on motions (2 commented)

* Extended discovery deadlines

Suggestions

* Courts should be more willing to grant motions for summary judgment and rule on motions in limine re evidentiary matters when they are filed

Torts, Property, and Civil Rights 18-29 Mos.

Causes of Delay

* Calendar overloaded with criminal matters (2 commented)
* Discovery completion
* Ruling on summary judgment
* Setting trial dates
* Problems in individual cases
* Two-step review process in Title VII cases

Suggestions

* Rule on motions promptly (2 commented)
* Separate criminal and civil cases
* Court settlement conferences (perhaps with magistrates)
* Without asserting Rule II issues, the Court should tax $300 against the loser of a motion (to help eliminate)

Torts, Property, and Civil Rights >29 Mos.

Causes of Delay

* Some judges may not take the time on the bench that is necessary to move cases efficiently

Suggestions

* Reasonable discovery responses should be given by defendants

* Weak motions should not be filed

* Case load is heavy; appoint more judges

* Rule on motions promptly (perhaps additional law clerks would help)

* Title VII matters - get rid of internal operating procedure referring case to magistrate

* No motions for summary judgment over 30 pages

* Set firm trial date

* Discover scheduling orders (with liberal provisions for extensions)

* Early deadline for naming defense expert witnesses

* Case management order in lieu of fill-in-the-blank form (unique to each case)

* Cases move more efficiently when judges actively practice case management

All Other (Except Bankruptcy, Prisoner and Social Security) 6-17 Mos.

Causes of Delay

* Discovery abuse

* Judges with largest number of cases and attorneys who have more cases than time

Suggestions

* Stipulate to facts at every opportunity (2 commented)

* Do not permit counsel excessive delays and extensions of time on discovery and motions (2 commented)

* Return telephone calls

* Review and sign settlement papers promptly

* Adhere to court rules

* Marshall's performance in liquidating condemned property must be improved

All Other (Except Bankruptcy, Prisoner and Social Security) 17-29 Mos.

Comments

* Judge Harold Murphy's court runs smoothly and efficiently - don't change it

Suggestions

* Better communication between counsel and court

* Take local rules seriously

* Need much greater oversight by the bench

* Dispense with settlement certificate and preliminary statement

All Other (Except Bankruptcy, Prisoner and Social Security) >29 Mos.

Causes of Delay

* Criminal cases have priority (2 commented)

* Criminal cases and habeas petitions

* Incompetent judges

* Too many pretrial pleadings required

* Rulings on motions

Suggestions

* Status conferences at various stages help (2 commented)

* More motions delegated to magistrates

* Rule requiring ruling on motions within a set period of time

* Should have some judges assigned only to civil cases

* Assign hearing date for all motions

* Lawyers should focus on trial of case if it cannot be settled or if there are no clear legal issues for summary adjudication

Confidential

Suggestions

* Prompt ruling on motions

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTIONS #6, #7, AND #8

	No. Responding	Desired ADR Option		Timing ADR			Preferred ADR Program			Dollars at Stake (Thousands)				
		Yes	No	Bef. Disc.	Aft. Disc.	Aft. PTO	Medi-ation	Arbi-tration	Other	(0-49)	(50-99)	(100-149)	(150-199)	(200-over)
Contracts:														
6-17 mos.	14	2	10	1	4	2	2	4	0	4	5	0	0	1
18-29 mos.	16	4	12	1	7	1	3	6	1	1	1	3	1	5
>29 mos.	11	16	14	10	14	4	8	12	1	1	5	2	0	17
Subtotal:	61	22	36	12	25	7	13	22	2	10	11	5	1	25
Torts, Property, and Civil Rights:														
6-17 mos.	13	6	7	5	4	1	5	4	1	1	2	1	1	1
18-29 mos.	19	10	9	3	7	2	3	5	0	5	3	4	1	1
>29 mos.	18	8	9	5	6	2	6	5	1	2	1	1	0	9
Subtotal:	50	24	25	13	17	5	14	14	2	10	6	6	2	15
All other except: Bankruptcy, prisoner, & Soc. Sec.														
6-17 mos.	13	6	6	2	3	2	4	0	0	5	0	0	1	1
18-29 mos.	12	4	6	1	3	1	3	1	0	6	0	0	1	1
>29 mos.	11	2	11	1	7	1	1	5	1	5	1	0	0	1
Subtotal:	36	12	23	4	13	4	8	6	1	16	1	0	2	3
Confidential Responses:	1	1	0	0	1	0	0	1	0	0	0	0	0	1
TOTAL:	150	59	84	29	56	16	35	43	8	36	18	11	7	50

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #9

TRANSACTIONAL COSTS	CONTRACTS			TORTS, PROP, CIVIL RIGHTS			ALL OTHERS			CONF.
	6-17 mos.	18-29 mos.	>29 mos.	6-17 mos.	18-29 mos.	>29 mos.	6-17 mos.	18-29 mos.	>29 mos.	
No. Responses	14	16	31	12	19	18	13	12	13	1
Much Too High	0	2	6	0	0	5	3	0	1	0
Slightly Too High	3	4	11	0	4	2	0	1	2	0
About Right	9	9	12	12	14	10	7	10	9	1
Slightly Too Low	0	0	0	0	2	0	0	0	0	0
Much Too Low	0	0	0	0	0	0	0	0	0	0

ATTORNEY QUESTIONNAIRE SUMMARY - QUESTION #10

HIGH COSTS OF LITIGATION

Contracts 6-17 Mos.

Comments

* Transactional costs are not too high
* Filing fees and depositors costs are too high
* Discovery deadline is too short
* Local rules increase cost of litigation by imposing unnecessary filing requirements
* Too many unnecessary papers required to be filed

Suggestions

* Should lower filing fees and put caps on court reporting fees
* Lawyers should voluntarily refrain from taking unnecessary depositions
* Reduce supervision of court until attorneys and clients ready to try case
* Preliminary statement should be abandoned for mandatory pretrial conference after issue joined

Contracts 18-29 Mos.

Comments

* Costs probably no higher than other places
* Cost of transcript too high
* Too many copies for filing requirements

Suggestions

* Increase severity of sanctions against parties and lawyers who abuse system; publish information regarding imposition of sanctions in appropriate publications

* Videotape depositions without transcript (transcript can be made from videotape)

* Place limit on fees that experts may change

* Concerning a case that should not have come before this court (but it involved Maritime Law): a referee system should be in place in this type of case rather than trial before U.S. judge

Contracts >29 Mos.

Comments

* In a particular case, transitional costs elevated because liberal joinder of parties and claims increased scope and expense of discovery

* In a particular case, dispositions excessive in length, documents excessive in number, pretrial order burdensome in length

* Length of time too long between pretrial order submission and trial

* Deposition cases (especially medical) are unreasonable

Suggestions

* Limit discovery - speed up trial (2 commented)

* Rule on motions promptly (2 commented)

* Shorten gap between pretrial order and trial (2 commented)

* Multiple party cases should be screened early to determine if all parties necessary

* Early trial

* Increased control over depositions

* Discovery plans limiting discovery should require court approval in all civil cases

* Reduce duration of case through more active management

* (One attorney stated that he had many suggestions and would like to talk with the Advisory Group)

Torts, Property and Civil Rights 6-17 Mos.

Suggestions

* More communication between court and counsel (such as informal conference)

* Cut down on amounts experts can and do charge for their testimony

Torts, Property and Civil Rights 18-29 Mos.

Comments

* Deposition transcribing fee totally out-of-line

* Defense counsel in some firms is taking injured plaintiff's depositions that last 2 to 5 hours

Suggestions

* Reduce attempts by courts to "case manage" litigation

* Eliminate superfluous filing (e.g., settlement certifications)

* Eliminate requirement that detailed pretrial orders be filed months before case will be reached for trial

* Diligent use of Alternate Dispute Resolution and judicious judicial pressure to settle

* Limit skyrocketing costs that expert witnesses charge

* Tape recording in lieu of transcribing

Torts, Property and Civil Rights >29 Mos.

Comments

* High costs for the adequate preparation of a serious case are unavailable

* High cost when discovery goes on interminably

Suggestions

* Limit high-cost experts

* Utilize magistrates as settlement judges

* Make losing party in arbitration program pay reasonable expenses of winning party's prosecution or defense of case at the time that expenses are made

* Alternate Dispute Resolution prior to close of discovery

All Other (Except Bankruptcy, Prisoner and Social Security) 6-17 Mos.

Comments

* Sole problem of high cost of civil discovery is national (Federal Rules of Civil Procedure)

* Rule concerning publication in civil forfeiture actions too costly

Suggestions

* Eliminate preliminary statement and settlement certification

All Other (Except Bankruptcy, Prisoner and Social Security) 18-29 Mos.

No comments or suggestions

All Other (Except Bankruptcy, Prisoner and Social Security) >29 Mos.

Comments

* Court's demand for pretrial activity can result in abuse by some lawyers and ends up costly (2 commented)

* In a particular case, appeal process delayed case and increased cost

Suggestions

* Have status conference held shortly after issue joined

* Put substance back into motion for summary judgment

* Quicker disposition of motions and discovery issues

* Limitations on the scope of discovery absent showing of necessity

* Alternative Dispute Resolution of discovery issues

* More frequent judicial or similar conferences

* Sanctions for abuse of the system, scope of discovery, etc.

RULE 201
ADDITIONAL PLEADING REQUIREMENTS

201-1. **Certificate of Interested Persons.**

201-2. **Mandatory Interrogatories for All Parties.**

The parties to all civil actions are required to answer the following mandatory standard interrogatories, except that appeals to this Court of administrative determinations which are presented to this Court for review on a completed record are exempted from the requirements of this rule.

The Court has prepared a form Answers to Mandatory Interrogatories which counsel shall be required to use. A copy of the form is included in Appendix B and copies of the form may be obtained by counsel at the Public Filing Counter in each division. No modifications or deletions to the form shall be made without the prior permission of the Court. All interrogatories must be answered fully in writing in accordance with Federal Rules of Civil Procedure 11 and 33.

If there is more than one plaintiff or more than one defendant in the action, each plaintiff and each defendant must answer each interrogatory separately unless the answer to the interrogatory is the same for all plaintiffs or all defendants.

The answers shall identify the individual attorneys representing a party by full name, law firm and mailing address, and telephone number.

(a) **Interrogatories to be Answered by All Plaintiffs.** Each plaintiff's Answers to Mandatory Interrogatories shall be submitted to the Clerk of Court for filing at the time the complaint is filed. A copy of the Answers shall be served with the summons and complaint upon each defendant. In removed cases, the plaintiff shall file and serve answers 40 days after receiving notice of removal.

The mandatory interrogatories to be answered by all plaintiffs are as follows:

(1) State precisely the classification of the cause of action being filed, a brief factual outline of the case including plaintiff's contentions as to what defendant did or failed to do, and a succinct statement of the legal issues in the case.

(2) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative caselaw which plaintiff contends are applicable to this action.

(3) List by style and civil action number any pending or previously adjudicated related cases.

(4) Identify by full name, address, and telephone number all witnesses whom plaintiff will or may have present at trial, including expert (any witness who might express an opinion under Federal Rules of Evidence, Rule 702) and impeachment witnesses. For each lay witness, include a description of the issue(s) to which the witness' testimony will relate. For each expert witness, state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

(5) If you contend that you have been injured or damaged, provide a separate statement for each item of damage claimed containing a brief description of the item of damage, the dollar amount claimed, and citation to the statute, rule, regulation or caselaw authorizing a recovery for that particular item of damage.

(6) Describe or produce for inspection (see FRCivP 33(c)) each document in your custody or control or of which you have knowledge which you contend supports your claims as stated in your answer to interrogatory number 5 above.

(7) Outline in detail the discovery you expect to pursue in this case. The standard period for discovery in this Court is four months (see Local Rule 225-1). If you anticipate that you will need additional discovery time, state specifically the reasons why discovery cannot be completed within four months.

