Superior Court Success Story:
Civil Case Reform in the District of Columbia

Council for Court Excellence
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INTRODUCTION AND EXECUTIVE SUMMARY

In 1989, the Council for Court Excellence ("CCE") conducted a comprehensive study of civil case processing in the District of Columbia Superior Court. At the time of that CCE Study civil cases were typically taking just over two years to be disposed of by the Court. The 1989 CCE study recommended both structural and procedural changes to the Superior Court's civil trial system including expanding the use of alternative dispute resolution, and amending the law to raise the small claims jurisdictional ceiling from $2,500 to $5,000.

One of the most far-reaching recommendations contained in the CCE's 1989 Report was to urge the D.C. Superior Court to adopt a single judge civil case assignment system, in which the same judge would actively manage a civil case from filing to final court disposition. (Up until this time, only the most complicated civil cases were handled by the same judge from beginning to end; the large majority of civil cases were processed using a "master calendar system." The master calendar system managed cases by assigning judges to handle only specific phases of the same civil case.) Following an intensive analysis by the D.C. Superior Court of its' entire civil case processing system, and the several CCE policy reform proposals, the Court, in 1991, instituted the single judge case assignment for all civil cases, and many other civil division reforms.

The net effect for the Washington, DC community was a fundamental change in the manner in which civil cases were handled in the D.C. Superior Court. Importantly, after the Court's many reforms took full effect, most civil cases were being disposed of within one year of filing. Further, and also of great importance to trial lawyers and their clients, under the new Superior Court case

management program, scheduled civil court hearings and trials more reliably took place on the date when they were set, and were not rescheduled time and again before being held. The recommendations summary from the CCE's 1989 civil case report can be found in Appendix A.

In 2001, CCE approached the D.C. Superior Court leadership about conducting a ten year follow-up study to assess how well the major 1991 civil case reforms were now working. CCE had received anecdotal comments from a number of quarters alleging that Superior Court civil case delays had increased markedly, and that the important early gains the Court had made may have been lost. This latest CCE civil case study also examined Superior Court civil case statistics yearly from 1991-2000; surveyed bar members and other court users; and interviewed Civil Division judges and administrators. The new CCE study examined whether the structural and procedural changes implemented in 1991 could be further improved upon to reduce unwarranted delays in the resolution of civil cases.

The major findings of this latest CCE civil case review and study are:

- The reforms implemented by the D.C. Superior Court in 1991 have significantly reduced the time from civil case filing to disposition.
- The Court continues to manage most types of civil cases, using the single case assignment system, promptly and efficiently.
- There is much greater case scheduling certainty than before the Court implemented their reforms. Trials and other civil court proceedings are held on the date set, and when held over, are heard by the Court within a day or so of when initially calendared.

Statistics examined by the CCE for this report reveal that D.C. Superior Court civil case processing delays have increased only in automobile personal injury cases involving "low impact soft-

tissue" ("LIST") injuries. Because LIST cases settle much less frequently than other types of civil cases, and typically involve jury trials, they impose a unique burden on the Court's civil trial system. Accordingly, one of the principal recommendations of this CCE study is that the D.C. Superior Court should adopt a separate case processing track for LIST cases in order to move them from start to finish more quickly.

Another major civil case reform the D.C. Superior Court instituted in 1991 was the establishment of the civil Alternative Dispute Resolution ("ADR") program. Administered by the Court's Multi-Door Dispute Resolution Division, the ADR program goal was to increase the number of civil case settlements prior to trial. In the early years after its establishment, the Court's Multi-Door Program was quite effective in settling a substantial proportion of civil cases. More recently, however, the rates of settlement through the Court's ADR program have declined significantly, and several of the recommendations set forth in this study propose changes to make the Superior Court's ADR program more effective.

Finally, it appears that financial constraints and deficiencies in the number of staff have hampered the ability of the Superior Court Civil Division Clerk's office to manage the paper flow and otherwise carry out its important case management and record keeping functions. Some of these problems may be ameliorated by the ongoing conversion to electronic filing. The CCE recommends further review by the Court and the Bar to determine whether additional ways might be found to make the Clerk's office more efficient and "customer friendly."

In sum this CCE study found a civil trial case system that is operating well. The recommendations set forth are offered to make a good functioning system work even better.

The CCE Civil Case Study Committee acknowledges, with thanks, the cooperation and constructive participation by members of the D.C. Superior bench and court staff throughout the course of researching and preparing this report. In particular, Judges Herbert B. Dixon, Jr. and Steffen W. Graae offered CCE the benefit of their considerable direct experience with the many issues involved in this analysis, and participated actively in the study's development. This study also benefitted directly from the openness and insight of Deborah Taylor-Godwin and David E. Michael, respectively Directors of the Civil Division and the Multi-Door Dispute Resolution Division, and their staff. The principal financial underwriting for this study was provided by the annual contributors to the Council for Court Excellence. In particular, we also recognize and thank the American Arbitration Association for their generous special grant to conduct this study. We also acknowledge the assistance of the DC Bar Litigation Section. We are most appreciative for the support from those listed above, and we believe this final work product is strengthened as a result.

RECOMMENDATIONS SUMMARY

1. **The D.C. Superior Court Civil Division should establish a separate "track" for all automobile and personal injury LIST cases, with consensual rather than mandatory ADR, and immediate trial assignment after ADR.**

   a. Special designation in the caption when filed;

   b. Provide that ADR may be waived by mutual consent;

   c. Schedule the trial date as early as practicable immediately upon completion of ADR or, if ADR is waived, at an early pretrial conference;

   d. Create several special trial calendars devoted to LIST cases;

   e. Schedule more than one minimum impact, minimum injury case on special calendars each week; and

   f. Explore procedures to permit earlier impanelment of juries on special calendars. This may require additional funding for the Court to permit overtime pay so that juries could be impaneled at 9:00 AM, as occurs in some neighboring jurisdictions. Alternatively, LIST case juries could be impaneled the day before the trial.

2. **The D.C. Superior Court Civil Division should establish a separate trial calendaring track for complex medical malpractice cases.**

3. **The D.C. Superior Court should take steps to enhance the effectiveness of the Civil ADR Program.**

   a. Provide that ADR may be waived by mutual consent for LIST cases;

   b. Assign mediation and arbitration of personal injury and medical malpractice cases, and perhaps other matters, by subject-matter expertise;

   c. Permit and encourage parties to consent to ADR earlier in the "life cycle" of a civil case;

   d. Encourage the voluntary use of non-binding arbitration by routinely posting in the ADR Program office comparisons of arbitration decisions with trial de novo verdicts;

   e. Permit by mutual consent of the parties for an extension of the mandatory 120 day arbitration hearing deadline to encourage voluntary use of non-binding arbitration;

f. Make mediator and arbitrator resumes available and permit parties to mutually select a mediator or arbitrator through a "strike and rank" selection process;

g. Permit mediations to be conducted outside the courthouse with the consent of the parties and the mediator;

h. Require that parties contribute a portion of the arbitrator's compensation to promote good faith use of non-binding arbitration and reduce the percentage of trial de novo filings;

i. Reduce the time and expense associated with the current labor intensive panel selection and training process by recruiting attorneys with prior mediation or arbitration experience;

j. Increase the compensation of all neutrals, perhaps in part through contributions from the parties in cases exceeding a certain amount; and

k. Continually evaluate neutrals and remove non-performers.

4. **The D.C. Superior Court Civil Division judiciary should continue to reinforce the positive "local legal culture" it established for civil case management by emphasizing intolerance for delay.**

5. **The D.C. Superior Court should study the individual dockets of Civil Division judges to determine if, and to what degree, carrying cases from other divisions affects how civil judges process civil cases.**

6. **The D.C. Superior Court Civil Division should continually monitor – and the D.C. Courts annual reports should routinely include – time-to-disposition data, and how D.C. case processing trends compare to the American Bar Association civil case processing standards.**

7. **The D.C. Superior Court Civil Division should take steps to improve paper flow and refine "customer" relations in the Civil Division Clerk's Office.**

STUDY METHODOLOGY AND FINDINGS

This CCE study was carried out by an ad hoc committee of the Council for Court Excellence Court Improvements Committee. The CCE Civil Case Study Committee ("the Committee") was chaired by David Cynamon, Esquire and included a cross-section of members of the plaintiffs' and defense bars, representatives of ADR organizations, and the Honorable Herbert B. Dixon, Jr. and the Honorable Steffen W. Graae, respectively Presiding Judge and Deputy Presiding Judge of the D.C. Superior Court Civil Division. Deborah Taylor-Godwin, Esquire, Director of the Court's Civil Division, and David E. Michael, Esquire, Director of the Court's Multi-Door Dispute Resolution Division, also participated and provided important statistical information for the study. A list of the Committee members is set forth in the preceding pages of this report.

The focus of this study was on the so-called Civil II calendar, where the large majority of civil cases in the D.C. Superior Court are managed. The study obtained information from five sources:

1. The Committee members;
2. A survey of practitioners in the Civil Division;
3. Interviews with selected judges in the Civil Division;
4. Statistical information covering the period 1991-2000 provided by the Court with respect to case filings and dispositions; and
5. Interviews with the Director of the Multi-Door Dispute Resolution Division and related case disposition data.

The experience and knowledge of the Committee members, who included representatives from both plaintiff and defense counsel, were invaluable in providing context and "reality testing" for the study's analysis of data, and the development of our conclusions and recommendations. The

survey of the local bar, however, was in some respects disappointing. Despite broad circulation of the survey through the Litigation Section of the D.C. Bar, and elsewhere, and repeated efforts to solicit responses, too few responses were received to permit any meaningful general conclusions to be drawn. The responses, however, were helpful in providing additional anecdotal information to flesh out the statistics. Perhaps more important, the very fact that so few practitioners responded may be a sign that the civil case calendaring system in place is essentially working well. Lawyers generally are not shy about complaining about procedural inefficiencies or delays. Consequently, it may be fair to conclude that most attorneys who regularly litigate cases in the Superior Court Civil II calendar are reasonably happy with the system currently in place. A summary of the bar survey and responses is attached as Appendix B.

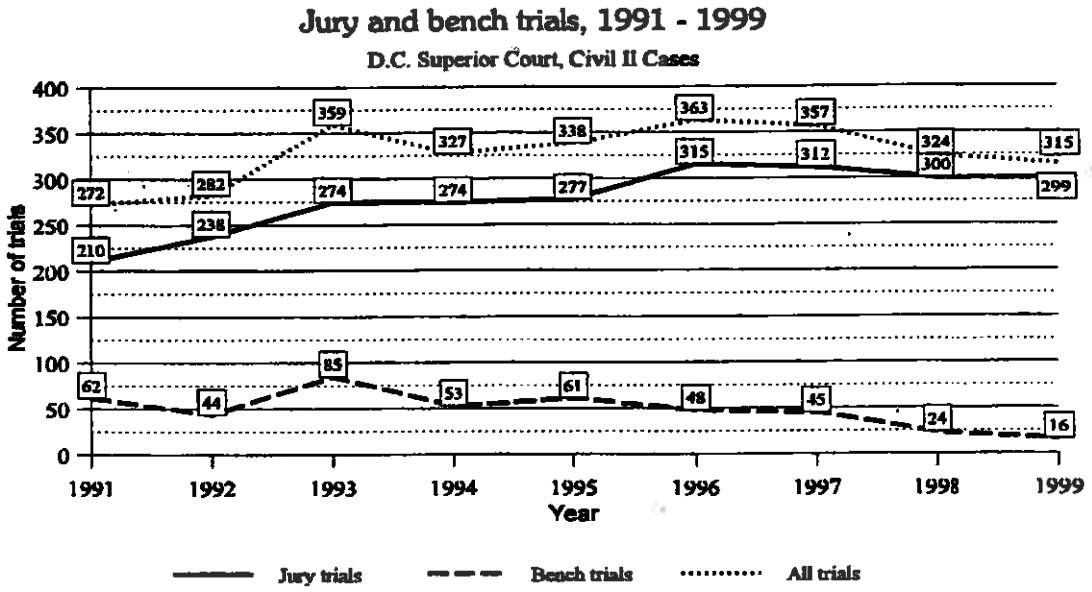
Seven of the 16 judges then assigned to the D.C. Superior Court Civil Division were interviewed for this study. By and large, the judges believe that the individual case assignment system has been highly effective in making the Civil Division more efficient and in reducing delays. They also strongly favor maintaining the tracking and scheduling system that was put in place in 1991, including the initial scheduling conference and pretrial conference. The judges did, however, share some of the same concerns about paperwork problems and efficiency in the Clerk's office that were expressed by practitioners. A summary of the judicial interviews is attached as Appendix B.

