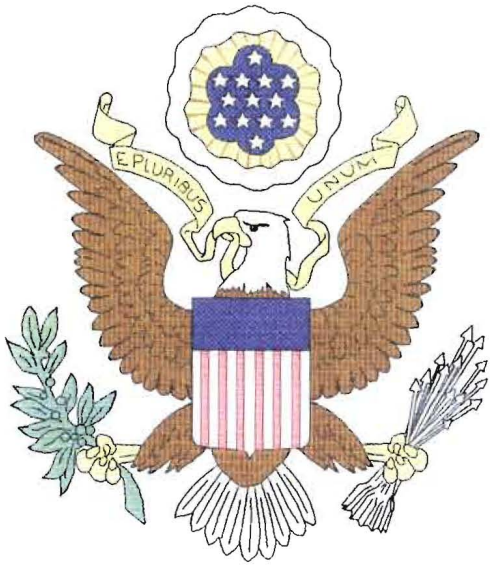
1994 ANNUAL REPORT
OF THE UNITED STATES DISTRICT COURT - IN CONSULTATION WITH THE CIVIL JUSTICE REFORM ACT ADVISORY GROUP FOR THE DISTRICT OF RHODE ISLAND



Appointed Under The CIVIL JUSTICE REFORM ACT OF 1990

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INTRODUCTION

In October, 1993, the Advisory Group (hereafter the "Group") for the District of Rhode Island, appointed pursuant to the Civil Justice Reform Act of 1990 (hereafter the "Act"), submitted to the Court it's recommendations for incorporation into a Civil Justice Reform Act Expense and Delay Reduction Plan (hereafter the "Plan"). The Group analyzed civil litigation in the District, relying upon its members' experience, the deliberations of its committees and the results of several surveys, as well as consideration of other quantitative and qualitative information. In general, the Group concluded that this Court functions well in its management of judicial workload and in its delivery of judicial services to litigants and members of the bar. This conclusion continues to be supported by workload data that reflects a tremendous increase in the number of cases terminated, both as a percentage of the civil docket and as an actual number. There is as well a pronounced decline in the Court's pending caseload during both 1993 and 1994. It is anticipated that these trends will continue.

The Group's original conclusion that the Court functions well, was not statistically anticipated in 1992, given the fact that difficult civil cases had risen, filings of criminal cases (as well as the number of defendants) had increased dramatically, and the percentage of cases tried was well above national averages for both civil and criminal dockets.

The number of trials completed by the judges in this district remains very high, however, fewer trials are being conducted. This is not for reason of any delay in the civil or criminal dockets, nor the availability of a district judge to preside over trials, rather, the decline is due largely to the success of the court's judicial officers in achieving settlements through active settlement conferencing. These settlements have occurred in large numbers and earlier on in the life of the cases filed.

Median time to disposition has declined from 11 to 10 months. Disposition time of cases remains low due to a number of factors. First, the unprecedented complement of three active judges and two extremely active senior judges, one bankruptcy judge, as well as two full-time magistrate judges and the services of one retired magistrate judge (recently officially recalled), all of whom have work habits that lend themselves to expeditious management of their dockets.

Did dramatic changes need to be made in the court's practices and procedures? No. The Court in it's wisdom however, realized that without significant change or expense to the Court, that the Civil Justice Reform Act created a positive opportunity to devise and implement changes that have enhanced the court's practices and the way it functions, as well as introduce means adjunct to trial that might reduce cost, make delay less likely and resolve disputes much earlier on in the life of cases. The Courts rationale for change and enhancement of judicial services was predicated upon several reasons, including:

a. *The Court will never be "blessed" with greater judicial assets than it presently enjoys—three active district judges, two senior district judges, one bankruptcy judge, two full-time magistrate judges and one retired magistrate judge (as noted, recently recalled) available for assistance, and*

b. *That in the event that, civil and criminal case filings increase dramatically during a period when the court does not have the same level of judicial resources it presently has, the court will be able to manage it's docket without delay and unnecessary cost associated with such delay*

On November 18, 1993, the court adopted the Plan which calls for the following:

1. Consideration of proposed revisions of the Local Rules submitted by the CJRA Advisory Group at the earliest time practicable.
2. Revision of the categories for assigning cases.

3. Requires that all discovery motions contain a certification by moving counsel that counsel have met and conferred in good faith to attempt to resolve disputes prior to filing such motions.

4. Reducing the time for filing responses to non-dispositive motions to (11) days from the date the motion was filed.

5. Encouraging referral of discovery motions that the district judges in their sole discretion deem appropriate to the assigned magistrate judge.

6. Encouraging the consensual referral of appropriate cases to the assigned magistrate judge.

7. Adopting and Implement an Alternative Dispute Resolution Plan.

8. Considering the use of video technology to conduct arraignments of criminal defendants in order to reduce cost associated with transporting prisoners and detainees as well as eliminate the security risk inherent in the process, and in appropriate circumstances in civil matters as well.

Implementation of the Plans provisions are discussed briefly below. Also included in this Report is an update of the Court's civil and criminal dockets

II.
THE CJRA PLAN

1. Local Rules: In December, 1993 the Federal Rules of Civil Procedure were amended. As a result, the Court delayed any further consideration of the proposed revisions to the District Court's Local Rules until such time as the Court decided whether to opt out of new Rule 26 and determine how the new rules generally might impact on existing local rules and the proposed changes thereto. Recently the Court has renewed it's consideration of the proposed revisions.

2. Categories for Assigning Cases: The Court revised the categories for assigning cases. Prior to the change in categories the following were the categories assigned:

CIVIL

Admiralty
Antitrust
Bankruptcy
Civil Rights
Contracts
Habeas Corpus
Taxes
Labor
Miscellaneous
Patents/copyrights/Trademarks
Real Property
Social Security
Torts
Miscellaneous Grand Jury Proceedings
Prisoner Petitions
Transfers from other districts

CRIMINAL

All indictments
Bail Appeals
Forfeitures

While each judged received a pro rata share of cases, the weighted value of those cases was skewed by several factors:

The number of categories
The number of cards for each judge in the category
The difficulty of the case, etc.

In order to assure the close approximation in each category of the expected cases to be assigned, TROs and Transfers from other districts have been drawn from the category which most closely fits the nature of the TRO or Transfer case. All criminal matters have been consolidated into two categories. Further, Indictments and Bail Appeals have been included as a third Miscellaneous category. At present, the categories for assigning civil cases are:

CIVIL

Admiralty
Antitrust
Bankruptcy Appeals
Civil Rights
Contracts
Environmental (new category)
Forfeiture/Penalty/Tax Suits
Labor
Miscellaneous (including Grand Jury Proceedings and Bail Appeals)
Patents/Copyrights/Trademarks (Intellectual Property Rights)
Prisoner Petitions (Habeas Corpus)
Real Property
Social Security
Torts (subdivided into (a) products liability, (b) all malpractice, and (c) all other).

In making these assignments the Court has been mindful of historical data for the number of cases to be expected from any category to assure that the least number of judge cards necessary are used for the draw.

The Court noted in the Group's Report that the civil docket is heavily influenced by the criminal docket. While the Group did not evaluate the criminal docket in depth, the observation was meaningful in causing the Court to better categorize criminal cases so as to minimize the possibility of one judge receiving a number of very time-consuming cases. A statistical evaluation of this problem disclosed that one of this court's judges had in fact received a number of such cases, and as a result, had a very high percentage of the total criminal trial hours on the bench, leaving less time for civil matters.

In order to avoid a reoccurrence of this problem the Court adopted categories of criminal cases based on the expected length of trial.

The U.S. Attorney estimates trial length on all new indictments on form AO 257 ("Defendant information relative to a criminal action in the U.S. District Court") While most cases are Category I type cases (that is cases which are more routine in nature

and take up less judicial time [5 days or less] for disposition), only one set of cards is placed in the Category II type (cases that are more complex and time consuming [more than 5 days]). These may involve multi-party defendants, RICO, complex fraud or conspiracy charges against one or more defendants, and which are likely to take more than 5 days of trial.

All cards are drawn from category II before being replaced. In this way, each judge is assured of receiving only one category II case out of each five cases assigned in that category.

3. Motion Practice (certification): If there was any delay in this district, it resided in the area of motion practice. This was a finding supported by the work of the Group.

