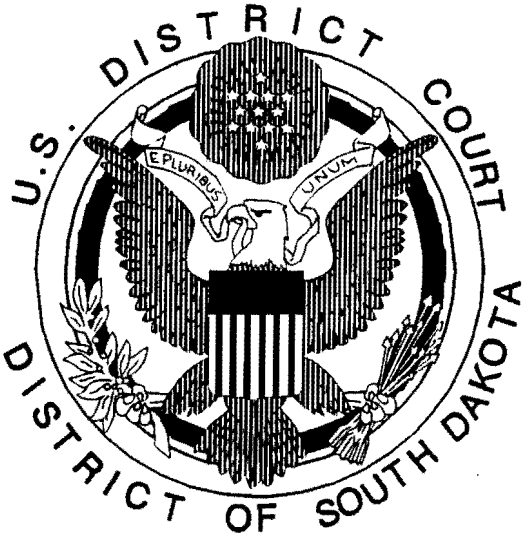
CIVIL JUSTICE REFORM ACT ADVISORY GROUP REPORT

FOR THE DISTRICT OF SOUTH DAKOTA



William F. Day, Jr., Esq.
Chairperson

December 31, 1992

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Civil Justice Reform Act of 1990

Advisory Group
For the District of South Dakota
(1991-1992)

William F. Day, Jr., Esq.
Chairperson

Honorable John B. Jones

Honorable Richard H. Battey

William F. Clayton
Clerk of Court

Gene R. Bushnell, Esq.

Joseph M. Butler, Esq.

Krista H. Clark, Esq.

David R. Gienapp, Esq.

Chester A. Groseclose, Jr., Esq.

Lawrence E. Long, Esq.

Terry L. Pechota, Esq.

Reed A. Rasmussen, Esq.

Steven W. Sanford, Esq.

Kevin Schieffer, Esq.
United States Attorney

Arlo D. Sommervold, Esq.

Charles M. Thompson, Esq.

Professor David S. Day
Reporter

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"We'll try the cases whenever the lawyers want". Chief Judge John B. Jones.

INTRODUCTION

This Report has been prepared by the Advisory Group to the federal District Court for the District of South Dakota (hereinafter, the "District" or, sometimes, the "Court"). The Civil Justice Reform Act of 1990 ("CJRA") requires each District Advisory Group (the "Advisory Group") to submit a report of its work. The Advisory Group (described in further detail in Appendix A) respectfully submits the following to the Court and pledges its continued availability to assist the Court in the development of the required CJRA Plan.

This report is structured in a manner consistent with the Judicial Conference Committee on Court Administration and Case Management's "Recommended Format for Advisory Group Reports." Although compliance with this format requires some disjuncture in the Report, the Advisory Group recognizes that the use of the Format will enhance review and research.

After many months of research, consideration and discussion, the Advisory Group assesses, in Part II, the conditions of the District's civil docket. In Part III, the Advisory Group presents its Recommendations for Court action to monitor and, in a few cases, to improve these conditions.

The Advisory Group has been honored to serve the Court, the residents of the District, and the interests of justice in the area of civil litigation. The District has, if all vacancies would be filled, adequate judicial resources. As indicated by Chief Judge Jones' statement, quoted as a preamble, the District has a tradition of hardworking Judges and Senior Judges and a District bar that is marked by a high degree of experience, skill and civility. See Responses to Question 83, Appendix C-1. These are, in the view of the Advisory Group, fortunate circumstances.

Under the traditional model of civil litigation, the lawyers, as adversaries supervised by an impartial court, are the primary vehicles for making the civil litigation system operate in a "just, speedy, and inexpensive" manner. See Fed. R. Civ. Proc. 1 (1992). In the District for South Dakota, the elements of the traditional model are working skillfully and efficiently. Under these circumstances, the Advisory Group's Report is directed at preserving, and improving, these favorable conditions.

I.

DESCRIPTION OF THE COURT

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A. THE PHYSICAL CIRCUMSTANCES OF THE DISTRICT

The federal district Court for the district of South Dakota encompasses the entire geographic limits of the State of South Dakota. The District is divided into four divisions. The Southern Division consists of 22 counties in south central and southeastern South Dakota with a courthouse in Sioux Falls, South Dakota. The Central Division consists of 18 counties in central South Dakota with the courthouse in Pierre, South Dakota. The Western Division is composed of 11 counties in the western and northwestern parts of the state of South Dakota, and the courthouse is located in Rapid City. The Northern Division has its courthouse in Aberdeen, and this division covers 15 counties north and east of Pierre and Sioux Falls.

The District is authorized three active Judgeships by 28 U.S.C. Section 133. At the present time one of the active judgeships is vacant. The District also has three Senior Judges. Two of the Senior Judges maintain an active and regular calendar. Especially while the District has had a vacancy, the Senior Judges have provided indispensable service. See responses to Question 3, Appendix C-1.

The District has four part-time Magistrate Judgeships, as authorized by the Judicial Conference. There are no full-time Magistrate Judges. All of the part-time positions are presently filled.

B. SPECIAL STATUTORY STATUS UNDER THE CJRA.

The District of South Dakota will not serve either as a pilot court or early implementation district.

II.

ASSESSMENT OF CONDITIONS IN THE DISTRICT

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In this part of the Report, the Advisory Group offers the conclusions which, after many months of study and deliberation, it has reached regarding the state of the District's civil docket. The condition of the civil docket is, compared to other districts, highly satisfactory and well-managed. The trends in case filings, while placing serious demands upon District resources, are presently manageable. The trends in the District's resources deserve attention, but court resources, except for the vacancy in one Judgeship, have generally been quite satisfactory.

A. CONDITION OF THE DOCKET

The Advisory Group has concluded, based upon review of data from the Administrative Office of the United States Courts, that the condition of the District's civil docket is currently manageable and well-managed.

1. Conditions of the Civil Docket

During calendar 1992, the most recent Federal Court Management Statistics Profile ("Profile") indicates that there were 628 filings in the District and 638 terminations. The trend of filings, after reaching a high in 1988, has declined and stabilized in the lower 600's. As of June 30, 1992, 448 cases were pending in the District of South Dakota. The number of pending cases has dropped from a high of 519 in 1988 to the above-referenced figure of 448. Currently, the District is disposing of more cases than its rate of filings, and there is no indication that this disposal rate will change in the near future.

a. "Old" cases within the District

One hallmark of delay would be the number of cases pending more than three years. Nationally, some 19,423 cases are over three years old, amounting to 8.7% of all pending cases. In South Dakota, however, only two pending cases are over three years and that represents only .6% of the District's docket. Nationally, the District is the third-best district regarding three-year-old cases.

This very low level of three-year-old cases is not a new phenomenon in the District. The District has historically had only a few cases pending longer than three years. In the last five years, for example, the number of three-year-old cases has never been greater than eight.

The Advisory Group concludes that this remarkable record is the result of careful management by our Judges and the salutary traditions of the District bar.

b. Median Disposition Times in the District

Another important statistic revealed by the most recent Profile is the median time from filing to disposition for civil actions. This median time in the District for civil actions is the remarkably low time frame of eight months. Historically, the District's trends regarding median time have been quite satisfactory. In 1989, for example, the median time was only 10 months. Over the last three years, moreover, the District has maintained a median time of eight months.

c. The Criminal Docket in the District

The median duration of criminal felony cases is also quite low, most recently being 5.5 months. Felony cases in the District typically do not involve multiple defendant problems, and this contributes to the ability of the Court to handle criminal matters in a relatively efficient fashion. Until recently, the trend in the number of criminal cases shows only a modest increase, but this has been offset by a sufficient number of Judges and Magistrate Judges.

The recent Profile also indicates that the criminal calendar is basically current. Based on interviews of the District's Judges, the volume of criminal cases does not seem to have an adverse impact on the Court's ability to handle civil actions. The Judge's interviews also suggest, however, that the Federal Sentencing Guidelines have increased the workload regarding sentencing.

d. Judicial Workloads in the District

The Profile statistics also reveal that, compared to national averages, the District's Judges have a relatively manageable caseload. While the national mean rose last year to 403 cases per Judge (350 civil and 53 felony), South Dakota's average dropped from 218 to 209 (147 civil and 62 felony).

While the District's average caseload is lighter than all but two districts, the Advisory Group believes that the District's relatively high ranking in trials per Judge indicates that the workload is a significant one. The District's Judges also

periodically serve on Eighth Circuit panels or as visiting Judges. Within the District, extensive travel time is regularly required. Even with these schedules, because the caseload is relatively low, the chances of having a firm trial date for, and trying, a case are very good. This prospect, in the view of the Advisory Group, is the key to disposition of civil cases.

Taken as a whole, the statistical data in the Federal Court Management Statistics Profile confirms the Advisory Group's conclusions about delay. Delay is not a "problem" in the District.

2. Trends in the Docket

Unlike many districts, trends in the District's docket are quite positive. The number of filings has declined in the last five years. The number of terminations has usually run parallel with the number of filings, and the number of pending cases has dropped from the high of 519 in 1988. While the number of trials within the District has declined from the high 62 in 1987, the number of filings and the number of dispositions has also declined. The ratio of trials to pending cases has actually gone up, but this is during a time frame when the median disposition time has gone down to eight months. Unlike some of our neighboring Districts who face a large number of three-year-old cases, the trend in the District is for the number of three-year-old cases to remain very low and, in fact, to decline.

The Advisory Group examined the question whether the trends in any particular type of case (e.g., asbestos cases)

threatened to create delay or excessive expense. Generally, a review of the September 1992 SY92 Statistics Supplement and other data confirms that there is no trend in types of cases which presently causes concern. In his interview, one Judge reported that, although the volume of "prisoner" cases had once been a source of docket congestion, this was no longer a problem. In sum, the Advisory Group found no indication that any category of cases was a source of delay or excessive expense.

Other docket trends also confirm that the District's civil docket is current and well-managed. For example, the 1991 Eighth Circuit Annual Report indicates that the District is largely current in its rulings on motions. The District had only three motions pending longer than six months, tying it with the Northern District of Iowa for the second lowest number in the Circuit. Given that several districts in the Circuit have more than 40 motions pending longer than six months, the District's total indicates a practice of relatively prompt action by the Judges.

Although there seems to be no problem with extended delay in ruling on motions, the data generated by the Advisory Group's survey of federal practitioners indicates that some practitioners believe that, within a particular case, a Judge's delay in ruling on a particular motion may be the source of delay in that action. See Responses to Questions 35 and 36, Appendix C-1. The Advisory Group recognizes that such intra-case delay in ruling on motions, especially dispositive motions, may result in some delay. The Advisory Group found, from the Judges' interviews, sensitivity to

this problem and a willingness to enhance the speed in ruling. The Advisory Group suggests, however, that some delay of this sort is inevitable in an adversarial system and that the survey data does not suggest that intra-case ruling delay is, at this time, a significant problem.