(8) State the full name, address, and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in plaintiff's cause of action and state the basis and extent of such interest.

(9) State whether plaintiff wishes this case to be tried to a jury or to the Court without a jury.

(b) Interrogatories to Be Answered by All Defendants. Each defendant's Answers to Mandatory Interrogatories shall be submitted to the Clerk of Court for filing no later than 45 days after the date of service of plaintiff's complaint and Answers to Mandatory Interrogatories upon defendant. In cases in which the government is defendant, the government's Answers to Mandatory Interrogatories shall be filed 15 days after the date on which its answer to the complaint was filed. Defendant shall simultaneously serve a copy of his interrogatory answers on each plaintiff. In removed cases, defendant shall file and serve answers within 30 days following receipt of plaintiff's interrogatory answers.

The mandatory interrogatories to be answered by all defendants are as follows:

(1) If the defendant is improperly identified, state defendant's correct identification and state whether defendant will accept service of an amended summons and complaint reflecting the information furnished in the answer to this interrogatory.

(2) Provide the names of any parties whom defendant contends are necessary parties to this action, but who have not been named by plaintiff. If defendant contends that there is a question of misjoinder of parties, provide the reasons for defendant's contention.

(3) Provide a detailed factual basis for the defense or defenses asserted by defendant in the responsive pleading.

(4) Describe or produce for inspection (see FRCivP 33(c)) each document in your custody or control or of which you have knowledge which you contend supports your defense or defenses as stated in your answer to interrogatory number 3 above.

(5) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative caselaw which defendant contends are applicable to this action.

(6) If defendant contends that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address, and telephone number of such person or entity and describe in detail the basis of such liability.

(7) Provide the names and addresses of all insurance companies that have liability insurance coverage relating to the matter alleged in the complaint, the number or numbers of such policies, the amount of liability coverage provided in each policy, and the named insured on each policy.

(8) Identify by full name, address, and telephone all witnesses whom defendant will or may have present at trial, including expert (any witness who might express an opinion under Federal Rules of Evidence, Rule 702) and impeachment witnesses. For each lay witness, include a description of the issue(s) to which the witness' testimony will relate. For each expert witness, state the subject matter in which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

(9) State whether defendant wishes this case to be tried to a jury or to the Court without a jury.

(c) Plaintiff's Amended Answers. The plaintiff shall have 11 days after service of defendant's Answers to Mandatory Interrogatories to file and serve any amended answers made necessary by the information received from defendant's Answers.

(d) Additional Procedures.

(1) If, after the exercise of reasonable diligence, a party is unable to answer fully a mandatory interrogatory, the party is required to provide the information currently known or available to him and to explain why the party cannot answer fully, to state what must be done in order for the party to be in a position to answer fully, and to estimate when the party will be in that position.

If the opposing party or parties disagrees with the answering party's explanation, the party opponent shall respond in writing within 11 days after service of the party's interrogatory answer.

(2) All parties have a continuing duty to amend seasonably a prior interrogatory response if the party obtains information which establishes that the party's prior response was either incorrect or although correct when made, no longer true or complete. The parties' introduction of documents and use of witnesses at trial will be governed by the provisions of the pretrial order.

Note: This memorandum was received as an attachment to a memo dated September 5, 1991, from L. Ralph Mecham, Secretary of the Judicial Conference of the United States.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Memorandum

DATE: July 3, 1991

FROM: William R. Burchill, Jr., General Counsel

SUBJECT: Impact of the Civil Justice Reform Act on the Federal Rules of Civil Procedure and Arbitration Statutes

TO: Abel J. Mattos, Court Administration Division-CPB

This is in response to your request for our views as to whether the Civil Justice Reform Act (CJRA), Pub. L. No. 101-650, as a general matter authorizes rules or procedures that are inconsistent with the Federal Rules of Civil Procedure and, if not, whether the CJRA specifically provides for deviations from any of the civil rules. You have also asked whether the CJRA would allow use of arbitration in courts not otherwise authorized by statute to conduct arbitration. It is my view that the CJRA must be read in pari materia with both the civil rules and the arbitration statutes, 28 U.S.C. § 651 et seq., giving meaning to both. Where the CJRA does not provide for additional or different procedures than available under the civil rules or arbitration statutes, those statutes control and Fed. R. Civ. P. 83 would prohibit development of local rules inconsistent with the civil rules. However, in those few instances where the CJRA expressly provides for expansion of the civil rules, mainly as regards discovery, and clarifies the authority to hold summary jury trials as a type of alternative dispute resolution (ADR), the CJRA, as the later specific statute, would control.

In response to questions concerning the constitutional authority to enact rules for the Federal courts, the legislative history to the CJRA has a lengthy discussion of Congress' broad power to make both procedural and substantive rules, advancing the argument that the Supreme Court's authority to enact rules of procedure is solely that delegated by Congress under the Rules Enabling Act. Senate Report No. 101-416, 101st Cong., 2nd Sess. 8-12 (Aug. 3, 1990). While Congress broadly asserted the right to make rules, neither the plain language of the CJRA nor the legislative history supports an argument that Congress intended to allow a wholesale revision to the civil rules or encouraged development of local rules across the board that are inconsistent with the Federal Rules of Civil Procedure. By contrast, there are several instances in which the CJRA explicitly, but narrowly, expands and clarifies the civil rules. While it is an important purpose of this Act to encourage creativity and innovation, it appears to me that Congress intended such approaches to be consistent with the civil rules unless it expressly said otherwise.

As you note in your memorandum, section 473 of the CJRA authorizes procedures that go beyond those provided for in the civil rules. Section 473(a)(2)(C) gives the court additional control on the timing and extent of discovery. The section-by-section analysis in the Senate Report[1] explains:

> The authority in this subsection is intended to supplement the authority to limit discovery currently provided for in the Federal Rules of Civil Procedure, principally in Rule 26(b)(1). The 1983 amendments to this rule were clearly a step in the right direction in the effort to control discovery. But the problems of excessive and abusive discovery remain substantial, and additional measures are necessary. . . .
>
> As a result, subsection (a)(2)(C) gives judges and magistrates the additional authority to control discovery. The tools they might use include phasing discovery into several stages and phasing the use of interrogatories. With this clear statutory mandate, it is hoped that judges and magistrates will no longer be unsure about the degree to which they can act to reduce discovery expenses.

(Emphasis added.) Id. at 55.

Similarly, section 473(a)(3)(C) provides authority to set presumptive time limits for discovery, especially in complex cases. Again the section-by-section analysis states that this is an intentional addition to the civil rules. "The Federal Rules establish consistent and uniform time limits for several procedures (see, e.g., rule 6 (time limit for amending the pleadings); rule 56 (time limit for summary judgment)), and it is appropriate for the district courts to consider additional time limits for discovery." Id. at 56.

Section 473(a)(5) requires that discovery motions be accompanied by a certification that the moving party has made a good-faith effort to reach agreement with opposing counsel. While this is permissible under the civil rules, section 473(a)(5) makes such certification mandatory. The drafters recognized that a majority of district courts already had local rules that required a conference between the parties prior to the filing of discovery motions and found this to be a procedure meriting nationwide compliance. Id. at 57.

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[1] The section-by-section analysis of House Report No. 101-732, 101st Cong., 2nd Sess. 1-30 (Sept. 1, 1990) is almost identical to the Senate Report.

Finally, section 473(b)(3) adds a provision that the court plan may require that all requests for extensions of deadlines for completion of discovery or trial be signed by the attorney and the party making the request. According to the Senate Report, this provision is intended to supplement the existing requirements of Rule 11. Id. at 58.

Each of these provisions is a clear statement of Congress' intention to provide the courts with additional tools to control expenses and delays in civil litigation, particularly as it involves discovery. Given the plain language of the Act and the equally clear explanation of that language in both the Senate and House Reports, there can be no doubt that the Act expands the civil rules in these discrete areas. Correspondingly, in areas other than these, I see no authority for development of local rules that are inconsistent with the Federal Rules of Civil Procedure.

Having said all this, you should know that the Advisory Committee on Civil Rules has recommended to the Standing Committee on Rules that Rule 83 be amended to provide for experimental local rules that are inconsistent with the civil rules if they are not inconsistent with the provisions of title 28 of the United States Code (copy of amended Rule 83 attached). The proposed Advisory Committee note to this amendment states that the purpose of the amendment is to enable experimentation, particularly in light of the CJRA, and to ensure that the rules not "be an impediment to the search for new methods provided that the experimentation is suitably monitored as a learning opportunity." Such experimental local rules would require the approval of the judicial council, be effective for five years or less, and be accompanied by a plan for evaluation of the experiment. If the Advisory Committee on Civil Rules believed that the CJRA generally allowed for development of rules that are inconsistent with the civil rules, I do not think they would have bothered to suggest this amendment on limited experimental rules.

The question of whether the CJRA allows for arbitration in courts other than those authorized to use arbitration in 28 U.S.C. § 658 can also be answered by a review of the language of the CJRA and consideration of the legislative history. The CJRA provides at section 473(a)(6) that courts have:

> 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, mini-trial, and summary jury trial.

S. 2027, the precursor to the current Act, had a broader provision on ADR requiring at section 471(b)(10) that each plan have:

> a comprehensive program providing for adjudication and, in appropriate cases, alternative dispute resolution, which make available to the parties and their counsel the full range of alternative dispute resolution mechanisms, including mediation, arbitration, mini-trial, and summary jury trial. If such program includes the mandatory reference of certain cases to an alternative dispute resolution mechanism, provision shall be made for motions to exempt a case from the mandated procedure.

While the ADR provisions of S. 2027 clearly expanded the availability of arbitration nationwide, the provision finally enacted in section 473 of the CJRA omits arbitration from the list of available ADR techniques and further limits, in 473(a)(6)(A), ADR programs to courts that have been designated for such programs. This appears to be a reference to the designations of arbitration programs in 28 U.S.C. § 658. Thus, in my view, the CJRA should be read as not expanding arbitration beyond that already statutorily provided.[2]

Interestingly, while the Senate Report does not specifically mention arbitration, the section-by-section analysis to section 473(a)(6) does discuss the availability of summary jury trials, making clear that there is authority for such an approach. "Some doubt has been raised as to whether the summary jury trial is an authorized procedure permissible in the Federal courts. . . . While the authority for a summary jury trial does appear to lie in Rule 1 and Rule 16 of the Federal Rules of Civil Procedure and in the court's 'inherent power to manage and control its docket,' . . . subsection (a)(6) eliminates any doubt that might exist in some courts." Id. at 57. If the drafters were concerned enough to resolve issues about the availability of summary jury trials, one would expect them to have at least made mention of the fact if they intended expansion of the authority to conduct arbitration.

I hope this answers your question. Please contact me if I can be of further assistance in this matter.

Attachment

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[2] While I generally eschew such maxims, this seems too clear an example of "expressio unius est exclusio alterius" to avoid saying so.

OPERATING PROCEDURES FOR THE ADVISORY GROUP
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

The Advisory Group for the United States District Court for the Northern District of Georgia under the Civil Justice Reform Act of 1990 is composed of 18 members appointed by Chief Judge William C. O'Kelley in March 1991. The Advisory Group members reflect a geographical cross section of the District with two members residing in the Gainesville Division and one member each residing in the Newnan and Rome Divisions.

The Advisory Group members include officers and executives of major litigants in this Court, including the State of Georgia; the City of Atlanta; the airlines, telecommunications, carpet, poultry, banking, and insurance industries; corporate enterprise; labor groups; and civil rights organizations, and attorneys whose professional endeavors and activities qualify them to represent the interests of the entire Bar membership, the plaintiffs or defense attorneys bars, and public service organizations. The Clerk of Court served on the Advisory Group as a representative of the Court, and the United States Attorney for the District represented the federal government's interests in litigation occurring in the Northern District of Georgia.

After the March 1991 organizational meeting, the Advisory Group met monthly between April and September 1991. The Advisory Group also held a specially called meeting in mid-July with judges of the Court. During April, the Advisory Group Chairman divided the members into four subcommittees, the name and membership of which are presented below. A report was received from a designated subcommittee at the May, June, July, and August monthly meetings. The subcommittees held frequent meetings as they prepared their subcommittee reports.