The statistical information, attached as Appendix C, provided the hard empirical evidence for analyzing the effects of the 1991 reforms. As noted in the report summary above, the Court statistics for the period 1991-2000 demonstrate the reduction in delays that first appeared in 1991 have held relatively steady. For example, in 1999 (the most recent year for which reliable disposition data are

available) 81% of Civil II cases were processed to completion within 12 months of filing, as compared to 82% in 1991; at 18 months, 86% of cases were processed to completion in 1999, compared to 92% in 1991; and in 1999, 99% of cases were completed within two years of filing, as compared to 97% in 1991.

Cases disposed within:	12 months	18 months	24 months
ABA Standards	90%	98%	100%
D.C. Sup. Ct., 1991	82%	92%	97%
D.C. Sup. Ct., 1999	81%	86%	99%

The relatively steady disposition rate was maintained even though the number of jury trials increased markedly from 210 jury trials in 1991 to 299 in 1999, displayed in the graph below.



Source: DC Courts Annual Reports, 1991 - 1999, Civil Case Activity, Assigned and Unassigned Civil Actions.

The upward civil II jury trial trend occurred despite a steady decline in civil II case filings - a 28% decrease, from 12,444 in 1991 to 9,020 in 1999 - during the decade. Further, trials as a percentage of all civil II case dispositions more than doubled in this decade from 1.5% to 3.9%. As described below, and as the detailed case statistics reflect, the increase in jury trials is principally the result of the Low Impact Soft Tissue Case (LIST) cohort of cases. The methodology and findings relating to the ADR program in this study are in discussed Recommendation 3 below.

Tangentially, the reader may be interested in other time data collected as part of this study specifically regarding the small percent of civil II cases which are tried. The most recent data on the time it takes civil II cases to move from date of filing to the first trial date is offered in the chart below:

Recommendation 1. **The D.C. Superior Court Civil Division should establish a separate case "track" for automobile and personal injury LIST cases, with consensual rather than mandatory alternative dispute resolution (ADR), and immediate trial assignment after ADR.**

a. Special designation in the caption when filed;

b. Provide that ADR may be waived by mutual consent;

c. Schedule the trial date as early as practicable immediately upon completion of ADR or, if ADR is waived, at an early pretrial conference;

d. Create several special trial calendars devoted to LIST cases;

e. Schedule more than one minimum impact, minimum injury case on special calendars each week; and

f. Explore procedures to permit earlier empaneling of civil juries on these special short case calendars. This may require additional funding for the Court to permit overtime pay so that juries could be impaneled at 9:00 AM, as occurs in some neighboring jurisdictions. Alternatively, LIST case juries could be impaneled the day before the trial.

Rationale. In addition to the individual calendaring system, the D.C. Superior Court's1991 civil case management reforms established a four-track system for Civil II cases further described in Footnote One below.[1] The decision as to which of the four case tracks to place a given civil case is

[1] Track I (Fast); Track II (Normal); Track III (Complex); and Track IV (Special). See Civil Actions Case Processing Diagram – General Civil Cases, attached as Appendix E.

set at the Initial Scheduling Conference ("ISC"). This scheduling conference is held between 91 - 120 days after the complaint is filed, and determines the schedule for discovery, motions, ADR, pretrial, and trial.[2] This individual calendaring and four-track system appears to have been a great success when examined in terms of time to disposition and related factors. The LIST cases do appear to be clogging the existing civil case calendaring system and warrant a separate track.

As set forth in greater detail in the statistical analysis found at Appendix C, the median time for disposition of automobile personal injury cases from 1991 to 1999 has consistently been longer than for collection cases and other types of Civil II cases processed by the D.C. Superior Court. The

Comparison of median disposition times for major types of civil cases, 1991 and 1999

	1991	1999	Percent Increase (Decrease)
Auto/Personal Injury LIST cases	254	313	23%
Collections cases	194	163	(16%)
Other civil II cases	133	101	(24%)

[2] Counsel for the parties (or *pro se* parties) must appear personally at the ISC to set the case track. Many members of the Committee, as well as respondents to the practitioners' survey, felt that personal appearances at the ISC are unnecessary for this routine task, since substantive issues infrequently arise and cases rarely are settled at that time. The judges, however, believe that personal appearances by opposing counsel at the ISC are important to ensure that counsel or *pro se* parties meet and focus on the case at an early stage. Judges view the ISC as the first step in moving the case to disposition, and they are reluctant to tinker with something that is working well. There is some recognition that "regular" practitioners could achieve the purposes of the ISC through prior telephone conferences, but there is no system through which such "regulars" could be identified and permitted to opt out of the ISC. Despite the perceived inconvenience of personal attendance at routine ISC's, there is a clear value in forcing counsel to focus on their cases at an early stage of the litigation. The ISC appears to be an essential component of the successful track system, and therefore we do not recommend any change.

median processing time, from case filing to disposition, for automobile/personal injury cases grew by 23% between 1991 and 1999--from 254 days in 1991 to 313 days in 1999. By contrast, the median processing time for collection cases dropped by 16% over the same period, from 194 days to 163 days; further, the median processing time for other Civil II cases declined 24% from 133 days to 101 days.

Notably, the percentage of Civil II cases, other than automobile cases, processed within 12 months of filing increased between 1991 and 1999 (from 78% to 86% for general Civil II cases, and from 93% to 96% for collection cases). The percentage of automobile personal injury cases processed within a year of filing dropped from 66% to 59%. Another telling statistic is that while total civil II case filings declined by 18% between 1991 and 1999, and non-jury trials plummeted from 62 in 1991 to only 16 in 1999 (a 74% decrease), the number of civil jury trials has risen steadily during the same period, from 210 in 1991 to 299 in 1999, a 42% increase.

The above statistical trends appear to suggest that LIST cases adversely influence the Court's overall case processing capacity. It is very encouraging that the number of automobile personal injury cases that remained unresolved after two years was significantly lower in 1999 (18 cases), as compared to 1991 (131 cases). This highly positive data we attribute to the effectiveness of the individual judicial assignment system now used by the Superior Court civil judges, and the attendant continuity of focus individual judges now devote to individual civil cases. However, discussions with representatives of the plaintiffs' and defense bar reveal that LIST cases are less likely to settle and therefore have led to an increased number of jury trials. Such LIST cases could benefit from a different approach to "tracking."

The apparent cause of the increased number of LIST case trials is that in recent years, several major automobile insurance carriers have adopted less flexible approaches to the settlement of such cases, which involve minimum property damage and soft tissue injuries. These insurance carriers have determined that trials of such cases do not produce large jury verdicts and more often than not end in defense verdicts. Consequently, the automobile insurance companies are more likely to make lower settlement offers than in previous years and, once an offer is made, the offer is less likely to be substantially increased. As a result, through no apparent fault of the Court's Multi-Door ADR Program, LIST cases are not typically settled at the existing D.C. Superior Court mandatory ADR stage, although, as described below, they consume a lot of the ADR Program resources.

In addition, trials of LIST cases typically involve very few witnesses and do not present complex issues that require lengthy jury deliberation. In neighboring jurisdictions, such as [the Circuit Court for] Prince George's County, Maryland, where juries may be impaneled by 9:00 AM, trials of this sort are often completed in less than a day, as stated in Recommendation 1.f. In contrast, it is rare in the D.C. Superior Court Civil Division for such cases to be resolved in less than one day under the current calendaring system. With the goal enabling Superior Court LIST trials to be routinely completed within a day, we recommend a special LIST case track in which several LIST trials are calendared each week, as opposed to the current system in which Civil II trials are scheduled only for Monday of each week.

Recommendation 2. **The DC Superior Court Civil Division should establish a separate trial calendar track for complex medical malpractice cases.**

Rationale. At the other end of the civil case complexity spectrum, concern was also raised regarding the scheduling of complex medical malpractice cases. Such cases often involve more than one defendant. In addition, each party may call several fact witnesses as well as multiple expert witnesses on the issues of liability and causation. Thus, it is not uncommon for such complex medical malpractice cases to involve counsel for three or more parties and to require at least two weeks of Superior Court Civil Division trial time. Moreover, for complex medical malpractice cases the defense bar is comprised of a relatively small number of attorneys, whose trial calendars may be full for one year or more in advance. As a final concern, medical malpractice cases often involve the most seriously injured plaintiffs. Malpractice plaintiffs may have seriously shortened life expectancies as a result of the alleged negligence. Such persons may have the greatest need, and claim, for timely adjudication of their claims.

Complex medical malpractice cases generally proceed smoothly through discovery, and trial dates are readily available by the Court on the individual calendars. Because of the difficulty of scheduling trials in such cases, occasioned by trial counsel availability, we recommend that firm trial dates be scheduled earlier in the process than the Pretrial Conference. Neighboring jurisdictions, such as the Circuit Court for Baltimore City, schedule trial dates in these types of cases at the Initial Scheduling Conference, and the same system could be adopted by the Superior Court, we believe, for complex medical malpractice cases. Alternatively, trial dates could be scheduled immediately after the discovery deadline or upon conclusion of ADR.

Recommendation 3. **The D.C. Superior Court should take steps to enhance the effectiveness of the Civil ADR Program.**

a. Provide that ADR may be waived by mutual consent for LIST cases;

b. Assign mediation and arbitration of personal injury and medical malpractice cases, and perhaps other matters, by subject-matter expertise;

c. Permit and encourage parties to consent to ADR earlier in the "life cycle" of a civil case;

d. Encourage the voluntary use of non-binding arbitration by routinely posting in the D.C. Superior Court Multi-Door ADR Program office comparisons of arbitration decisions with trial de novo verdicts;

e. Permit, by mutual consent of the parties, an extension of the mandatory 120 day arbitration hearing deadline to encourage voluntary use of non-binding arbitration;

f. Make mediator and arbitrator resumes available and permit parties to mutually select a mediator or arbitrator through a "strike and rank" selection process;

g. Permit mediations to be conducted outside the courthouse with the consent of the parties and the mediator;

h. Require that parties contribute a portion of the arbitrator's compensation to promote good faith use of non-binding arbitration and reduce the percentage of trial de novo filings;

i. Reduce the time and expense associated with the current labor intensive panel selection and training process by recruiting attorneys with prior mediation or arbitration experience;

j. Increase the compensation of all neutrals, perhaps in part through contributions from the parties in cases exceeding a certain amount; and

k. Continually evaluate neutrals and remove non-performers.

Rationale: When the civil delay reduction program became operational in January 1991, the Multi-Door Dispute Resolution Division made available mediation, neutral case evaluation, and binding and non-binding arbitration for most civil cases filed in the D.C. Superior Court. The Committee examined the effectiveness of the Multi-Door Dispute Resolution Division's Civil ADR program.

The first step in that review involved the establishment of valid criteria upon which to base a determination of the effectiveness of the Court's ADR Programs. In the Multi-Door Division's Revised FY2002 Budget Request the Division noted that it was appropriate to evaluate the Multi-Door's ADR programs on the basis of (a) resolution rates; and (b) whether the ADR process was efficient, impartial, and accessible.

Members of the Committee interviewed Multi-Door Division Director David Michael, and members of his staff. Findings from this review included the following:

(1) the largest number of civil cases handled by the Multi-Door's mediation program are LIST cases;

(2) although the majority of mediations and non-binding arbitrations are LIST cases, very few of the arbitrators or mediators have personal injury expertise;

(3) Less than 20% of the LIST cases settle during mediation, and many of the non-binding arbitrations are set for trial;

(4) a great deal of Multi-Door Program staff resources is expended on LIST cases finding an available neutral, scheduling hearings during times and dates when rooms are available at the courthouse and dealing with questions from pro se parties;

(5) the ADR program employs a very labor intensive and costly screening and training program for prospective mediators;

(6) lacking the funds to recruit and train new mediators, the mediation panel has remained unchanged for the past four years;

(7) lacking funds and available staff time, the Multi Door Division has been unable to conduct mediator evaluations or implement mediator mentoring;

(8) mediators appointed to Civil II cases receive $50.00 per case regardless of the size or complexity of the case; and

(9) services are provided at no cost to the parties by the D.C. Superior Court's ADR Program regardless of the size or complexity of the case.

The Committee also engaged in the collection, correlation, and review of case disposition data for the ADR Program. This review showed that: (1) settlement rates for civil mediation cases declined from 52% in 1991 to 36% in 1999; (2) the number of cases submitted to mediation declined from a high of 4,578 cases in 1992 to a low of 2,450 in 1999; (3) the number of cases submitted to non-binding arbitration declined from a high of 823 cases in 1995 to a low of 145 in 2000; (4) the filing of trial de novos for civil cases following ADR increased from a low of 31% in 1993 to a high of 87% in 1999; (5) the median time from the actual date of the Initial Scheduling Conference to the date of the mediation was 219 days for LIST cases in 1999; and (6) due to the failure of approximately 80% of LIST cases to be resolved by means of ADR, the median time to dispose of LIST cases in 1999 was 313 days, as compared to 163 days for collections cases, and 101 days for all other Civil II cases.