3. Trends in District Resources

The trends in the use of court resources have not caused, until most recently, any particular problem. The District has authorized three active judgeships. With Judge Porter's taking senior status in March of 1992, there is now a vacancy. The vacancy was announced in December of 1991, and it has not been filled to this point in time. In light of the recent election results, the Advisory Group anticipates that it may be many months before the new Administration will nominate, and the Senate confirm, a third active judge. This delay, while probably inevitable in the democratic process, will likely place a serious burden on the active Judges.

Fortunately for the District, the substantial contributions of Senior Judges Fred Nichol, Andrew Bogue and Donald Porter have enabled the Court to cope with its docket despite a vacancy. See Responses to Question 3, Appendix C-1. The Advisory Group cautions, however, against any long-term reliance on the Senior Judges.

Other court resources besides the number of judges seem appropriate. The interviews revealed no specific concerns by the Judges about court resources. The Court has a sufficient number of

law clerks and staff, and the circumstances including salaries seem to be satisfactory to attract qualified persons. Library resources are presently adequate, and personal computers have been purchased for each Judge's secretary and law clerk.

The District's current status, overall, is admirable. The civil docket is free from delay and matters are typically resolved expeditiously. While the costs of litigation may seem high compared to costs forty years ago, the Advisory Group found no indication that costs were excessive; in fact, the Advisory Group believes that costs in the District are relatively lower than adjoining districts.

B. COST AND DELAY

1. Assessment of Excessive Cost and Delay in Civil Litigation

In this section of the Report, the Advisory Group will provide its assessment and evaluation of the District's docket conditions. Consistent with the focus of the CJRA process, the issues are whether the District is experiencing "delay" and whether civil litigation in the District is "excessively costly".

a. Delay

The Advisory Group has determined that the District is not "experiencing delay". When the average civil case is resolved within a median time of eight months and the overall number of filings is declining, the District simply cannot be said to suffer from "delay".

The Advisory Group concludes that, while delay is not a

problem, the reason the District has avoided any such problem is that the Court has already adopted, by Local Rule and Scheduling Order, measures to expedite the resolution of civil matters. The Advisory Group's survey of federal practitioners (Appendix C) confirms the conclusion. As one lawyer commented: "I don't think delay is much of a problem in the Federal Court; however, the scheduling orders are a good idea." The District has avoided any serious delay problem by taking incremental steps, over time, to address the problem.

b. Excessive Costs of Litigation

The Advisory Group has also determined that there is not "excessive cost" concerning civil litigation in this district. The Advisory Group gathered information concerning litigation costs in a number of ways. First, the members of the Advisory Group were experienced lawyers with, collectively, extensive experience with litigation costs. Second, the Advisory Group interviewed the Judges, but none of the interviews indicated any information regarding excessive cost problems. Third, the Advisory Group also invited the other lawyers to speak to the Advisory Group, and none of these lawyers indicated any source of information regarding excessive costs.

In addition, the Advisory Group conducted a survey of federal practitioners (discussed further in Appendix C). Regarding costs of discovery, the survey data presents some suggestive information. Most of the survey data flatly refutes any suggestion that the District is experiencing excessive costs. For example,

when asked about the costs of discovery in the lawyer's latest completed case, over 70% of the respondents reported that the costs were "about right" or "below what should have been expected," given the nature of the case. See Responses to Question 66, Appendix C-1. The survey respondents were asked whether, as a general matter, the costs of taking depositions (an important discovery technique) were "so high that litigants are unable to pursue the desired course of legal action?" The majority of respondents answered that deposition costs in the District do not constitute an obstacle for litigants. See Responses to Question 28, Appendix C-1. In general, the survey data does not indicate a problem with excessive costs.

There is, however, some data which appears slightly inconsistent with the responses to other questions. Specifically, in their responses to Question 19, 85 percent of the lawyers suggest that the costs of discovery are, at least sometimes, "too high." While this data requires further study, and comparison to data from other districts, the Advisory Group concludes that the costs of discovery in the District are not excessively expensive.

In sum, the Advisory Group believes that the cost of litigation may be high, but it is high everywhere. It is not excessively high in this District compared to other districts. In fact, the Advisory Group has concluded that the costs of litigation within the District are lower than in a number of the surrounding districts.

c. Summary

The Advisory Group's conclusion that neither delay nor excessive costs are currently a problem in the District is based on several sources of information. First, there is no statistical information suggesting that delay is a common feature of the docket. Second, none of the District's Judges indicate, in their Advisory Group interviews, that they perceive any serious delay. Third, the experienced lawyers who compose the Advisory Group have not observed either delay or cost problems. Fourth, the results from the Advisory Group's survey of federal practitioners do not indicate that the members of the practicing Bar perceive any problem with delay or cost in the civil docket.

The Advisory Group has examined all these sources thoroughly. All the information available is consistent. Under present circumstances, the District's civil docket is not experiencing delay or excessive cost problems.

2. Principal Causes of Cost and Delay

Since the Advisory Group has concluded that there are not excessive costs or delay problems, this issue is largely moot. The Advisory Group, mainly through its experience, its collective deliberations and the empirical information gathered by its survey of practitioners, has developed ideas about potential sources of excessive cost and delay. At the present time, however, none of these potential sources have proven to create any serious problems.

3. Potential Sources of Delay

One potential source of delay within the District would

be the failure of the President to nominate, and the Senate to confirm, a new Judge to fill the current vacancy. Any extended delay would place an undue burden on the active Judges and require extended reliance on the Senior Judges.

The current reliance on the Senior Judges is another source of potential delay. A decision by one or more of the Senior Judges to reduce his caseload would adversely impact the civil docket.

Another potential source of delay might be an unforeseen expansion in the criminal docket causing, by virtue of the Speedy Trial Act and other Constitutional requirements, the Court to give a lower priority to civil actions. As indicated by the experience of a number of districts, a higher volume of criminal cases would erode the amount of time available for supervision of civil litigation. While such an expansion has not happened in the District, one Judge noted in his Advisory Group interview that he was concerned about the prospect that the U.S. Attorney's Office might pursue what the Judge called "de minimis" cases. To the extent that such cases would expand the volume of criminal cases, it would potentially present an additional source of strain on the Court's ability to supervise civil litigation.

Relative to other districts, a large percentage of the District's land mass is subject to Native American tribal jurisdiction and, accordingly, to the jurisdiction of the federal courts. A relatively high percentage of the District's population lives on, or is a member of, various tribal jurisdictions. As a

consequence, the District has historically had a certain volume of cases which focus on issues of tribal-state relations and other Indian Law matters.

Given that the state of the law regarding many of the tribal jurisdiction questions is in flux, the Advisory Group recognizes that this could be an area of increased volume and complexity for the District. As such, it might be considered a potential area of civil docket delay.

Another potential source of delay might be the passage of legislation by Congress which increases the work load of the federal court without any commensurate increase in judicial resources. For example, Congressional efforts to make criminal federal felonies out of matters which were previously considered the exclusive province of state law (*e.g.*, "car jacking") carry with them the potential for excessive amount of work.

The Advisory Group also investigated whether an additional potential source of delay and cost might be the relative inexperience of practitioners in federal court. The Advisory Group's survey seems to reject this possibility. The Group's study indicates that many of the practitioners in the federal court system have considerable experience. See Responses to Questions 78 and 80, Appendix C-1. Hence, this does not appear to be a problem in the District.

4. Summary: "If it ain't broke, don't fix it."

The District presently has an admirable record at resolving civil disputes without inordinate delay or excessive

expense. In terms of avoiding delay, the District could easily share the label of a "rocket docket district." In terms of costs, the Advisory Group found no indication, in judicial interviews or in its empirical study, that litigation costs were "excessive." The District has been successful under the Federal Rules of Procedure in demonstrating that the traditional model of civil litigation can work well.

Under these circumstances, the Advisory Group's Recommendations are, for the most part, suggestions for modest changes. Some Recommendations urge the Court to maintain current practices and, for the present, to resist changes in the traditional civil litigation model. The Advisory Group urges that the District not undertake procedural change for the sake of change. Not every idea labeled as a "reform" necessarily has, under the District's circumstances, merit.

The Advisory Group ultimately recommends that the Court continue to maintain its high standards and its current procedures for expeditious and relatively inexpensive resolution of civil disputes. The traditional civil litigation system - honored, but reformed over time - is alive and doing very well in the District.

III.

ADVISORY GROUP REOMMENDATIONS AND THEIR BASIS

III. ADVISORY GROUP RECOMMENDATIONS AND THEIR BASIS

The Advisory Group, after considerable deliberation over many months and through numerous draft Recommendations, has prepared the following Recommendations for the Court's consideration regarding the development of the CJRA Plan. Following each Recommendation is a deliberately succinct explanation as to the Advisory Group's reasoning. Further discussion regarding the reasoning underlying a Recommendation can often be found in Part II of this Report.

In many cases, the reasoning is self-evident, and the Advisory Group is reluctant to address the Judges of the District as though they could not understand such simple matters. In some cases, the Advisory Group has indicated, with a subsequent citation, the relevant provision in the Civil Justice Reform Act. This approach is designed to facilitate the review of the Report by the Court and by various review committees. The Advisory Group carefully considered all of the "principles" and "techniques" identified in the CJRA and discussed their applicability to the District's circumstances. The citations are designed to simplify review and research regarding this Report.

For further convenience of the Court and reviewing bodies, the Advisory Group has organized its Recommendations in four categories: Judicial Management of Civil Litigation (Nos. 1-7); Discovery (Nos. 8-12); Alternative Dispute Resolution and Settlement (Nos. 13-17); and General (Nos. 18-23). Since a number of the Recommendations have overlapping significance for more than one of these categories, the Advisory Group has numbered the Recommendations consecutively.

A. RECOMMENDATIONS

1. The District should maintain its current Local Rules and other procedures that provide systematic differential treatment of certain types of civil litigation. CJRA §473(a)(1).

Advisory Group Commentary

The Advisory Group does not recommend adoption of any formal program of differentiated case management (i.e., tracks). The Court already has mechanisms, with the scheduling letter and pretrial conferences, to identify large and potentially unmanageable cases. When the District has a median disposition time of only eight months, there seems little need for a "fast track". Additionally, the survey indicates that the practicing lawyers are opposed, at this time, to a formalized differential case management program. See Responses to Question 4, Appendix C-1.

2. The District should not presently consider developing guidelines or Local Rules specifically tailored to larger, complex cases. CJRA §473(a)(1).

Advisory Group Commentary

The Advisory Group concludes that the District does not have, at present, a problem with larger, complex cases. Neither the interviews of the Judges nor the survey of practitioners revealed any problem of this type. Moreover, the existing Scheduling Orders and pretrial conference procedures seem adequate to handle any unusual cases.

3. The District should maintain its Local Rules and other procedures that create early and continuing involvement of a judicial officer in the pretrial process. §473(a)(2).

