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 3, 1991

Mr. Duke Artgetsinger
Court Administration Division
Administrative Office of
United States Courts
Washington, D. C. 20544

Dear Mr. ~~Artgetsinger~~ Duke:

Per your request, enclosed please find the subcommittee reports of the CJRA Advisory Group of the U. S. District Court for the Northern District of Georgia.

The final report of the Advisory Group (which includes the minutes of the meetings) is in the process of being printed. When the printed copies have been received, I will mail you a copy of the same.

Sincerely,

Luther D. Thomas
Clerk

LDT/cc

Enclosures

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

REPORT OF THE SUBCOMMITTEE ON ANALYSIS OF COURT PROCEDURES

AUGUST 28, 1991

ADVISORY GROUP
CIVIL JUSTICE REFORM ACT OF 1990

SUBCOMMITTEE ON ANALYSIS OF COURT PROCEDURES
J. Douglas Stewart, Chairman
Lewis S. Andrews
Michael J. Bowers
F. Abit Massey
David H. Tisinger

REPORT OF THE SUBCOMMITTEE ON
ANALYSIS OF COURT PROCEDURES
ADVISORY GROUP
CIVIL JUSTICE REFORM ACT OF 1990
NORTHERN DISTRICT OF GEORGIA

The Subcommittee on Analysis of Court Procedures, consisting of the persons listed below, in regard to its study of the requirements of §473 of the Judicial Improvement Act of 1990 (Public Law 101-650 [H.R. 5316]) offers for consideration by the Advisory Group the following report.

With respect to §473(a)(1) through (5), the Subcommittee feels that the existing local rules of the Northern District (LR__, NDGa) now provide, with certain additions, the basic framework for meeting the mandate of §473(a).

For instance, LR235-3 and LR235-4, NDGa now fulfill the requirement, especially with respect to the ability of the Court to offer and the parties to implement as a part of the preliminary statement and scheduling order allowed by that rule, of "...systematic, differential treatment of civil cases..." (§473(a)(1)) and "...early and ongoing control of the pretrial process through involvement of a judicial officer..." (§473(a)(2)) in that the preliminary statement and scheduling order and the pretrial conference allow the Court and the parties to treat cases differently with respect to scheduling if the case is complex or out of the ordinary in nature and will allow the Court to set an early, firm trial date scheduled to occur within eighteen months after the filing of the complaint or to provide an explanation of why that cannot be done.

Likewise, LR225-1 through 4, NDGa seems to cover the requirements of §473(a)(2)(C) of the Act which requires the involvement of a judicial officer or the court in controlling the extent of discovery and the time for completion of discovery as well as insuring compliance with appropriate requested discovery in a timely fashion in that those existing local rules allow for the length of discovery (four months after the last answer to the complaint is filed or should have been filed), extensions of time for discovery, a limitation on the number of interrogatories and the number of hours a deposition may last as well as the events incident to filing motions to compel including the duty of counsel to confer prior to filing such a motion to try to resolve discovery disputes.

Any conference which may be called by the Court upon receipt of the preliminary statement may also be a useful vehicle for fulfilling the requirements of §473(a)(3) which provide for careful case management in complex and other appropriate cases.

Section 473(4) suggests implementation of plans to encourage cost-effective discovery through voluntary exchange of information amount litigants and their attorneys and through the use of cooperative discovery devices. In that regard, the Subcommittee commends the adoption of an amendment to the local

rules in the form attached as Exhibit "A" which will require both plaintiffs and defendants in each case to automatically respond to certain interrogatories and requests for production of documents, by the plaintiff when the complaint is filed and by the defendant within forty-five days of service of the complaint or its acknowledgment, whichever comes first. This rule has been followed successfully in the Southern District of Georgia and in other district courts in the United States.

Section 473(a)(5) dealing with the 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 is, in the Subcommittee's opinion, adequately covered by existing Local Rule 225-4, NDGa, and §473(a)(6) dealing with authorization to refer appropriate cases to alternative dispute resolution programs that have been designated for use in the district court or which the court may make available, including mediation, mini trial or summary jury trial has been, in the Subcommittee's opinion, adequately covered by the report of the Advisory Group's Alternative Dispute Resolution Subcommittee.

With regard to the requirements of §473(b) of the Act, subparagraphs (1) through (6), the Subcommittee has the following comments:

With respect to the requirement of (1) that counsel for each party to a case present a discovery-case management plan for the case at the initial pretrial conference or explain the reasons for their failure to do so, the requirement could adequately be fulfilled by a statement meeting that requirement as a part of the preliminary statement now required by the local rules and referred to above and which may take the form of Exhibit "B" attached.