A number of factors appear to be contributing to the D.C. Superior Court's declining ADR resolution and submission rates. These include: (1) mandatory submission of certain types of civil cases to the mediation program when experience and supporting statistical data reveal such case types are not successfully resolved through a consensual dispute resolution process, specifically the LIST cases; (2) routinely scheduling mediation after completion of the discovery process; (3) appointment of mediators by the Court instead of allowing the parties to select them; (4) scheduling mediation hearings to be held at the D.C. Courthouse instead of allowing mediators the flexibility to select a location mutually agreeable to the parties; (5) failing to include personal injury attorneys on the court's arbitrator and mediator panels; (6) failing to pay a fair market rate for mediator or arbitrator compensation; (7) providing parties with free ADR services regardless of the size, complexity or

volume of cases; (8) failing to impose a penalty or sanction when a party demands a trial de novo following non-binding arbitration and that party fails to obtain a better judgment at trial.

In the course of several Committee meetings these findings were discussed with plaintiffs' counsel and representatives of several major automobile insurance companies. The conclusions and recommendations offered within Recommendation 3 emanated from those discussions.

Recommendation 4. **The D.C. Superior Court Civil Division Judiciary should continue to reinforce the positive "local legal culture" it established for civil case management by emphasizing intolerance for delay.**

Rationale. While this recommendation may seem self-evident, it must be remembered that a decade ago the reforms recommended by the Council for Court Excellence in its 1989 Civil Delay Reduction Study stimulated the Court to introduce fundamental policy and procedural changes in a legal environment and culture in which lengthy civil case delays were assumed, and to a large extent accepted. The judicial interviews referenced earlier in this present report, and summarized at Appendix B, reflect the important fact that D.C. Superior Court Civil Division judges do not tolerate delay, and are intent on maintaining the case processing standards achieved by the Court's 1991 reforms.

Because there are many different factors that contribute to delay – judges' and attorneys' busy schedules, budget and staff constraints, and the natural human tendency to put off to tomorrow anything that need not be done today – it is important for the D.C. Superior Court to demonstrate

a constant and consistent intolerance for delay so as not to lose the major progress that has been made and maintained consistently over the past ten years.

Recommendation 5. **The D.C. Superior Court should study the individual dockets of Civil Division judges to determine if, and to what degree, carrying cases from other divisions affects how civil judges process civil cases.**

Rationale: Each of the judges assigned to the Civil II calendar necessarily carry cases from other divisions through which he or she rotates. For example, matters arising from the Family Division, particularly child abuse and neglect cases, at least until the new family court procedures and systems are fully in effect in 2003, appear to comprise a significant proportion of the individual case load that must be handled along with the judge's civil case load. As well, judges rotating from the Criminal Division to the Civil Division carry with them criminal matters such as sentencing proceedings that must be attended to, even though a judge is sitting in the Civil Division. Absent a substantial increase in the number of judges on the Superior Court, it is clear that Civil II judges will have these additional responsibilities for the foreseeable future.

Information received from the judges' survey, as well as anecdotal information received from practitioners, indicates that the matters carried by Civil II judges from other divisions are time consuming and often interrupt civil trial proceedings. Judges must allocate time to deal with child abuse and neglect cases, and attend to sentencing and other criminal matters. Often these proceedings must be addressed on a priority or emergency basis, causing civil proceedings to be interrupted.

While it is the understanding of the Committee that the recently enacted D.C. Family Court Act of 2001 will by mid to late 2003 address child abuse and neglect cases, criminal cases and other matters that may carry over from one division to another will remain a case management challenge and concern for counsel and bench alike.

This present CCE study did not examine whether or to what extent individual dockets, and the carry over of cases from one division to another, have an effect on the ability of Civil II judges to process civil cases. Admittedly, the overall civil case time-to-disposition statistics indicate that case loads carried from one division to another do not have a noticeable adverse impact on efficient case disposition. It is likely that such existing practices do contribute to LIST cases, among others, requiring longer to adjudicate in D.C. than in some of the surrounding jurisdictions. Given the anecdotal information received from practitioners, we recommend that the Court study this issue, particularly as it might relate to the establishment of a separate track and trial calendar for LIST cases.

Recommendation 6. **The Superior Court Civil Division should continually monitor – and the D.C. Courts annual reports should routinely include time-to-disposition data, and how D.C. case processing trends compare to the American Bar Association civil case processing standards.**

Rationale. The ABA civil case processing standards provide an excellent benchmark against which to measure the case disposition performance of the D.C. Superior Court's Civil II cases, and

to determine what is working well and what needs improvement. For example, the statistics compiled for this report (Appendix C) show that the Court's major 1991 reforms, which put collections cases on a fast track with hearings by Magistrate Judges, are equal to or better than the ABA civil case processing standards. On the other hand, the case processing difference between Civil II automobile personal injury case dispositions and the relevant ABA processing standards highlight the need to focus on reducing delays in such cases, as this study has recommended. Regular monitoring and publishing of civil case disposition data, and offering comparisons to extant ABA standards, will demonstrate to the bar and broader community the openness of the Court to scrutiny, and help Court leaders identify future problems before they get out of hand. Such a practice can also provide the Court with an objective, ongoing test of the effectiveness of specific reforms.

Regular monitoring and publication of case disposition statistics, in comparison to ABA standards, will enable the Court to focus on these important measures. Publication will enable lawyers and litigants to better appreciate the fact that the Superior Court Civil Division is performing well as compared to national standards. Certainly, the evaluation of the case disposition statistics developed for this study dispelled some assumptions among Committee members about delays in case processing.

Recommendation 7. **The D.C. Superior Court Civil Division should take steps to improve paper flow and refine "customer" relations in the Civil Division Clerk's Office.**

Rationale: Both judges and practitioners noted that the Civil Division Clerk's Office is understaffed and overworked. This reality has resulted from time to time in misplaced or disorganized

case files, delays in transmitting pleadings or orders to and from judges' chambers, and sometimes unpleasant or unhelpful encounters with attorneys seeking information or help.[3] Increased funding, of course, is necessary to solve the staffing issue. Some of the paperwork problems may be resolved as the Civil Division moves to electronic filing and updated computer systems. In addition, however, a separate study focused on operations of the Civil Clerk's Office might reveal useful insights into how to improve the efficiency of that office. The study should include a review of operational and training methods in the clerk's offices of neighboring jurisdictions, which committee members found to be generally more user-oriented. The Council for Court Excellence stands ready to assist the Court should there be interest in proceeding with such a Civil Division Clerk's Office management study and review.

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[3] Civic observations of the Civil Division Clerk's Office suggest another perspective. Civil Division Clerk's Office staff received high marks for their cordiality and helpfulness, as reported by the Council for Court Excellence's Court Community Observers Project (*Report of the Court Community Observers Project in the DC Superior Court and its Civil Division*, July 2001, p. 10).

CONCLUSION

The adage, "justice delayed is justice denied," is no less true for being timeworn. The individual calendaring system, ADR program and related reforms implemented so effectively a decade ago by the D.C. Superior Court significantly reduced delays in the disposition of civil cases, and significantly improved the delivery of justice to litigants. Expressions of concern that the Court may have lost ground in recent years proved largely without substance, as noted in this Report's recitation of relevant statistical data, as well as surveys of judges and practitioners. Simply put, with several exceptions, the D.C. Superior Court's civil case management system is by and large working well.

The recommendations in this report are designed to deal with the one category of cases that is clogging the system – the LIST cases – and to make other adjustments in the ADR Program and in calendaring complex medical malpractice cases to ensure that the coming decade will bring continued timely and efficient civil case flow management in the D.C. Superior Court.

Appendix A

CCE's 1989 Civil Case Study Report Recommendations

1. **Establish a "fast track" for all civil cases in which the demand is $10,000 or less.**

2. **Establish an individual judge cases assignment system.**

3. **Enhance value of the pre-trial conference by requiring the following of counsel:**

   a. Statement of issues with supporting points and authorities;
   b. Proposed jury instructions;
   c. Proposed voir dire questions;
   d. Exhibits marked with copies for opposing counsel;
   e. Names and addresses of witnesses;
   f. Stipulations; and
   g. Presence of parties with settlement authority.

4. **Consistent and strict enforcement of civil rules which address time:**

   a. Rule 11 (sanctions for filing without reasonable inquiry into the facts or the law);
   b. Rule 37 (discovery); and
   c. Rule 41 (dismissal for failure to prosecute).

   Consider abolishing:

   d. Rule 16(g) (costs imposed if settlement occurs within 48 hours of scheduled trial).

5. **Raise standard for granting continuances.**

6. **Expand usage of hearing commissioners:**

   a. For ex-parte proof; and
   b. Resolving discovery disputes.

   Alternatively, consider using experienced attorneys from the private bar as special masters for such duty.

7. **Close monitoring of the docket by the judges.**

8. **Expand use of mandatory non-binding arbitration and mediation.**

9. **Work to change the "local legal culture" by promoting intolerance for delay.**

10. **Study the establishment of a statutory court of limited jurisdiction.**

Appendix B
DC Superior Court Civil Division Practitioners' Interview Summary

The Civil Case Study Committee distributed surveys to civil law practitioners beginning in February, 2001, to solicit their perspectives on civil case processing at the D.C. Superior Court. Copies of the survey were made available at the Superior Court's Civil Division Clerk's Office, and the survey was mailed to over 100 members of the Board of the Council for Court Excellence. advertised through an announcement in the D.C. Bar's Litigation Section Winter 2000 Newsletter The survey also was posted on the Council's Website and also was advertised through the D.C. Bar's Litigation Section Winter 2000 Newsletter.

Despite these outreach efforts, the Council received only 32 surveys back. Of these surveys, eight were identified as being from counsel who represent insurance companies. In addition, some attorneys did not answer every question on the survey; one attorney returned only the odd-numbered pages of the survey. The responses described below, therefore, do not constitute a scientific or representative sample of the views of Superior Court practitioners.[4] Nevertheless, these responses are useful insofar as they elicited opinions on the Court's civil rules and procedures. Because practitioners were encouraged to provide comments on various aspects of the Court's rules and docket, their specific comments are set forth below.

The Initial Scheduling Conference (SCR16(b))

There was an even division of the respondents on whether they typically did communicate with opposing counsel (or pro se party) prior to the Scheduling Conference. Almost none of the respondents reported that they had settled a case at the Conference or directly as a result of its being held. Most of the attorneys had filed motions after, as opposed to before, the Conference. Most attorneys indicated that the Courts did not decide motions at the Conference.

A large majority of the respondents did not consider their appearance at the Scheduling Conference to be useful. When asked whether there were certain types of cases in which the requirement of personal appearances at the Scheduling Conference was particularly helpful, the attorneys identified cases involving pro se litigants and multi-party cases.

The surveys yielded a number of specific suggestions for rules or practices that would govern Scheduling Conferences. The most prominent one was that the Court not require face-to-face

[4] The attorneys were asked to identify how many civil cases they had tried in Superior Court within the past 12 months, and to identify how many ADR sessions they had attended in Superior Court during that same period. There was a wide range of responses to these questions, with the number of trials ranging from zero to 15 (most attorneys reported zero, one or two trials), and the number of ADR sessions ranging from zero to 26 (Most attorneys reported in the zero to 10 range).

conferences, but permit telephone conferences, or permit the parties to confer on an agreed scheduling order. A related suggestion was that counsel could be permitted to seek agreement on the "track" to be assigned to the case. Another suggestion was that a proposed scheduling order be issued with the complaint, or at the time issue was joined, thereby giving the parties the opportunity to decide on the provisions of the order. Individual suggestions included a requirement that motions be filed 21 days before the Conference, that the attorney handling the case should not be required to attend the Conference, and that auto tort suits be placed on track two.

Alternative Dispute Resolution

Practitioners were asked a series of questions on the use and effectiveness of the various ADR processes available through the Court. Overall, the respondents expressed general satisfaction with those processes. For example, when asked if the Scheduling Conference provided attorneys with an adequate opportunity to select either arbitration, neutral case evaluation, or mediation, the most frequent response was "most of the time," with "always" the second largest response. Most of the respondents stated that the scheduling of ADR in the "life cycle" of a civil case typically has been "about right."