Advisory Group Commentary

With its Local Rules and Standing Orders, the District presently achieves early judicial supervision of the pretrial process. Early judicial involvement through an initial pretrial/scheduling conference, as currently practiced, is strongly favored by the District's practitioners. See Responses to Question 9, Appendix C-1. The present procedures appear to provide adequate control in the event a case becomes delayed or otherwise unmanageable.

4. The District should establish a requirement, by Local Rule, that each party will be represented at each pretrial conference by an attorney with authority to bind the party on relevant matters. CJRA §473(b)(2).

Advisory Group Commentary

The District already has established, as a matter of Standing Orders and common practice, the expectation that each party will be represented at each pretrial conference by an attorney appropriately authorized to enter into agreements regarding the case. While there may be a problem of inadequate authority in some districts, there was no indication that such a problem exists here. Even so, the current practice might be easily formalized in a Local Rule, and it seems unlikely that this new rule would increase litigation costs.

5. The District should maintain its current requirement, in Local Rule 29.1, regarding stipulated continuances and should not require that all stipulations for continuance be signed by the parties. CJRA §473(b)(3).

Advisory Group Commentary

The Advisory Group considered the suggestion, found in §473(b)(3) of the CJRA and in some of the literature, that all stipulations for continuance be signed by the parties. The Advisory Group found no indication that continuances were a problem in the District. The practitioner survey results reject the idea that costs in the District are significantly increased by continuances. See Responses to Questions 37 and 64(a), Appendix C-1. The attorneys suggest that, as a general matter, continuances have no impact on litigation costs or delay. See Responses to Questions 64(a) and (b), Appendix C-1. The Advisory Group, accordingly, has no reason to recommend a "party signature" requirement, especially when such a requirement is likely to increase litigation costs.

6. The District should not adopt an "early neutral evaluation" program. CJRA §473(b)(4).

Advisory Group Commentary

The Advisory Group studied various materials regarding ADR programs including early neutral evaluation. In particular, the Advisory Group reviewed the Plan of the Western District of Missouri. The Advisory Group concluded that there would be few, if any, benefits for practice in South Dakota from such a formal program.

The interviews of the District's Judges indicates a judicial sensitivity to early settlements, and the Judges seem to be making greater use of the Magistrate Judges in this regard. This view is bolstered by the survey results. The District's practitioners support expanded use of ADR. See Responses to Question 46, Appendix C-1. The survey data suggests that the District's practitioners support the use of ADR procedures as a post-discovery settlement technique, rather than at an earlier stage of the pretrial process. See Responses to Question 48(c), Appendix C-1. Under these circumstances, before adopting an expensive bureaucratic program, the Advisory Group recommends that less expensive alternatives should be explored.

7. The Advisory Group recommends that the Court utilize as the most significant factor in reducing delay, and promoting settlement, the Court's early setting of a firm trial date.

Advisory Group Commentary

The Advisory Group, after extended deliberation and debate concluded that, instead of setting a final pretrial conference deadline, the early setting of a firm trial date is the most important incentive for attorney preparation and eventual settlement of civil actions. The District already has a policy of holding relatively firm trial dates. See Responses to Question 57, Appendix C-1. The Advisory Group also commends the Court for its necessary flexibility in these matters. The Advisory Group, however, believes that as case volume or case complexity increases, the Court should look first to its control of trial date scheduling as the means to maintain present standards. The Advisory Group respectfully submits this view for the Court's consideration.

8. The District should maintain its Local Rules and other procedures, including Standing Orders, that provide, through pretrial conferences and other oversight, monitoring of discovery processes. CJRA §473(a)(3).

Advisory Group Commentary

The Advisory Group concludes that the District's procedures presently provide adequate monitoring of discovery. Neither the Judges nor the practitioners perceive discovery to be the source of delay or excessive costs. See Responses to Question 8, Appendix C-1. The Court has, of course, the ability to fashion new Local Rules or to issue orders in a particular case if the District's circumstances would change.

9. The District should continue to encourage cost -effective discovery through the informal discovery practices common within the District's bar. CJRA §473(a)(4).

Advisory Group Commentary

The Advisory Group's deliberations, and the input from the Federal Practice Committee, indicate that "informal" discovery exchanges are presently a common feature of the District's practice. These practices are apparently part of the District's rich tradition of civility. See Responses to Question 83, Appendix C-1. Informal discovery, and the cost efficiencies it brings to the process, is already commonplace in the District.

Moreover, the District's Local Rules already encourage informal resolution of discovery disputes. See D.S.D. L.R. 37.1; Responses to Questions 30(a) and 30(b), Appendix C-1. At present, there is no need for any further formal rules implementing informal procedures. See Responses to Question 31, Appendix C-1.

10. The District should not adopt mandatory mutual disclosure procedures in place of the current discovery rules. CJRA §473(a)(4).

Advisory Group Commentary

The Advisory Group concludes that, in the District, the current discovery rules work well. Again, the median time to disposition is only 8 months and there is no backlog of old cases or old motions. Nearly 60% of the attorneys surveyed reject any suggestion that the current discovery rules are generally abused; only 20% perceived a "general abuse" problem. See Responses to Question 21, Appendix C-1. During their interviews, moreover, none of the Judges indicated any perception of systematic discovery abuse.

Since the current discovery rules work in the District as they were designed, the Advisory Group does not recommend such a major change as "mandatory mutual disclosure".

11. The District should maintain its current requirement, found in its Local Rule 37.1, that every discovery motion must be accompanied by a certification attesting that the attorneys have made a good faith effort to resolve the dispute informally. CJRA §473(a)(5).

Advisory Group Commentary

For many years, the District has had a local rule requiring that, before filing a discovery motion, the parties must attempt a good faith, informal resolution of the discovery dispute. See D.S.D.L.R. 37.1. The consensus view of the Judges, the Advisory Group and the practitioners surveyed is that this local rule works well. See Responses to Question 30(a), Appendix C-1. The present local rule, accordingly, should be retained.

12. The District should maintain its current program, in the Local Rules and other procedures, calling for the parties to present a recommended discovery schedule as part of their response to the Court's scheduling letter. CJRA §473(b)(1).

Advisory Group Commentary

The Advisory Group has concluded that the Court's current procedures regarding early discovery scheduling are satisfactory. There is no indication of discovery abuse and also no indication that a procedure requiring a joint discovery plan would be an improvement. The District's practitioners apparently oppose any expanded pre-discovery requirements. See Responses to Questions 12 and 65, Appendix C-1. The Advisory Group also concluded that, in all likelihood, the joint discovery schedule would only increase litigation costs without improving disposition times.

13. The District should prepare a list of available, reasonably-priced alternative dispute resolution (ADR) programs within the District and should make this information available to all counsel as part of the Court's request for scheduling suggestions, routinely sent to all counsel under Fed. R. Civ. Proc. 16. CJRA §473(a)(6).

Advisory Group Commentary

Although mandatory ADR would not presently be appropriate for the District, see infra Recommendation No. 14, the Advisory Group believes that voluntary ADR programs should be available and encouraged. The District should encourage such activities by providing information about ADR programs.

There are several bases for this Recommendation. The Advisory Group's research indicates that the Northern District of California has provided such information with a measure of success. The practitioner survey indicated, moreover, that the District's lawyers consider most common forms of ADR to be "helpful" and that they are generally receptive to some expanded use of voluntary ADR techniques. See Responses to Questions 45 and 46, Appendix C-1. The Advisory Group has also identified a number of ADR services within the District, and these will be forwarded to the Court.

14. The District should not adopt a mandatory referral system sending some or all cases to alternative dispute resolution programs. CJRA §473(a)(6).

Advisory Group Commentary

The Advisory Group recognizes that, in some districts, the volume and complexity of the civil docket may argue for the use of mandatory and/or binding ADR programs. In South Dakota, however, neither the Judges, the Advisory Group nor the practitioners surveyed believe that the District needs a mandatory ADR program. The practitioners overwhelmingly reject mandatory ADR procedures. See Responses to Question 47, Appendix C-1. A formal ADR program is not necessary under the District's current circumstances.

The Advisory Group, based on its collective experience, also believes that a mandatory ADR program would not, under the District's circumstances, reduce disposition times. Moreover, as one of the Judge's observed in his interview, the ADR program would probably increase litigation costs. For all these reasons, the Advisory Group declines to recommend any formal ADR program to the Court.

15. The District should amend its Local Rule 68.1 to require that, at any settlement proceeding, the parties either (1) provide their counsel with authority to settle or (2) be available by telephone. CJRA §473(b)(5).

Advisory Group Commentary

As with certain other Recommendations, the Advisory Group believes, from its deliberations and the interviews with the Judges, that the District does not have a problem with inadequately authorized attorneys for purposes of settlement. Even so, since an amendment to Local Rule 68.1 would be easily developed, the Advisory Group recommends the formalization of existing practice.

16. The District should consider the more frequent, if not routine, use of the Magistrate Judges as "settlement judges" at or about the time of a final pretrial conference.

Advisory Group Commentary

The Advisory Group extensively examined the District's settlement practices and the role, if any, of the District's part-time Magistrate Judges at several meetings and with the District's Judges. During the course of the CJRA review process, it appears that both of the active Judges have started, on their own initiative, to use the Magistrate Judge in their respective Divisions as a "settlement judge." The Judges report, in their interviews, some success.

The survey of practitioners indicates substantial interest in post-discovery settlement opportunities. See Responses to Question 48(c), Appendix C-1. The Court's use of the Magistrate Judges as "settlement judges" would seem to address this interest by the lawyers without the need for creating any new (and possibly expensive) programs.

17. The Advisory Group recommends that the District's part-time Magistrate Judges be afforded the opportunity to attend training sessions regarding civil litigation and settlement techniques, such as those provided by the Eighth Circuit.

Advisory Group Commentary

This Recommendation complements Recommendation No. 16. If the duties of the Magistrate-Judges would be expanded beyond their present focus on criminal matters, the District should provide the appropriate financial support and training to facilitate the success of these officials at their settlement tasks. The Advisory Group believes that the Magistrate Judges' willingness to attend such programs will, over time, alleviate the apparent reluctance by practitioners to have them serve as "settlement judges" and as "discovery referees". See Responses to Question 33, Appendix C-1.

18. The Advisory Group recommends that the Executive and Congressional branches of the federal government take steps to fill the District's current vacancy as soon as possible.

Advisory Group Commentary

The Advisory Group's investigation of the District's civil docket revealed that, while the situation is presently satisfactory, the current vacancy in the Central Division presents current and potential problems. The interviews of the Judges demonstrate that, because of the large distances between Courthouses, this vacancy creates substantial burdens on the two active Judges. With a vacancy, the District, with its large geographic area, must also rely on its Senior Judges more than sound management would recommend.

While the District currently has a salutary record concerning its civil docket, its future success depends on prompt action by the Executive and Congressional branches.

19. As a method of reducing expense in civil actions, the District should adopt this Local Rule on Divisional Venue:

A. *Division Venue Generally.*

(1) *Single defendant.* All actions brought against a single defendant who is a resident of this District must be brought in the division where the defendant resides, or where the claim for relief arose.