Minutes from each of the Advisory Group meetings are included in Appendix A.

Subcommittee on Impact of Recent Legislation

Joe D. Whitley, Chairman

Walter H. Alford

Veronica Biggins

Herbert H. Mabry

Subcommittee on Assessment of the Court's Docket

Luther D. Thomas, Chairman

Myrtle Davis

Steven Gottlieb

William M. Schiller

Subcommittee on Alternative Dispute Resolution

Earl T. Shinhoster, Chairman

Foy R. Divine

Robert S. Harkey

Walter J. Thomas

Subcommittee on Analysis of Court Procedures

J. Douglas Stewart, Chairman

Lewis S. Andrews

Michael J. Bowers

F. Abit Massey

David H. Tisinger

Civil Justice Reform Act of 1990
Minutes of the Advisory Group Meeting
for the Northern District of Georgia
April 24, 1991

The Advisory Group for the Northern District of Georgia held its monthly meeting on Wednesday, April 24, 1991, at 3:30 p.m. at the United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia. The Advisory Group gathered at the office of Luther D. Thomas, member of the Advisory Group and Clerk of Court for the United States District Court. All members were present except Robert S. Harkey and Herbert A. Mabry.

Mr. Thomas began the meeting by providing the Advisory Group a demonstration on PACER, a computerized civil docket service. Mr. Thomas explained that PACER is available 22 hours a day, that the information is current within one day, and that 350 attorneys or law firms are users of PACER. Mr. Thomas stated that the Northern District of Georgia's PACER program has the highest rate of usage among the 20 district courts equipped with PACER. Mr. Thomas also stated that the Northern District of Georgia is opposed to the imposition of a user fee, an idea under consideration by the Administrative Office of the United States Courts. The Court believes PACER is not only a convenience for attorneys, but also a dollar-saver for the Clerk's Office since it frees deputy clerks from researching docket information for attorneys.

Mr. Thomas then took the Advisory Group on a tour of the Clerk's Office civil and criminal filing sections and the computer room. He explained that the Court does not permit facsimile filings, but that the Clerk's Office has added a late pleadings slot (4 p.m. to 6 p.m.) to assist those attorneys running up against a filing deadline. The Court is also exploring the option of an outside drop for pleadings, if the security risk posed by such a practice can be solved.

Mr. Thomas also showed the Advisory Group the size of pleadings in a typical civil case, pointing out that case filings in Atlanta are larger in size and more complex than case filings in other district courts within the Eleventh Circuit. He explained further that closed cases are transferred to the Federal Records Center in East Point three to five years after the case is concluded. The Clerk's Office, as a time-saving service for attorneys, provides attorneys the information they need in order to retrieve stored records and view these files at the Federal Records Center as opposed to having the file transferred back to the Clerk's Office for review or copying.

The Advisory Group then reassembled in the Jurors' Lounge on the twenty-second floor of the courthouse for a statistical presentation by Mr. Thomas. Mr. Thomas discussed charts which showed:

1. The overall number of filings in the Court over the past six years and the percentage of civil case filings, by division, in this Court.

2. Information regarding the overall number of case filings, terminations, and pending cases in this Court, as well as statistics presenting those figures on a per judge basis and processing time, per case, from filing to disposition.

3. Filing and disposition statistics, as in item number two above, with a national judicial workload profile (average or median). This could be used as a standard or basis for comparison of the same statistics for the Northern District of Georgia.

4. Overall and per judgeship figures for the Northern District of Georgia as compared to other district courts in the Eleventh Circuit.

5. The number of senior judges serving in the ten pilot courts under the Civil Justice Reform Act of 1990 and in the 20 largest district courts.

6. The percentage of pending cases three or more years old in the ten pilot courts and in the 20 largest district courts.

Mr. Thomas pointed out that case filings in this district have been fairly constant over the past ten years. Increases in 1985-86 were due to petitions filed by the Marielito Cubans detained at the Atlanta Penitentiary. Mr. Thomas also explained the impact that senior judgeships have on district statistics since senior judges are not counted in preparing the per judge statistics, even though many senior judges carry a 100% load. Mr. Thomas stated that it was his

opinion that the Northern District of Georgia should be compared against the other 19 largest district courts in this country and not against the less metropolitan courts in the Eleventh Circuit. A circuit-wide comparison would be misleading because the statistics do not reflect:

1. The disparity in case size between metropolitan and rural court areas.

2. The higher level of sophistication of the law practice in metropolitan courts.

3. The greater number of civil and criminal cases with multiple parties in metropolitan courts.

4. The larger number of criminal case filings in metropolitan courts, which impacts the processing of the civil case docket.

Mr. Thomas also explained the limitations of the existing case-weighting system.

Chairman Trammell Vickery then addressed the Advisory Group regarding the task facing the group. He explained that the charge to the Advisory Group is to prepare an analytical report advising the Court on the six points enumerated in the Civil Justice Reform Act of 1990. Preparation of an operational plan based on this report is a function assigned to the Court.

Motions were also made, seconded, and approved:

1. Adopting a policy of no releases of information, either individually or as a group, to the press.

2. Affirming that the Advisory Group's focus would be on the function of the Northern District of Georgia as a unit rather than on the statistics of specific, individual judges serving on the Court.

Mr. Vickery also pointed out that the Civil Justice Reform Act of 1990 directs that the press be provided a copy of the Advisory Group's final report.

Meeting times were tentatively set for the fourth Wednesday of each month, at the United States Courthouse, at 3:30 p.m. Mr. Vickery announced that he would confirm meeting times and sub-committee appointments by letter in the week following this meeting.

There being no further business before the Advisory Group, the meeting was adjourned.

Jeanne J. Bowden

Jeanne J. Bowden, Reporter
Advisory Group for the Northern
District of Georgia

CIVIL JUSTICE REFORM ACT OF 1990

MINUTES OF THE ADVISORY GROUP MEETING FOR THE NORTHERN DISTRICT OF GEORGIA

May 29, 1991

The Advisory Group for the Northern District of Georgia held its monthly meeting on Wednesday, May 29, 1991, at 3:30 P.M. in the Judge's Conference Room at the United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia. All members were present except Lewis S. Andrews and Veronica Biggins. Assistant U.S. Attorneys Curtis Anderson, Amy Levin, and Michael O'Leary were also in attendance.

Chairman Trammell Vickery began the meeting by reporting on the meeting for Advisory Group Chairmen that he attended in Naples, Florida. Ninety-three chairmen attended the meeting, which was organized by the Federal Judicial Center (FJC). Mr. Vickery reported that the Advisory Groups were encouraged to share information and materials among themselves and that the FJC is working on a report format which, hopefully, will be available in time to benefit the pilot courts.

Mr. Vickery also asked the Advisory Group reporter to prepare a bibliography of available publications for the benefit of the Advisory Group. He stated that this Advisory Group's number one priority would be a recommendation as to the best alternative dispute resolution program for the Northern District of Georgia. A second important area of focus will be to develop recommendations aimed at controlling and reducing the costs and delays attributable to discovery practice in this Court.

The remainder of the meeting was devoted to a presentation by the United States Attorney and Advisory Group member Joe D. Whitley examining the impact of new legislation on the Court. Mr. Whitley was assisted by Assistant U.S. Attorneys Anderson Levin, and O'Leary.

Mr. Whitley reported that statistical charts show that the Northern District of Georgia is still moving cases fairly well, notwithstanding an increase in the number of criminal trials occurring in the District. His subjective observation is that the Speedy Trial Act, imposing maximum time limits for proceedings in criminal cases, has impacted this Court's civil docket. Mr. Whitley reminded the Advisory Group that the provisions of the Speedy Trial Act were, however, supported by valid reasons.

Mr. Whitley then provided the Advisory Group with a description of the recently enacted Sentencing Guidelines and the impact the Guidelines have had on all units involved in the sentencing process, including the defendant, the probation office, counsel for the defendant and the government, and the Court, both judges and staff. He explained that it is no longer in the best interest of a defendant to plead guilty and/or to cooperate with government counsel. This factor has led to more criminal trials.

Mr. Whitley next described Project Achilles, a cooperative effort between his office and the State Attorney General's Office to prosecute the most egregious violators of the firearms statutes. He also reviewed the impact of the war on drugs and cases arising under legislatively-created causes of action on this Court's civil docket.

Mr. Whitley closed his presentation by observing that while there is not a significant increase in the number of case filings in the Northern District of Georgia, there have been substantial increases in the complexity of cases filed in this Court and in the number of case filings involving multiple defendants. He reported that five years ago, most criminal trials lasted 1-3 days; today many trials last one month or longer.

Mr. Whitley then answered questions from the Advisory Group relating to the sentencing guidelines and to the number and nature of criminal prosecutions within this District. State Attorney General and Advisory Group member Michael Bowers provided corollary information for state prosecutions.

There being no further business, Chairman Vickery adjourned the meeting. The next meeting of the Advisory Group is set for Wednesday, June 26, at 3:30 P.M. at the U.S. Courthouse. The subcommittee chaired by Luther D. Thomas will present a report assessing the Northern District's civil docket at this time.

Jeanne J. Bowden

Jeanne J. Bowden, Reporter
Advisory Group for the
Northern District of Georgia

CIVIL JUSTICE REFORM ACT OF 1990

MINUTES OF THE MEETING OF THE ADVISORY GROUP FOR THE NORTHERN DISTRICT OF GEORGIA

June 26, 1991

The Advisory Group for the Northern District of Georgia held its monthly meeting on Wednesday, June 26, 1991, at 3:30 p.m. in the Judge's Conference Room at the United States Courthouse, 75 Spring Street, S. W., Atlanta, Georgia. All members were present except Walter H. Alford, Michael J. Bowers, Herbert H. Mabry and F. Abit Massey.

Chairman Trammell Vickery began the meeting by asking Foy Devine to report on the progress of the alternative dispute resolution (ADR) subcommittee. Mr. Devine reported that members of the subcommittee had met with former Fulton Superior Court Judge Jack Etheridge to discuss the objectives and status of the state's task force on ADR. He also reported that the ADR subcommittee had held a general meeting to consider ADR options for the Northern District and that preparation of a written report was in progress. The ADR subcommittee will present its report and recommendations to the Advisory Group at the next monthly meeting on Wednesday, July 31, 1991.

Doug Stewart, Chairman of the rules subcommittee, reported that his committee was beginning its review. Mr. Stewart noted that the recommendations of the rules subcommittee would be affected by the final reports and recommendations issued by the legislative, docket, and ADR subcommittees.

Chairman Vickery then opened discussion on several issues relating to the review to be undertaken by the rules subcommittee, including:

(1) Should diversity jurisdiction be abolished?

(2) Should discovery practices and procedures be revamped? How?

(3) Should a party or a representative of the party empowered with settlement authority be required to attend settlement hearings?

(4) What can the court do to shorten criminal trials, thereby leaving more time for management of the civil docket?

Chairman Vickery asked advisory member Joe Whitley to recommend to the Advisory Group procedures which, in the opinion of the United States Attorney's Office, would speed up criminal trials. Such recommendations may include use of stipulations, standing orders, or other suitable devices.

Advisory member Doug Stewart commented that, in his opinion, motions to dismiss created the biggest procedural delay in the movement of civil cases. He stated that this delay could be avoided by a change in the Federal Rules of Civil Procedure requiring the motion to dismiss to be filed with the answer to the complaint.

Chairman Vickery also reported on his recent meeting with the court's magistrate judges. Mr. Vickery described the functions now served by the magistrates and reported that the magistrates seemed to believe that they could provide more assistance to the district judges, particularly if there was more use in the district of the parties' option of consenting to trial of civil actions before magistrates. A discussion then followed regarding the current level of consent trials before magistrates in this district and the receptivity among the judges on this court to greater participation by the magistrates in the civil docket. Also, after discussion, the Advisory Group decided that a questionnaire should be mailed to lawyers in a representative sampling of recently terminated cases including questions relating to delay, expense, and ADR.