When asked to evaluate the knowledge and preparation of mediators and arbitrators for their conducting the ADR sessions, the attorneys chose either "usually" or "sometimes" as the most frequent response; very few responded at the extremes of "always" or "never."

Attorneys also generally reported that the ADR process was either "sometimes" or "usually" effective in facilitating the resolution of disputes.

Attorneys were asked to identify if the ADR process provided benefits apart from directly assisting the resolution of disputes. "Sometimes" and "usually not" were the most frequent responses. Attorneys commented that ADR gave the parties the opportunity to explore the feasibility of settlement, and gain a better understanding of their respective positions, and narrow issues.

The attorneys generally reported that the Multi-Door Division staff was "effective" in addressing ADR issues.

When asked to estimate the percentage of cases during the past two years that had been settled at or as a result of D.C. Superior Court ADR, there was a range of responses, the most frequent being in the 40% to 50% range.

The practitioners were asked for suggestions on the ADR process. Several attorneys expressed views on whether clients or insurance representatives should be required to attend the sessions, but there was substantial division in the opinions expressed. Other suggestions included moving mediation back if there were a dispositive motion pending, providing the mediator with more materials, giving the parties more opportunity to select a mediator, including a knowledgeable mediator, having more mediators with specialized knowledge, extending discovery deadlines,

eliminating mediation as mandatory, eliminating non-binding arbitration, allowing the parties more opportunity to choose private mediation, and to pay for the mediator.

Motions

Practitioners were asked to relate their experiences with motions practice, and to provide their views on several motions-related issues, including whether oral argument should be scheduled on all substantive or dispositive motions, what they thought about the Court's scheduling a regular Friday motions calendar, or if they had other suggestions for motions practice. Practitioners also were asked to estimate the time motions remained pending decision.

First, attorneys were asked to provide information on the time period for the disposition of motions. Most reported that it took more than four weeks for ripe motions to be decided by the Court, with three to four weeks being the next most frequent response given.

When asked to estimate the approximate percentage of motions that the attorneys had filed that had been decided without oral argument, most of the attorneys responded that all such motions were resolved without argument, with smaller numbers reporting that 75% or 50% were resolved without argument.

A large majority of the respondents said that they did not favor oral argument being held on all dispositive motions. A majority opposed there being a Friday motions calendar. A number of the attorneys noted that other jurisdictions — Virginia was specifically identified — already schedule motions for that day.

When asked to suggest whether rules or practices that govern motions be changed, a number of attorneys recommended that the certification/consultation requirement be eliminated for the filing of dispositive motions. One attorney provided that recommendation for discovery disputes. Other suggestions were that there be more prompt rulings on pending motions, including a time period for such rulings, or a "tickler" system for unresolved motions, that replies be eliminated for non-dispositive motions, that electronic filing be permitted, and that oral argument should be automatic if requested by counsel. Another suggestion was for rules on videotaped depositions.

Pretrial Conference (SCR16(f))

Attorneys were asked to identify what percentage of their cases settled at the Pretrial Conference, or as a result of the Rule 16 process. The most frequent response was that settlement occurred 25% of the time, while a substantial number responded that settlement occurred 50% of the time. There was close division, however, in response to the question of whether the conference of counsel required by Rule 16 was meaningful.

Attorneys were asked for suggestions on how the Rule 16 conference could be improved. Several recommended that the conference be done by telephone.

The attorneys were asked about settlement efforts in connection with the pretrial conference. They responded that judges "sometimes" or "always" tried to settle cases at the conference. There was almost universal agreement that judges undertake a more active role in attempting to settle cases at this stage.

When asked to provide suggestions on changes in the rules or practices that govern pretrial conferences, several attorneys responded questioning the necessity for an insured party to appear if a carrier representative were present. Others responded questioning whether such representatives should have to attend, one indicating it was not useful unless settlement were to be discussed. One attorney suggested that more settlement efforts be undertaken at the conference, another suggested that the parties submit separate confidential statements on their settlement positions. Several attorneys identified the issue of resolving pending motions, including in limine motions, at the conference. Other suggestions included omitting the need for a joint pretrial statement (as opposed to stipulated facts), having the plaintiff prepare the draft pretrial statement and schedule the conference, and dispense with the need to exchange exhibits at the conference. One attorney recommended eliminating the conference; another recommended that the conference start on time; a third recommendation was that such conferences be held on Friday afternoons.

Trials

Attorneys were asked if they had encountered any problems during a trial when the court interrupted the trial to handle other matters, and they were asked to state whether the interruptions were scheduled or unscheduled proceedings, to identify the proceeding(s), and to estimate the resulting delay. The vast majority reported that they had experienced an interruption of the trial, but a broad range of causes was identified. Most of the responses identified delays as having been in the 2 to 3 hour range at their last completed trial. A few reported delays of one-half day to one day, and one reported a two-day delay.

Attorneys were asked about the likelihood that a civil trial would begin on the scheduled trial date. Most replied that it was "likely" that the trial would begin on that date.

When asked to identify the day of the week that the trial had started, most responded Monday, with only a few responding Tuesday or Wednesday.

One question was directed at delays in the resolution of post-trial motions. A large number reported having experienced such delays. The range of delays identified was 1-2 months, with a few responses identifying delays of a year or more.

Attorneys were asked their opinion on the Court using a Monday-Thursday trial calendar, with Friday reserved for motions, sentencing, and other matters. There was almost unanimous

support for that proposal. In contrast, when asked about the Court's scheduling of half-day, uninterrupted trials, that proposal received virtually no support.

In response to a question on suggestions for trial practice, various ideas were offered: that judges decide post-trial motions, set firm trial dates, set the trial date for medical malpractice actions at the first conference, allow voir dire by counsel, or have questions from the jury, have more information on jurors than is provided on the information pages, consider pre-exchanged exhibits admitted into evidence once offered, set time limits for parties' direct and cross-examinations ("time clock"), not set unreasonable limits on such examination, that judges be prompt in beginning the scheduled trial.

Attorneys were asked to estimate the time period from joinder of issue to trial for the last three cases that they had filed in Superior Court, and to identify if they were in Civil I or Civil II. A variety of responses were given, in the range of 12 to 18 to 24 months. Only some attorneys differentiated between Civil I and Civil II cases in identifying these time periods.

Attorneys were asked if the time period from joinder of issue to trial had increased, decreased, or remained the same, over the prior five years. While there was a range of responses, most responded that there either had been a decrease, or no change.

Civil Division Clerk's Office

Attorneys were asked to evaluate the Clerk's office in terms of its effectiveness, courteousness, and file management. Attorneys generally reported that the Clerk's office was effective and courteous.

A large number of attorneys reported that they had experienced problems with filing documents or with retrieving files from the Clerk's office. When asked to estimate the percentage of time this had occurred, there was a broad range of replies: 2%, 5 %, 10%, 12%, but with several estimates in the 25% to 35% range, and several others of 50 %, 60% or "always."

Court Reporters

Attorneys were asked to provide their opinion on court reporters, including the accuracy of their work and the timeliness or delays in obtaining transcripts. Most expressed satisfactory to favorable opinions, with some attorneys identifying delays as a problem.

When asked about their experience with the court reporting system over the past five years, most attorneys responded that it had remained about the same.

There was a range of opinion on court reporter compliance with the D.C. Court of Appeals Rule that transcripts for appeals be prepared within 60 days. A substantial number of attorneys indicated that there was no compliance at all, with others providing 25% or 50%, or higher.

Office of the Appeals Coordinator

Attorneys were asked if the performance of the Office of Appeals Coordinator had improved, remained the same, or worsened in the past five years. Most responded that the performance was about the same.

Recommendations for Improving the Civil Court System

Attorneys were asked if they had any specific recommendations for improving the Superior Court's civil trial system to make it more effective, more efficient, and more just. Nineteen attorneys responded to this question. While there were no trends in the responses, several attorneys repeated comments made in response to several of the specific comments described above, including the issue of delay in resolving motions and prescribing time limits on when courts must rule on motions. Several attorneys expressed concern about delays in proceeding through a trial and recommended that there be firm trial dates.

Other suggestions were that the Court have a more sophisticated web site, with the availability of forms, that jurors be paid more, that there be more information on juror sheets (e.g., addresses), that there be peremptory strikes (4-6), and that "business casual" be acceptable for scheduling conferences. Concern was expressed about staffing levels and its diminution, including in Landlord-Tenant Division, about the status of contested cases in Family Division, about the number of hours spent per day in actual trial due to a judge's scheduling other matters, i.e., the attorney said there would be an average of 4-5 hours per day of trial maximum. Other attorneys had these recommendations -- that mediation should refer low impact, soft tissue cases directly to the trial judge for early trial without a pretrial, that medical bills and medical reports be admitted without testimony by a doctor, that these cases be put on a "fast track" and tried in one-half day, that there be video players for every court room for use in expert video testimony.

Other suggestions included eliminating new case status calls or doing them by telephone, requiring courts to handle motions through oral argument, and restricting mediators to experienced trial attorneys in medical malpractice and products liability cases, adopting the "Montgomery County" system, having ADR at the close of discovery if agreed to by the parties and once a trial date is set.

APPENDIX C

DC Superior Court Civil Division Judges Interview Summary

This appendix summarizes the interviews of seven DC Superior Court Civil Division judges, regarding the Council for Court Excellence Civil Delay Reduction Project. The judges interviewed include: Judge Geoffrey M. Alprin (Civil I), Judge John H. Bayly, Jr. (Civil II), Judge Ronna Lee Beck (Civil II), Judge A. Franklin Burgess (Civil II), Judge Linda Kay Davis (Civil II), Judge Stephanie Duncan-Peters (Civil II), and Judge Steffen Graae (Deputy Presiding Judge, Civil Division). Interviews were conducted by Project Committee members from April - May 2001.

The purpose of the judicial interviews was to have judges identify problematic areas in the flow of civil cases and to recommend possible solutions. The narrative below summarizes the eleven major topics outlined in the judicial interview (attached). (Note: comments in quotations are taken from the CCE interviewers' judicial interview memoranda, and do not necessarily reflect direct statements made by the judges.)

Time of judges' service in the Civil Division

The average and median terms of service for all judges interviewed is 4 years. The terms of service ranged from 4 months to 9 years.

Estimations of civil caseload in the past twelve months in DC Superior Court

Two of the seven judges did not report their civil caseload. Of the five reporting an active civil caseload, one carried a Civil I caseload of approximately 150 cases and four carried an average of roughly 475 Civil II cases.

The Initial Scheduling Conference (SCR 16(b))

When asked if judges communicate with counsel prior to the Scheduling Conference, all indicated that such communication typically does not occur. The rare exception would be to discuss a ripe motion.

As to the frequency with which motions are filed before the Scheduling Conference and subsequently dealt with by judges, six judges noted that motions are "rarely" filed before Scheduling Conference.[5] The few that are filed typically relate to discovery, service, or dismissal. Occasionally, judges will resolve pending motions at the Scheduling Conference.

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[5]However, one judge noted that, "*many times* [emphasis added] counsel walk in with motions to extend service or to dismiss and these are decided at the Scheduling Conference;" an experience quite opposite from those stated by the other six judges.

With regard to the frequency of cases settling at the Scheduling Conference, all judges expressed that this was "rare." One judge estimated that only 6 or 7 cases on his calendar have settled within the past two years at the Scheduling Conference.

Generally, judges believed that counsels' personal appearance at the Scheduling Conference to be useful, particularly so when *pro se* litigants are involved. One judge remarked, "[e]very time counsel is required to pull out a file and look at it, the chances of settlement are increased."

Six judges thought that the rules and practices governing the Scheduling Conference did not need any changes. One judge, who believes that the Scheduling Conference generally works well, did note that personal appearances by attorneys are "not particularly useful" where a small, specialized bar exists (as for automobile accident cases) and the attorneys generally know one another. However, one judge recommended that if counsel can physically meet prior to the Scheduling Conference and can agree on a track, then there is no need for counsel to appear at the Scheduling Conference. The judges' preference for face-to-face contact also resonated when judges were asked if phone conferences could replace personal appearances at the Scheduling Conference. One judge speculated that "it would be difficult to devise a system which would enable 'regulars' to opt out of the conference in favor of a telephone exchange."

Alternative Dispute Resolution

Six of the seven judges responded to this topic (one judge declined to comment due to insufficient experience with Multi-Door). Of the six, five specifically mentioned that the Scheduling Conference provides counsel an adequate opportunity to select arbitration, mediation, or neutral case evaluation. Six judges noted that the current timing of ADR in the "life cycle"of a case was fine.

Four judges commented on and had varying opinions as to whether mediators and arbitrators had sufficient knowledge to facilitate ADR sessions. Two of the judges stated that mediators lack experience, and one questioned the adequacy of the training that was provided to mediators.