(2) *Multiple defendants.* All actions brought against multiple defendants, all of whom reside in the same division, must be brought in that division, or in the division where the claim for relief arose. In the event that at least two of the defendants reside in different divisions, such action shall be filed in any division in which one or more of the defendants reside, or where the claim for relief arose.

(3) *Non-resident defendant.* In the event that none of the defendants is a resident of the District of South Dakota, the action shall be filed in the division where at least one plaintiff resides, or where the claim for relief arose.

(4) *Corporations.* For purposes of this Rule, a corporation shall be deemed to be a resident of the division in which it has its principal place of business. If a corporation does business throughout the District and has no site therein that can properly be deemed its principal place of business, it is deemed a resident of any division where it conducts activities which render it subject to personal jurisdiction in this District.

B. *Where to Submit Papers.* All pleadings, motions or other documents offered for filing in a case in a Division shall be delivered to the Clerk's office in that Division.

C. *Departures from this Rule.*

(1) In all cases filed under the provisions of this Rule, the Court, in its discretion, may order a transfer to another division pursuant to 28 U.S.C. § 1404(a).

(2) Nothing contained within this Rule shall affect the Court's discretion to depart from the provisions of this Rule, including changing the location where any proceedings shall be held, transferring a cause to a different division, or requiring to be submitted other than as directed in this Rule.

Advisory Group Commentary

At its third meeting, the Advisory Group voted to establish a local rule on Divisional Venue in order to reduce "forum shopping" and to respond to increased inter-Divisional practice within the District. Some of the attorneys interviewed at the second meeting had expressed concern about these problems. This proposed local rule is based on general venue principles and is derived from the local rule for the Eastern District of Missouri.

20. The Advisory Group recommends that Congress repeal or revise the federal Sentencing Guidelines legislation so that the sentencing procedures no longer unduly burden the District's docket.

Advisory Group Commentary

The Advisory Group considered the potential impact of the District's criminal docket on the status of the civil docket. While the volume of criminal cases does not presently appear to create delay in the civil docket, the Advisory Group has concluded that the federal Sentencing Guidelines create a serious burden for the civil docket.

Several of the District's Judges and Senior Judges reported that the Sentencing Guidelines require that they devote far more time to sentencing matters than before the imposition of the Guidelines, and these Judges believe this extra time would be better directed to maintaining, or improving, the civil docket. These interviews also indicate that at least one Judge believes that the Sentencing Guidelines have a disproportionately harsh impact on Native American defendants. Under these circumstances, the Advisory Group has concluded that the Sentencing Guidelines should be eliminated or reduced to an "advisory" status.

21. Following the adoption of its CJRA Plan, the Judges of the District should continue their practice of speaking to local Bar Associations and other relevant groups about the conditions of the District.

A. The Advisory Group members should participate in a State Bar CLE program regarding the District's Plan.

Advisory Group Commentary

The Judges of the District are hardworking, dedicated persons with busy schedules. Even so, they have routinely found time to speak to local Bar Associations, Inns of Court programs and at Law Schools. They are to be commended and should be encouraged to continue these important professional and public activities. Over time, these activities will enhance public understanding and will promote professional development among members of the Bar.

22. The District should request that the Advisory Group undertake, at least once annually, an examination of the District's Local Rules and propose changes to the Local Rules.

Advisory Group Commentary

This Recommendation derives primarily from the spirit of the CJRA. It is also supported by the experience a number of the members had serving on the Local Rules Revision Committee. Finally, this is part of the Advisory Group's commitment to continuing cooperation with the Court.

23. The District should maintain and expand the representativeness of the Advisory Group.

A. The Court should consider appointing several lay persons to the Advisory Group to assist securing input regarding litigant perceptions.

Advisory Group Commentary

The Advisory Group conducted an investigation of the conditions of the District's civil docket through several mechanisms: interviews of active and Senior Judges; discussions with experienced lawyers; and an empirical survey of practitioners. Moreover, the Advisory Group's membership included lawyers with extensive experience in federal civil practice. See generally Appendix A. While the Advisory Group has confidence in its information base, it believes its insight into the perceptions of litigants might be enhanced by participation by two or more lay persons.

B. CONTRIBUTIONS TO THE COURT'S PLAN

The District's salutary state of its civil docket has not occurred by accident. The traditional civil litigation system works well in the District because the segments of the system - Judges, lawyers and litigants - make it work. Each participating group has made significant contributions to the current success of the District.

1. Judicial Contributions

The Judges, Senior Judges and Magistrate Judges of the District are dedicated, industrious public officials. They take their jobs seriously, both off and on the bench. Their record shows consistent efforts to maintain and to improve the Court's record at resolving disputes and in dispensing justice.

The District's Judges specifically contribute to the District's success by working long hours, by traveling, by speaking to Bar Association groups and the public, by their activities in programs like the "Inns of Court" and by their serious attention to the issues in a case. The District's Judges have a strong tradition of seeking to improve the District. The Judges have adopted programs to enhance communication (e.g., Federal Practice Committee), to address the problems of indigent litigants (e.g., the District Court Fund and the appointment of counsel) and to improve the Court's rules (e.g., the Local Rules Revision Program). These types of judicial actions make the traditional model work.

The Judges have made many contributions. They will undoubtedly continue this effort.

2. Lawyer Contributions

The lawyers in the District also have made many contributions to the current status. The District's lawyers contribute to the success of the traditional civil litigation system in many ways. For present purposes, these contributions might be summarized as: (1) maintaining traditional standards of professionalism, and (2) maintaining traditional respect for the courts as institutions. Unlike some districts, the District's lawyers maintain a high degree of civility. See Responses to Question 83, Appendix C-1. By all reports to the Advisory Group, the lawyers also conduct civil litigation the way the federal rules and traditional practices command: move the case (i.e., the client's interests) forward towards trial or other resolution. In conducting their practices in this traditional manner, the lawyers make precisely the contributions which the Federal Rules of Civil Procedure and the public would expect.

The District's lawyers also make contributions in ways external to the particular case. The lawyers, for example, serve on various District and State Bar committees dedicated to maintaining and improving the legal system.

3. Litigant Contributions

The public's contribution to the District is mainly in the capacity as litigants. The litigants in the District make those contributions traditionally expected of litigants. The Advisory Group's data here is largely second-hand, but there was no indication that litigants - or the public - were dissatisfied with delay or the costs of civil litigation in the District.

For the future, the Advisory Group would expect that litigants will continue to make those sacrifices required by the federal rules and the District's complementary Local Rules. While other District's may have some arguable basis for drastic actions (such as categorical exclusion of certain types of cases) which would require dramatic sacrifices by some litigants, the District's current experience would not support that approach.

4. Future Contributions

The recommended actions by the Advisory Group include additional contributions to the goals of reducing delay and expense in civil litigation. A number of these Recommendations, particularly those regarding the Court's trial setting practices, call for contributions by the Court. The litigants are required to contribute to maintaining the current efficient state of the docket by the compliance with the various scheduling orders. The contribution of the attorneys is best indicated by the requirements imposed upon them to conduct their case efficiently and to comply with the discovery cut-off and other deadlines.

C. COMPLIANCE WITH THE PRINCIPLES AND TECHNIQUES OF THE CJRA

The Advisory Group has indicated, by notation following certain Recommendations, how these recommendations involve consideration of the principles and techniques for litigation management and cost and delay reduction contained in the CJRA. The Advisory Group's deliberations covered all six of the CJRA's "principles" and all five of the statutory "techniques." Further analysis of each may be found in the discussion following the Recommendations.

D. RECOMMENDATIONS REGARDING THE COURT'S CJRA PLAN

The Advisory Group has been benefitted from the assistance of the Court in many ways. The Advisory Group, accordingly, stands ready to assist the Court in drafting a formal plan by the CJRA's December 1, 1993, deadline.

The Advisory Group has not drafted a formal CJRA Plan. The Recommendations stated under Section III-A serve, in essence, as the recommended plan. The Advisory Group certainly believes the Court can incorporate any of the Recommendations, as indicated, into the Local Rules or into its Standing Orders.

One reason the Advisory Group has not drafted a formal plan is that the Advisory Group's Recommendations are largely aimed at some minor modifications of the Court's Local Rules. In this regard, the prior work done by the Court in revising its Local Rules in conformance with the "Federal Judicial Conference's Local Rule Project" has now proven to be quite helpful to the District. Because of its timely response to the Local Rule Project, the District has already revised its Local Rules, and it does not have to do this as part of its CJRA Plan. In fact, the revised Local Rules serve as a threshold for the proposed Recommendations regarding new Local Rules or other Standing Orders. See Appendix D.

APPENDIX A:

The Membership of the Advisory Group

The Judicial Conference Guidelines suggest that the biographical and other information about the membership of the Advisory Group should be presented in an Appendix format. This is provided in this Appendix.

A further observation is appropriate here. The Advisory Group is very fortunate, for purposes of this Report and otherwise, that a detailed history of the District has been available. The Advisory Group has relied on Peggy J. Teslow's History of the United States District Court for the District of South Dakota (West, 1991) for general information and detailed data about the District's Judges. This book is recommended to anyone interested in the history of the District. More information can be secured by contacting the Clerk's Office in Sioux Falls.

THE HONORABLE JOHN B. JONES
CHIEF JUDGE
UNITED STATES DISTRICT COURT
400 S. PHILLIPS AVENUE, #202
SIOUX FALLS, SD 57102

John B. Jones is presently Chief Judge of the District and one of the District's two active Judges. Following military service, Judge Jones received his undergraduate degree from the University of South Dakota and his law degree from the University of South Dakota School of Law in 1953. Upon admission to the South Dakota Bar in 1953, Judge Jones established a solo practice in Presho, South Dakota. He was appointed as county judge in 1953, and he was re-elected in 1954. Judge Jones served two terms (1956-1960) in the South Dakota House of Representatives. From 1959 until 1967, he was in private practice in Presho. In 1967, Judge Jones was appointed as a Circuit Court Judge in the state court system. He served as a Circuit Judge until 1981, and for 18 years he was the Circuit's presiding judge. Judge Jones attended the National Judicial College and, later, served as a faculty advisor there. Before his appointment to the federal bench, Judge Jones frequently participated in various public service activities; for example, he served as a State Bar Commissioner, as president and vice-president of the South Dakota Judges' Association and as a charter member of the South Dakota Judicial Qualifications Commission. Judge Jones was nominated by President Ronald Reagan as United States District Court Judge for the District of South Dakota, and he was sworn in on December 5, 1981. He became the District's Chief Judge in 1991. Judge Jones currently resides in Sioux Falls, South Dakota. Judge Jones has remained active in bar association, Law School and community matters; he is, for example, one of the founders of the Inns of Court program in Sioux Falls.