Advisory member Luther D. Thomas reported on a recent meeting with Chief Judge William C. O'Kelley. Due to the demands of his criminal docket, in 1991 Judge O'Kelley was not able to commence trial of a civil case until June 26, 1991. Mr. Thomas also reported that Judge O'Kelley would be receptive to speaking with the Advisory Group, if the group was interested in hearing from the judges on the court. After discussion, the Advisory Group agreed that such a meeting would be beneficial and asked Chairman Vickery to arrange a date with Judge O'Kelley for him and other judges to speak to the Advisory Group.

The remainder of the meeting was turned over to the Docket Analysis subcommittee, chaired by Luther D. Thomas who presented the report of the subcommittee.

Mr. Thomas reported that total filings in the Northern District of Georgia had decreased by 4.8% between 1986 and 1990 and that total terminations over the same time period, omitting the Cuban cases, had decreased 12.3%. The pending caseload increased 3% between 1986 and 1990. Mr. Thomas directed the Advisory Group's attention to each of the 7 remaining facts contained in the Executive Summary portion of the written subcommittee report. Mr. Thomas emphasized the effect senior judges could have on a court's statistics since senior judges are not included in the calculation of statistics.

Mr. Thomas then reviewed attachment 2 of the subcommittee report showing Northern Georgia's ranking among the top 25 metropolitan courts. For the 12-month period ending June 30, 1990, Northern Georgia ranked 22nd in the number of total civil and criminal filings, 20th in the number of weighted case filings, 18th (or 7th lowest) in the number of pending case, 21st in the number of case terminations, and was tied at 13th for the number of trials. At 4.0%, Northern Georgia had the seventh lowest percentage of pending cases three years old or older.

Mr. Thomas stated that the subcommittee review had shown a very significant increase in the amount of judge time spent on sentencing hearings, but that analysis of the docket had failed to pinpoint other major areas affecting delay and efficiency in this Court.

Mr. Thomas stated to the Advisory Group that, within the federal court system, the Northern District of Georgia is generally perceived to be one of the top ten best district courts in the country and that it is difficult to ascertain why some of the statistics do not seem to support this widely-held perception. Advisory Group member David Tisinger suggested that the lawyers' perception of quality was responsible for Northern Georgia's good ranking. He suggested further that it may not be possible to insert the "intangible factors" which make a court a good court into the statistics.

It was also noted that Northern Georgia's low percentage of three-year-old cases indicated that the judges here are committed to moving those cases which generally are "troublesome" in some way rather than deferring them indefinitely, even though attention to those cases may slow processing of the more routine civil case docket.

The meeting concluded with general discussion among the Advisory Group as to the impact of the criminal docket and diversity jurisdiction on the civil court docket.

There being no further business, Chairman Vickery adjourned the meeting. The next meeting of the Advisory Group is set for Wednesday, July 31, 1991, at 3:30 p.m. in the Judges' Conference Room on the 23rd floor of the United States Courthouse. The subcommittee chaired by Earl Shinhoster will present its report on alternative dispute resolution (ADR) at this time.

Jeanne J. Bowden, Reporter
Advisory Group for the
Northern District of Georgia

CIVIL JUSTICE REFORM ACT OF 1990

MINUTES OF THE MEETING OF THE ADVISORY GROUP FOR THE NORTHERN DISTRICT OF GEORGIA

July 16, 1991

The Advisory Group for the Northern District of Georgia held a specially-called meeting with judges of the Court on Tuesday, July 16, 1991, in the Judge's Conference Room at the United States Courthouse, 75 Spring St., S.W., Atlanta, Georgia. The Advisory Group met with Judges William C. O'Kelley and Robert L. Vining, Jr. at 3:30 p.m. and with Judges O'Kelley, Orinda D. Evans, and J. Owen Forrester at 4:00 p.m. All members were present except Veronica Biggins, Michael J. Bowers, Myrtle Davis, Herbert H. Mabry, and Robert S. Harkey.

Judge Vining expressed his hope that the Advisory Group would, in making its recommendations under the Civil Justice Reform Act of 1990, take into consideration the total responsibilities of the judges. Judge Vining discussed the impact of the criminal docket on the civil docket, mentioning specifically Project Achilles and the Crime Control Bill passed by Congress, on July 11, 1991, creating federal jurisdiction in all homicide cases committed with a fire arm, in drug trafficking cases, etc.

Judge Vining stated that, in his opinion, use of ADR procedures is limited by the parties' right to trial by jury. He believes abolishment of diversity jurisdiction would help the federal courts' civil docket, but that such a move would create a glut for the State Superior Courts.

Judge O'Kelley predicted that the published statistics will soon no longer be valid due to significant changes in the civil docket caused by the overload of criminal cases. The sentencing guidelines and hearings and recently-enacted statutes imposing minimum mandatory sentences are, in his opinion, primarily responsible for this change. Judge O'Kelley also stated that he does not think lawyers want arbitration, but that they want a trial. He pointed out that the Court has voted down mandatory ADR three times since 1983, but that judges on the Court use voluntary ADR devices on an ad hoc basis. Judge O'Kelley also stated his satisfaction with the Court's settlement procedures, set forth in LR 235-2, requiring attorneys to meet during discovery and again after the close of discovery to assess the possibility of settlement.

Judge Vining concluded his remarks with the following three observations:

1. He hopes that the studies made under **CJRA-1990** will show that Congress cannot continue to keep passing new legislation to cure perceived

problems and that Congress will be required to assess in advance the impact its legislation will have on the criminal laws, courts, prison systems, etc;

2. He believes Northern Georgia already has in place procedures and rules satisfying the principles of **CJRA-1990**, except for an ADR program; and

3. The only problem he sees facing this Court is the increasing impact of criminal legislation on this Court's overall docket. Judge Vining hopes the Advisory Group's report will document this problem for Congress.

In response to questioning by Advisory Group member Foy Devine, Judge Vining stated that (a) he thinks non-binding ADR is a useless step but (b) he is not willing to give up a party's right to trial by adopting binding ADR programs and (c) that possibly ADR could prove to be helpful if the program reached the case early on, e.g. three or four months after filing. The judge's authority to require a person empowered with settlement authority to be present at the settlement conference should also be made clear.

Trammell Vickery concluded this portion of the meeting with the observation that the goal should be to recreate the alliance which formerly existed between the Court and attorneys.

Judge O'Kelley began the next portion of the meeting by introducing Judges Evans and Forrester to the Advisory Group. He stated that the purpose of the **CJRA-1990** is two-fold: to deal with court delay and to decrease costs. Judge O'Kelley is not an advocate of summary jury trials because there is too much risk of increased costs (the procedure helps some cases but increases expenditures in others). Judge O'Kelley's preference among ADR options is binding arbitration.

Judge Evans favors making voluntary, binding arbitration available to those who want it with the arbitrators being paid out of government funds. Judge Evans does not support the use of lawyers as arbitrators. She stated further that she opposes arm-twisting settlement conferences.

Judge Forrester observed that any ADR program is going to apply to only 6-7% of civil cases since the remaining percent settle or are otherwise terminated before trial. It is his belief that any arbitration program will, therefore, increase the parties' transaction costs. Judge Forrester stated that, among ADR options, the virtue of a summary jury trial is that it lasts one day and that it helps the plaintiff's lawyer to get a realistic view as to potential damages (actual and punitive). Judge Forrester does not foresee that ADR will yield any material change in this Court unless a change is made in discovery practices.

Judge O'Kelley commented that the best gauge of the time required to terminate a case is from filing of the complaint to trial and not the time from the joinder of issue to termination, as catalogued by the FJC. Judge O'Kelley also stated that it is his opinion that many lawyers over litigate, especially in their use of discovery, in order to obtain a maximum fee from their client. He reiterated his satisfaction with Northern Georgia's settlement rule, especially since it relieves the attorney from the burden of having to initiate settlement and the risk that such initiation might be viewed as a sign of weakness.

Discussion of ADR closed with the following observations:

(1) Many litigants cannot afford the costs of private litigation which may offer a meaningful alternative to wealthier litigants;

(2) If a summary jury trial is proposed, the magistrates should be used as decision makers; and

(3) Northern Georgia tries alot of 3-day cases and a summary trial would not work for cases with such a short trial duration.

There was then general discussion among the judges and the Advisory Group regarding problems with discovery abuse, including limiting discovery to discovery of relevant evidence; the required early exchange of documents, names of experts, etc. in an approach similar to that utilized in Southern Georgia; and the opportunity open to Advisory Groups to focus attention on policy issues going beyond the CJRA-1990 which affect the Court system.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jeanne Bowden

Jeanne J. Bowden, Reporter

JJB/lb

CIVIL JUSTICE REFORM ACT OF 1990
MINUTES OF THE MEETING OF THE ADVISORY GROUP
FOR THE NORTHERN DISTRICT OF GEORGIA
July 31, 1991

The Advisory Group for the Northern District of Georgia held its regular monthly meeting on Wednesday, July 31, 1991, in the Judges' Conference Room at the United States Courthouse, 75 Spring St., S.W., Atlanta, Georgia. All members were present except Veronica Biggins, Michael J. Bowers, Robert S. Harkey, Abit Massey, and David Tisinger.

The Advisory Group Subcommittee on Alternative Dispute Resolution opened its presentation by showing a video prepared by the Center for Public Resources which explained and demonstrated various forms of alternative dispute resolution programs.

In introducing ADR Subcommittee Chairman, Earl T. Shinhoster, Advisory Chairman Trammell Vickery commented about the extensive number of publications available on ADR topics and that the task before the Advisory Group is "a question of selection" or "how to decide which ADR devices play best on this Court".

After introductory remarks, Mr. Shinhoster stated that the interim ADR proposal being presented to the Advisory Group today is innovative and, in his opinion, satisfies the principles of the Civil Justice Reform Act of 1990. Mr. Shinhoster then turned the presentation over to subcommittee member Foy Devine who sequentially reviewed each recommendation of the interim proposed ADR program for the Northern District of Georgia. Mr. Devine made the following observations about the recommended program:

1. If a large number of parties are successful in opting out of the program, then the test program will falter, but that an "escape" provision is necessary since some selected cases may be inappropriate for ADR.

2. The finder of fact (judge or jury) will not be informed of the arbitrator's advisory award if the case goes to trial.

3. A backup provision to develop a panel of approved private attorney arbitrators is necessary because the subcommittee is unable to determine the impact arbitration duties will have on the magistrate judges' schedule. The subcommittee has not considered development of a training program for arbitrators yet, but Mr. Devine observed that Fulton County's arbitrators training program is "pretty good".

4. The proposed program is structured for ADR to come far enough into discovery to allow the attorneys a chance to gather information while still not being unduly postponed.

5. Two important questions to be answered by the pilot program are: (a) did the ADR program increase the number of settlements and (b) did the ADR program shorten the time it took to reach settlement agreements.

6. The alternative dispute resolution option for private litigation set forth in recommendation 21 would still be court-annexed with the judge retaining overall management through development of the order of reference.

The remainder of the meeting was devoted to open discussion of the proposed ADR program. Issues discussed are as follows:

1. Can parties select a special issue(s) for arbitration or private litigation rather than the entire case? Similarly, can the randomly selected cases seek to opt out in part from the program? The consensus of the group was that arbitration of the "whole case or any issue" was a provision that should be considered further.

2. After lengthy discussion pro and con, it was decided that it is best to leave recommendation 10 as written so that parties are encouraged, but not required, to attend arbitration hearings. Of primary concern were the cost and administrative disruption which would result if the corporate official empowered to make the final decision on an issue was required to be present at every arbitration hearing conducted on a matter under his supervisory control.

3. In recommendation 6, an additional requirement for allowing a randomly selected case to be withdrawn from the ADR program should be considered, namely that retaining the case in the ADR program would not promote the goal of giving the ADR procedure a "fair test".