Subparagraph (2) requires 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. The Subcommittee feels this is already in place by the requirement in the form pretrial order (Appendix B, page 97, et seq. of the Local Rules, NDGa) that there be a designation of lead counsel for all parties. If this is not considered to be satisfactory to meet the requirements of §473(b)(2), then the provisions of LR235-4, NDGa may be amended to require that at a pretrial conference, each party shall be represented by an attorney who has authority to bind that party regarding all matters to be discussed at the pretrial hearing.

With respect to the requirements of §473(b)(3) that extensions of deadlines for completion of discovery or for postponement of trial be signed by the attorney and the party making the request, LR225-1(b), NDGa dealing, generally, with continuances may be amended to require that parties, as well as counsel, sign applications or motions for such continuances or extensions of time or that

counsel may certify that she has obtained permission from the client to seek the extension or continuance.

With respect to §273(b)(4) requiring a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a non-binding conference conducted early in the litigation, the Subcommittee feels that it needs make no recommendation since that program was considered by the ADR Subcommittee as not being responsive to the particular needs of this district.

Section 273(b)(5) mandates 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. Both LR235-2(b)(2) dealing with the report to the Court as a part of the consolidated pretrial order required to be filed pursuant to LR235-4, NDGa which is supposed to relate the results of the "in person" settlement conference required by LR235-2(1) to be held by lead counsel within ten days after the close of discovery and the pretrial conference contemplated by the second unnumbered paragraph of LR235-4(a), NDGa may be amended to require that persons with authority to settle must be available by telephone or in person during the pretrial conference and settlement conference.

Finally, §273(b)(6) allows for the implementation of "such other features as the district court considers appropriate after considering the recommendations of the advisory group...." The Subcommittee has no additional "features" to suggest.

On a general basis, the Subcommittee favors prohibiting plaintiffs from invoking diversity jurisdiction in their home states and favors a diversity jurisdictional amount of $75,000.00 or greater.

The Subcommittee also urges an amendment to the Federal Rules of Civil Procedure to require the service of responsive pleadings within 30, instead of the presently required 20, days of service of the complaint regardless of whether a motion to dismiss or other such motion is filed at the same time.

J. Douglas Stewart, Chair
Lewis S. Andrews
Michael J. Bowers
F. Abit Massey
David H. Tisinger

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 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.

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). If the parties anticipate that additional time will be needed to complete discovery, please state those reasons in detail below: _____

_____

_____

_____

8. Related Cases:

The cases listed below (include both type 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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

INTERIM REPORT OF THE SUBCOMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION

JULY 31, 1991

ADVISORY GROUP
CIVIL JUSTICE REFORM ACT OF 1990

SUBCOMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION
Earl T. Shinhoster, Chairman
Foy R. Devine
Robert S. Harkey
Walter J. Thomas

Interim Report of the Subcommittee on Alternative Dispute Resolution

A. Background and Research Approach

The Civil Justice Reform Act of 1990, Section 103(a), 28 U.S.C. § 473(a)(6), directs each United States District Court, in consultation with an advisory group appointed by the Chief Judge of the Court, to consider implementation of an alternative dispute resolution program (hereinafter ADR program) for purposes of reducing litigation delay and expense in that district court. The Act contemplates that each district court will either refer "appropriate cases" to its ADR program or that it will develop ADR options which will then be available to civil litigants in that Court. The United States District Court for the Northern District of Georgia was named as a pilot court under the Act. See Section 105(b), Civil Justice Reform Act of 1990. The Advisory Group for the Northern District of Georgia is, therefore, required not only to consider development of an ADR program but also to suggest to the Court a program for implementation in this District on a pilot basis, to remain in effect for a minimum period of three years.

The Alternative Dispute Resolution Subcommittee of the Advisory Group for the Northern District of Georgia is mindful of the fact that the judges on this Court have considered ADR options on at least three occasions over the past eight years. On July 16, 1991, several district judges, at the request of the Advisory Group, met with the Advisory Group to answer questions. At that meeting Chief Judge William C. O'Kelley reported that in each instance when the Court considered ADR, the majority of the Court concluded that the benefits of existent ADR options had not been sufficiently documented and that any problems with civil docket delay in this District did not rise to a level sufficient to justify implementation of an ADR program.

Statistical analysis of Northern Georgia's docket has affirmed the judges' assessment that, historically, civil litigants have not been adversely impacted by excessive delay in the resolution of their civil litigation. The average duration for civil cases in the Northern District of Georgia has been 11.65 months, 11.95 months, and 12.46 months, respectively, for years ending June 30, 1988, 1989, and 1990. Preliminary figures for the statistical year ending June 30, 1991, indicate that the average civil case duration in this Court has remained at slightly over one year.