In the course of developing the Report and Plan, the Group through interviews with the magistrate judges disclosed that one third to one-half of all discovery matters resolve themselves at the courthouse when counsel discuss the motion just prior to the scheduled hearing. While current Local Rule 13(d) requires counsel to confer about objections to interrogatories or request for production of documents, the Court has fashioned in it's Plan a rule that requires that all motions contain a certification by moving counsel stating that counsel for the parties have met and conferred in good faith to attempt to resolve disputes prior to the filing of such motions.

The effect of this requirement has insured that Rule 13(d) is complied with and greater communication takes place over disputes involving discovery, such that the great majority of the same are resolved without resort to the Court as a means of compelling compliance. The decrease in these motions reduces cost and delay and insures more efficient use of judicial resources.

4. Response Time (Non-dispositive motions): As a means of saving time, Local Rule 12(2) was amended by Order of the Court to require that all non-dispositive motions be filed within 11 days from the date the motion is filed. This change saves almost ten days in closing the response time to motions. The 11 days is inclusive of weekdays and holidays. The 10 days under former Local Rule 12(2) was exclusive of weekends and holidays (10 days computes to about 17 days under Federal Rule of Civil Procedure 6(a). Eleven days compute as 11 days. Starting the 11 day clock from filing rather than service saves an additional 2 to 3 days.

5. Referral of Discovery Motions to Magistrate Judges:

The Plan calls for the Court to encourage referral of discovery motions that the district judges, in their sole discretion, deem appropriate to the assigned magistrate judge. The referral of such motions is not uniform among the practice of the district judges, though as the Plan contemplated, each of the district judges gives consideration to such referral.

6. Referral of Cases to Assigned Magistrate Judges:

As contemplated by the Plan, the court gives careful consideration to the consideration of referral.

7. Adoption and Implementation of the ADR Plan:

In November, 1993, the Court adopted an ADR Plan which provides for a wide range of choices among various ADR methods for litigants to choose, including: arbitration, mediation, early neutral evaluation, summary jury/bench trials and settlement conferences. The adoption came about due in part to the unusually large percentage of cases that are tried in this district. At the time of the Report and Plan being issued, 18 percent of the civil cases filed went to trial and 22.6 percent of the

criminal docket went to trial. The national average at the time was approximately 7 percent civil and 12 percent criminal. In 1994, 20.6 percent of the criminal docket and approximately 14 percent of the civil docket went to trial.

In February, 1995, the ADR Plan was amended and is attached to this Report as Appendix A. The Amended Plan includes a provision that requires all civil cases, except those specifically exempted by a district judge, to attend and participate in a mandatory settlement conference before a magistrate judge, to be held within 120 days of a responsive pleading to the complaint or Motion to Dismiss pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure [whichever is first]. Parties may opt out of this conference if they elect to pursue one of the ADR options provided by the Court, prior to or at the time of the Rule 16 conference. This approach is unique among existing ADR programs in other district courts in the sense that it preserves both mandatory and voluntary options, as well as providing a wide range of ADR methods.

Through a highly competitive process of selection, the Court offered appointments to 25 persons, to serve as ADR Panel Members. These candidates underwent extensive training in November and December, 1994. The Court has certified their qualification to serve in the capacities of arbitrators, mediators and early neutral evaluators upon cases being referred to them under the Plan.

In January the Court, together with the Rhode Island Federal Bench/Bar Committee, co-sponsored an ADR Conference to introduce in detail the ADR Plan including practice and procedure thereunder. The Conference was a success, with attendees providing valuable recommendations, some of which were adopted as part of the Amended ADR Plan. The ADR Program officially commenced on February 1, 1995. Interest in the program has been high, though exactly how many cases will ultimately be referred remains unclear.

8. Consideration of Use of Video Technology:

The Court in it's Plan gave careful consideration to the Group's recommendation that the Court use video technology to conduct arraignments of criminal defendants in order to reduce cost associated with transporting prisoners and detainees as well as eliminating the security risk inherent in the process, and in appropriate cases use of such technology in civil matters such as depositions . Due to a lack of funding the Court has delayed any further consideration of this technology until such funding is available.

III.

ASSESSMENT OF THE CRIMINAL AND CIVIL DOCKETS

A. The Civil Docket

Since 1993, the percentage of civil cases 3 years old or older in this District increased from (25) or 3.4 percent in 1993 to (32) or 4.9 percent in 1994. This District's level of such cases, however, remains well below the national average of 8.9 percent and is second only to the District of Maine in the Circuit. The increase is an aberration, and is due largely to several large and complex cases.

A breakdown of civil cases by specific case types provides further detail and allows for a more precise analysis of the court's docket. The mixture of civil cases filed in this District has not changed significantly over the last year. The most significant change since 1993 has been a marked decline in the number of Type II cases.[1]

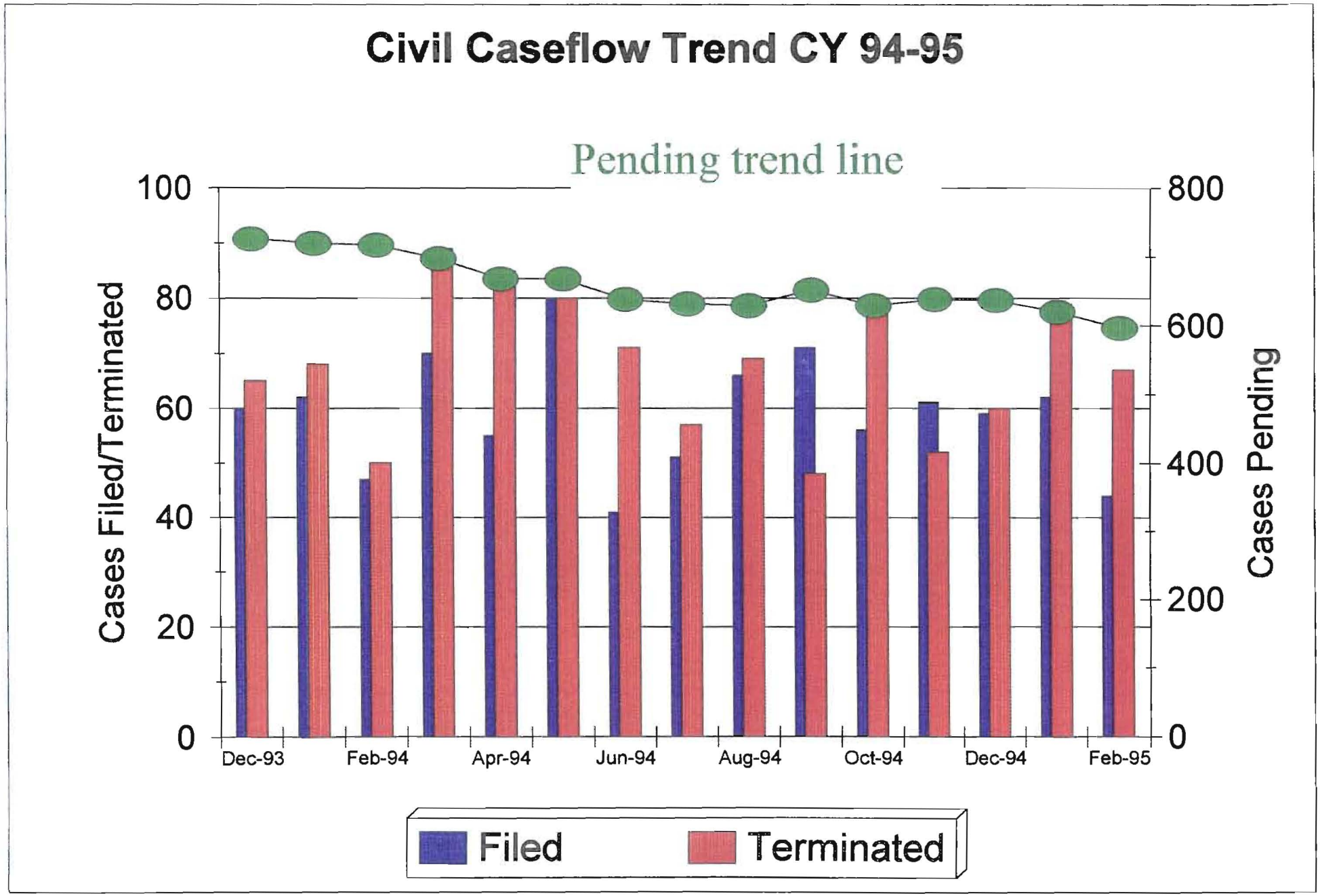
[1] Type II cases are generally more complex and demand greater amounts of time and other judicial resources than do Type I cases which are more routine, and in most cases place less burden on the judicial resources of courts. The "big four" cases types in this district remain: Contract, Civil Rights, Personal Injury and Prisoner cases.