4. The <u>private</u> attorney requirement for non-magistrate arbitrators, as opposed to arbitration groups, should be retained. However, some members were of a view that arbitrators should not be limited to Georgia attorneys only.

5. A suggestion was introduced that soon after selection for the ADR program, the parties should be given an opportunity to indicate a preference for arbitration by a magistrate or private arbitrator selected jointly by the parties.

6. One committee member stated his preference for the judge reserving the right to review the decision of the special master in cases decided in accordance with the special program described in recommendation 21. Others disagreed and thought that the parties, in electing to participate in this voluntary program, should agree in advance to be bound by the special master's decision.

There being no further discussion, Chairman Vickery brought the meeting to a close. He invited all Advisory Group members to submit written comments regarding the ADR proposal to Jeanne Bowden, Reporter, who would address those suggestions and/or refer them to the ADR subcommittee. Mr. Vickery reminded the Advisory Group that its final recommendations for the ADR program would be determined at the next meeting on Wednesday, August 28, 1991.

The meeting was then adjourned by Mr. Vickery.

Respectfully submitted,

Jeanne J. Bowden, Reporter

CIVIL JUSTICE REFORM ACT OF 1990

MINUTES OF THE MEETING OF THE ADVISORY GROUP FOR THE NORTHERN DISTRICT OF GEORGIA

AUGUST 28, 1991

The Advisory Group for the Northern District of Georgia held its regular meeting on Wednesday, August 28, 1991, in the Judges' Conference Room at the United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia. All members were present except F. Abit Massey, Herbert H. Mabry, William M. Schiller, Robert S. Harkey, and Lewis S. Andrews.

Chairman Trammell Vickery began the meeting by reporting on the August 1-2, 1991, meeting for pilot courts that he and Advisory Member Luther D. Thomas attended in Kansas City.

A. Report of Subcommittee on Analysis of Court Procedures.

Mr. Vickery then introduced Advisory Group Subcommittee Chairman J. Douglas Stewart to present the report of the Subcommittee on Analysis of Court Procedures. Mr. Stewart first went through the six principles of the Civil Justice Reform Act of 1990 stated in Section 473(a) and presented the subcommittee's analysis of the Court's present compliance with each. Mr. Stewart also explained that as a pilot court, the Northern District of Georgia is required to implement any provisions contained in Section 473(a) not already covered by existing Court procedures and local rules. He reported as follows:

SECTION 473(a): MANDATORY PRINCIPLES

1. **Individualized Case Management.** The Court's scheduling order, which is based on the information contained in the Preliminary Statement submitted jointly by counsel 40 days after the joinder of issue, provides an adequate vehicle for the judge to tailor the individual case management plan of a case, early in the life of the case, according to the specific needs of that case. See LR235-3, Preliminary Statement and Scheduling Order, NDGa.

2. **Judicial Officer's Active Control of Pretrial Process.**

(A) Judge's Continuing Involvement. Local Rule 235-3, the Preliminary Statement and Scheduling Order, together with LR235-4, Consolidated Pretrial Order, assure the judicial officer's continuing participation in "assessing and planning the progress of a case."

(B) Early Trial Date. The information made available to the judges through these pretrial documents and any related conferences provide the judge adequate information on which to determine the case's readiness (or lack of readiness) for trial "within eighteen months after the filing of the complaint" and the orders entered based on those documents provide a suitable means for informing the parties of the case's trial date.

(C) Reasonable and Timely Discovery. Local Rule 225 limits the discovery period to 4 months and establishes procedures for shortening or lengthening the discovery period as appropriate in a particular case (LR225-1); controls the extent of discovery by limiting the number of interrogatories to 40 and the length of deposition to 6 hours (LR225-2); and provides for timely compliance of discovery requests by requiring initiation of discovery sufficiently early in the discovery process to allow reasonable time for response prior to expiration of the discovery period (225-1), by requiring the parties to file with the Court certificates of service relating to the discovery process so that the Court can monitor the progress of discovery (225-3(a)), and by requiring the parties to make a good faith effort to resolve discovery disputes before filing motions to compel (225-4).

(D) Motion Deadlines. Local Rule 220 sets specific filing times for certain motions, namely motions pending on removal (LR220-2), motions for summary judgment (LR220-5(c)), motions to compel discovery (LR220-4 and LR225-4(d)), and motions for reconsideration (LR220-6). All other motions are required to be filed within 100 days after the complaint is filed unless the filing party has obtained prior permission of the Court to file later (LR220-1(a)(2)). The consolidated pretrial order requires in provision (1) that the parties list any pending motions and prohibits in provision (2) the filing of any further motions to compel discovery. See LR235-4(b)(1)(2). These provisions provide a mechanism for the Court to assure that trial of an action is not delayed by unresolved motions. A provision of CJRA-1990 addresses the timely decision of motions by requiring all motions pending for more than six months to be reported by the judge.

3. **Management of Complex Cases.** The procedures described above relating to the Judicial Officer's Active Control of Pretrial Process apply fully to complex cases. The subcommittee found that those procedures provided the judicial officer the information needed to recognize that an action before him or her was complex (the preliminary statement (LR235-3) gets this information before the judge early on) and provided adequate procedures to facilitate any additional case management that the judge might find to be required as a result of the action's complexity.

4. **Voluntary Exchange of Discovery.** The subcommittee recommended that the Advisory Group suggest to the Court adoption of a new local rule 201-2, Mandatory Interrogatories for All Parties, in order to implement principle 4 of Section 473(a) of the CJRA-1990. Proposed LR201-2 requires the parties to respond automatically to eight interrogatories and one request for production of documents at the time of filing the complaint for plaintiffs and within a specified time after service of the complaint for defendants. The subcommittee believes this Court-initiated discovery will require the parties to analyze the merits of their cause of action or defense early on and to begin an early assessment of the strength of the opposing party's case.

Based on comments received at the meeting, Section (d)(2) of proposed local rule 201-2 has been amended by the addition of the word "seasonably" immediately following the words "continuing duty to amend" in the first sentence of subsection (d)(2). A second sentence was added to subsection (d)(2) which reads as follows: "The parties' introduction of documents and use of witnesses at trial will be governed by the provisions of the pretrial order." A copy of proposed LR201-2, as amended, is attached to these minutes.

5. **Limiting Motions to Compel.** The subcommittee reported that no additional Court procedures or local rules were needed to satisfy this principle of the CJRA-1990. As discussed above, LR225-4, NDGa requires counsel in Section (a), "...to make a good faith effort to resolve by agreement among themselves any disputes which arise in the course of discovery." Section (b) requires counsel to attach to any motion to compel a statement certifying that this good faith effort to resolve the discovery dispute was undertaken.

6. **Alternative Dispute Resolution Option.** This principle of the CJRA-1990 was covered by the report of the Advisory Group's ADR subcommittee at the July meeting, and the Rules Analysis subcommittee reported that it had no additional recommendations regarding this principle.

SECTION 473(b): VOLUNTARY PRINCIPLES

Mr. Stewart then explained to the Advisory Group that the Act requires Advisory Groups to consider the six litigation management and cost and delay reduction techniques included in Section 473(b) but that implementation of these techniques by the Court is optional. The recommendations of the Subcommittee on Analysis of Court Procedures regarding these six techniques were as follows:

1. **Joint Discovery Plan.** The subcommittee recommended that the Advisory Group propose to the Court an amendment to Item 7, Discovery Period, of the Preliminary Statement and Scheduling Order adding the following sentence to subprovision (b): "If the parties anticipate that additional time will be needed to complete discovery, please state those reasons in detail below: (blank lines for answer)." The subcommittee was of the opinion that the addition of this provision, together with the local rules already in place regarding discovery, would satisfactorily implement the recommended technique that counsel jointly present a discovery-case management plan for the case.

2. **Attorney Empowered to Bind Party.** The subcommittee found that the local rules for the Northern District of Georgia already incorporate adequate safeguards to assure that lead counsel, presumably authorized to bind their client, participate in pretrial conferences. Both the Preliminary Statement (see LR235-3(2)) and the Consolidated Pretrial Order (see LR235-4(b)(5)) require that the Court be given the names of lead counsel for each party. The subcommittee also pointed out the settlement conference provisions of the local rules (see LR235-2(a)(b)) require the participation of lead counsel in settlement negotiations.

3. **Parties' Approval of Delays.** The subcommittee suggested that the best procedure for implementation of this recommended technique would be for the attorney to obtain the consent of the client regarding requests for extensions of time for discovery and for delay of trial or, in the alternative, to require attorneys to certify that they have their clients' approval to seek the extension or postponement. Misrepresentation by the attorney of his or her authority would be a disbarrable offense.

4. **Early Neutral Evaluation Program.** The Rules Analysis Subcommittee found early neutral evaluation of cases to be adequately covered by the local rules which make obligatory an early settlement evaluation. Given the emphasis on settlement in the local rules, the subcommittee doubts the feasibility of requiring inclusion of a neutral into the process.

5. **Party Availability for Settlement Conferences.** The subcommittee acknowledged that the current local rules for the Northern District of Georgia do not require that authorized parties be available in person or by telephone during settlement conferences. If the Court so chooses, this suggestion can easily be implemented by incorporation into LR235-2.

6. **Other Recommended Features.** The Rules Analysis Subcommittee reported that the subcommittee had no additional suggestions for additional features to the local rules.

Mr. Stewart closed the subcommittee report by reporting that the subcommittee recommends that: 1) diversity jurisdiction for resident plaintiffs be abolished; 2) that the jurisdictional amount in diversity cases be raised to $75,000; and 3) that the Federal Rules of Civil Procedure be amended to require defendants to file an answer to the complaint within 30 days from the date of service (or acknowledgment of service) of the complaint and that motions, such as motions to dismiss and motions for lack of jurisdiction, would also be filed at that time with the answer.

B. Update on ADR Proposal

Chairman Vickery then updated the Advisory Group on the status of the Alternative Dispute Resolution program. Several minor changes in the proposal, as indicated in the ADR handout given to members at the meeting, had been made to implement suggestions received at the July Advisory Group meeting. Mr. Vickery also reported that he had unofficially received a copy of an opinion of the general counsel for the Administrative Office stating that the provisions of CJRA-1990 do not authorize district courts to implement a court-annexed arbitration alternative dispute resolution program. Mr. Vickery stated that, in his opinion, the general counsel's opinion is debatable and that it was his recommendation that the Advisory Group should recommend its arbitration ADR program to the Court, notwithstanding the general counsel's opinion letter.

C. Legislative Impact Subcommittee Report

Advisory Group Member Joe Whitley, Chairman of the Impact of New Legislation Subcommittee, reported that he, several prosecuting attorneys in his office, and Chairman Trammell Vickery had met with a representative group of criminal defense lawyers to discuss ways in which the length of criminal trials could be shortened. Mr. Whitley presented his summary of the group's overall recommendations, explaining that the recommendations reflected only his office's understanding of the group's views and that his formulation of the group's recommendations still needed to be circulated among the defense attorneys for comment. The recommendations were as follows:

1. That the Court conduct all voir dire. Counsel for the parties would be permitted to submit suggested voir dire questions to the judge.

2. That a pretrial conference be held to resolve contested issues before trial. Adoption of a pretrial procedure similar to that now used in civil actions should be considered. The use of pretrial memoranda could be encouraged in complex cases or in cases where novel issues are expected to arise.

3. That an early conference requirement (preferably prior to the pretrial conference) between defense counsel and the government be established to discuss the possibility of a plea.

4. That the presentence investigation report be prepared at an earlier stage so that the defendant could have earlier notice of probation's position regarding the application of the sentencing guidelines to defendant under the facts of his case. Communication of this information early on might help promote plea agreements.

5. That criminal cases be specially set for trial. Mr. Whitley also reported that the United States Attorney's Office is redoubling its efforts to give a realistic estimate of the time needed for trial so that the judges can more accurately plan their trial calendars.