However, as indicated earlier, the mission of this Advisory Group is not to determine whether the Northern District of Georgia needs an ADR program, but to recommend to the Court the ADR program which it believes will best further the goals of the Civil Justice Reform Act of 1990 in this District. In addition, the comments of several judges at the July 16, 1991, meeting that, in their opinions, the previously published civil docket statistics would not continue to hold up

because of the rapidly escalating demands of the criminal docket on judge time have entered into the deliberations of the ADR subcommittee.

The subcommittee has reviewed the various types of alternative dispute resolution programs in use in other courts. Inquiry began first with each of the other district courts in the Eleventh Circuit in order to determine what ADR options, if any, were offered to civil litigants by 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 direct 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 1) 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 (a) for an arbitration program to be successful in the Northern District of Georgia, it would have to encompass cases with significantly higher prayers for damages than those designated for arbitration in Fulton County and (b) that the time constraints under which this Advisory Group is functioning made it impractical to consider coordinating efforts with the state ADR task force at this time.

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 U. S. 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.

"The general 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). As Ms. Meierhoefer explains, the two historical methods of resolving disputes are adjudication and negotiation. In adjudication, the decision is based on application of a rule of law whereas the outcome of a negotiation is whatever the litigants are willing to accept.

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.

According to Ms. Meierhoefer, the goal of alternative negotiation strategies is to provide "better settlements that will increase both parties' satisfaction with the outcome of the case and preserve ongoing relationships." With alternative adjudicative procedures there is, as in court, always a loser. In alternative adjudication programs, " . . . litigant satisfaction with the process is more important than maximizing both parties' satisfaction with the outcome." B. Meierhoefer, supra, at pp. 16-17.

The ADR subcommittee carefully considered programs implementing each of these four ADR devices as well as lesser utilized programs such as early neutral evaluation, case valuation, and settlement weeks. The subcommittee received a presentation from an attorney who had had a very positive experience in this Court with voluntary private litigation before a special master in a case involving commercial litigation with multiple parties. At the July 16, 1991, meeting, discussions among the Advisory Group members and judges of the Northern District developed the benefits which may be obtained in certain cases by use of the mini-trial procedure in which attorneys present their best cases to the parties (usually top officials of corporate parties) in hopes of increasing chances for settlement.

The subcommittee also looked very carefully at Local Rule 235-2, Settlement Conferences and Certificates, of the Northern District of Georgia to determine if this existent court practice satisfied the principles enunciated in the Civil Justice Reform Act of 1990. Although this rule has many positive features which promote a negotiative approach to termination of civil cases, the ADR subcommittee has concluded 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 most responsive to the needs of this District.

B. Recommendations

The subcommittee on alternative dispute resolution hereby makes the following recommendations to the Advisory Group for establishment of an alternative dispute resolution program in the United States District Court for the Northern District of Georgia:

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

2. That for administrative ease and because some divisions outside Atlanta do not have full-time magistrate judges, the pilot program shall be implemented 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 petitions for habeas corpus and actions in which one or more party(ies) is proceeding pro se, regardless of category. Attorney responses to the Advisory Group Questionnaire support the application of ADR to all civil actions rather than limiting ADR to certain categories and sizes of actions.

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 prior to implementation of the ADR program 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. Participation in the program is mandatory for those civil actions randomly selected, unless the judge, sua sponte or upon motion by one or more parties, in his or her discretion and upon a showing of good cause allows an action to be withdrawn.

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 will be assigned to a separate category for statistical purposes.

8. That a civil action assigned to or permitted to participate in the ADR program shall be subject to the overall management control of the assigned judge during the pendency of the arbitration process, and parties shall not be precluded from filing pretrial motions or pursuing discovery.

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

10. That parties are to be encouraged to attend the arbitration hearing, but the presence of parties shall not be required.

11. That the award of the arbitrator shall be advisory and non-binding.

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

13. That full-time magistrate judges in the Atlanta Division serve as 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 shall serve as arbitrator.

15. That to qualify as an arbitrator, 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; 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 shall be centralized in the office of the Clerk of Court for the United States District Court for the Northern District of Georgia and 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 shall 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, the date for the arbitration hearing shall be a firm date.

19. That in the event a magistrate judge is not available to serve as arbitrator, the administrator shall provide the parties to the civil action with a list of approved attorney arbitrators. The parties will be permitted to submit a joint listing of three preferred arbitrators, ranked in order of preference. The administrator will 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 shall be responsible for developing and carrying out a data collection and evaluation program to determine whether the pilot ADR program increased the number of cases which settled; caused settlements to occur at an earlier time; had any affect, either increased or decreased, upon the costs associated with litigation in the Northern District of Georgia; and whether the ADR program reduced delays associated with litigation in this Court or otherwise improved the administration of justice.