In terms of actual numbers, **civil filings** per judgeship for 1994 rose from 237 to 239. Criminal felony filings also increased from 34 to 37. These changes do not represent increases that are statistically significant. The number of total pending cases per judgeship has declined from 283 in 1993 to 257 cases in 1994. This is a significant decline. This decline is complimented by the dramatic increase in termination's per judge, from 277 in 1993 to 293 in 1994. The decline is due in part to the large number of cases settled or otherwise disposed of short of trial. The number of trials per judge completed has also declined from 42 in 1993 to 30 in 1994. Weighted filings per judgeship have decreased from 299 in 1993 to 287 in 1994. Terminations per judgeship have increased from 237 in 1993 to 239. This trend is likely to continue in 1995.

A number of factors have contributed to these improvements: leveling off of the economic downturn in Rhode Island which is credited for much of the increase in commercial litigation over the last four to six years; the presence of 3 "active" district judges, two senior district judges, two full-time magistrate judges, and the adjunct services of a retired magistrate judge. As well, the Court has placed significant emphasis on settlement conferences. It is likely that the Court's ADR Program and it's continued use of active settlement conferencing will result in even greater success in resolving disputes earlier on in the life of cases filed in this district.

The graph on the following page "colorfully" describes the success of the district in terminating cases and keeping it's pending case load down. As the graph indicates, the courts terminations have far outpaced the number of cases filed and the Court's pending caseload continues to decline.

Median time from filing to disposition has remained rather constant. In 1992 it was (10) months. In 1993 it rose to (11) months and in 1994 declined to (10) months. The "life expectancy" of civil cases in this District has remained relatively constant. However, in 1993 and in 1994, the average has continued to decline, from approximately 13 months in 1992 to 11 months in 1994. This trend supports the


Civil Caseflow Trend CY 94-95
Pending trend line
Cases Filed/Terminated
Cases Pending
100
80
60
40
20
0
800
600
400
200
0
Dec-93
Feb-94
Apr-94
Jun-94
Aug-94
Oct-94
Dec-94
Feb-95
Filed
Terminated

continued belief of the Group and Court that there continues to be little, if any, delay in this district. The indexed Average Life Span ("IAL")[2] for this District is 11 months, which is below the national average of 12 months for all civil cases.

B. The Criminal Docket

Felony filings per judgeship increased only slightly in 1994 from 34 the preceding year to 37 cases. The absolute numbers of filings while significant is important, but the burden to judges in criminal cases is generally proportional to the number of defendants per case. In 1992 there were an average 1.5 defendants per case. In both 1993 and in 1994, the average has declined to 1.3 defendants, representing a reduction in the burden of criminal cases to the overall administration of cases by the district judges. The average for the five year period 1989 to 1993 is 1.46.

The percentage of drug defendants, compared to all criminal defendants declined sharply in 1994 over the preceding year from approximately 50 percent to just under 30 percent. The number of drug defendants both as a percentage and as an actual number have also declined from approximately 75 in 1993 to 45 in 1994. These declines have significantly reduced the demands and burdens of such cases upon the courts resources. However, in an interview with the Chief Assistant United States Attorney for this District in December, it appears that criminal prosecutions are on the rise and a resurgence of prosecutions of drug defendants is likely. Staffing shortages

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[2] Life expectancy is used to assess change in the trend of actual cases life span; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL permits comparison of the characteristic life span of this court's cases to those at all district courts over the past decade. The IAL is indexed at a value of 12 because the national average for time to disposition is about 12 months nationally. This value then represents an average speed of case disposition, shown on figure 10 as IAL Reference. Values below 12 indicate the court is disposing of cases faster than the average, and, conversely, values above 12 indicate that cases are being disposed of at a slower rate than the national average.

in the U.S. Attorney's Office in 1993, resulted in approximately 20 percent fewer indictments being obtained.

In 1983, median time from filing to disposition of criminal cases was 7.2 months. By 1992 it had declined to 5.3 months. In 1993 median time increased significantly to 7.0, due in large part to an unusually high number of highly complex criminal cases. In 1994 median time declined to 5.9 months. With the present compliment of judges, it is likely that median time will decline further.

Despite the decline in criminal case filings and defendants, the District continues to try an unusually large percentage of it's criminal docket, approximately 20.3 percent.

	RHODE ISLAND		TWELVE MONTH PERIOD ENDED SEPTEMBER 30						Numerical Standing Within	
			1994	1993	1992	1991	1990	1989	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings*		828	813	871	762	792	816		
	Terminations		880	830	866	719	717	813		
	Pending		770	848	868	865	828	748		
	Percent Change in Total Filings	% over Last Yr.		1.8					36	2
	Current Year	Over Earlier Yrs...			-4.9	8.7	4.5	1.5	38	3
	Number of Judgeships		3	3	3	3	3	3		
	Vacant Judgeship Months**		11.4	6.9	.0	.0	6.6	9.2		
ACTIONS PER JUDGESHIP	FILINGS	Total	276	271	290	254	264	272	80	3
		Civil	239	237	241	216	230	248	78	3
		Criminal Felony	37	34	49	38	34	24	67	3
	Pending Cases		257	283	289	288	276	249	78	4
	Weighted Filings**		287	299	365	316	312	294	83	4
	Terminations		293	277	289	240	239	271	79	4
	Trials Completed		30	42	51	57	43	45	44	1
MEDIAN TIMES (MONTHS)	From Filing to	Criminal Felony	5.9	7.0	5.3	6.4	5.6	6.9	39	1
	Disposition	Civil**	10	11	11	11	10	10	65	3
	From Issue to Trial (Civil Only)		20	17	13	10	12	11	50	3
OTHER	Number (and %) of Civil Cases Over 3 Years Old		32 4.9	25 3.4	27 3.6	32 4.1	26 3.4	24 3.5	51	2
	Average Number of Felony Defendants Filed per Case		1.3	1.3	1.5	1.5	1.4	1.6		
	Jurors	Avg. Present for Jury Selection**	21.28	25.16	20.96	17.43	19.16	15.55	5	2
		Percent Not Selected or Challenged**	36.4	32.3	24.6	16.7	20.8	10.1	74	4

Magistrate Judges: The workload trend for magistrate judges in this district is one of consistent growth. This trend will likely be enhanced by the requirement under the Court's Alternative Dispute Resolution Plan that all civil cases submit to a mandatory settlement conference, unless parties elect to pursue one of the court approved ADR

options. The magistrate judges have aided the court substantially in reducing the number of cases that are tried in this district by conducting very active and successful settlement conferences. These judges experiences, knowledge and talents have demonstrated repeatedly the value of the magistrate judge roles, including their aid in facilitating meaningful negotiations between litigants .

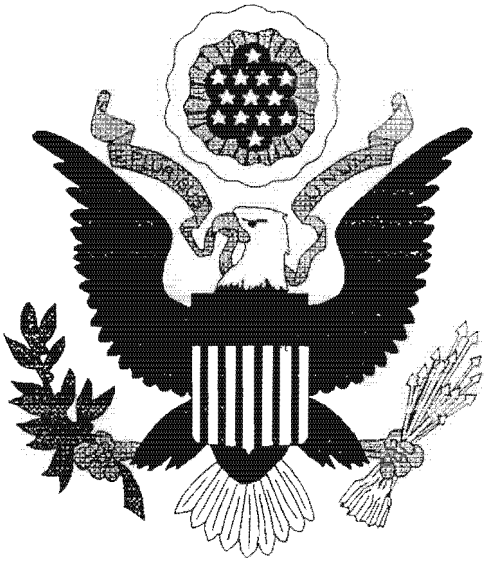
IV.

CONCLUSION

While the Court has enjoyed great success in maintaining expeditious filing to disposition time and has significantly increased the number of case terminations, the Court is mindful of the one constant, change, which at some point in the future will reduce the compliment of judges the Court now enjoys and is likely to see a return to more historical trends in civil filings. New legislation, like the recently enacted "Crime Bill" may impose upon the District greater workload demands upon the criminal docket. The Courts Civil Justice Reform Act Expense and Delay Reduction Plan has created an enhanced infrastructure that is likely to address successfully the uncertainties of change.