THE HONORABLE RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE
515 NINTH STREET, #318
RAPID CITY, SD 57701

Richard H. Battey is presently one of the District's two active Judges. He was born in 1929 at Aberdeen, South Dakota. He was admitted to the South Dakota State Bar in 1953 upon graduation from the University of South Dakota School of Law. He has served as an officer, United States Army, 1953-55; as City Attorney, Redfield, South Dakota, 1955-63; State's Attorney for Spink County, South Dakota, 1959-65 and 1981 to 1985; as a member of the South Dakota Board of Regents, 1967-73, and President for 1969-70; and as a Lecturer, Criminal Justice Studies, University of South Dakota, 1973, 1974, 1975. Judge Battey was appointed by the Supreme Court of South Dakota as a member of the South Dakota Board of Pardons & Paroles, July 1, 1976 to January 1, 1980, Vice-Chairman in 1977-78,

Chairman January 1, 1979. He was a member of the firm of Gallagher & Battey, Redfield, South Dakota, since 1953, and he was a member of the South Dakota Bar, including a term as a State Bar Commissioner 1979-82. He was appointed by President Ronald Reagan as United States District Judge of the District of South Dakota, on October 28, 1985, and he currently is a resident of Rapid City, South Dakota, having assumed the office of United States District Judge on November 2, 1985.

WILLIAM F. DAY, JR., ESQ.
409 SOUTH SECOND AVENUE
SIOUX FALLS, SD 57101

William F. (Bill) Day, Jr. is a member of the law firm of Lynn, Jackson, Shultz & Lebrun, P.C. He is currently the Chair of the Advisory Group for the District of South Dakota. The primary area of Mr. Day's practice is litigation (from both the plaintiff's and defendant's standpoint) including personal injury, professional negligence, trials and appeals in all state and federal courts. Mr. Day served in the military from 1953-55 and again in 1961-62 during the Berlin crisis. He received his LL.B. degree (replaced by J.D. degree) from the University of South Dakota in 1956. During his career, Mr. Day has been State's Attorney for Tripp and Todd Counties, City Attorney for Winner, South Dakota, and a Trial Judge for the Rosebud Sioux Tribe. Mr. Day's professional memberships include: The State Bar of South Dakota (Past President); The American Bar Association; The South Dakota Trial Lawyers Association (Past President); The Association of Trial Lawyers of America; The American Judicature Society; American Inns of Court; Associated School Boards of South Dakota; Defense Research and Trial Lawyers Association; National Conference of Bar Presidents; Supreme Court Historical Society; Fellow, The International Society of Barristers; Fellow, The American Board of Trial Advocates; Fellow, The International Academy of Trial Lawyers; Fellow, American Counsel Association; Fellow, The American College of Trial Lawyers; and Life Member, The American Bar Foundation. Mr. Day served on the District's Local Rule Revision Committee.

GENE R. BUSHNELL, ESQ.
P.O. BOX 290
RAPID CITY, SD 57709

Mr. Bushnell is a partner at Costello, Porter, Hill, Heisterkamp & Bushnell in Rapid City. He received a B.A. from the University of South Dakota in 1960 and a J.D. from George Washington University in 1964. He was an Assistant United States Attorney for the District of South Dakota from 1965 to 1969. In 1969, he entered

private practice at his present firm. Mr. Bushnell's practice is primarily in the areas of personal injury, products liability and worker's compensation. He is a member of the Pennington County and American Bar Associations, the State Bar of South Dakota, Defense Research Institute, Inc., South Dakota Trial Lawyers Association, International Association of Defense Counsel, International Association of Trial Lawyers, and is an advocate of the American Board of Trial Advocates. Mr. Bushnell was a member of the District's Local Rules Revision Committee. Mr. Bushnell led the subcommittee interview of Senior Judge Andrew W. Bogue.

JOSEPH M. BUTLER. ESQ.
818 ST. JOE STREET
RAPID CITY, SD 57709-2670

Joseph M. Butler is a partner in the firm of Bangs, McCullen, Butler, Foye & Simmons in Rapid City, South Dakota. Mr. Butler's practice concentrates on trial practice in the areas of personal injury, property damage and antitrust law. He received his L.L. B. degree from the University of South Dakota and was admitted to the South Dakota Bar in 1954. Mr. Butler's professional memberships include: The State Bar of South Dakota; The American Bar Association; Fellow, American College of Trial Lawyers; International Academy of Trial Lawyers; American Board of Trial Advocates; International Society of Barristers; International Association of Insurance Counsel. He has served as Special Assistant United States Attorney. He has frequently presented CLE programs and has published several articles in the South Dakota Law Review and other journals.

KRISTA H. CLARK, ESQ.
P.O. BOX 727
MISSION, SD 57555

Ms. Clark is Executive Director of Dakota Plains Legal Services (DPLS), a non-profit organization that provides free legal services in civil matters to low-income people. She received her B.G.S. degree from the University of Iowa in 1974, her M.A. from Iowa in 1976, and her J.D. from Iowa in 1979. From 1979 until 1986, she worked as a staff attorney and then as managing attorney in the Eagle Butte office of DPLS, handling cases in tribal, state and federal court. From 1986 to the present, she has been litigation director of DPLS, supervising the work of attorneys and paralegals in the program's seven offices in South Dakota. From September through December, 1992 she also served as Acting Director of DPLS. She is a member of the South Dakota and Iowa bars. Ms. Clark led the subcommittee interview of Senior Judge Donald J. Porter.

WILLIAM F. CLAYTON
CLERK OF COURT
UNITED STATES DISTRICT COURT
400 S. PHILLIPS AVENUE
SIOUX FALLS, SD 57102

Mr. Clayton presently serves as Clerk of the District Court. He received his J.D. degree from the University of South Dakota Law School. Following graduation, he entered private practice in Sioux Falls, South Dakota. He served as States Attorney for Minnehaha County from 1958 to 1964 and served as a State Representative from 1966 to 1968. During his time in private practice, he had extensive experience in both State and Federal Courts. With respect to the Federal Courts, Mr. Clayton served as United States Attorney for the District of South Dakota from 1969 to 1977. In 1977, he served as Reporter for the Speedy Trial Planning Group. In 1979, he was appointed as U.S. Magistrate Judge for the District on a part-time basis while also continuing in private practice. Mr. Clayton was appointed Clerk of Courts in 1981. He has served on many committees regarding the District, including the Local Rules Revision Committee. He has also served on several State Bar Committees.

DAVID R. GIENAPP, ESQ.
205 NORTH EGAN
MADISON, SD 57042

Mr. Gienapp is a partner in the firm of Arneson, Issenhuth, Gienapp & Blair. He graduated from the University of South Dakota in 1964 with a B.S. degree in Political Science and History. He graduated with a J.D. degree from the University of Wyoming Law School in 1967. From 1967 to 1968 he served as a law clerk for the South Dakota Supreme Court. From 1968 to 1969, he was an Assistant Attorney General for the State of South Dakota, and from 1969 to 1976 he was an Assistant United States Attorney in the District. Since 1976, he has been with what is presently the law firm of Arneson, Issenhuth, Gienapp & Blair. He is admitted to practice in Federal District Court, the Eighth Circuit Court of Appeals, the United States Court of Federal Claims and the United States Supreme Court. He is a member of the South Dakota Trial Lawyers Association (past president) and the Association of Trial Lawyers of America. He is an advocate of the American Board of Trial Advocates and a Fellow of the American College of Trial Lawyers. He practices in both State and Federal Courts, being involved in both civil and criminal litigation. Mr. Gienapp has served on numerous State Bar committees and has lectured at numerous legal education programs.

CHESTER A. GROSECLOSE, JR., ESQ.
ONE COURT STREET
ABERDEEN, SD 57401

Mr. Groseclose is a graduate of the University of South Dakota School of Business, and he obtained his law degree from that institution in 1960. While in law school he was a member of the Editorial Board of the South Dakota Law Review. He became associated in 1960 with Campbell, Voas & Richardson of Aberdeen, South Dakota, one of the predecessor firms of Richardson, Groseclose, Kornmann & Wyly. He has been a partner in the firm since 1963. He limits his practice to civil litigation. He has appeared in state and federal courts throughout South Dakota, but for the most part practices in the northeastern part of the state. He is a member of the American Board of Trial Advocates, having served as president of the South Dakota chapter, the International Society of Barristers, the State Bar of South Dakota, where he has served on various litigation-related committees, including several terms on the Medical/Legal Committee, and the American Bar Association and its Litigation Section. He was appointed by the South Dakota Supreme Court to the Rules of Evidence Committee, which recommended a revised version of the Federal Rules of Evidence by the South Dakota Supreme Court in 1978. He has presented several litigation-related papers at CLE seminars and meetings and has authored three articles which were published in the South Dakota Law Review.

LAWRENCE E. LONG, ESQ.
500 E. CAPITOL
PIERRE, SD 57501-5070

Lawrence E. Long is currently Chief Deputy Attorney General of the State of South Dakota. He received his B.S. degree from South Dakota State University and his J.D. degree from the University of South Dakota Law School. Following military service in the U.S. Army, Mr. Long entered private practice in Martin, South Dakota. He is a member of the South Dakota Bar Association. From 1973 to 1990, he served as States Attorney for Bennett County, South Dakota. During this time, he practiced before the Oglala Sioux And Rosebud Sioux tribal courts. He served on the Board of Directors, and as president, of the S.D. States Attorneys' Association, and he also was South Dakota's representative to the Board of Directors of the National District Attorneys Association. Mr. Long also served as the State Bar representative on Board of Directors of Dakota Plains Legal Services for 16 years, including ten years as Chairman.

TERRY L. PECHOTA, ESQ.
1617 SHERIDAN LAKE ROAD
RAPID CITY, SD 57702

Mr. Pechota is a partner in the law firm of Viken, Viken, Pechota, Leach and Dewell. He received a B.S. degree from Black Hills State University in 1969 and a J.D. degree from the University of Iowa in 1972. He went to work with Rosebud Indian Legal Services on the Rosebud Indian Reservation, where he is enrolled, in 1972, and went on to become its Executive Director from 1975 to 1977. From 1977 to 1979, Mr. Pechota was in private practice in Mission, South Dakota, and he served as United States Attorney for the District from 1979 to 1981. From 1981 to 1983, Mr. Pechota was a staff attorney at the Native American Rights Fund in Boulder, Colorado. He has been in private practice in Rapid City from 1983 to the present time. He has practiced extensively in federal courts in South Dakota and elsewhere in the areas of criminal and civil law.

REED RASMUSSEN, ESQ.
500 CAPITOL BUILDING
ABERDEEN, SD 57402

Mr. Rasmussen is a partner in the firm of Siegel, Barnett & Schutz. He works in the firm's Aberdeen, South Dakota office. He graduated Phi Beta Kappa from Arizona State University in 1976 with a B.S. degree in Political Science. He graduated with a J.D. degree from the University of South Dakota Law School in 1979. From 1979 to 1981, he served as a law clerk for United States District Judge Andrew W. Bogue in Rapid City, South Dakota. From 1981 to 1986, he was an assistant United States Attorney stationed in Rapid City. Since 1986, he has been with the law firm of Siegel, Barnett & Schutz. He is admitted to practice in state and federal courts in South Dakota, the Eighth Circuit Court of Appeals and the United States Supreme Court. He is a member of the American Bar Association, the South Dakota Trial Lawyers Association and the Brown County Bar Association. He was also a member of the Local Rules Revision Committee for the Federal District Court in South Dakota. Mr. Rasmussen led the subcommittee interview of Judge Richard H. Battey.