Six judges offered no opinion of whether mediators or arbitrators were sufficiently prepared to effectively facilitate ADR sessions.

Four judges thought that the ADR process worked well, though one noted that mediation was particularly ineffective for automobile cases. One of these thought that a settlement rate of 30 - 50% was a "substantial number." One other judge thought that, generally, the effectiveness of Multi-Door was declining.

Four judges had no perspective on whether ADR provides benefits apart from directly assisting the resolution of disputes. Two judges noted that ADR *does* provide such indirect benefits, both citing it allows both parties to more effectively assess the strengths and weaknesses of their cases.

With regard to the effectiveness of Multi-Door Division staff, four judges indicated that staff was very effective and responsive. One judge had not encountered any problems with staff. Only one judge was concerned about the lack of resources at Multi-Door, and thought that they were understaffed.

The judges responding to the question of how frequently their cases settle at or because of court-sponsored ADR, noted percentages between 30 - 50%.

Of the four judges who offered ways to change ADR practices, two indicated that the background and experience of neutrals should be matched to similar case types. One judge indicated that training *judges* on settlement techniques would be quite useful. (Simply sitting in on a mediation might be useful, as two judges mentioned.) Responding to a specific question, the same judge indicated that using lawyers who volunteer for Multi-Door to arbitrate discovery motions might take some of the burden off judges.

Motions

Seven of seven judges commented on this topic. Relating to how much time it takes for judges to decide ripe motions, four judges responded differently with: " 2-3 weeks," 1-2 months," "based on the times set forth in the scheduling order," and "80% within one week - 20% can take anywhere from 30 days to six months or even a year."

All seven judges indicated that deciding motions based on oral arguments is either rare or, expressed as a percentage, no greater than 20% of the time. For this reason, all of the judges agreed that scheduling oral argument for all motions would be a considerable waste of everyone's time. However, one judge commented that oral arguments for all dispositive motions would be helpful.

None of the seven judges was in favor of establishing a regular Friday motions calendar. One judge remarked that such a calendar "would make sense for practitioners," but since most motions are decided without oral argument, a Friday motions calendar would not benefit the Court. Moreover, "trying to schedule all non-trial matters on a Friday would be logistically impossible."

Pretrial Conference (SCR 16(f))

All seven judges commented on this topic. Six judges offering varying estimates of the percentages of cases which settle at the Pretrial Conference or as a result of the Rule 16 process. One judge indicated that 10% of Civil I cases settle at the Pretrial Conference. The responses of two judges, taken together, provided estimates that between 25 - 50% of cases settle at the Pretrial Conference. Another indicated that 75% of his cases settled between mediation and the Pretrial Conference. Two stated simply that "many" of their cases settle at this stage. Judge Joan Zeldon was cited as a "master at settling cases at the pre-trial conference."

Four of the judges indicated that the Pretrial Conference was meaningful, and two of these quite strongly. Only one judge directly indicated that the Pretrial Conference was not meaningful.

All seven judges indicated that they actively try to encourage settlement at the Pretrial Conference. None proposed any changes to the Pretrial Conference.

Trials

All of the judges responded to questions regarding civil trials. Without exception, the judges indicated that trials are scheduled for and typically occur on Monday.

Six judges indicated that they experienced only "occasional" interruptions in their civil trials to handle other matters, and two of these cited abuse and neglect proceedings as being the most typical of any interruption. One judge indicated experiencing frequent interruptions, often being required to move to another courtroom where there is a holding cell.

Responses to the average time it takes judges to decide post-trial motions varied considerably. Two judges did not comment on this. One judge had not yet experienced ruling on post-trial motions. The four discrete answers offered were, "promptly," "2-3 weeks after [the motion is] ripe," "a month or two," and "four to eight months."

Of the five judges who responded to whether they would prefer a civil trial system where cases are tried from 9:00 am to 5:00 pm Monday through Thursday with Friday devoted to other matters, all indicated they would not. Three simply stated "no" to the question. One judge did "not believe it could be done because counsel would have too many conflicts." Another thought the current system works fine as is.

Regarding whether the judges would favor scheduling civil trials to proceed for half-days without interruption, four of the five judges commenting thought this was unnecessary. Two of these judges thought that they could accomplish more in a full day with interruptions than in a half day without. Another noted that it can often take a half day simply to select a jury panel. One judge "would be willing to consider" the proposed uninterrupted half day trial schedule.

Estimation of the time from joinder of issue to trial for the civil cases

Three of the seven judges offered estimates. The median time estimate was 7-8 months for Civil II cases. One judge offered an estimate of 18 months for Civil I cases.

Civil Division Clerk's Office

All seven judges commented on this section. Consistently, the judges remarked that the Clerk's office is over-burdened and lacks sufficient resources to do an adequate job. Three judges specifically indicated that the Clerk's Office was understaffed. Disorder of the case files and delays in accessing case files were frequently cited problems. Two judges noted that filing documents with

or retrieving files from the Clerk's Office has been a problem 10 - 15% of the time over the past two years. Other problems flagged by judges include:

- "briefs on motions do not get logged in or sent to chambers on a timely basis;"
- "long delays in processing paperwork - e.g., it can take weeks between the time that a judge enters an order and the time the Clerk's Office dockets the order and sends it to counsel;" and
- "filing something by mail is generally a mistake because it won't get filed properly."

Of the three judges commenting on the demeanor of Clerk's Office staff, one indicated that staff are "helpful and friendly." Interestingly, the negative comments about Clerk's Office staff by the other two judges were couched in terms of complaints coming from counsel. Two judges noted that their courtroom clerks are "excellent."

Court reporters

Four of the seven judges commented on court reporters. Two of the judges not commenting indicated that they didn't have sufficient experience with court reporters to have an opinion. Of the four responding, opinions were mixed. One of the four judges felt there were no problems with court reporters and the accuracy and timeliness of the transcripts. Two judges noted that transcripts generated from taped proceedings are not timely produced. Two recommendations were mentioned: increasing the number of court reporters, and moving to real time transcripts.

Recommendations for improving the Civil Court System

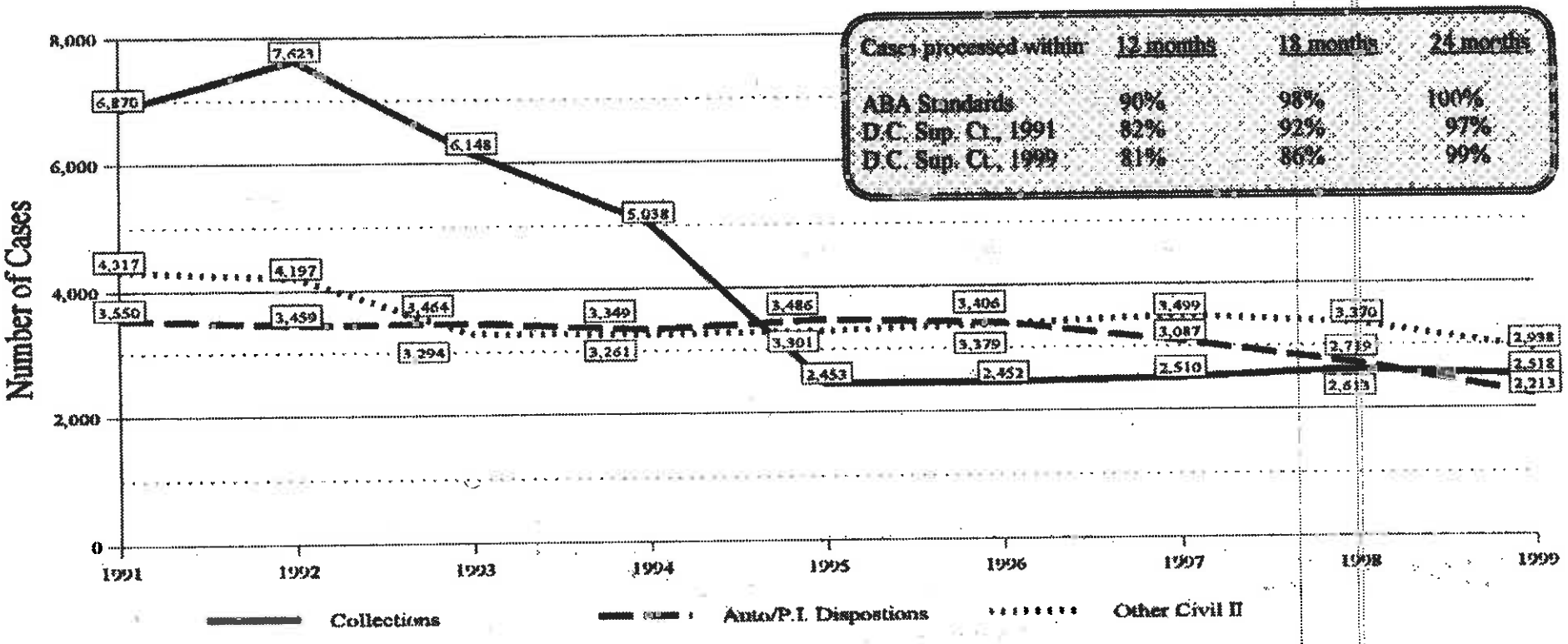
Four of the seven judges interviewed offered additional comments, and together these may be interpreted as not reflecting any serious concerns by the bench as to the current civil court system. These include:

- "a bench bar lunch every two months would be good for open discussions;"
- "senior judges to be used more frequently to settle cases;"
- "use the more experienced judges to help with the backlog of motions;"
- "judges need to be ready to begin when they tell lawyers they will begin;"
- with the exception of the Clerk's office, the current civil court system runs well, though a little "tweaking" might be in order; and
- improve the handling of minor automobile accident cases.

Appendix D

DC Superior Court Civil Division Caseflow Analysis

D.C. Superior Court
Civil II Case Disposition Trends by Category, 1991-1999[1]

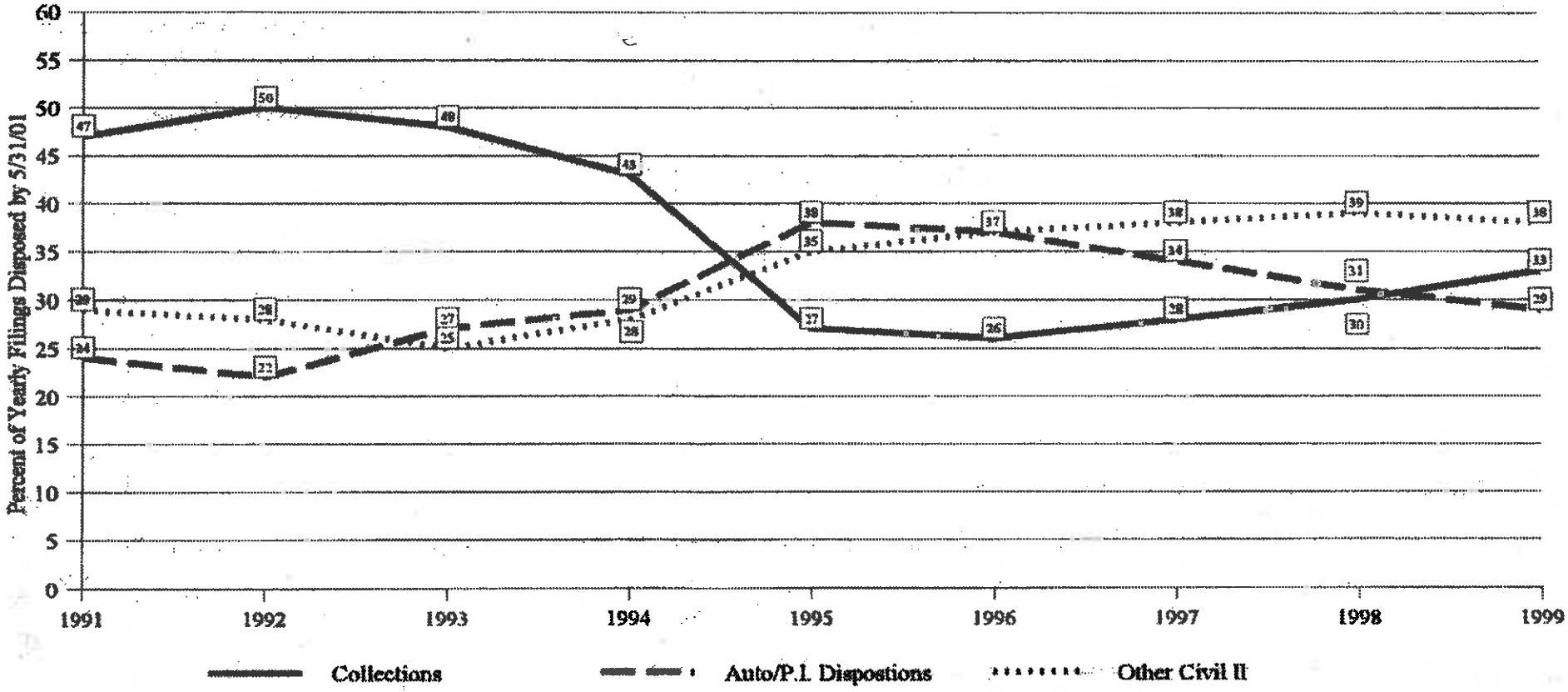


Related Statistics for Civil II Cases

	1991	1999	Percent Change
Number of Dispositions:	14,737	7,669	- 48%
Number of Jury Trials:	210	299	+ 42%
Number of Non-Jury Trials:	62	16	- 74%
Trials as a percentage of Dispositions:	1.5%	3.9%	+160%