Appendix
Amended ADR Plan

ALTERNATIVE DISPUTE RESOLUTION
AMENDED PLAN
DISTRICT OF RHODE ISLAND



EFFECTIVE - FEBRUARY 8, 1995

AMENDED

ALTERNATIVE DISPUTE RESOLUTION PLAN

United States District Court for the District of Rhode Island

"DISCOURAGE LITIGATION. PERSUADE YOUR NEIGHBOR TO COMPROMISE WHENEVER YOU CAN. POINT OUT TO THEM HOW THE NOMINAL WINNER IS OFTEN A REAL LOSER-IN FEES, EXPENSES, AND WASTE OF TIME"

-Abraham Lincoln-
1850

I.
INTRODUCTION

The United States District Court for the District of Rhode Island provides this manual as an informal overview of the Court's Alternative Dispute Resolution Program available to litigants, effective February 8, 1995. The Court's ADR Program was developed in 1993 as part of its Civil Justice Reform Act Expense and Delay Reduction Plan (hereafter "the Plan"). As an outgrowth of an ADR Conference sponsored by the Court on January 30, 1995, the original ADR Plan adopted by this Court was amended on February 6, 1995 as set forth herein. The Plan is designed to give litigants ready access to case evaluation and/or modern ADR settlement techniques. The program seeks to encourage a mutually satisfactory resolution to disputes in the early stages of litigation. Such early case resolution is likely to increase litigant satisfaction with the judicial process and make more efficient use of judicial and private resources.

II.
ACCESS TO INFORMATION

Prior to the Rule 16 (b) Conference, the Court shall include with the Notice and Order mailed to the parties, a brief summary of essential ADR information. This information shall provide counsel and litigants with the following: (1) introduction to the existence of the ADR Program and Plan; (2) information as to which cases are subject to ADR; (3) basic definitions as to approved ADR methods; (4) information about the ADR Panel; and finally, (5) information regarding the process of referral. Upon referral of cases to ADR, the ADR Administrator shall provide litigants (prior to the referral

meeting with the ADR Administrator, required under this Plan), a copy of this ADR Plan. Copies of this Plan are available upon written request to the ADR Administrator: 1 Exchange Terrace, Providence, RI 02903.

III.

CASES SUBJECT TO ADR

All civil cases filed in this district (except those specifically exempted upon application to the Court , or upon further order of the this Court. All ADR options offered by the Court are voluntary, except that, parties not electing ADR shall be required to attend a settlement Conference within 120 days of a responsive pleading to the complaint, or Motion to Dismiss pursuant to Rule 12(b) [whichever is first].

IV.

DEFINITIONS

1. "***Mandatory Settlement Conference***" is a non-binding settlement process involving a neutral (in most cases a magistrate judge), who works with the parties and their counsel to identify issues, promote settlement dialogue and, if possible, resolve the dispute in a mutually acceptable way. The fundamental goal of this process is to help the parties overcome obstacles to effective negotiation and settlement.

2. "***Early Neutral Evaluation***" (ENE) is a pre-trial process involving a neutral evaluator who meets with the parties early in the development of the litigation (less than 75 days after the answer is filed) to help parties and their counsel focus on the issues, organize discovery, prepare the case for trial and, to the extent possible, aid in the settlement of the case. The evaluator provides an expert assessment of disputed legal and factual issues and estimates the perceived value of the case.

3. "***Summary Jury/Bench Trial***" is a non-binding process in which the parties present an abbreviated version of their respective cases to a mock jury or before a judicial officer. In a summary jury trial, the parties use the decision of the jury and information about the jurors' reactions to the parties' legal and factual arguments as an aid to settlement. A summary bench trial works in the same way, except there is no jury. The Court has already conducted summary jury trials with some success. They are sometimes referred to in this jurisdiction as "mini-trials."

4. "***Mediation***" is a voluntary, non-binding process in which the parties, with the help of a neutral mediator, identify underlying interests and develop acceptable means of addressing those interests and settling differences. The focus in mediation is on the pragmatic needs of parties and the preservation of any relationship that may exist between them.

5. "***Arbitration***" is a non-binding, adjudicative process in which a neutral decides the rights and obligations of parties and imposes an appropriate remedy in the form of an award.

V.

ADR ADMINISTRATOR

The proposed ADR options, with the sole exception of the mandatory magistrate judge settlement conference, require an ADR Administrator to manage and supervise their operations. The ADR Administrator has been appointed by the Chief Judge of this Court and, while attached administratively to the Clerk's Office, reports directly to the Chief Judge. The ADR Administrator possesses a full range of authority and responsibility to implement and direct the program options described in this manual. The ADR Administrator shall:

1. *Administer the selection, training, and use of a panel of neutral intervenors for the various ADR options established by the Court;*

2. *Serve as a member of the Court's ADR Panel conducting mediation upon direct referral of cases by the Court to the ADR Administrator;*

3. *Serve as liaison to judges, court clerk, and other staff on matters relating to the ADR program;*

4. *Direct and coordinate the ADR Program;*

5. *Provide strategic and master planning relating to ADR services in the district;*

6. *Draft and propose revisions of the ADR Plan, local rules, or orders and/or procedures that may improve the efficiency and effectiveness of the ADR program;*

7. *Collect and maintain biographical data on neutral intervenors to permit assignments commensurate with the neutral's experience, training and expertise and make the collected biographical data available to parties and counsel;*

8. *Prepare the ADR budget;*

9. *Prepare applications for funding and submit to the United States Government or other funding sources such applications ;*

10. *Prepare reports required by the United States Government or other funding sources on the use of funds in the operation and evaluation of the established ADR options;*

11. *Develop and maintain necessary forms, records, docket controls, and* data to administer and evaluate the options effectively;

12. *Periodically evaluate, or arrange for the outside evaluation of the ADR Program, if necessary, and submit the resulting evaluation to the Court, along with appropriate recommendations for change;*

13. *Develop, and make available upon request, a list of private or extra-judicial ADR providers;*

14. *Monitor legal decisions and congressional action in the ADR area and advised the Court of new developments in other courts and private ADR entities.*

15. *Make presentations to judges, staff, lawyers, bench/bar groups and the public on ADR and the Court's ADR program; and*

VI.

PANEL OF NEUTRAL INTERVENORS

The Court established a panel of neutral intervenors, comprised of individuals whose education, experience, training and character qualify them to act as neutrals in one or more of the ADR options (arbitration, early neutral evaluation and mediation) implemented by the Court.

A. Appointment to the panel. The panel of intervenors consists of persons nominated by the Advisory Group's ADR Panel Subcommittee and confirmed by the judges of this Court. Intervenors are appointed for a period of three years. Appointment may be renewed upon a demonstration of continued qualification.

B. Qualifications and Training.

1. Panelists are lawyers who have been admitted to the practice of law for at least ten years and who are currently members of the bar of the United States District Court for the District of Rhode Island. The panel also includes non-lawyers who possess special or unique expertise in particular fields and/or have substantial experience or training in one of the dispute resolution options, and are certified for inclusion on the panel by the Court.

2. All persons selected as intervenors have:

   a. *Undergone dispute resolution training prescribed by the Court;*

   b. *Taken the oath set forth in 28 U.S.C. § 453; and*

   c. *have agreed to follow the guidelines for the various options established by the Court.*

C. Compensation.

1. *Magistrate judges presiding over settlement conferences and the ADR Administrator serving in the capacity of mediator upon referral of cases by the Court shall serve without compensation;*

2. *Persons (other than the aforementioned) serving as neutral intervenors receive no compensation for the first hour of their service. Thereafter, the parties are equally responsible for an intervenor's compensation at a rate agreed to by the parties, but not to exceed $150 per hour.*

3. *No single intervenor may be assigned in any one calendar year to more than one complex case (defined as a case in which discovery is likely to exceed fourteen months), nor to a total of more than five* cases, without his or her consent.

VII.

THE PROCESS

REQUIREMENT TO MEET AND CONFER REGARDING REFERRAL TO ADR:

Prior to a Rule 16(b) Pre-Trial Conference , held pursuant to the Federal Rules of Civil Procedure, the Notice and Order advising the parties of the date and time of the Conference, and any requirements established by the district judge in order to further

the objectives of the Conference, pursuant to F. R. Civ. P. Rule 16 (a), shall, in addition to any present requirements set forth in the Notice and Order, include a requirement that parties attending be prepared to discuss possible referral to the Court's ADR Program.