STEVEN W. SANFORD, ESQ.
120 NORTH PHILLIPS AVENUE
SIOUX FALLS, SD 57101

Mr. Sanford is a partner in the law firm of Cadwell, Sanford and Deibert. He received a B.A. degree from the University of the South (Sewanee, Tennessee) and a J.D. degree from the University of South Dakota Law School. Following graduation, he entered private

practice in Sioux Falls, SD. His areas of specialty include banking, commercial, and products liability litigation. He has practiced extensively in both the federal and state Courts. He has served as adjunct Professor of Law at the University of South Dakota Law School. Continuing his experience as a student author, he has published several articles and chapters in books. He has frequently served as a CLE and Seminar speaker for the State Bar of South Dakota, the South Dakota Trial Lawyers Association, the ABA Litigation Section, the ABA Commercial Financial Services Committee, and the ABA National Institute on Agricultural & Agri-Business Financing of the American Bankers Association. He was a member of the District's Local Rule Revision Committee. Mr. Sanford headed the subcommittee interview of Chief Judge John B. Jones.

KEVIN V. SCHIEFFER, ESQ.
230 SOUTH PHILLIPS AVENUE, # 600
SIOUX FALLS, SD 57102

Kevin V. Schieffer is the United States Attorney for the District. He received his B.A. degree (Phi Beta Kappa) in 1982 from the University of South Dakota and his J.D. degree in 1986 from the Georgetown University Law Center. Mr. Schieffer is admitted to practice in South Dakota, Pennsylvania and the District of Columbia; he has been admitted to practice before various federal courts, including the Eighth Circuit and the United States Supreme Court. Prior to attending law school, Mr. Schieffer had worked in law enforcement agencies as a police officer and as an investigator. He was, from 1982 to 1991, Chief of Staff for one of South Dakota's U.S. Senators, the Honorable Larry Pressler. Mr. Schieffer has served as an adjunct professor of law at the Georgetown University Law Center, and he has published articles in the Denver University Law Review and the UCLA Federal Communications Law Journal. In 1991, Mr. Schieffer was appointed as U.S. Attorney by President George Bush. He currently resides in Sioux Falls.

ARLO D. SOMMERVOLD, ESQ.
310 SOUTH FIRST AVENUE
SIOUX FALLS, SD 57102

Arlo Sommervold is a partner in the law firm of Woods, Fuller, Shultz & Smith P.C. in Sioux Falls, South Dakota. He has practiced law in Sioux Falls since graduating from the University of South Dakota Law School in 1957. His practice is limited to litigation, particularly involving damage cases in the areas of products liability, personal injury, business and securities lawsuits. He was the President of the South Dakota State Bar in 1980. Mr.

Sommervold is a Fellow of the American College of Trial Lawyers (present State Chair), a Fellow of the International Academy of Trial Lawyers, an Advocate of the American Board of Trial Advocates (present National Board of Directors) and a member of the National Association of Railroad Trial Counsel.

CHARLES M. THOMPSON, ESQ.
P.O. BOX 160
PIERRE, SD 57501

Mr. Thompson is a partner of May, Adam, Gerdes & Thompson of Pierre, South Dakota. He specializes in litigation and trial work. Mr. Thompson has a B.S. degree from Colorado State University and a J.D. degree from the University of South Dakota Law School. He has been active in many professional organizations, including the American Judicature Society (Board of Directors), American Bar Foundation (Fellow), American Bar Endowment (Board of Directors), American Board of Trial Advocates, American Trial Lawyers Association, and National Judicial College (Board of Directors). He is currently president of the National Conference of Bar Presidents. He has been a member of the Board of Governors and a representative to the House of Delegates of the American Bar Association. He has served as president of the South Dakota Bar Association (1986-87), and of the South Dakota Trial Lawyers Association (1980-81). Mr. Thompson has served on the Federal Advisory Committee for the Eighth Circuit Court of Appeals and on the District's Federal Practice Committee. Mr. Thompson believes that he has had more fun in Bar work than any one human being should ever be allowed.

PROFESSOR DAVID S. DAY
UNIVERSITY OF SOUTH DAKOTA LAW SCHOOL
414 E. CLARK STREET
VERMILLION, SD 57069

David S. Day served as the Advisory Group's Reporter. He is presently a tenured Professor of Law at the University of South Dakota Law School. Professor Day has B.A. (Phi Beta Kappa) and J.D. (Coif) degrees from the University of Iowa. He was an associate with the firm of Latham & Watkins in Los Angeles for five years, and he had extensive litigation experience in federal and California state courts. He is a member of the California State Bar Association and the American Bar Association. In 1983, he joined the University of South Dakota law faculty where he teaches primarily in the civil procedure and constitutional law areas. Professor Day has published many law review articles in these areas, and he has frequently presented CLE and other programs. He served a term (1989-1993) as a member of the Federal Advisory

Committee for the Eighth Circuit Court of Appeals. Within the District, he has served on the Federal Practice Committee (1985-present) and as the Reporter for the Local Rules Revision Committee (1989-92). He was the primary drafter of this Report, and he gratefully acknowledges the many insightful suggestions from the members of the Advisory Group and from the District's Judges and Senior Judges.

APPENDIX B:

The Operations and Procedures of the Advisory Group

THE OPERATIONS AND PROCEDURES OF THE ADVISORY GROUP

In this Appendix, the Advisory Group will present, in largely chronological fashion, a narrative regarding its operating procedures during the past two years. In this regard, the Advisory Group seeks to comply with the Judicial Conference guidelines.

The Advisory Group was established by an Order of then Chief Judge Donald J. Porter on March 1, 1991. Judge Porter's order, after consultation with Judges John B. Jones and Richard H. Battey, named an Advisory Group composed of ten persons. The order contemplated that Chief Judge Jones would fill out the balance of the Advisory Group membership.

During the Spring of 1992, Chief Judge Jones completed the Advisory Group membership, and he appointed William F. Day, Jr., to be the Advisory Group Chair. Chairperson Day began informal consultation with members of Advisory Groups from other districts and followed up on the informal contacts with communications seeking information from other Advisory Groups. The Chair directed that materials be regularly communicated to the members for their inspection and review. Early in the process, the Judges, the Chair, and other members viewed a videotape featuring the Honorable William W. Schwarzer, Director of the Federal Judicial Center. A large amount of documentary material was also reviewed.

During the summer and fall of 1991, the Advisory Group was engaged in the review of materials that were circulated by the Chair and by the Reporter, Professor David S. Day of the University

of South Dakota Law School. The Reporter reviewed a number of the CJRA Reports which were already available and began to secure information regarding the state of the civil docket in South Dakota. In this regard, the Clerk of the Court, William F. Clayton, was particularly instrumental. The Reporter also met with the Judges and received a large amount of material that the Judges had received at various meetings and briefings. The Judges were uniformally supportive of the Advisory Group's various efforts.

The members of the Advisory Group also circulated various information. For example, Mr. Charles Thompson circulated to all members an article that explained the difference between a "litigator" and a "trial lawyer". The circulation of the background material generally prepared the members for their initial meeting.

The First Meeting

The first meeting of the CJRA Advisory Group was held on May 15, 1992, in Sioux Falls, South Dakota. An agenda was circulated before the meeting, and it can be found at Appendix B-1 below. Chief Judge Jones welcomed the Advisory Group and provided an overview of its duties under the CJRA.

For present purposes, the Advisory Group's discussion covered a number of topics relevant to the CJRA process including the existence and extent of "delay" in civil litigation, docket conditions generally, the presence of "excessive expense" for civil litigants within the District, the need for new procedures and the

need for alternative dispute resolution (ADR) procedures. The Advisory Group also reviewed the CJRA Report by the District of Wyoming, a copy of which had been distributed to every member of the Advisory Group at the suggestion of Chief Judge Jones.

Following the general discussion, the members resolved to engage in various types of fact-finding activities. These included an empirical survey of federal court practitioners, review of documents, and interviews of the District's Active and Senior Judges. The Advisory Group generally directed the Chair, and the Reporter, to develop appropriate plans for these activities.

The Second Meeting

The second meeting of the Advisory Group was held on July 23, 1992. This meeting had two basic purposes regarding the Advisory Group's effort to secure information. The Advisory Group took the opportunity to solicit comments from the members of the District's Federal Practice Committee and from other members of the Bar who were attending the Judicial Conference. Both the Federal Practice Committee members and the other attorneys were experienced and distinguished members of the South Dakota Bar.

The Advisory Group also took the opportunity to have the Judges, especially active Judges Jones and Battey, respond to questions both from the Advisory Group members and the other attorneys present. There was a lively and prolonged exchange of information that covered a variety of subjects relevant to the CJRA program. In particular, the discussion centered on the existence

and sources of delay within the District and on the existence and sources of excessive costs within the District. The consensus of the attorneys was that the District did not suffer from delay and that litigation expenses, while high, were not excessive.

During the meeting, there were spirited discussions regarding various proposals such as limits on various types of discovery. The meeting also featured comments from one of the District's part-time magistrates, the Honorable Marshall Young, and he related his recent experiences regarding the use of Magistrate Judges as settlement judges in federal civil cases.

Following the second meeting, the Advisory Group began to prepare for interviewing the Judges. To this end, the Reporter circulated an outline of interview questions.

The Advisory Group also began to focus on the task of presenting Recommendations. The Reporter circulated to the entire Advisory Group samples of Recommendations from other Reports. At a later date, the Reporter additionally circulated some Proposed Recommendations for consideration by the members of the Advisory Group.

The Reporter also completed preparation of the questionnaire for use in the empirical survey of practitioners. Discussion of this survey is detailed further in Appendix C.

A third meeting of the Advisory Group was scheduled for September of 1992. Prior to the meeting, in addition to an agenda, the Chair circulated a list of topics for Advisory Group Recommendations.

The Third Meeting

The third meeting of the Advisory Group was held at Rapid City, South Dakota on September 25, 1992. The Agenda is located at Appendix B-2. The Chair had determined that holding a meeting in the western part of the District provided a certain amount of "equity" for the members who were from that part of the state. (For once, they did not have to spend several hours, at a minimum, traveling to the eastern part of the District.)

The meeting was well attended and followed the agenda. Judge Richard Battey was able to meet with the Advisory Group during parts of these discussions and added many valuable comments. He answered questions and, to some extent, provided a preview of his subsequent interview.

During this meeting, the Advisory Group again discussed the topics of delay and excessive expense generally. The Advisory Group reviewed the very latest Federal Court Management Statistics Profile which was provided by Chief Judge Jones. This information confirmed the Advisory Group's earlier conclusion that the District does not suffer from the type of delay or expense problem that has troubled certain districts.