D. Final Report

Chairman Vickery concluded the meeting by setting the next Advisory Group Meeting for Tuesday, September 24 at 3:30 p.m. in the Judges' Conference Room of the United States Courthouse. At that time, Mr. Vickery will present a final overall report for review by the Advisory Group prior to its submission to the Court. The final report will be, in large part, based upon the various subcommittee reports with the actual reports and other working papers attached as appendices.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jeanne Bowden

Jeanne J. Bowden, Reporter

RULE 220

MOTION PRACTICE

220-1. Filing of Motions and Responses; Hearings.

(a) Filing of Motions.

(1) Every motion presented to the clerk for filing shall be accompanied by a memorandum of law citing supporting authorities and, when allegations of fact are relied upon, by supporting affidavits. Motions not in conformance with this rule shall not be accepted for filing.

(2) Specific filing times for some motions are set forth below. All other motions must be filed WITHIN 100 DAYS after the complaint is filed, unless the filing party has obtained prior permission of the Court to file later.

(b) Response to Motion.

(1) Each party opposing a motion shall serve his response, responsive memorandum, affidavits, and any other responsive material not later than ten days after service of the motion, except that in cases of motion for summary judgment the time shall be twenty days after the service of the motion. Failure to file a response shall indicate that there is no opposition to the motion.

(2) Although a reply by the movant shall be permitted, it shall not be necessary for the movant to file a reply as a routine practice. When the movant deems it necessary to file a reply brief, that brief shall be served not later than ten days after service of the responsive pleading. No further briefs may be filed by the parties, except upon order of the Court.

(c) Hearings.

All motions shall be decided by the Court without oral hearing unless a hearing is ordered by the Court.

220-2. Motions Pending on Removal.

When an action or proceeding is removed to this Court with pending motions on which briefs have not been submitted, the moving party shall serve a memorandum in support of his motion within ten days after removal. Each party opposing the motion shall reply in compliance with Rule 220-1(b).

220-3. Emergency Motions.

Upon written motion and for good cause shown, the Court may waive the time requirements of this rule and grant an immediate hearing on any matter requiring such expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure.

220-4. Motions to Compel Discovery.

Motions to compel are subject to the provisions set forth in this rule. Further instructions on motions to compel are contained in Rule 225-4.

220-5. Motions for Summary Judgment.

(a) **Generally.** Motions for summary judgment shall be filed in accordance with the provisions of Rule 56 of the Federal Rules of Civil Procedure, except that no date for a hearing shall be set until after the party opposing the motion has had twenty days after service of the motion in which to file his responsive pleading. In accordance with Rule 220-1(b)(2), the parties shall not be permitted to file supplemental briefs and materials, with the exception of a reply by the movant, except upon order of the Court.

(b) **Form of Motion.**

(1) The movant for summary judgment shall attach to his motion a separate and concise statement of the material facts to which he contends there is no genuine issue to be tried. Each material fact shall be numbered separately. Statements in the form of issues or legal conclusions (rather than material facts) will not be considered by the Court. Affidavits and the introductory portions of briefs do not constitute a statement of material facts.

(2) The respondent to a motion for summary judgment shall attach to his response a separate and concise statement of material facts, numbered separately, to which he contends there exists a genuine issue to be tried. Response should be made to each of the movant's numbered material facts. All material facts contained in the moving party's statement which are not specifically controverted by the respondent in his statement shall be deemed to have been admitted. The response that a party has insufficient knowledge to admit or deny is not an acceptable response unless the party has complied with the provisions of F.R.Civ.P. 56(f).

(3) All documents and other record materials relied upon by a party moving for or opposing a motion for summary judgment shall be clearly identified for the Court. Where appropriate, dates and specific page numbers shall be given.

(c) **Time.** Motions for summary judgment shall be filed as soon as possible, but, unless otherwise ordered by the Court, not later than 20 days after the close of discovery, as established by the expiration of the original or extended discovery period or by written notice of all counsel, filed with the Court, indicating that discovery was completed earlier.

220-6. Motions for Reconsideration.

Motions for reconsideration shall not be filed as a matter of routine practice. Whenever a party or attorney for a party believes it is absolutely necessary to file a motion to reconsider an order or judgment, the motion shall be filed with the Clerk of Court within 10 days after entry of the order or judgment. Responses shall be filed not later than ten days after service of the motion. Parties and attorneys for the parties shall not file motions to reconsider the Court's denial of a prior motion for reconsideration.

220-7. Oral Rulings on Motions.

Unless the Court directs otherwise, all orders, including findings of fact and conclusions of law, orally announced by the judge in Court shall be prepared in writing by the attorney for the prevailing party. The original and one copy of the order shall be submitted to the judge within seven days from the date of pronouncement. Copies shall also be provided each party.

RULE 225
DISCOVERY PRACTICE

225-1. Discovery Period.

(a) **Length.** All discovery proceedings shall be initiated promptly so that discovery may be initiated and completed within four months after the last answer to the complaint is filed or should have been filed, unless the Court has either shortened the time for discovery or has for cause shown extended the time for discovery. Discovery must be initiated sufficiently early in the discovery period to permit the filing of answers and responses thereto within the time limitations of the existing discovery period.

(b) **Extensions of Time.** Requests for extensions of time for discovery must be filed with the Court prior to the expiration of the original or previously extended discovery period. A request for extension shall include the date issue was joined, the date on which the time limit in question is to expire, the dates of any and all previous extensions of time, and a description of the additional discovery which is needed.

225-2. Limitations on Discovery.

(a) **Interrogatories.** A party shall not at any one time or cumulatively serve more than 40 interrogatories upon any other party. Each subdivision of one numbered interrogatory shall be construed as a separate interrogatory. If counsel for a party believes that more than 40 interrogatories are necessary, he shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. In the event a written stipulation cannot be agreed upon, the party seeking to submit additional interrogatories shall file a motion with the Court showing the necessity for relief.

(b) **Depositions.** Unless otherwise ordered by the Court, no deposition of any party or witness shall last more than six (6) hours.

225-3. Service and Filing of Discovery Material.

(a) **Filing Not Generally Required.** Interrogatories, requests for documents, requests for admission, and answers and responses thereto shall be served upon other counsel or parties, but they shall not be routinely filed with the Court. The party responsible for service of the discovery material shall, however, file a certificate with the clerk indicating the date of service. He shall also retain the original discovery material and become its custodian. The original of all depositions upon oral examination shall be retained by the party taking the deposition.

(b) **Selective Filing Required for Motions, Trial, and Appeal.**

(1) The custodial party shall file with the clerk at the time of use at trial or with the filing of a motion those portions of depositions, interrogatories, requests for documents, requests for admission and answers or responses thereto which are used at trial or which are necessary to the motion.

(2) Where discovery materials not previously in the record are needed for appeal purposes, the Court, upon application, may order or counsel may stipulate in writing that the necessary materials be filed with the clerk.

(c) **Depositions Under Seal.** At the request of any attorney of record in the case, the clerk may open the original copy of any deposition which has been filed with the clerk in accordance with this rule. The clerk shall note on the deposition the date and time at which the deposition was opened. The deposition shall not be removed from the clerk's office.

225-4. Motions to Compel.

(a) **Duty to Confer.** Counsel shall have the duty to make a good faith effor to resolve by agreement among themselves any disputes which arise in the course of discovery

(b) **Form of Motion.** When despite their good faith efforts, counsel are una ble to resolve discovery issues without intervention of the Court, counsel may file a motion tc compel discovery in accordance with Rules 33, 34, 36, and 37 of the Federal Rules of Civi Procedure. The moving party shall attach to his motion a statement certifying that he anc opposing counsel conferred in an attempt to resolve the controversy by agreement but that they were unable to do so. He shall also state the issues which remain to be resolved.

A motion to compel shall:

(1) Quote verbatim each interrogatory, request for admission, or request for production to which objection is taken;

(2) State the specific objection;

(3) State the grounds assigned for the objection (if not apparent from the objection); and

(4) cite authority and include a discussion of the reasons assigned as supporting the motion.

The motion shall be arranged so that the objection, grounds, authority, and supporting reasons follow the verbatim statement of each specific interrogatory, request for admission, or request for production to which an objection is raised.

(c) **Response to Motion.** Response to a motion to compel discovery shall be served within ten days after service of the motion.

(d) **Time Limitation for Filing.** Unless otherwise ordered by the Court, motions to compel discovery must be filed within the time remaining prior to the close of discovery or, if longer, within 10 days after service of the discovery responses upon which the objection is based. The close of discovery is established by the expiration of the original or extended discovery period or by written notice of all counsel, filed with the Court, indicating that discovery was completed earlier.

RULE 235
PRETRIAL AND SETTING FOR TRIAL

235-1. Purpose.

These rules are established to facilitate the prompt and expeditious movement of cases and to assist the Court. Certain provisions of Rule 235-3 have been adopted to implement the scheduling requirements of Rule 16 of the Federal Rules of Civil Procedure.

235-2. Settlement Conferences and Certificates.

(a) Conference During Discovery.

(1) Within 30 days after issue is joined, lead counsel for all parties are required to confer in a good faith effort to settle the case. Plaintiff's counsel shall be responsible for arranging the date of the conference. The Court encourages counsel to meet in person, but

telephone conferences are permitted.

(2) Counsel are required to inform the parties promptly of all offers of settlement proposed at the conference.

(3) Within 10 days after the conference, counsel shall file a joint statement certifying that the conference was held, whether the conference was in person or by telephone, the date of the meeting, the names of all participants, and that any offers of settlement were communicated to the clients. The certificate shall also indicate whether counsel intend to schedule additional settlement conferences prior to the close of discovery; counsel's opinions as to the prospects of settlement of the case; specific problems, if any, which are hindering settlement; and whether counsel desire a conference with the Court regarding settlement problems. A form settlement certificate prepared by the Court and which counsel shall be required to use is contained in Appendix B.

(b) Conference After Discovery.

(1) For cases not settled earlier, counsel for plaintiff shall contact counsel for all other parties to arrange an *in person* conference among lead counsel to discuss, in good faith, settlement of the case. The conference must be held no later than 10 days after the close of discovery. All offers of settlement must be communicated promptly to the parties.

(2) If this personal conference does not produce a settlement, the status of settlement negotiations must be reported in item 26 of the pretrial order.

(c) Cases Not Subject to Rule. Pro se litigants and their opposing counsel and cases involving administrative appeals are exempt from the requirements of this rule.

235-3. Preliminary Statement and Scheduling Order.

For all cases not settled at the initial settlement conference (Rule 235-2(a)), counsel are required to complete the joint preliminary statement and scheduling order form prepared by the Court and attached to these rules as Appendix B. If counsel cannot agree on the answers to specific items, the contentions of each party must be shown on the form. The completed form must be filed 10 days after the initial settlement conference.

Appeals to this Court of administrative determinations which are presented to the Court for review on a completed record shall be excepted from the requirements of this rule. Pro se litigants and opposing counsel shall be permitted to file separate statements.

The preliminary statement and scheduling order shall include:

(1) A classification of the type of action, a brief factual outline of the case, and a succinct statement of the issues in the case.

(2) The individual names of lead counsel for each party.

(3) Any objections, supported by authority, to this Court's jurisdiction.

(4) The names of necessary parties to this action who have not been joined and any questions of misjoinder of parties and inaccuracies and omissions regarding the names of parties.

(5) A description of any amendments to the pleadings which are anticipated and a time-table for the filing of amendments.

(6) Information regarding timing limitations for filing motions in this case.

(7) Directions regarding the length of the discovery period and the procedure for requesting extensions of discovery.

(8) A listing of any pending or previously adjudicated related cases.

(9) The signatures of lead counsel for each party consenting to the submission

of the completed preliminary statement and scheduling order form.

(10) A scheduling order signed by the judge imposing time limits for the adding of parties, the amending of pleadings, the filing of motions, and the completion of discovery in accordance with the completed form submitted by counsel, except as the judge may specifically state otherwise.

235-4. Consolidated Pretrial Order.