The Court shall include with the Notice and Order, a brief summary of essential ADR information. This summary information shall provide counsel and litigants with the following: (1) introduction to the existence of an the ADR Program and Plan; (2) information as to which cases are subject to ADR; (3) basic definitions as to approved ADR methods; (4) information about the ADR Panel; and finally, (5) information regarding the process of referral.

PROCESS OF REFERRAL TO ADR:

If the parties express and interest in referral to ADR, the parties shall be advised by the presiding judicial officer to contact the ADR Administrator, in order to arrange a mutually convenient time for the parties and the Administrator to meet to discuss: (1) the Court's ADR Program in greater detail; (2) the facts and issues in the case (3) selection of an ADR method most likely to be of value to the parties, and (4) the selection of an ADR Panel Neutral.

RULES GOVERNING THE ADR PROCESS:

The ADR conference(s) shall be conducted in accordance with procedures outlined in this Amended ADR Plan, a copy of which shall be provided to the parties in advance of the conference with the ADR Administrator. **Referral to ADR does not constitute a waiver of any requirement established by statute, Local Rule, or procedure required by the individual district judges of this court.**

SCHEDULING ADR CONFERENCES:

Upon the selected neutral receiving notice from the ADR Administrator of his/her designation as the desired neutral, the neutral shall file with the Clerk's Office, with a copy to the ADR Administrator, his/her acceptance of the designation, and shall promptly schedule the first meeting with the parties **(not to exceed 30 days)** from the date of the Order of Referral being signed by the district judge assigned to the case.

TIME FRAME FOR ADR SETTLEMENT EFFORTS:

The time frame for concluding the ADR process shall be set forth in the Order of Referral , and may be extended by order of the Court upon good cause shown.

LOCATION OF ADR CONFERENCES:

Conferences may be conducted at such locations as are agreeable to the parties and neutral assigned to the case. Space is available to conduct ADR conferences in the United States Courthouse (Room 518) located at 1 Exchange Terrace, Providence, by making arrangements with the Court's ADR Administrator.

DUTY TO ATTEND AND PARTICIPATE:

If required by the judicial officer or neutral assigned to the case, all parties, counsel of record, and corporate representatives or claims professionals having authority to bind and settle shall attend all ADR conferences and participate in good faith.

AGREEMENT OF THE PARTIES TO REFERRAL:

In consultation with the Court, at the time of the Rule 16(b) Conference, if parties desire to refer their case to ADR, both parties, or their counsel if represented must indicate their mutual consent to referral on the Order of Referral.

REFERRAL TO ADR PRIOR TO THE RULE 16 CONFERENCE: Patries may request referral to ADR prior to the Rule 16 Conference. In such cases the parties shall contact the ADR Administrator.

DUTY TO ATTEND AND PARTICIPATE:

If required by the judicial officer or neutral assigned to the case, all parties, counsel of record, and corporate representatives or claims professionals having authority to bind and settle shall attend all ADR conferences and participate in good faith.

AGREEMENT OF THE PARTIES TO REFERRAL:

In consultation with the Court, at the time of the Rule 16(b) Conference, if parties desire to refer their case to ADR, both parties, or their counsel if represented must indicate their mutual consent to referral on the Order of Referral.

REFERRAL TO ADR PRIOR TO THE RULE 16 CONFERENCE: Patries may request referral to ADR prior to the Rule 16 Conference. In such cases the parties shall contact the ADR Administrator.

VIII.

MANDATORY MAGISTRATE SETTLEMENT CONFERENCE

Parties in all civil cases filed in this district must participate in a settlement conference before a magistrate judge, unless they have elected to use one of the other ADR options available. This mandatory conference is in addition to any pretrial conference the district judge may require of the parties to prepare a case for trial pursuant to Rule 16 of the Federal Rules of Civil Procedure. If the parties fail to activate one of the ADR options, they shall be required to appear before a magistrate judge for a settlement conference within 120 days of a responsive pleading to the complaint or motion to dismiss pursuant to Rule 12 (b) [whichever is first.

1. Preliminaries to a magistrate settlement conference:

At least ten days prior to the settlement conference, the parties shall submit to the magistrate judge:

a. *A joint copy of relevant pleadings and motions;*

b. *A brief memorandum, not to exceed ten pages, stating the legal and factual positions of each party on the issues in dispute; and*

c. *Such other material as each party believes would be beneficial to the magistrate judge.*

2. Attendance of parties:

The primarily responsible attorney in each case (or the party, if proceeding pro se) shall attend the magistrate settlement conference. Parties shall also be present.

If a party other than an individual is involved, or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to settle, shall attend.

3. Magistrate judge settlement conference procedures:

a. *The magistrate judge settlement conference shall be informal. The magistrate judge shall conduct the process to assist the parties in arriving at a settlement of all or some of the issues involved in the case.*

b. *The magistrate judge may hold separate, private discussions with any party or counsel associated with the case, but may not, without the consent of that party or counsel, disclose the contents of the discussion to any other party or counsel.*

c. *If the parties have failed, after reasonable efforts, to develop settlement terms, or if the parties so request, the magistrate judge may submit to the parties a final settlement proposal which the magistrate judge believes to be reasonable and fair. The parties shall carefully consider the proposal and, if requested, the magistrate judge may discuss it with the parties. The magistrate judge may comment on questions of law at any appropriate time.*

The magistrate judge may conclude the process when:

1. *A settlement is reached; or*

2. *The magistrate judge concludes, and so informs the parties, that further efforts will not be useful.*

If a settlement agreement is not reached, the magistrate judge shall inform the ADR Administrator in writing that the settlement conference has been held, forward to the ADR Administrator any resulting agreements, stipulations or other pertinent developments and make any appropriate recommendation for the future processing of the case.

IX.

ADR OPTIONS

A. EARLY NEUTRAL EVALUATION (ENE)

Any civil case may be referred to ENE upon the election of both parties. In order for the case to be referred, both parties must execute the form Order of Referral referring the case to ADR, and must upon the form indicate their proposed method of

ADR. Within 10 days of the execution of the Order both parties must arrange for a joint meeting with the Court's ADR Administrator to (1) discuss process and procedure under the Court's ADR Plan; (2) discuss the facts and issues involved in the case;

(3) with the assistance of the ADR Administrator review the proposed ADR method selected in the Referral Order and (4) select a panel neutral to assist the parties in resolution of the case. The parties must select a neutral from a list of approved evaluators provided by the ADR Administrator.

Upon selecting a neutral, the parties shall complete the form "**Designation of Neutral By Parties**", and file the same with the Court. If the If the parties fail to make selection from the approved list of neutrals, the ADR Administrator shall select randomly (unless the case requires special expertise, in which the ADR Administrator shall select a person from the list whose experience and qualifications are well suited to the appointment and the needs of the parties) from the list of approved evaluators a qualified neutral to serve as the evaluator. The ADR Administrator shall promptly notify the parties of the selected neutral and shall file with the Court the form **"Designation of Neutral By ADR Administrator"**.

1. Challenges to neutrality:

If the evaluator becomes aware of, or if a party raises an issue about the evaluator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties or attorneys, the evaluator shall immediately disclose to the parties the relevant facts giving rise to the alleged conflict of interest. If a party requests the evaluator to withdraw because of the disclosed facts, the evaluator shall withdraw, and the parties shall select another evaluator from the list provided by the ADR Administrator.

2. Preliminaries to ENE:

a. *Promptly after receiving a notice of designation, neutral and the parties shall schedule the evaluation session. The neutral shall send written notice to all parties (see form **"Initial ADR Conference Report"**), with a copy to the ADR Administrator, of the time and place of the session . The evaluation session shall be held within 30 days of the receipt by the neutral of the notice of designation unless otherwise ordered by the Court for good cause. A request for postponement of a scheduled evaluation session must be presented to the neutral and served on the ADR Administrator and all parties without delay;*

b. *No later than ten days prior to the evaluation session each party shall submit to the evaluator and serve on all other parties a written evaluation statement. The statement shall not exceed ten pages and shall:*

1. *Identify the person, in addition to counsel, who will attend the session as representative of the party with decision making authority;*

2. *Identify any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute to settlement; and,*

3. *Describe discovery which is contemplated.*

The statement may include any other information the party believes useful in preparing the neutral and other parties for a productive session. The statement may identify individuals connected to another person (including a representative of an insurer) whose presence would be helpful or necessary to make the session productive. The neutral shall determine whether any person so identified should be requested to attend and, where appropriate, may order such attendance. Written evaluation statements shall not be filed with, nor revealed to, the Court.