21. That in civil actions where the parties are of the view that appointment by the Court of a special master empowered to make binding findings of fact and conclusions of law is desirable and all parties consent, it is recommended that the Court permit the parties to utilize a voluntary program of alternative dispute resolution in which the parties agree jointly to the selection, appointment, and payment of a special master to try the action. The special master shall be authorized to control and manage discovery, conduct a trial of the action, and render a decision which shall be binding on the parties. Costs associated with a voluntary ADR procedure of this nature shall be paid in full by the parties in accordance with the terms of an agreement reached in advance among themselves.

22. The ADR non-binding court-annexed arbitration program and the optional voluntary ADR procedure described in these recommendations shall be provided for by temporary rule in the Local Rules of Practice of the United States District Court for the Northern District of Georgia, which shall remain in effect during the term of the pilot program and until terminated by the Court.

C. Conclusion

The recommendations presented in this paper by the Alternative Dispute Resolution Subcommittee of the Advisory Group for the Northern District of Georgia are interim recommendations only and are fully subject to correction and revision by and at the direction of the Advisory Group.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

FOLLOW UP REPORT OF THE SUBCOMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION

AUGUST 28, 1991

ADVISORY GROUP
CIVIL JUSTICE REFORM ACT OF 1990

SUBCOMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION
Earl T. Shinhoster, Chairman
Foy R. Devine
Robert S. Harkey
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PROPOSAL

ALTERNATIVE DISPUTE RESOLUTION PROGRAM FOR THE 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 pursuant to the Civil Justice Reform Act of 1990 hereby makes the following recommendations to the judges of this Court for establishment of an alternative dispute resolution program in the United States District Court for the Northern District of Georgia:

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

2. That for administrative ease and because some divisions outside Atlanta do not have full-time magistrate judges, the pilot program shall be implemented 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 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 shall be excluded.

Original Recommendation

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 petitions for habeas corpus and actions in which one or more party(ies) is proceeding pro se, regardless of category. Attorney responses to the Advisory Group Questionnaire support the application of ADR to all civil actions rather than limiting ADR to certain categories and sizes of actions.

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 prior to implementation of the ADR program 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. Participation in the program for those actions selected is 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.

Original Recommendation

That the form of ADR be court-annexed arbitration. Participation in the program is mandatory for those civil actions randomly selected, unless the judge, sua sponte or upon motion by one or more parties, in his or her discretion and upon a showing of good cause allows an action to be withdrawn.

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 will be assigned to a separate category for statistical purposes.

8. That a civil action assigned to or permitted to participate in the ADR program shall be subject to the overall management control of the assigned judge during the pendency of the arbitration process, and parties shall not

be precluded from filing pretrial motions or pursuing discovery.

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

10. That parties are to be encouraged to attend the arbitration hearing, but the presence of parties shall not be required.

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

Original Recommendation

That the award of the arbitrator shall be advisory and non-binding.

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

13. That full-time magistrate judges in the Atlanta Division shall serve as 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 shall serve as arbitrator.

15. That to qualify as an arbitrator, 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 shall be centralized in the office of the Clerk of Court for the United States District Court for the Northern District of Georgia and 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 shall notify the parties within 20 days after filing of the inclusion of an action in the arbitration program. The administrator shall 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, the date for the arbitration hearing shall be a firm date.

Original Recommendation

That the administrator shall 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, the date for the arbitration hearing shall be a firm date.

19. That in the event a magistrate judge is not available to serve as arbitrator, the administrator shall provide the parties to the civil action with a list of approved attorney arbitrators. The parties will be permitted to submit a joint listing of three preferred arbitrators, ranked in order of preference. The administrator will 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 shall be responsible for developing and carrying out a data collection and evaluation program to determine whether the pilot ADR program increased the number of cases which settled; caused settlements to occur at an earlier time; had any affect, either increased or decreased, upon the costs associated with litigation in the Northern District of Georgia; and whether the ADR program reduced delays associated with litigation in this Court or otherwise improved the administration of justice.

21. That in civil actions where the parties are of the view that appointment by the Court of a special master empowered to make binding findings of fact and conclusions of law is desirable and all parties consent, it is recommended that the Court permit the parties to utilize a voluntary program of alternative dispute resolution in which the parties agree jointly to the selection, appointment, and payment of a special master to try the action. The special master shall be authorized to control and manage discovery, conduct a trial of the action, and render a decision which shall be binding on the parties. Costs associated with a voluntary ADR procedure of this nature shall be paid in full by the parties in accordance with the terms of an agreement reached in advance among themselves.

22. The ADR non-binding court-annexed arbitration program and the optional voluntary ADR procedure described in these recommendations shall be provided for by temporary rule in the Local Rules of Practice of the United States District Court for the Northern District of Georgia, which shall remain in effect during the term of the pilot program and until terminated by the Court.