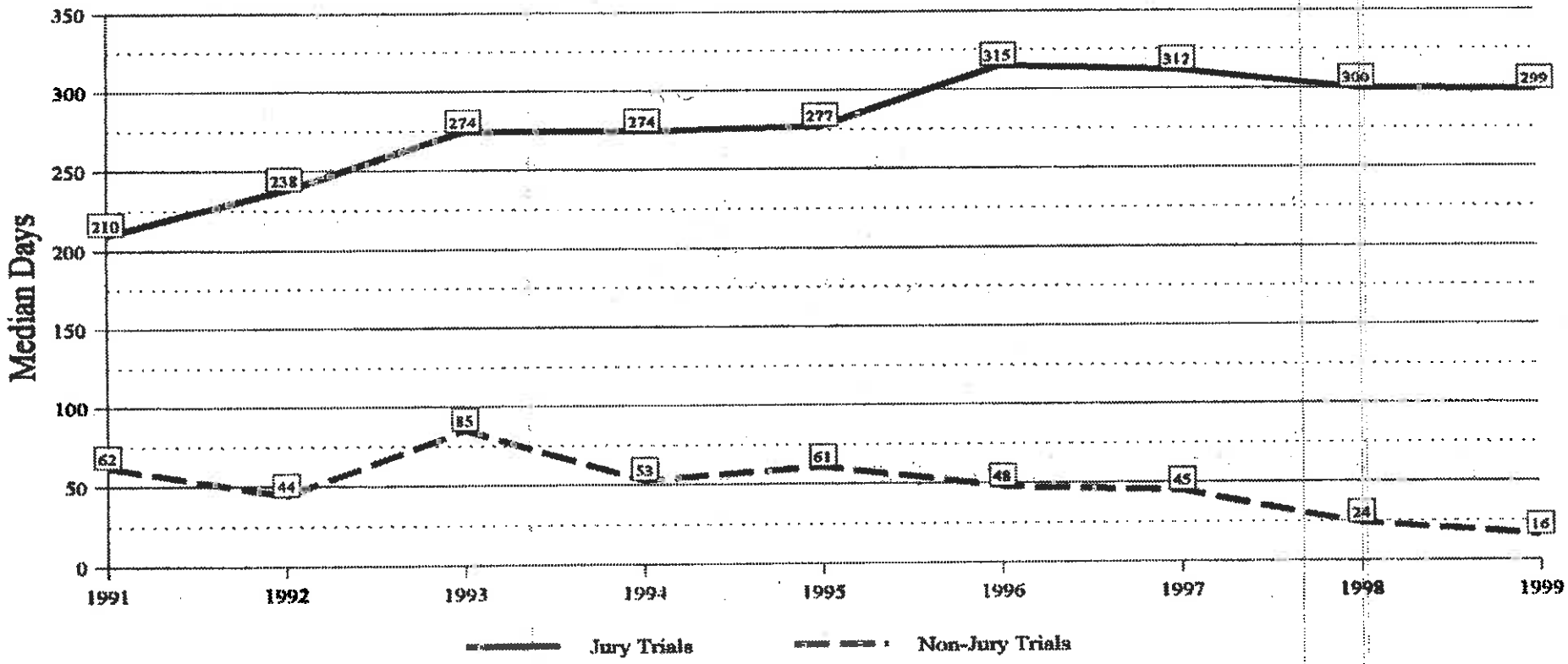
[1]Figures reflect Civil II dispositions. These are based upon the year the case was filed, and reflects cases disposed before 05/31/01 (D.C. Superior Court Civil Division statistics, 07/13/01).

D.C. Superior Court
Percentages of Civil II Cases Disposed by Category, 1991-1999[2]



[2]Figures are for Civil II cases only. These reflect all cases disposed on or before 5/31/01, and are presented according to their year of filing. (D.C. Superior Court Civil Division statistics, 07/13/01).

D.C. Superior Court
Comparison of Jury and Bench Trial Trends for Civil II Cases, 1991-1999[3]



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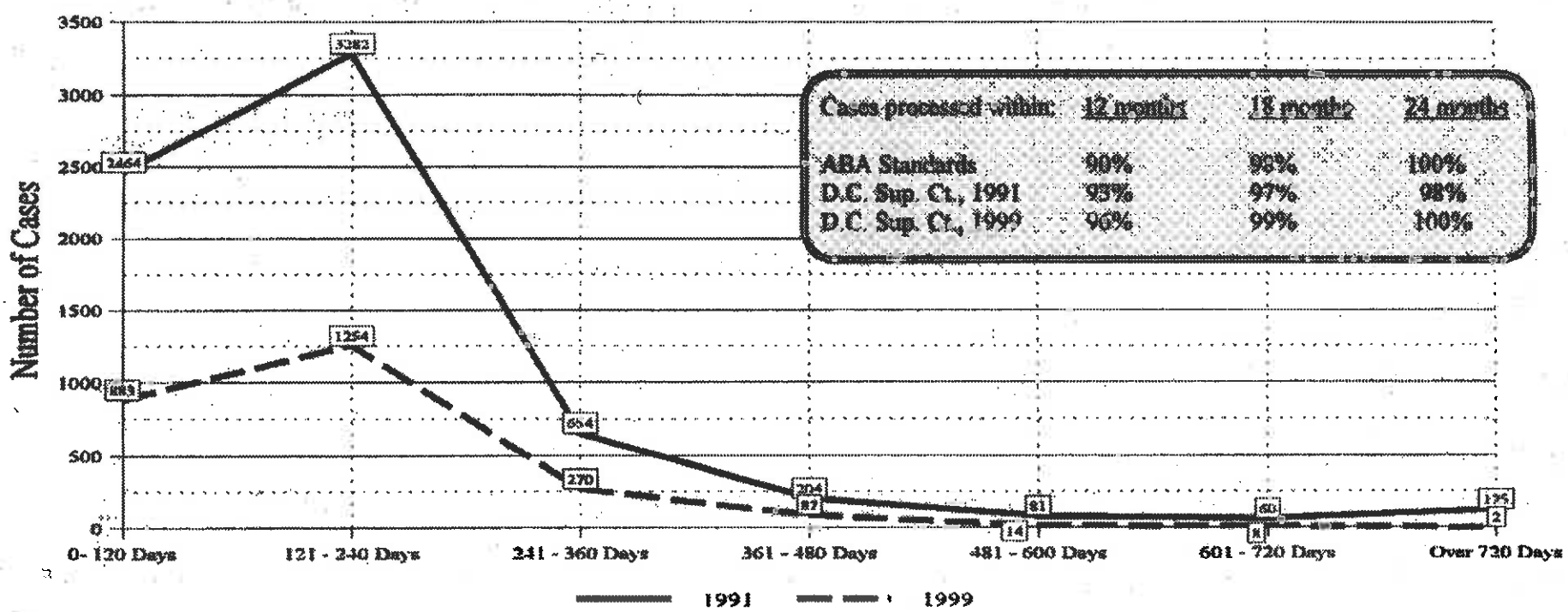
Trials as a percentage of Dispositions:	1.5%	3.9%	+160%

[3]From Annual Report of the District of Columbia Courts, 1991 - 1999, Civil Case Activity, Civil Actions only.

D.C. Superior Court
Collections Case Dispositions Comparison, 1991 to 1999[4]



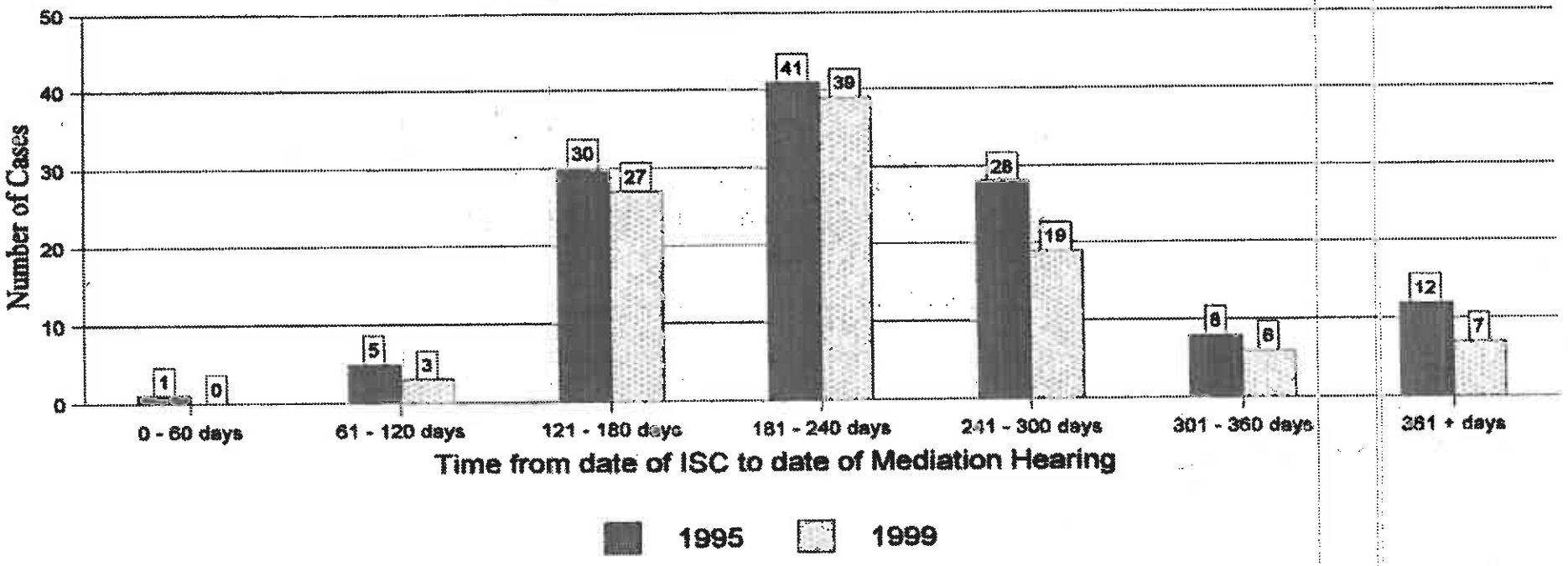
Related Statistics for Collections Cases

	1991	1999	Percent Change
Number of cases:	6,870	2,518	- 63%
Average Processing Time[5]:	184 days	169 days	- 8%
Median Processing Time:	194 days	163 days	- 16%

[4]D.C. Superior Court Civil Division statistics, 07/13/01.

[5]D.C. Superior Court Civil Division statistics, 07/13/01. Reflects the weighted average of Commissioner's and Judge's Collection Cases from time of case Filing to Disposition. There was no Judge's collections calendar in 1991.