In addition to submitting a written evaluation statement, the parties shall prepare to respond fully and candidly in a private caucus to questions from the neutral concerning:

1. *The estimated cost, including legal fees, to that Party, of litigating the case through trial;*

2. *Witnesses (both lay and expert);*

3. *Damages, including the method of computation and proof to be offered; and*

4. *Plans for discovery.*

3. Attendance of parties:

All parties shall be present. When a party other than an individual is involved, or when a party's interests are represented by an insurance company, an authorized representative of such party or insurance company, with full authority to act and to settle, shall attend. Willful failure of a party to attend the evaluation conference shall be reported to the assigned magistrate judge or district judge who may impose appropriate sanctions. Each party shall be represented at the session by the attorney expected to be primarily responsible for handling the trial of the case.

4. Procedures:

a. *Each ENE conference shall be informal. The neutral shall conduct the process in order to help the parties to focus on the issues and work efficiently and expeditiously to ready the case for trial or settlement.*

b. *At the conference, the neutral shall:*

1. *Permit each party to make a brief oral presentation (not to exceed 15 minutes) of its position, without interruption, through counsel or otherwise;*

2. *Help the parties to identify areas of agreement and, if feasible, enter stipulations on the court record;*

3. *Determine whether the parties wish to negotiate, with or without neutral assistance, before evaluation of the case;*

4. *Help the parties identify issues and assess the relative strengths and weaknesses of the parties' positions;*

5. *Help the parties to agree on a plan for exchanging information and conducting discovery which will enable them to prepare expeditiously for the resolution of the case by trial, settlement, or dispositive motions;*

6. *Help the parties to assess litigation costs realistically;*

7. *Determine whether one or more additional conferences would assist in the settlement of the case and, if so, schedule such a conference and direct the parties to prepare and submit any additional written materials needed for the conference;*

8. *Provide the parties with an evaluation of the parties' strengths and weaknesses and the probable outcome, if the case is tried, including, if feasible, the dollar value of each claim and counterclaim;*

9. *Report, promptly and in writing, to the ADR Administrator the fact that the ENE process has been completed, any agreements reached by the parties, and the neutral's recommendation, if any, as to any other ADR processes that might be of assistance in resolving the dispute. For example, as a result of the ENE, the parties may elect to submit their dispute, or some element(s) thereof, to court-annexed arbitration. Any such referrals must be* coordinated with the supervising district judge or magistrate judge.

C. SUMMARY JURY/BENCH TRIAL ("MINI-TRIAL")

The summary jury trial is a flexible ADR process. The procedures to be followed should be determined in advance by the judicial officer assigned to the case in light of the circumstances of each case. Ordinarily a case should be set for summary jury trial

when discovery is substantially completed and conventional pretrial negotiations have failed to achieve settlement. Some cases may be ripe for early summary jury trial, with limited and expedited discovery. The summary jury trial should precede the trial by approximately 60 days.

1.) Preliminaries to a summary jury trial:

a. *Materials, such as statements of the case, stipulations if any, exhibits, and proposed jury instructions, should be submitted in advance of the summary jury trial.*

2.) Attendance of parties: Each party shall attend the summary jury trial. When a party is other than an individual or when the party's interest is being represented by an insurance company, an authorized representative of the party or insurance company, with full authority to settle, shall attend.

3.) Procedures:

a. *Usually, the jury will consist of six jurors. Trials are generally concluded in a day or less.*

b. *The Court, at its discretion, may permit counsel to engage in limited voir dire or may, on its own, question members of a jury panel. The Court may also, in its sole discretion, determine whether to allow challenges.*

c. *Each party shall make a brief opening statement.*

d. *A party may cause a transcript or recording to be made of the proceedings at the party's expense, but no transcript of the proceedings shall be submitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.*

e. *Counsel shall present a condensed narrative summarizing the entire case, including opening statements, presentation of evidence, and final arguments. Counsel may present exhibits, read excerpts from exhibits, reports and depositions, all of which should be subject to the approval of the presiding judge by the filing of motions in limine reasonably in advance of the summary jury trial . Generally, live witnesses shall not be permitted, except in exceptional cases and only upon the approval of the presiding judicial officer.*

f. *Jury instructions shall be given.*

g. *Jury deliberations shall be limited in time, subject to the sole discretion of the judicial officer.*

h. *After the verdict, the judicial officer should initiate and encourage parties and jurors to discuss the case.*

i. *Within a reasonable time after the summary jury trial, the judicial officer and the parties should meet to see whether the matter can be settled. If the case does not settle as a result of the summary jury trial, it should proceed to trial on the scheduled trial date.*

j. *The judicial officer shall not admit at a subsequent trial any evidence that discloses there has been a summary jury trial, the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless;*

   1. *The evidence would otherwise be admissible under the Federal Rules of Evidence; or*

   2. *The parties have stipulated otherwise.*

D. SUMMARY BENCH TRIAL

The summary bench trial is a pretrial procedure intended to facilitate settlement through a summarized presentation of a case to either a district judge (if the case is heard by a district judge, it shall be a judge other than the one who will ultimately preside at the binding trial) or a magistrate judge, whose decision and subsequent factual and legal analysis may serve as an aid to settlement negotiations. A case may be referred to a summary bench trial when making the selection of one of the ADR alternatives provided for in this proposal.

The parties shall submit proposed findings of facts and conclusions of law in advance of the summary bench trial to the judicial officer. Where appropriate, the same procedures applicable in summary jury trials may be adapted to summary bench trials.

E. MEDIATION

Any civil case may be referred to mediation upon the election of both parties. In order for the case to be referred, both parties must execute a form Order referring the case to ADR, and must upon the form indicate their proposed method of ADR. Within 10 days of the execution of the Order both parties must arrange for a joint meeting with the Court's ADR Administrator to

(1) discuss process and procedure under the Court's ADR Plan; (2) discuss the facts and issues involved in the case; (3) with the assistance of the ADR Administrator review the proposed ADR method selected in the Referral Order and (4) select a panel neutral to assist the parties in resolution of the case. The parties must select a neutral from a list of approved evaluators provided by the ADR Administrator.

Upon selecting a neutral, the parties shall complete the form **"Designation of Neutral By Parties",** and file the same with the Court (with a copy to the ADR Administrator). If the If the parties fail to make selection from the approved list of neutrals, the ADR Administrator shall select randomly (unless the case requires special expertise, in which the ADR Administrator shall select a person from the list whose experience and qualifications are well suited to the appointment and the needs of the parties) from the list of approved evaluators a qualified neutral to serve as the evaluator. The ADR Administrator shall promptly notify the parties of the selected neutral and shall file with the Court the form **"Designation of Neutral By ADR Administrator"** (with copies to the parties).

1. Challenges to neutrality: If the assigned mediator becomes aware of, or if a party raises an issue about the mediator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties or attorneys, the mediator shall immediately disclose to the parties the relevant facts giving rise to the alleged conflict of interest. If a party requests the mediator to withdraw because of the disclosed facts, the mediator shall withdraw, and the parties shall select another mediator from the list provided by the ADR Administrator.

2. Preliminaries to mediation:

a. Promptly after receiving a notice of designation and after consultation with counsel, the mediator shall schedule the mediation session. The mediator shall send written notice to all parties, with a copy to the ADR Administrator, of the time and place of the session (see form notice, ***"Initial ADR Conference Report"*** *at* ***Appendix A****). The mediation session shall be held within 30 days of the receipt by the mediator of the notice of designation unless otherwise ordered by the Court for good cause. A request for postponement of a scheduled mediation session must be presented to the neutral and served on the ADR Administrator and all parties without delay.*

b. No later than five days prior to the mediation session, each party shall submit to the mediator a written, confidential summary of the case. The summary shall not exceed five pages and shall describe the nature and history of the dispute, the applicable legal theory and any settlement discussions that may have occurred. The summary may identify individuals whose presence could be helpful or necessary to make the session productive. ***The written summaries shall not be filed with, nor revealed to, the Court, nor shall the mediator share the summaries with other parties.***

3. Attendance of parties:

All parties shall be present.