The Advisory Group examined the various Proposed Recommendations. Several of the Recommendations were adopted, and two new Recommendations were drafted during the meeting. Following the meeting, the minutes were circulated including a redrafting of the new Recommendations.

The Interviews of the Judges

In the time period following the September meeting, subcommittees of the Advisory Group interviewed active Judges Jones and Battey and Senior Judges Bogue and Porter. The use of subcommittees was designed to diversify the input into the Advisory Group's information base.

Each of these interviews was conducted in a cordial fashion, the Judges graciously answering questions. The subcommittee members were impressed with the fact that the Judges seemed "prepared" for the interviews. In some instances, the Judge arrived at the interview with a written list of suggestions and other statements he wished to make.

A written report of each interview was prepared and submitted to the Chair and the Reporter. The Chair subsequently circulated the interview reports to all members. The information from these interviews was integrated into the Advisory Group's Report at many points.

In the final stages of its deliberations, the Advisory Group scheduled a meeting for December. Prior to the meeting, an agenda was circulated. Prior to the meeting, a draft of the list of Proposed Recommendations was circulated. The Reporter sent a copy of the data printout from the computer processing of the survey results to each member and a copy of the draft Report.

The Fourth Meeting

The Advisory Group's fourth meeting took place on December 11, 1992, in Sioux Falls. The meeting generally followed the agenda, which can be found at Appendix B-3.

Under the Chair's direction, the Advisory Group carefully reviewed each of the proposed Recommendations. Several of the proposals were reworded, and the explanations for several Recommendations were amended. As revised, all 23 recommendations were unanimously adopted.

The Advisory Group also discussed matters regarding the publication of the Report. The Advisory Group directed that the Chair, Mr. Clayton and the Reporter complete the publication and distribution tasks. After adjournment, the Chair and the Reporter conferred with Chief Judges Jones about scheduling matters.

Following the meeting, the Reporter prepared revisions of Recommendations as directed by the Advisory Group. A final draft of the Report was sent to the Chair for formal presentation to Chief Judge Jones. The final revisions of the Report were prepared by Ms. Peggy Teslow of Chief Judge Jones' office.

APPENDIX B-1
AGENDA
BIDEN COMMITTEE MEETING
MAY 15, 1992
(1:00 P.M., Sioux Falls)

This is an agenda for the first meeting of the Biden Committee ("the Committee"). It will be circulated prior to the meeting to the Committee members. The Chair would welcome additions or suggestions.

I. INTRODUCTION
- A. Comments by the Honorable John B. Jones, Chief Judge
- B. Introductory remarks by William F. Day, Jr., Committee Chair

II. COMMITTEE PERCEPTIONS OF THE DISTRICT'S PROBLEMS: ARE THERE OBVIOUS PROBLEMS?
- A. The existence of "Delay" in civil actions
- B. Court Docket Conditions generally: Civil and Criminal
- C. "Expense" or Costs for civil litigants
- D. Need for new procedures?
- E. Need for alternate dispute resolution (ADR) procedures?
- F. Review of the Wyoming Biden Report (previously distributed)
- G. Other

III. ADOPTION OF COMMITTEE PROJECTS: HOW WILL THE COMMITTEE STUDY THE DISTRICT'S PROBLEMS?
- A. Potential Projects
  1. Survey statistics regarding Docket conditions
  2. Meetings with Judges (active and/or senior)
  3. "Open meetings" for public input: at June Bar Meeting
  4. Meetings with selected attorneys
  5. Written survey of attorneys and/or litigants
  6. Other
- B. Division into Subcommittees with Designated Tasks
  1. Perhaps the committee might solicit the views of attorneys at the State Bar Convention in June. For this, a written questionnaire regarding attorneys' perceptions (to be answered anonymously) might be made available and collected
  2. It may be necessary to divide the subcommittees for the interviews of the judges and senior judges
- C. Discussion of Costs and Benefits Associated with Options

IV. SETTING TIMETABLE FOR VARIOUS COMMITTEE ACTIVITIES
- A. June
- B. September
- C. October
- D. December: Report Due

V. SETTING A MEETING DATE AND TIME FOR SUBSEQUENT ACTIVITIES

VI. PERSPECTIVE ON COMMITTEE'S ROLE IN THE PREPARATION OF THE DISTRICT COURT'S PLAN

VII. OTHER

APPENDIX B-2

AGENDA

September 25, 1992
1:00 p.m.

South Dakota CJRA Advisory Group

I. INTRODUCTION - Chairman William F. Day, Jr.

II. REMARKS - The Honorable Richard H. Battey

(NOTE: these remarks will be scheduled at Judge Battey's convenience.)

III. Update on attorney survey regarding "delay" and "expense"

IV. Other remarks regarding delay and expense

A. The interviews of active Judges
B. The role of Senior Judges

V. Consideration of Proposed Advisory Group Recommendations

VI. Scheduling

A. Future meetings
B. Review of draft Report

VII. Adjournment

(NOTE: We have been asked to submit expenses in a slightly different manner this time. After the meeting, please submit a letter on your letterhead, listing your expenses (airline fare, hotel, meals, etc.). Send it, promptly, to Bill Clayton in Sioux Falls.

APPENDIX B-3

AGENDA
December 11, 1992
10:00 A.M.

South Dakota CJRA Advisory Group

(Third Floor, Federal Courthouse)

I. Introduction - Chairman William F. Day, Jr.

II. Remarks - The Honorable John B. Jones

III. Final Consideration of Advisory Group Recommendations

IV. Review of Draft Report and Data from Attorney Survey

- A. Contingency Fees and Litigation Costs

V. Scheduling

- A. Final Draft of Report

VI. Lunch ?

VII. Adjournment

APPENDIX C:

The CJRA Federal Practitioner Survey

APPENDIX C: THE CJRA FEDERAL PRACTITIONER SURVEY

This Appendix describes the history and purposes of the South Dakota CJRA Advisory Group's Survey of federal court practitioners. The material will be set forth basically in chronological order. A summary of the results of the survey is provided in Appendix C-1.

A. THE INITIAL PLANNING FOR THE SURVEY

The Advisory Group was aware, from its study of other Advisory Group Reports and CJRA Plans, that some of the Advisory Groups had undertaken surveys of various practitioners, litigants or other participants in federal civil practice. The Judges of the District were very supportive of the idea. At its May 1992 meeting, therefore, the Advisory Group concluded that, as a supplement to its own deliberations and other research activities, it wanted an empirical survey of federal court practitioner activities and attitudes. The Advisory Group had concluded that it wanted the survey to be in a questionnaire form with anonymous responses. The consensus was that the use of anonymous responses would provide the maximum latitude for practitioner criticisms, if any.

B. THE PREPARATION OF THE QUESTIONNAIRE

The Advisory Group, through the Chair, directed the Reporter to draft, over the summer, a questionnaire and to propose a plan for securing the desired empirical information. During the summer of 1992, the Reporter initially researched the question of a survey. In addition to research, the Reporter conferred with various academic experts in social science research, including Professor Michael Saks who is a professor of law at the University

of Iowa College of Law. Through Professor Saks, the Reporter contacted Professor David Levine of the Hastings College of Law who is the Reporter for the Advisory Group for the District of Nevada. Professor Levine had the Reporter speak with Mr. Robert Rucker, one of the consultants for the Nevada's Advisory Group. The contact with Mr. Rucker proved to be a major breakthrough since Mr. Rucker graciously sent South Dakota's Reporter a copy of the various surveys which Nevada was undertaking.

The Nevada materials, along with suggested questions from Professor Saks and from members of South Dakota's Advisory Group, formed the nucleus of questions for the survey drafted by the Reporter. The Reporter also used questions from other Advisory Group reports, and he drafted some questions in light of the particular circumstances prevailing within the District of South Dakota. Near the end of August, 1992, this draft questionnaire was circulated for comment to the Advisory Group. Since positive comments were returned, the Reporter set out to arrange for the distribution of the questionnaires.

C. SELECTION OF THE RESEARCH POPULATION

The selection of the research population initially presented some daunting questions. However, with the help of Mr. William Clayton, Clerk of the District Court, the Reporter was able to secure a list of the names of every attorney appearing on any civil action in the District for the prior three calendar years - 1989, 1990, and 1991 ("the counsel list"). The use of the entire set of counsel as represented on the docket sheets eliminated most

questions regarding sampling. The total number of names on the docket sheets for 1989 were 892; for 1990, 864; and for 1991, 1061.

In the interests of reducing both the costs of the project and the manipulation of the information to manageable portions, the Reporter and the Chair decided to exclude two types of names from the counsel list. First, the Reporter excluded all pro se litigants, under the rationale that the best source about federal court practice in South Dakota were those people who were involved with some regularity in the District. Second, for the same reason, the Reporter also excluded the names of any lawyers who did not have a South Dakota mailing address.

The exclusion of pro se litigants and out-of-state lawyers did reduce, as expected, the size of the research population. For example, in 1989, 190 of the 892 names were non-South Dakota lawyers (21.3%). For 1990, 138 of the 864 names were non-South Dakota lawyers (15.97%). For 1991, 182 of the 1,061 names (17.15%) were non-South Dakota residents. From the total 2,817 names appearing during the three years, and following the exclusions for non-South Dakota attorneys and for pro se litigants, the remaining task was the elimination of duplicate name entries. This process confirmed what had been expected by the Advisory Group and the Judges: many federal court practitioners in South Dakota are frequently in federal court. By eliminating duplicate names, the final research population constituted 495 individual attorneys.

The survey questionnaire was mailed to each of the 495 names. Although the Reporter expected, based on his previous experience

with such questionnaires and the high degree of cooperation of the South Dakota bar, that there would be an adequate response rate, various steps were taken to enhance the response rate. The main enhancement factor was a cover letter that accompanied each questionnaire; this cover letter signed by the District's Chief Judge, the Honorable John B. Jones. Another enhancement factor was the decision to enclose a postage paid return envelope.

The mechanics of copying and preparing the envelopes for mailing were handled by a combination of Ms. Peggy Teslow, secretary to Chief Judge Jones, and by personnel from the District Court Clerk's office under Mr. Clayton's direction. The distribution was handled in an extraordinarily short time, and the questionnaires were mailed on or about September 10, 1992.

D. THE RESPONSE TO THE QUESTIONNAIRE

The return rate was quite surprising. Although most questionnaires were mailed out on a Friday, by the next Monday there were already a large number returned to the Clerk's office. A number of attorneys filled out the questionnaire on the Saturday they received it! Eventually, 261 completed questionnaires (out of 495) were returned. The Reporter also received other responses from attorneys who declined to complete the questionnaire. (In each of these cases, the attorneys indicated that they had had such a small number of cases in federal court, at least in recent years, and that they did not feel they could answer the questions with any degree of confidence.)

For purposes of analysis, the return rate was 53%. The

Advisory Group was pleased with this response and with the fact that most questionnaires were comprehensively answered.