D.C. Superior Court
Collections Case Mediation Comparison, 1995 to 1999[6]



Total cases, 1995: 125 (40% Commissioners' calendar, 60% Judges' calendar)
Median[7], 1995: 221 days

Total cases, 1999: 101 (50% Commissioners' calendar, 50% Judges' calendar)
Median[8], 1999: 224 days

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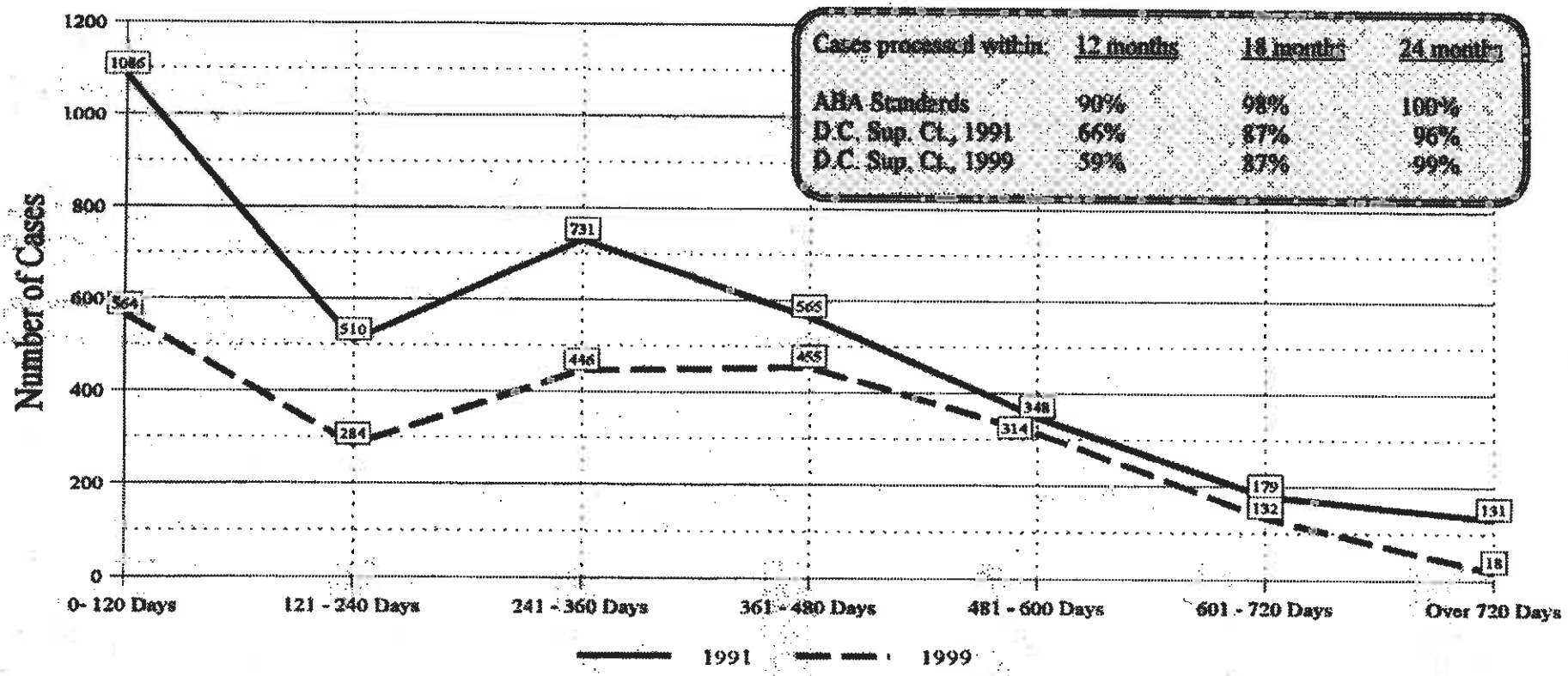
[6]Reflects time from Initial Scheduling Conference to date of actual mediation hearing for both Commissioners' and Judges' calendars. D.C. Superior Court Civil Division statistics, 07/13/01.

[7]Ibid.

[8]Ibid.

D.C. Superior Court
Automobile / Personal Injury Case Dispositions Comparison, 1991 to 1999[9]



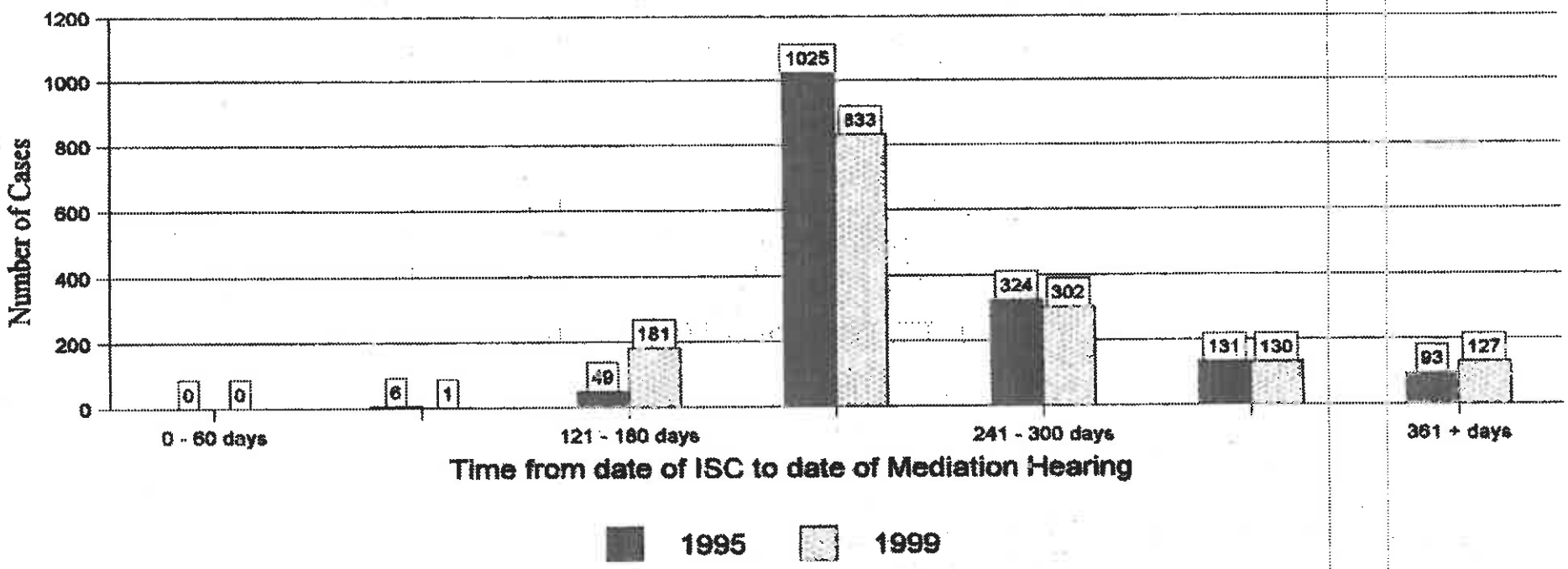
Related Statistics for Automobile / Personal Injury Cases

	1991	1999	Percent Change
Number of cases disposed:	3,550	2,213	- 38%
Average Processing Time[10]:	296 days	308 days	+ 4%
Median Processing Time:	254 days	313 days	+ 23%

[9]D.C. Superior Court Civil Division statistics, 07/13/01.

[10]Reflects time from Filing to Disposition. D.C. Superior Court Civil Division statistics, 07/13/01.

D.C. Superior Court
Automobile / Personal Injury Mediation Comparison, 1995 to 1999[11]



Total cases, 1995: 1,628
Median[12], 1995: 219 days

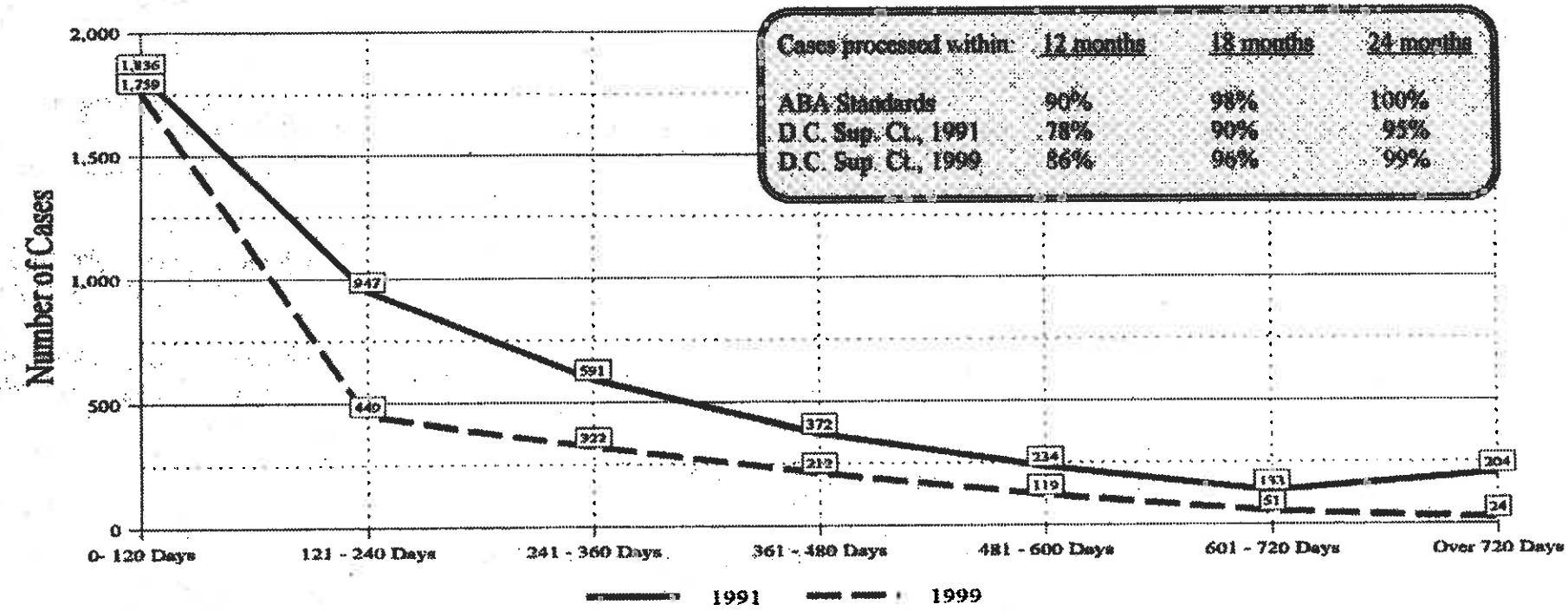
Total cases, 1999: 1,574
Median[13], 1999: 219 days

[11]Reflects time from Initial Scheduling Conference to date of actual mediation hearing for Tracks 1 - 4 only. D.C. Superior Court Civil Division statistics, 07/13/01.

[12]Ibid.

[13]Ibid.

D.C. Superior Court
Other Civil II (excluding Auto/PI and Collections) Case Dispositions Comparison, 1991 to 1999[14]



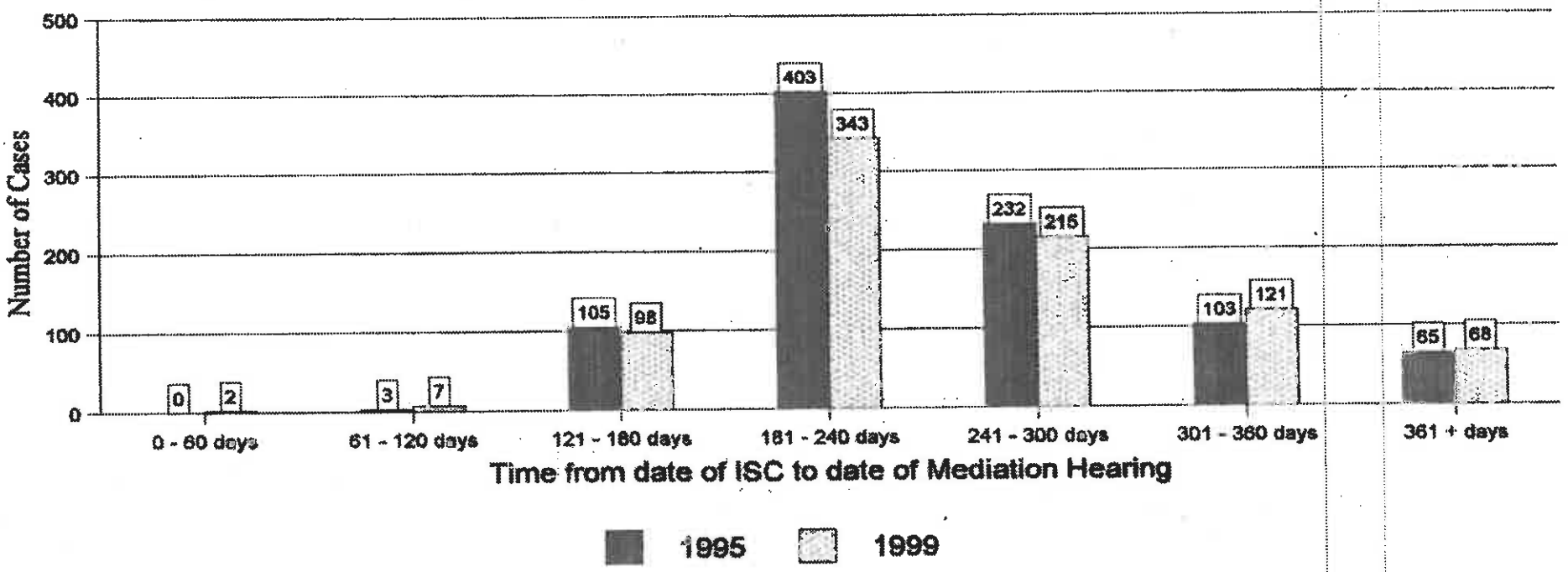
Related Statistics for Other Civil II Cases

	1991	1999	Percent Change
Number of cases:	4,317	2,936	- 32%
Average Processing Time[15]:	241 days	159 days	- 34%
Median Processing Time:	133 days	101 days	- 24%

[14]D.C. Superior Court Civil Division statistics, 07/13/01. Tracks 0 - 4 from time of case Filing to Disposition.