When a party other than an individual is involved or when a party's interest is being represented by an insurance company, an authorized representative of the party or the insurance company, with full authority to settle, shall attend. The absence of a party shall not be grounds for a continuance, but the mediator may continue the session and compel the attendance of an absent party.

4. Procedures at the mediation session:

The mediator shall open the session with an explanation of mediation, the mediator's role and the ground rules for the session. Parties shall be given an opportunity to provide an initial uninterrupted overview of the dispute.

The mediator may find it useful to meet separately with the parties in a caucus. Disclosures to the mediator in a caucus shall be treated confidentially unless the parties give permission to the mediator to use the disclosed information with the other party or parties.

No transcripts or recordings shall be made of the proceedings, and, at the conclusion of the mediation, the mediator shall destroy any notes made during the course of the session.

The mediator shall help the parties identify their respective underlying interests and develop creative options for meeting those interests in ways that are mutually acceptable.

The mediator may determine, with the consent of the parties, that one or more additional mediation sessions would assist in the settlement of the case, and, if so, schedule another session.

The mediator shall report to the ADR Administrator that the mediation process is complete, any agreements reached by the parties, and the mediator's recommendation, if any, as to other ADR processes that might be of assistance in resolving the dispute.

F. ARBITRATION

Any civil case may be referred to arbitration as authorized by 28 U.S.C. § 651 et seq., notwithstanding any provision of law to the contrary and except as provided in subsection (b) and (c) of 28 U.S.C. § 652, and section 901(c) of the Judicial Improvements and Access to Justice Act.

The district court may also refer a case to arbitration upon the election of the parties.order for the case to be referred, both parties must execute a form Order referring the case to ADR, and must upon the form indicate their proposed method of ADR. Within 10 days of the execution of the Order both parties must arrange for a joint meeting with the Court's ADR Administrator to (1) discuss process and procedure under the Court's ADR Plan; (2) discuss the facts and issues involved in the case; (3) with the assistance of the ADR Administrator review the proposed ADR method selected in the Referral Order and (4) select a panel neutral to assist the parties in resolution of the case. The parties must select a neutral from the list of approved evaluators provided by the ADR Administrator.

Upon selecting a neutral, the parties shall complete the form "**Designation of Neutral By Parties**", and file the same with the Court (with a copy to the ADR Administrator). If the parties fail to make selection from the approved list of neutrals, the ADR Administrator shall select randomly (unless the case requires special expertise, in which case the ADR Administrator shall select a person from the list whose experience and qualifications are well suited to the appointment and the needs of the parties) from the list of approved evaluators a qualified neutral to serve as the evaluator. The ADR Administrator shall promptly notify the parties of the selected neutral and shall file with the Court the form **"Designation of Neutral By ADR Administrator"**. The ADR Administrator shall give or send written notice of the election to all parties.

Parties to any civil action may elect private consensual arbitration under the Federal Arbitration Act (9 U.S.C. § 1, et seq.) and agree that the case be referred to binding arbitration. The order of referral shall specify the agreement of the parties with respect to the conduct of the arbitration and payment of the arbitrator(s).

1. Selection of the arbitrator: When a case has been referred for arbitration, the ADR Administrator shall immediately furnish to each party the names of three proposed arbitrators drawn at random from the neutrals available on the panel of approved neutral intervenors. If there are multiple parties not united in interest on either side of the case, the ADR administrator shall add the name of one proposed arbitrator for each additional party. The parties shall then confer for the purpose of selecting an arbitrator in the following manner:

a. *Each party shall be entitled to strike one name from the list, beginning with the first named plaintiff, who may strike the first name, followed next by the first-named defendant, and alternating thereafter between plaintiffs and defendants in the order named until a single name remains.*

b. *The parties shall submit to the ADR Administrator, within ten days of receipt by them of the original list, the name of the arbitrator selected from the list by means of the process just described. In the event that the parties fail to notify the ADR Administrator of the selection of an arbitrator within the time provided, the ADR Administrator, or in the*

absence of the ADR Administrator, the Clerk, shall make the selection at random from the original list of three named arbitrators.

c. *The ADR Administrator shall promptly notify the neutral of his or her selection. If any neutral so selected is unable or unwilling to serve, the process of selection shall begin again.*

2. Notification of hearing: When the selected arbitrator has agreed to serve, the ADR Administrator shall confer with the arbitrator concerning any potential conflicts of interest, scheduling, and place of hearing, and shall thereafter promptly send written notice to the arbitrator and to each party advising them as to:

a. *The identity of the selected arbitrator;*

b. *The date and time of the arbitration hearing, which shall be held not more than 30 days from the date of the written notice and not more than 180 days from the date of filing of a responsive pleading to the complaint, motion to dismiss pursuant to Rule 12(b) or the date of the filing of a reply counterclaim;*

c. *The place of the arbitration hearing; and,*

d. *There shall be no continuance of the date set for the arbitration hearing except for good cause, as determined by the judge assigned to the case.*

3. Neutrality of arbitrators: No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist. If the arbitrator becomes aware of, or if a party raises, an issue about the arbitrator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties or attorneys, the arbitrator shall immediately disclose the relevant facts giving rise to the alleged conflict of interest to the parties. If a party requests the arbitrator to withdraw because of the disclosed facts, the arbitrator may withdraw, and the parties shall select another arbitrator from the list provided by the ADR Administrator. If the challenged arbitrator determines that withdrawal is unwarranted, the arbitrator may elect to continue, subject to an appeal to the judge assigned to the case, who may allow the arbitrator to continue or remove the arbitrator.

4. Preliminaries to arbitration: At least five days before the arbitration hearing, the parties shall submit to each arbitrator:

a. *A set of relevant pleadings;*

b. *A short memorandum by each party (not to exceed ten pages), stating the legal and factual positions of the party, together with copies of the documentary exhibits the party intends to offer at the hearing; and,*

c. *At least five days before the arbitration hearing, each party shall deliver to the other party a copy of the memorandum and copies of documentary exhibits provided to the arbitrator, and each party shall make available any non-documentary exhibits for examination by the other party. If the party fails to deliver a copy of the documentary exhibit or to make available for examination a non-documentary exhibit as required, the arbitrator may refuse to receive the exhibit into evidence.*

5. Attendance at the arbitration hearing: Each individual who is a party shall attend the hearing in person. When a party other than an individual is involved, or when a party's interest is being represented by an insurance company, an authorized representative of the party or the insurance company, with full authority to settle, shall attend. The absence of a party shall not be grounds for a continuance.

6. Procedures at the arbitration hearing:

a. *The arbitrator may administer oaths and affirmations, and all testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine witnesses. In receiving evidence, the arbitrator shall be guided by the Federal Rules of Evidence, but shall not thereby be precluded from receiving evidence considered by the arbitrator to be relevant and trustworthy, and which is not privileged. Attendance of witnesses and production of documents may be compelled in accordance with Rule 45 of the Federal Rules of Civil Procedure.*

b. *A party may cause a transcript or recording to be made of the proceedings at the party's expense.*

c. *Arbitration hearings may be held at any location within the District of Rhode Island selected by the arbitrator. In making the selection, the arbitrator shall consider the convenience of the panel, the parties, and the witnesses. Unless the parties agree otherwise, hearings shall be held during normal business hours.*

d. *The arbitrator may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing.*

e. *There shall be no ex parte communication between the arbitrator and any counsel or party on any matter touching the action except for purposes of scheduling or continuing a hearing upon good cause.*

7. Award of judgment:

   a. *The arbitrator shall promptly, and in any event not more than ten days following the close of the hearing, file the award with the ADR Administrator who shall transmit the award to the Office of the Clerk for filing in the appropriate case file. As soon as the award is filed with the ADR Administrator, the Administrator shall serve copies on the parties.*

   b. *The award shall state clearly and concisely the name of the prevailing party and the party or parties against whom it is rendered, and the sum of money damages, if any, awarded. If interest is awarded, the award shall separately state the amount. No findings of fact and conclusions of law or opinions supporting an award are required unless requested by a party.*

   c. Unless a party has filed a demand for trial de novo within 30 days, the ADR Administrator shall enter judgment on the arbitration award in accordance with Rule 58, Federal Rules of Civil Procedure, and shall transmit forthwith the judgment to the Office of the Clerk for final entry of the judgment. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the Court in a civil action.

   d. The content of any arbitration award rendered under this chapter shall be confidential and shall not be made known to any judge unless:

      1. The assigned judge is asked to decide whether to assess costs;

      2. The Court has entered final judgment or action has been otherwise terminated; or

      3. The judge needs the information for the purpose of preparing the report required by § 903(b) of the Judicial Improvements and Access to Justice Act.