(a) Procedure. The parties shall prepare and sign a proposed consolidated pretrial order to be filed with the clerk no later than 30 days after the close of discovery, as defined in Rule 225-1. It shall be the responsibility of plaintiff's counsel to contact defense counsel to arrange a date for the conference. If there are issues on which counsel for the parties cannot agree, the areas of disagreement must be shown in the proposed pretrial order. In those cases in which there is a pending motion for summary judgment, the Court may in its discretion and upon request extend the time for filing the proposed pretrial order.

If counsel desire a pretrial conference, a request must be indicated on the proposed pretrial order immediately below the civil action number. Counsel will be notified if the judge determines that a pretrial conference is necessary. A case shall be presumed ready for trial on the first calendar after the pretrial order is filed unless another time is specifically set by the Court.

(b) Content. Each proposed consolidated pretrial order shall contain the information outlined below. No modifications or deletions shall be made without the prior permission of the Court. A form Pretrial Order prepared by the Court and which counsel shall be required to use is contained in Appendix B. Copies of the form Pretrial Order containing adequate space for response are available at the Public Filing Counter in each division.

The proposed order shall contain:

(1) A statement of any pending motions or other matters.

(2) A statement that, unless otherwise noted, discovery has been completed. Counsel will not be permitted to file any further motions to compel discovery. Provided there is no resulting delay in readiness for trial, depositions for the preservation of evidence and for use at trial will be permitted.

(3) A statement as to the correctness of the names of the parties and their capacity and as to any issue of misjoinder or non-joinder of parties.

(4) A statement as to any question of the Court's jurisdiction and the statutory basis of jurisdiction for each claim.

(5) The individual names of lead counsel for each party.

(6) A statement as to any reasons why plaintiff should not be entitled to open and close arguments to the jury.

(7) A statement as to whether the case is to be tried to a jury, to the Court without a jury, or that the right to trial by jury is disputed.

(8) An expression of the parties' preference, supported by reasons, for a unified or bifurcated trial.

(9) A joint listing of the questions which the parties wish the Court to propound to the jurors concerning their legal qualifications to serve.

(10) A listing by each party of requested general voir dire questions to the jurors. The Court will question prospective jurors as to their address and occupation and as to the occupation of a spouse, if any. Follow-up questions by counsel may be permitted. The determination of whether the judge or counsel will propound general voir dire questions is a matter of

courtroom policy which shall be established by each judge.

(11) A statement of each party's objections, if any, to another party's general voir dire questions.

(12) A statement of the reasons supporting a party's request, if any, for more than three strikes per side as a group.

(13) A brief description, including style and civil action number, of any pending related litigation.

(14) An outline of plaintiff's case which shall include:

(a) A succinct factual statement of plaintiff's cause of action which shall be neither argumentative nor recite evidence.

(b) A separate listing of all rules, regulations, statutes, ordinances, and illustrative case law creating a specific legal duty relied upon by plaintiff.

(c) A separate listing of each and every act of negligence relied upon in negligence cases.

(d) A separate statement for each item of damage claimed containing a brief description of the item of damage, dollar amount claimed, and citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

(15) An outline of defendant's case which shall include:

(a) A succinct factual summary of defendant's general, special, and affirmative defenses which shall be neither argumentative nor recite evidence.

(b) A separate listing of all rules, regulations, statutes, ordinances, and illustrative case law creating a defense relied upon by defendant.

(c) A separate statement for each item of damage claimed in a counterclaim which shall contain a brief description of the item of damage, the dollar amount claimed, and citation to the law, rule, regulation, or any decision which authorizes a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

(16) A listing of stipulated facts which may be read into evidence at trial. It is the duty of counsel to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the non-cooperating counsel.

(17) A statement of the legal issues to be tried.

(18) (a) A separate listing, by each party, of all witnesses (and their addresses) whom that party will or may have present at trial, including expert (any witness who might express an opinion under Rule 702), impeachment and rebuttal witnesses whose use can or should have been reasonably anticipated. Each party shall also attach to his list a reasonably specific summary of the expected testimony of each expert witness.

(b) A representation that a witness will be called may be relied upon by other parties unless notice is given 10 days prior to trial to permit other parties to subpoena the witness or obtain his testimony by other means.

(c) Witnesses not included on the witness list will not be permitted to testify. The attorneys may not reserve the right to add witnesses.

(19) (a) A separate, typed, serially numbered listing, beginning with 1 and without the inclusion of any alphabetical or numerical subparts, of each party's documentary and physical evidence. Adequate space must be left on the left margin of each list for Court stamping purposes. A courtesy copy of each party's list must be submitted for use by the judge. Learned treatises which counsel expect to use at trial shall not be admitted as exhibits, but

must be separately listed on the party's exhibit list.

(b) Prior to trial counsel shall affix stickers numbered to correspond with the party's exhibit list to each exhibit. Plaintiffs shall use yellow stickers; defendants shall use blue stickers; and white stickers shall be used on joint exhibits. The surname of a party must be shown on the numbered sticker when there are either multiple plaintiffs or multiple defendants.

(c) A separate, typed listing of each party's objections to the exhibits of another party. The objections shall be attached to the exhibit list of the party against whom the objections are raised. Objections as to authenticity, privilege, competency, and, to the extent possible, relevancy of the exhibits shall be included. Any listed document to which an objection is not raised shall be deemed to have been stipulated as to authenticity by the parties, and such documents will be admitted at trial without further proof of authenticity.

(d) A statement of any objections to the use at trial of copies of documentary evidence.

(e) Documentary and physical exhibits may not be submitted by counsel after filing of the Pretrial Order, except upon consent of all the parties or permission of the Court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

(f) Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during trial to examine exhibits that are or should have been listed herein.

(20) A listing of all persons whose testimony at trial will be given by deposition and designation of the portions of each person's deposition which will be introduced. Objections not filed by the date on which the case is first scheduled for trial shall be deemed waived or abandoned. Extraneous and unnecessary matters, including non-essential colloquy of counsel, shall not be permitted to be read into evidence. No depositions shall be permitted to go out with the jury.

(21) Any trial briefs which counsel may wish to file containing citations to legal authority on evidentiary questions and other legal issues. Limitations, if any, regarding the format and length of trial briefs is a matter of individual practice which shall be established by each judge.

(22) Counsel are directed to prepare, in accordance with LR 255-2, NDGa, a list of all requests to charge in jury trials. These charges shall be filed no later than 9:30 a.m. on the date the case is calendered (or specially set) for trial. A short, one-page or less, statement of the party's contentions must be attached to the requests. Requests should be drawn from the latest edition of the Fifth Circuit District Judges Association's *Pattern Jury Instructions* and Devitt and Blackmar's *Federal Jury Practice and Instructions* whenever possible. In other instances, only the applicable legal principle from a cited authority should be requested.

(23) A proposed verdict form if counsel desire that the case be submitted to the jury in a manner other than upon general verdict.

(24) A statement of any requests for time for argument in excess of 30 minutes per side as a group and the reasons for the request.

(25) Counsel are directed to submit a statement of proposed Findings of Fact and Conclusions of Law in nonjury cases, which must be submitted no later than the opening of trial.

(26) A statement of the date on which counsel met personally to discuss settlement, whether the Court has discussed settlement with counsel, and the likelihood of settle-

ment of the case at this time.

(27) A statement of any requests for a special setting of the case.

(28) A statement of each party's estimate of the time required to present th party's evidence and an estimate of the total trial time.

(29) The following paragraph shall be included at the close of each propos pretrial order above the signature line for the judge:

IT IS HEREBY ORDERED that the above constitutes the pretrial order for t above captioned case (___) submitted by stipulation of the parties or (___) approved by t Court after conference with the parties.

IT IS FURTHER ORDERED that the foregoing, including the attachmer thereto, constitutes the pretrial order in the above case and that it supersedes the pleadin which are hereby amended to conform hereto and that this pretrial order shall not be amend except by Order of the Court, to prevent manifest injustice.

IT IS SO ORDERED this ___ day of _____, 19___.

(30) The signatures of lead counsel for each party on the last page below t judge's signature.

235-5. Sanctions.

Failure to comply with the Court's pretrial instructions may result in the impos tion of sanctions, including dismissal of the case or entry of a default judgment.

RULE 250
SETTLEMENTS

250-1. Settlement Conference.

Refer to Rule 235-2 for a statement of this Court's requirements regarding a set tlement conference.

250-2. Taxation of Costs in Late-Settling Cases.

(a) Settlement before Trial. Whenever a civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs for one day shall be assessed equally against the parties and their counsel or otherwise assessed or relieved as directed by the Court. Juror costs include attendance fees, per diem, mileage, and parking. No juror costs will be assessed if notice of settlement or other disposition of the case is given to both the courtroom deputy of the judge to whom the case is assigned and to the Jury Section of the clerk's office one full business day prior to the scheduled trial date.

(b) Settlement before Verdict. Except upon a showing of good cause, the Court shall assess the juror costs equally against the parties and their counsel whenever a civil action proceeding as a jury trial is settled at trial in advance of the verdict. The judge may, in his discretion, direct that the juror costs be relieved or that they be assessed other then equally among the parties and their counsel.

DOCUMENTS REQUIRED TO BE FILED IN CIVIL CASES PENDING IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA

I. SETTLEMENT CERTIFICATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
_____ DIVISION

	:	Civil Action No. ____
Style of Case	:	Settlement Conference
	:	(is) (is not) requested.
	:	

SETTLEMENT CERTIFICATE

The undersigned lead counsel for the parties hereby certify that:

(1) They met (in person) (by telephone) on _____, 19___, to discuss in good faith the settlement of this case.

(2) The following persons participated in the settlement conference:

For plaintiff: Lead counsel: _____

Other participants: _____

_____

For defendant: Lead counsel: _____

Other participants: _____

_____

(3) The parties were promptly informed of all offers of settlement.

(4) Counsel (_____) do or (_____) do not intend to hold future settlement conferences prior to the close of discovery. The proposed date of the next settlement conference is: _____.

(5) It appears from the discussion by all counsel that there is:

(_____) A good possibility of settlement.
(_____) Some possibility of settlement.
(_____) Little possibility of settlement.
(_____) No possibility of settlement.

(6) The following specific problems have created a hindrance to settlement of this case:

_____

_____

(7) Counsel (_____) do or (_____) do not desire a conference with the Court regarding settlement problems.

Submitted this ____ day of _____, 19___.

_____ _____

Counsel for Plaintiff Counsel for Defendant

II. JOINT PRELIMINARY STATEMENT AND SCHEDULING ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
_____ DIVISION

_____	:	
	:	
vs.	:	Civil Action No. ____
	:	
_____	:	

JOINT PRELIMINARY STATEMENT AND SCHEDULING ORDER

1. Description of Case:

(a) Describe briefly the nature of this action:

_____

_____

(b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.

(c) The legal issues to be tried are as follows:

2. Counsel:

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiff:

Defendant: _____

3. Jurisdiction:

Is there any question regarding this Court's jurisdiction?

____ Yes ____ No.

If "yes," please attach a statement, not to exceed one (1) page, explaining the jurisdictional objection. When there are multiple claims, identify and discuss separately the claim(s) on which the objection is based. Each objection should be supported by authority.

4. Parties to This Action:

(a) The following persons are necessary parties who have not been joined:

(b) The following persons are improperly joined as parties:

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

(d) The parties shall have a continuing duty to inform the Court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

5. Amendments to the Pleadings:

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Rule 15, Federal Rules of Civil Procedure. Further instructions regarding amendments are contained in Local Rule 200.

(a) List separately any amendments to the pleadings which the parties anticipate will be necessary: _____

_____

_____.

(b) Amendments to the pleadings submitted LATER THAN 100 DAYS after the complaint is filed will not be accepted for filing, unless otherwise permitted by law.

6. Filing Times For Motions:

All motions should be filed as soon as possible. The local rules set specific filing limits for some motions. These times are restated below.

All other motions must be filed WITHIN 100 DAYS after the complaint is filed, unless the filing party has obtained prior permission of the Court to file later. Local Rule 220-1(a)(2).