[15]D.C. Superior Court Civil Division statistics, 07/13/01. Reflects the weighted average of Tracks 0 - 4 from time of case Filing to Disposition.

D.C. Superior Court
Other Civil II (excluding Auto/PI and Collections) Mediation Comparison, 1995 to 1999[16]



Total cases, 1995: 911
Median[17], 1995: 219 days

Total cases, 1999: 854
Median[18], 1999: 219 days

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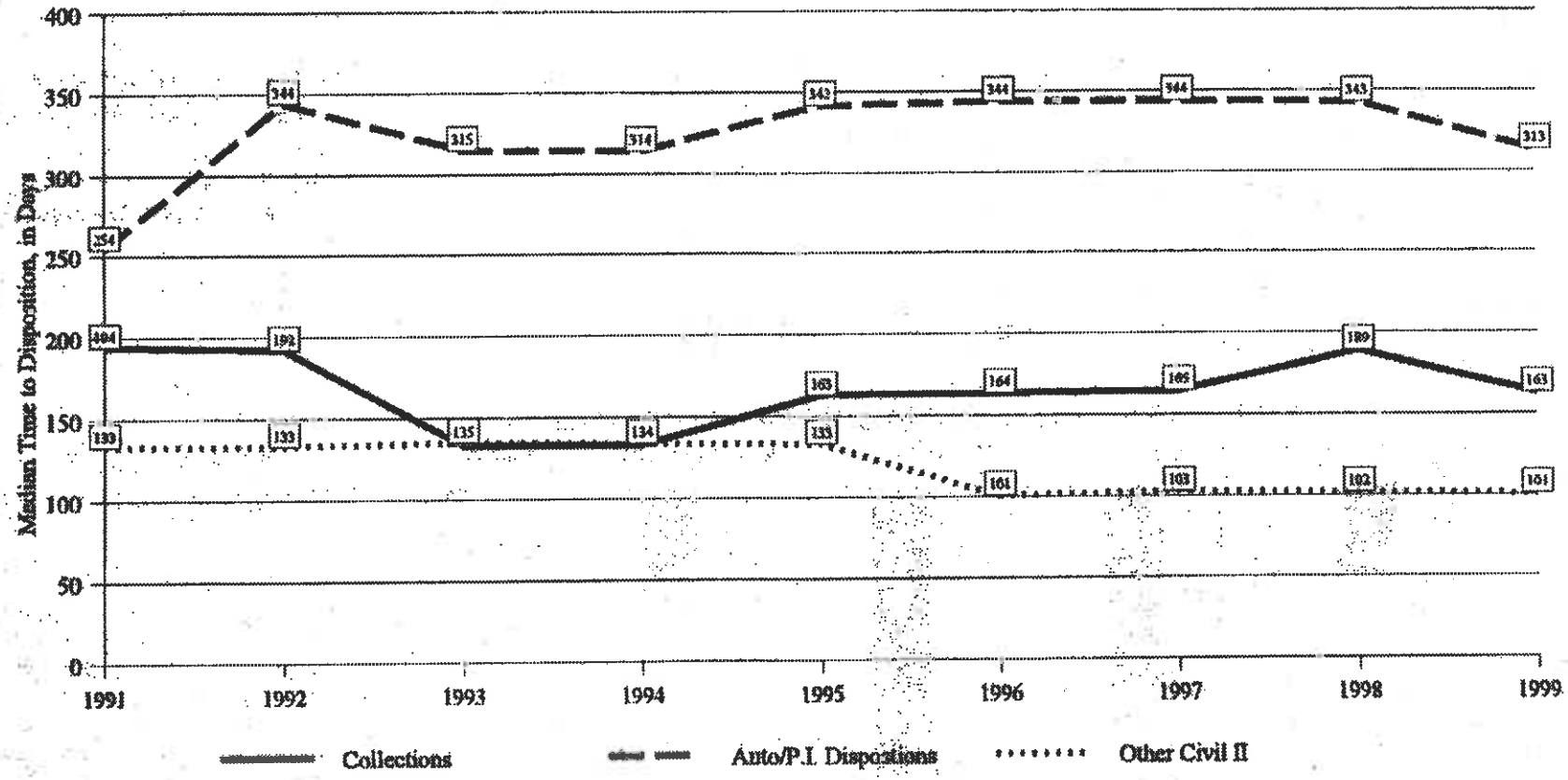
[16]Reflects time from Initial Scheduling Conference to date of actual mediation hearing for Tracks 1 - 4 only. D.C. Superior Court Civil Division statistics, 07/13/01.

[17]Ibid.

[18]Ibid.

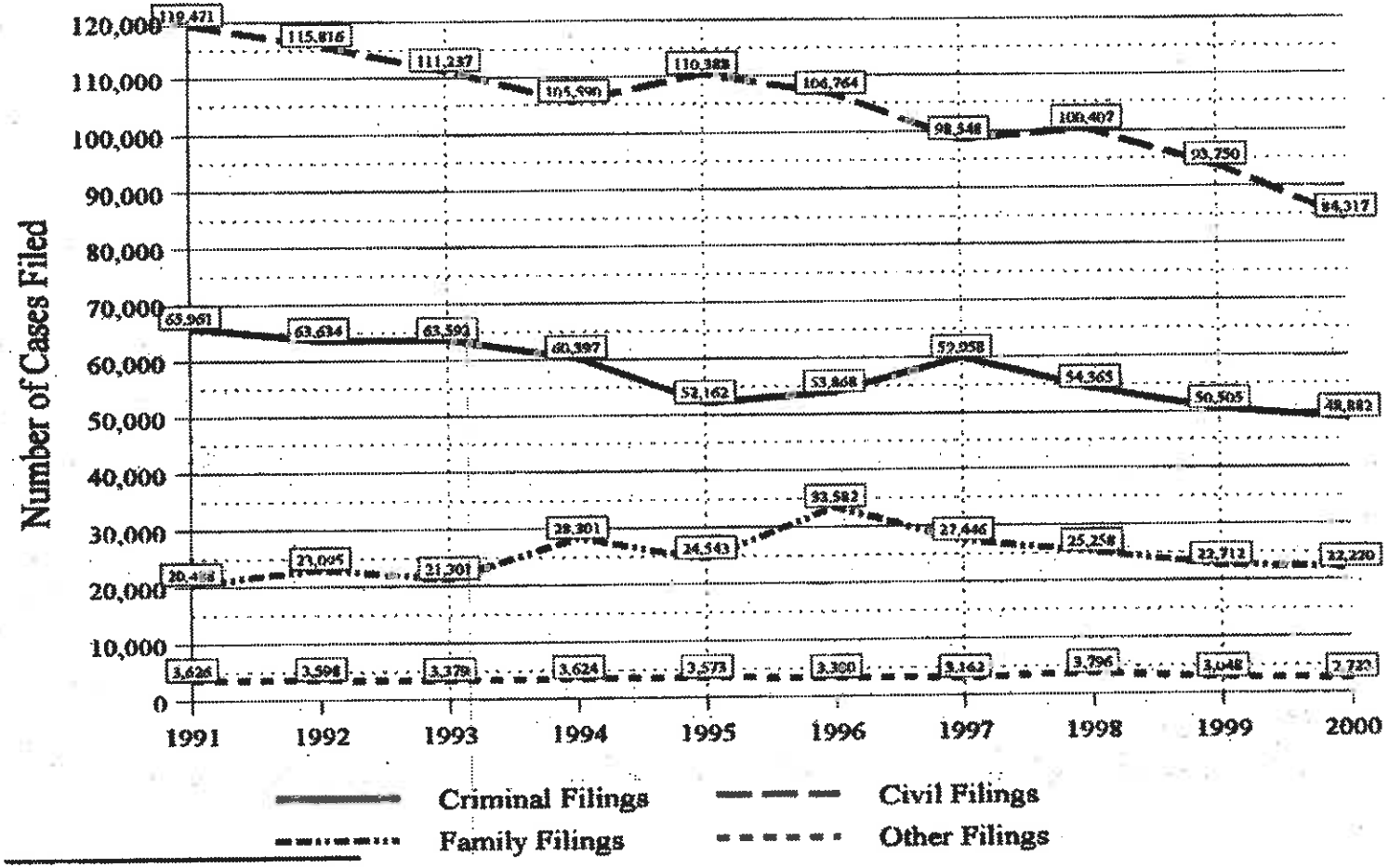
D.C. Superior Court
Comparison of Median Time-to-Disposition by Category, 1991 - 1999[19]



[19]D.C. Superior Court Civil Division statistics, 07/13/01.

D.C. Superior Court
Case Filings Trends by Court Division, 1991 - 2000[20]

From 1991 to 2000, total case filings (including cases reactivated and certified in) in the DC Superior Court have decreased by 25%.



- 29% in Civil Filings
- 26% in Criminal Filings
+ 9% in Family Filings
- 25% in Other Filings

[20]Source: "D.C. Superior Court Case Activity," Annual Report of the District of Columbia Courts, 1991 - 2000. Yearly filing figures are derived from the sum of "Cases at Issue" and "Cases Reactivated / Certified In." Civil Filings include Civil I, Civil II, Small Claims, and Landlord and Tenant cases (it is important to note that Small Claims and Landlord & Tenant cases typically comprise 85 to 90% of civil filings annually.) Family Filings include Domestic Violence Unit and Child Support Program Cases. Other Filings include the Tax and Probate Divisions, and in earlier years, Auditor Master cases.

D.C. Superior Court
Trends in Case Filings, Pending Caseloads, and Number of Sitting Judges, 1991 - 2000[21]

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	% change, 1991-2000
Case Filings	209,546	206,143	199,509	197,912	190,666	197,594	189,114	183,826	170,015	158,141	- 25%
Pending Cases	38,206	49,091	47,677	45,239	52,219	43,537	52,987	53,786	54,513	48,544	+24%
Number of Sitting Judges	55	58	57	56	58	59	59	59	59	59	+ 7%
Case Filings/Sitting Judge	3,810	3,554	3,500	3,534	3,287	3,349	3,100	3,014	2,882	2,680	- 30%
Pending Cases/Sitting Judge	713	846	836	808	900	738	854	882	924	823	+ 15%
All Cases/Sitting Judge	4,523	4,400	4,336	4,342	4,187	4,087	3,954	3,806	3,806	3,503	- 23%

[21]Source: "D.C. Superior Court Case Activity," Annual Report of the District of Columbia Courts, 1991 - 2000. Yearly Total Case Filings figures are derived from the sum of "Cases at Issue" and "Cases Reactivated / Certified In." Total Pending Cases figures are based upon "Cases Pending Jan. 1." Number of Sitting Judges reflects the count of D.C. Superior Court judges as listed in each year's Annual Report.

Appendix E

DC Superior Court Civil Actions Case Processing Diagram

DC Superior Court Civil Division[22]

3.2 Civil Actions Case Processing Diagram - General Civil Cases

DAYS	ACTION
1	Complaint Filed
1–60	Service of Process Due or motion to extend - Dismissal Issued
20	Answers Due or Motion to Extend or Consent Praecipe to Extend for 20 Days
20–100	Default Entered by Court
91–120	Initial Settlement and Scheduling Conference Case Track Established

	Track I (FAST)	Track II (NORMAL)	Track III (COMPLEX)	Track IV (SPECIAL)
150	Witness Lists			
180	Discovery Closed	Witness Lists		
195	Motions Cutoff			ALL SCHEDULED TIME FRAMES ESTABLISHED BY JUDGE
210			Witness Lists	
240	ADR	Discovery Closed		
255		Motions Cutoff		
270	Pretrial			
300		ADR	Discovery Closed	
315			Motions Cutoff	
330	Trial			
360		Pretrial	ADR	
420		Trial	Pretrial	
480			Trial	

[22]Provided to CCE Civil Case Study Committee staff by Deborah Taylor-Godwin, Director of the DC Superior Court Civil Division, on February 28, 2001.