8. Trial de Novo:

   a. *Any party may demand a trial de novo in the district court by filing with the ADR Administrator a written demand containing a short and plain statement of the reason for the demand. The party shall serve a copy of the demand upon all counsel of record and any unrepresented party. Such demand must be filed and served within 30 days of the date of the filing of the arbitration award, except that the United States, its officers and agencies, shall have 60 days to file and serve a written demand for trial de novo. Upon the filing of the demand for trial de*

novo, the action shall be treated for all purposes as if it had not been referred to arbitration, except that no additional pretrial discovery shall be permitted without leave of the court for good cause. Any right of trial by jury that a party otherwise would have, shall be preserved inviolate. Withdrawal of the demand for trial de novo shall reinstate the arbitrator's award.

b. *The assigned judge shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceedings, unless:*

    1. *The evidence would otherwise be admissible under the Federal Rules of Evidence; or*

    2. *The parties have stipulated otherwise.*

9. Assessment of Cost:

a. *The party requesting a trial de novo shall deposit with the ADR Administrator a sum equal to the arbitrator's fees as advance payment for costs, except that this requirement does not apply to parties proceeding in forma pauperis or to the United States, its officers or agencies.*

b. *Any sum deposited shall be returned to the party demanding trial de novo if;*

    1 *The party obtains a final judgment more favorable than the arbitration award; or*

    2 *The assigned judge determines that the demand for trial de novo was for good cause.*

c. *Any sum deposited which is not returned to the party shall be taxed as costs of the arbitration and paid to the Treasury of the United States.*

d. *In any trial de novo, the assigned judge may assess costs of that trial, as provided in 28 U.S.C. § 1920, against the party who demanded trial de novo if:*

1. *That party fails to obtain a judgment, exclusive of interest and costs, which is substantially more favorable to that party than the arbitration award; and*

2. *The assigned judge determines that the party's conduct in seeking trial de novo was in bad faith.*

3. *For the purposes of this section, a verdict may be considered substantially more favorable if it is at least ten percent greater for the party than the arbitration award. This section does not apply to any party in cases involving the United States or one of its agencies as a party.*

4. *No penalty shall be assessed against a party for demanding trial de novo.*

APPENDIX A

ADR FORMS

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

)
)
vs) **Case Number**_____
)
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ORDER

REFERRING CASE TO ALTERNATIVE DISPUTE RESOLUTION

After due consideration of the issues and in consultation with the parties, the parties having indicated their agreement to pursue alternative dispute resolution under the framework of the Court's Alternative Dispute Resolution Plan, as indicated below, the Court finds that this case is appropriate for referral to one of the ADR methods provided by the Court.

IT IS HEREBY ORDERED THAT:

(a) **Referral to ADR Administrator**: the parties within 10 **days** of the execution of this Order both parties shall arrange for a joint meeting with the Court's ADR Administrator to (1) discuss process and procedure under the Court's ADR Plan; (2) discuss the facts and issues involved in the case (3)with the assistance of the ADR Administrator review the parties proposed ADR method selected below; (4) select a panel neutral to assist the parties in resolution of the case.

(b) **Conduct of ADR Conference(s):** The ADR conference(s) shall be conducted in accordance with procedures outlined in the ADR Plan as amended, a copy of which shall be provided to the parties in advance of the conference with the ADR Administrator

(c) **Scheduling ADR Conference(s):** Upon the selected neutral receiving notice from the ADR Administrator of his/her designation as the desired neutral, the neutral shall file with the Clerk's Office, with a copy to the ADR Administrator his/her acceptance of the designation and shall promptly schedule the ADR meeting with the parties **(not to exceed 30 days)** from the date of this Order.

(d) **Time Frame for ADR Settlement Efforts:** The ADR conference(s) shall be concluded before _____, 19_____ .

(e) **No Waiver of Requirements Established by the Court:** Referral to ADR shall not excuse a party from compliance with any and all requirements established by the district judge assigned to the case, nor toll any time limitations imposed upon the parties by reason of Rule or Order of the Court.

(f) **Location of ADR Conference(s):** Conferences may be conducted at such locations as are agreeable to the parties and neutral assigned to the case. An ADR Conference space is available (Room 518) in the United States Courthouse located at 1 Exchange Terrace, Providence, by making arrangements with the Court's ADR Administrator.

(g) **Duty to Attend and Participate:** If required by the neutral, all parties, counsel of record, and corporate representatives or claims professionals having authority to bind and settle shall attend all ADR conferences and participate in good faith.

(h) **Compensation of the Neutral:** The Assigned neutral shall receive no compensation for the first hour of his/her service, but shall thereafter receive compensation at a rate agreed upon between the neutral and the parties, but not to exceed $150 per hour. The parties shall share equally in payment of compensation if any. Parties and the neutral shall discuss and come to agreement as to the fee to be paid to the neutral at the first meeting between the neutral and the parties.

(i) **No Enlargement of Time**. This order shall not be construed to enlarge the time for discovery or trial.

AGREEMENT OF THE PARTIES TO REFERRAL:

In consultation with the Court, the parties do hereby consent to referral to alternative dispute resolution, and propose the following method of ADR: ☐ **Arbitration,** ☐ **Early Neutral Evaluation** ☐ **Mediation,** ☐ **Summary Jury/Bench Trial.**

_____ _____

Dated

_____

Plaintiff(s) or Plaintiff(s) Counsel

_____

_____

Defendants(s) or Defendant(s) Counsel

SO ORDERED this____day of _____ , 19____

_____

United States District Judge

Revised 3/16/95

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

vs) **Case Number**_____

DESIGNATION OF NEUTRAL BY THE PARTIES

Pursuant to the Court's Order referring the Case to ADR, dated _____ , 19 ____ , the parties hereby designate by agreement the following individual from the Court's list of certified neutrals to serve as Neutral in the above styled action.

Name of Neutral:_____

Address_____

_____

Telephone/FAX Number:_____

_____ _____

Dated Signature of Plaintiff(s) or Counsel

_____

Signature of Plaintiff(s) or Counsel

_____ _____

Dated Signature of Defendant(s) or Counsel

_____

Signature of Defendant(s) or Counsel

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

)
)
vs) **Case Number**_____
)
)

DESIGNATION OF NEUTRAL BY ADR ADMINISTRATOR

Upon failure of the parties to select an approved neutral pursuant to the Court's Order Referring the Case to ADR, dated _____ , 19 ___ , the ADR Administrator , hereby designates the following individual from the Court's list of certified neutrals to serve as Neutral in the above styled action.

Name of Neutral:_____

Address_____

_____

Telephone/FAX Number:_____

This designation shall not relieve the parties of their remaining responsibilities under the Court's Order Referring the Case to ADR .

_____ _____

Dated ADR Administrator

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

)
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vs) **Case Number_____**
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APPLICATION AND ORDER APPOINTMENT OF PRO BONO NEUTRAL

The undersigned party hereby applies for leave to proceed with the ADR process in the above styled action without payment of neutral fees or cost and without giving security therefore. In support of my application, I declare that the following facts are true:

(1) I am a party in the above styled action and I believe I am entitled to redress.

(2) Because of limited financial resources. I am unable to pay the cost of the ADR process in said proceeding or give security therefore.

(3) My financial affidavit is filed with this application in support of this request.

(4) The neutral appointed/requested in this case is:_____

I declare under penalty of perjury that the foregoing is true and correct

Executed on _____ 19____

_____ _____

Dated Signature of Party

_____ **SO ORDERED**

_____ **DENIED**

_____ **MODIFIED. IT IS HEREBY ORDERED** that the above party compensate the neutral at an hourly rate of $_____. All other parties shall pay the standard fee agreed upon between the parties and the neutral.

_____ _____

Date United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

OATH OF NEUTRAL

I_____ , do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a ADR Panel Member, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God.

Subscribed this_____day of _____, 19_____ under penalty of perjury.

_____ _____

Dated Signature of Neutral