(a) *Motions to Compel*: before the close of discovery or within the extension period allowed in some instances. Local Rules 220-4; 225-4(d).

(b) *Summary Judgment Motions*: within 20 days after the close of discovery, unless otherwise permitted by Court order. Local Rule 220-5.

(c) *Other Limited Motions*: Refer to Local Rules 220-2, 220-3, and 220-6, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

7. Discovery Period:

(a) As stated in Local Rule 225-1(a), discovery in this Court must be initiated and all responses completed within four months after the last answer to the complaint is filed or should have been filed, unless the judge has set another limit.

(b) Requests for extensions of discovery must be made in accordance with Local Rule 225-1(b).

8. Related Cases:

The cases listed below (include both style and action number) are:

(a) Pending Related Cases: _____

_____

(b) Previously Adjudicated Related Cases: _____

Completed form submitted this ____ day of _____, 19__.

Counsel for Plaintiff

Counsel for Defendant

* * * * * * * * * * * * *

Upon review of the information contained in the Joint Preliminary Statement and Scheduling Order form completed and filed by the parties, the Court orders that the time limits for adding parties, amending the pleadings, filing motions, and completing discovery are as stated in the above completed form, except as herein modified: _____

IT IS SO ORDERED, this _____ day of _____, 19__.

UNITED STATES DISTRICT JUDGE

III. PRETRIAL ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
_____ DIVISION

style of case	:	Civil Action No. ____
	:	Conference (is) (is not) requested

PRETRIAL ORDER

1.

There are no motions or other matters pending for consideration by the Court except as noted: _____

_____

_____.

2.

All discovery has been completed, unless otherwise noted; and the Court will not consider any further motions to compel discovery. (Refer to LR 225-4(d), NDGa). Provided there is no resulting delay in readiness for trial, the parties shall, however, be permitted to take the depositions of any persons for the preservation of evidence and for use at trial. _____

_____

_____.

3.

Unless otherwise noted, the names of the parties as shown in the caption to this Order and the capacity in which they appear are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties. _____

_____.

4.

Unless otherwise noted, there is no question as to the jurisdiction of the Court; jurisdic-

tion is based upon the following code sections. (When there are multiple claims, list each claim and its jurisdictional basis separately.)

_____

_____.

5.

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiff: _____

_____

Defendant: _____

_____

Other Parties: (specify) _____

_____

6.

Normally, the plaintiff is entitled to open and close arguments to the jury. (Refer to LR 255-4(b), NDGa.) State below the reasons, if any, why the plaintiff should not be permitted to open arguments to the jury. _____

_____.

7.

The captioned case shall be tried (_____) to a jury or (_____) to the Court without a jury, or (_____) the right to trial by jury is disputed.

8.

State whether the parties request that the trial to a jury be bifurcated, i.e. that the same jury consider separately issues such as liability and damages. State briefly the reasons why trial should or should not be bifurcated.

9.

Attached hereto as Attachment "A" and made a part of this order by reference are the questions which the parties request that the Court propound to the jurors concerning their legal qualifications to serve.

10.

Attached hereto as Attachment "B-1" are the general questions which plaintiff wishes to be propounded to the jurors on voir dire examination.

Attached hereto as Attachment "B-2" are the general questions which defendant wishes to be propounded to the jurors on voir dire examination.

Attached hereto as Attachment "B-3", "B-4", etc. are the general questions which the remaining parties, if any, wish to be propounded to the jurors on voir dire examination.

The Court shall question the prospective jurors as to their address and occupation and as to the occupation of a spouse, if any. Counsel may be permitted to ask follow-up questions on these matters. It shall not, therefore, be necessary for counsel to submit questions regarding these matters. The determination of whether the judge or counsel will propound general voir dire questions is a matter of courtroom policy which shall be established by each judge.

11.

State any objections to plaintiff's voir dire questions.

State any objections to defendant's voir dire questions.

State any objections to the voir dire questions of the other parties, if any. _____

12.

In accordance with LR 255-1, NDGa, all civil cases to be tried wholly or in part by jury shall be tried before a jury consisting of six members. Unless otherwise noted herein, each side as a group will be allowed three strikes in accordance with 28 U.S.C. §1870 and Rule 47(b) of the Federal Rules of Civil Procedure. State the basis for any requests for additional strikes.

13.

State whether there is any pending related litigation. Describe briefly, including style and civil action number.

14.

Attached hereto as Attachment "C" is plaintiff's outline of the case which includes a succinct factual summary of plaintiff's cause of action and which shall be neither argumentative nor recite evidence. All relevant rules, regulations, statutes, ordinances, and illustrative case law creating a specific legal duty relied upon by plaintiff shall be listed under a separate heading. In negligence cases, each and every act of negligence relied upon shall be separately listed. For each item of damage claimed, plaintiff shall separately provide the following information: (a) a brief description of the item claimed, for example, pain and suffering; (b) the dollar amount claimed; and (c) a citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

15.

Attached hereto as Attachment "D" is the defendant's outline of the case which includes a succinct factual summary of all general, special, and affirmative defenses relied upon and which shall be neither argumentative nor recite evidence. All relevant rules, regulations, statutes, ordinances, and illustrative case law relied upon as creating a defense shall be listed under a separate heading. For any counterclaim, the defendant shall separately provide the following information for each item of damage claimed: (a) a brief description of the item claimed; (b) the

dollar amount claimed; and (c) a citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

16.

Attached hereto as Attachment "E" are the facts stipulated by the parties. No further evidence will be required as to the facts contained in the stipulation and the stipulation may be read into evidence at the beginning of the trial or at such other time as is appropriate in the trial of the case. It is the duty of counsel to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the non-cooperating counsel.

17.

The legal issues to be tried are as follows: _____

_____

_____

_____

_____

_____

18.

Attached hereto as Attachment "F-1" for the plaintiff, Attachment "F-2" for the defendant, and Attachment "F-3", etc. for all other parties is a list of all the witnesses and their addresses for each party. The list must designate the witnesses whom the party *will* have present at trial and those witnesses whom the party *may* have present at trial. Expert (any witness who might express an opinion under Rule 702), impeachment and rebuttal witnesses whose use as a witness can be reasonably anticipated must be included. Each party shall also attach to his list a reasonably specific summary of the expected testimony of each expert witness.

All of the other parties may rely upon a representation by a designated party that a witness will be present unless notice to the contrary is given 10 days prior to trial to allow the other party(s) to subpoena the witness or to obtain his testimony by other means. Witnesses who are not included on the witness list (including expert, impeachment and rebuttal witnesses whose use should have been reasonably anticipated) will not be permitted to testify.

19.

Attached hereto as Attachment "G-1" for the plaintiff, "G-2" for the defendant, and "G-

3", etc. for all other parties are the typed lists of all documentary and physical evidence that will be tendered at trial. Learned treatises which are expected to be used at trial shall not be admitted as exhibits. Counsel are required, however, to identify all such treatises under a separate heading on the party's exhibit list.

Each party's exhibits shall be numbered serially, beginning with 1, and without the inclusion of any alphabetical or numerical subparts. Adequate space must be left on the left margin of each party's exhibit list for Court stamping purposes. A courtesy copy of each party's list must be submitted for use by the judge.

Prior to trial, counsel shall mark the exhibits as numbered on the attached lists by affixing numbered yellow stickers to plaintiff's exhibits, numbered blue stickers to defendant's exhibits, and numbered white stickers to joint exhibits. When there are multiple plaintiffs or defendants, the surname of the particular plaintiff or defendant shall be shown above the number on the stickers for that party's exhibits.

Specific objections to another party's exhibits must be typed on a separate page and must be attached to the exhibit list of the party against whom the objections are raised. Objections as to authenticity, privilege, competency, and, to the extent possible, relevancy of the exhibits shall be included. Any listed document to which an objection is not raised shall be deemed to have been stipulated as to authenticity by the parties and shall be admitted at trial without further proof of authenticity.

Unless otherwise noted, copies rather than originals of documentary evidence may be used at trial. Documentary or physical exhibits may not be submitted by counsel after filing of the pretrial order, except upon consent of all the parties or permission of the Court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during trial to examine exhibits that are or should have been listed.

20.

The following designated portions of the testimony of the persons listed below may be introduced by deposition:

_____

_____

Any objections to the depositions of the foregoing persons or to any questions or answers in the depositions shall be filed in writing no later than the day the case is first scheduled for trial. Objections not perfected in this manner will be deemed waived or abandoned. All depositions shall be reviewed by counsel and all extraneous and unnecessary matter, including non-essential colloquy of counsel, shall be deleted. Depositions, whether preserved by stenographic means or videotape, shall not go out with the jury.

21.

Attached hereto as Attachments "H-1" for the plaintiff, "H-2" for the defendant, and

"H-3", etc. for other parties, are any trial briefs which counsel may wish to file containing citations to legal authority concerning evidentiary questions and any other legal issues which counsel anticipate will arise during the trial of the case. Limitations, if any, regarding the format and length of trial briefs is a matter of individual practice which shall be established by each judge.

22.

In the event this is a case designated for trial to the Court with a jury, requests for charge must be submitted no later than 9:30 a.m. on the date on which the case is calendered (or specially set) for trial. Requests which are not timely filed and which are not otherwise in compliance with LR 255-2, NDGa will not be considered. In addition, each party should attach to the requests to charge a short (not more than one page) statement of that party's contentions, covering both claims and defenses, which the Court may use in its charge to the jury.

Counsel are directed to refer to the latest edition of the Fifth Circuit District Judges Association's *Pattern Jury Instructions* and Devitt and Blackmar's *Federal Jury Practice and Instructions* in preparing the requests to charge. Those charges will generally be given by the Court where applicable. For those issues not covered by the *Pattern Instructions* or *Devitt and Blackmar*, counsel are directed to extract the applicable legal principle (with minimum verbiage) from each cited authority.

23.

If counsel desire for the case to be submitted to the jury in a manner other than upon a general verdict, the form of submission agreed to by all counsel shall be shown in Attachment "I" to this Pretrial Order. If counsel cannot agree on a special form of submission, parties will propose their separate forms for the consideration of the Court.

24.

Unless otherwise authorized by the Court, arguments in all jury cases shall be limited to one-half hour for each side. Should any party desire any additional time for argument, the request should be noted (and explained) herein.

25.

If the case is designated for trial to the Court without a jury, counsel are directed to submit proposed findings of fact and conclusions of law not later than the opening of trial.

26.

Pursuant to LR 235-2, NDGa, lead counsel met in person on _____, 19___, to discuss in good faith the possibility of settlement of this case. The Court (_____) has or (_____) has not discussed settlement of this case with counsel. It appears at this time that there is:

(_____) A good possibility of settlement.
(_____) Some possibility of settlement.

(_____) Little possibility of settlement.
(_____) No possibility of settlement.

27.

Unless otherwise noted, the Court will not consider this case for a special setting, and it will be scheduled by the clerk in accordance with the normal practice of the Court. _____

28.

The plaintiff estimates that it will require ____ days to present its evidence. The defendant estimates that it will require ____ days to present its evidence. The other parties estimate that it will require ____ days to present their evidence. It is estimated that the total trial time is ____ days.

29.

IT IS HEREBY ORDERED that the above constitutes the pretrial order for the above captioned case (_____) submitted by stipulation of the parties or (_____) approved by the Court after conference with the parties.

IT IS FURTHER ORDERED that the foregoing, including the attachments thereto, constitutes the pretrial order in the above case and that it supersedes the pleadings which are hereby amended to conform hereto and that this pretrial order shall not be amended except by Order of the Court to prevent manifest injustice.

IT IS SO ORDERED this _____ day of _____, 19___.

_____
UNITED STATES DISTRICT JUDGE

Each of the undersigned counsel for the parties hereby consents to entry of the foregoing pretrial order, which has been prepared in accordance with the form pretrial order adopted by this Court.

_____ _____
Counsel for Plaintiff Counsel for Defendant