The processing of the questionnaires was initially handled at the Reporter's office with the assistance from the University of South Dakota Law School staff and the Reporter's research assistant, Ms. Terri Craig. The bulk of the processing was handled through the University of South Dakota Computer Center. Further processing, particularly of the narrative responses to certain questions, was handled through the Reporter's office, mainly with the assistance of Ms. Kim Holsworth and Ms. Stephannie Bonaiuto.

E. THE AVAILABILITY OF THE RESEARCH DATA

The questions themselves can be found in Appendix C-1 which also represents the response rate to the various choices. For obvious reasons, the narrative responses cannot be represented on Appendix C-1, but copies have been lodged with the Court and are also available from the Reporter.

An analysis of the numerical and narrative responses has been utilized at various points in the Report. Largely because the Report conforms to certain Judicial Conference Guidelines, the Report utilizes only a small percentage of the available data. Under these circumstances, the Advisory Group encourages further research and analysis of the survey data. In particular, the Advisory Group would welcome appropriate comparative analysis with studies from other districts.

Any questions about the questionnaire, the results or any aspect of the Advisory Group's efforts may be directed to the

Reporter or the Advisory Group's Chair. See Appendix A.

APPENDIX C-1:

The Advisory Group Survey Results

This Appendix presents both the survey questionnaire used by the Advisory Group and a partial report on the responses from the surveyed lawyers. Some of the summaries, especially the narrative answers, do not fit into the spaces available on the questionnaire. Copies of all the data are available from the Reporter or the Court. To accommodate the incorporation of the data, the questionnaire has been modified from its original mailing length (12 pages plus cover sheets). The original questionnaire was designed with a smaller number of pages in order to enhance the response rate and to minimize costs.

CIVIL JUSTICE REFORM ACT ADVISORY GROUP (D.S.D.)

QUESTIONS FOR ATTORNEYS

General Instructions

Chief Judge John Jones, Advisory Group Chairman William Day, and the other members of the Advisory Group would greatly appreciate your answering the following questions. Please seal the completed questionnaire into the pre-addressed business reply return envelope, also provided.

All responses will be kept strictly confidential, although some quotes may be used in the Advisory Group's Report. (After its completion, the Advisory Group Report will be available for review in the Clerk's Office.) Please do not identify yourself at any point on the questionnaire.

It is extremely important that we receive your response as soon as possible. While we would like for you to respond to each question, please leave the questions blank if you have any problem responding and go on to other questions. We have tried to prepare the questions in an easily readable format, but (as you undoubtedly appreciate) sometimes the terminology, and the underlying concepts, are complex. Please ignore any question that you do not understand or call the telephone number listed below. Some of the questions provide you with space to explain your response. Please use this space, but we hope you will check the responsive blank even if you do not provide a narrative answer.

Before returning this questionnaire, please tear off and discard this top sheet. Thank you for your cooperation.

Should you have questions, please contact David Day (USD Law School) at (605) 677-5361.

CONFIDENTIAL

I. GENERAL QUESTIONS FOR ATTORNEYS

A. TIMELINESS OF LITIGATION

1. Do you believe that conclusion of civil actions is delayed within the District? N = 256

   3 a. Almost always 1.2%

   6 b. Frequently 2.3%

   140 c. Occasionally 54.7%

   78 d. Never 30.5%

   29 e. Do not know 11.3%

2. Do you believe that judicial resources are equitably distributed between the four Divisions of the District? N = 255

   93 a. Yes 36.5%

   140b. Do not know 54.9%

   22 c. No; if no, what changes would you recommend? 8.6%

   _____

3. Have senior judges played a beneficial role in the District? N = 255

   147 a. Yes, please explain 57.6%

   _____

   6 b. No; if no, why not 2.4%

   _____

   102c. Do not know 40.0%

B. CASE MANAGEMENT

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

4. Differentiated case management generally involves the categorization of cases (*e.g.*, expedited, complex, standard, or simple cases) and assigning case to a particular discovery track for that category. Should the Court consider implementing a formal program of differentiated case management? N = 249

109 a. Yes 43.8%

140 b. No 56.2%

5. Should the Court more strictly enforce the Federal Rules of Civil procedure? N = 253

67 a. Yes 26.5%

186b. No 73.5%

6. Should the Court more strictly enforce the Local Rules of the District? N = 256

51 a. Yes 19.9%

172b. No 67.2%

33 c. Do not know 12.9%

7. Would you find a practice of referring some dispositive motions to a magistrate judge beneficial? N = 256

97 a. Yes 37.9%

118b. No 46.1%

41 c. Do not know 16.0%

8. Do you believe the trial judge should intervene in litigation early in the process? N = 252

85 a. Yes 33.7%

167b. No 66.3%

9. Do you believe the trial judge should conduct an initial pretrial/scheduling conference? N = 252

172a. Yes 68.3%

80 b. No 31.7%

10. Should cases automatically be referred to the magistrate judges? N = 252

43 a. Yes, if yes, which matters? 17.1%

_ 1. All pretrial nondispositive matters

_ 2. All pretrial nondispositive and dispositive matters

_ 3. Other, please specify

209b. No 82.9%

11. Should a magistrate judge generally conduct an initial pretrial/scheduling conference? N = 251

64 a. Yes 25.5%

187b. No 74.5%

12. Do you believe that it would be generally beneficial if the Court required counsel to submit pre-discovery issue memoranda? N = 255

56 a. Yes 22.0%

199b. No 78.0%

C. STACKED CALENDAR

A "stacked calendar", *i.e.*, cases are placed in a queue for a two or three week period, is a practice used by some Districts.

13. Do you find the use of a master trial calendar for each active Judge beneficial? N = 227

163 a. Yes; if yes, to whom is it beneficial (please indicate all of the ones who have benefitted)?

_ 1. Attorneys 71.8%

_ 2. Judges

_ 3. Litigants

64 b. No 28.2%

14. Do you believe the use of a "stacked calendar" would help the Court settle more cases? N = 228

95 a. Yes 41.7%

133b. No; if no, why not? 58.3%

---

15. Do you believe the use of a "stacked calendar" would enable the judges to try more cases? N = 228

81 a. Yes 35.5%

147b. No 64.5%

D. DISCOVERY

16. We are assessing the impact of the discovery process on the timeliness of litigation.

a. Do you generally ask for discovery deadline extensions? N = 256

3 1. Always 1.2%

66 2. Frequently 25.8%

1743. Occasionally 68.0%

13 4. Never 5.1%

b. Do you find that opposing counsel generally asks for discovery deadline extensions? N = 257

7 1. Always 2.7%

94 2. Frequently 36.6%

1503. Occasionally 58.4%

6 4. Never 2.3%

c. Do you generally ask for extensions of time to respond to substantive (non-discovery) motions? N = 256

0 1. Always 0.0%

12 2. Frequently 4.7%

1813. Occasionally 70.7%

63 4. Never 24.6%

d. Do you find that opposing counsel generally ask for extensions of time to respond to substantive (non-discovery) motions? N = 257

1 1. Always 0.4%

30 2. Frequently 11.7%

2073. Occasionally 80.5%

19 4. Never 7.4%

e. In what ways should the Court manage litigation to avoid delays attributable to abuse of the discovery process? (Please check all that you would like to see implemented). N = 245

86 1. More frequent use of available sanctions to curb discovery abuses

94 2. More frequent status checks with litigants and attorneys to monitor the discovery process

41 3. Greater Court involvement in the scheduling of discovery

45 4. Less Court involvement in the discovery process and greater control vested with the attorneys

1165. Narrowing issues early in the litigation process

31 6. Other (please explain)

17. Would the increased use of sanctions during discovery prevent delays in the District? N = 239

107a. Yes 44.8%

132b. No 55.2%

18. If delay is a problem in the District for disposing of civil cases, what suggestions or comments do you have for reducing those delays?

_____

_____

19. In general, are the costs of discovery N = 255

15 a. Always too high 5.9%

91 b. Generally too high 35.7%

110c. Sometimes too high 43.1%

39 d. Normally about right 15.3%

_ e. Sometimes too low

_ f. Generally too low

_ g. Always too low

20. Would a stricter limitation on interrogatories/requests for production properly reduce the costs of discovery? N = 252

34 a. Almost always 13.5%

132b. Sometimes 52.4%

77 c. Rarely 30.6%

9 d. Never 3.6%

21. Do you agree or disagree with the statement that: attorneys generally abuse the discovery process?

N = 253

9 a. Strongly agree 3.6%

49 b. Agree 19.4%

43 c. Undecided 17.0%

130d. Disagree 51.4%

22 e. Strongly disagree 8.7%

22. As a generalization, do you agree or disagree that attorneys over-discover cases? N = 255

6 a. Strongly agree 2.4%

78 b. Agree 30.6%

42 c. Undecided 16.5%

118d. Disagree 46.3%

11 e. Strongly disagree 4.3%

23. In general, do you believe too much time is provided for the discovery of facts? N = 253

43 a. Yes 17.0%

208b. No 82.2%

24. Do attorneys take an excessive number of depositions? N = 254

4 a. Never 1.6%

58 b. Rarely 22.8%

186c. Sometimes 73.2%

6 d. Almost always 2.4%

25. Should the number of "discovery" depositions be limited? N = 243

44 a. Yes; if yes, how should they be limited? 18.1%

199b. No 81.9%

26. Should the Court require more use of telephone depositions to save time? N = 246

97 a. Yes 39.4%

149b. No 60.6%

27. Should the Court require more use of video tape depositions to save time? N = 244

67 a. Yes 27.5%

177b. No 72.5%

28. Are the costs of taking depositions so high that litigants are unable to pursue the desired course of legal action? N = 231

106a. Yes 45.9%

125b. No 54.1%

29. Are the costs for copies of depositions too high? N = 243

138a. Yes 56.8%

105b. No 43.2%

30. Concerning the District's Local Rule 37.1, which requires counsel to attempt a good faith resolution of discovery disputes before filing a motion:

a. As it is currently written, is it sufficient to control the volume of discovery motions? N = 255

1341. Yes 52.5%

43 2. No 16.9%

78 3. Undecided 30.6%

b. Should there be a stricter enforcement of L.R. 37.1? N = 248

39 1. Yes; if yes, in what ways should it be more strict? 15.7%

_____

1152. No 46.4%

94 3. Undecided 37.9%

31. Should the Court require more "informal" discovery? N = 223

101a. Yes 45.3%

122b. No 54.7%

Please explain _____

32. Do you believe that, in order to reduce delay, attorneys' fees and costs involved in litigating cases, it would be just and reasonable if the Court limited pre-trial discovery and motion practice? N = 245

68 a. Yes 27.8%

177b. No 72.2%

Please explain _____

33. Would the use of magistrate judges or "discovery masters" help alleviate some of the problems associated with discovery? N = 233

92 a. Yes, please explain when and how they would help. 39.5%

_____

141b. No 60.5%

E. DISPOSITIVE MOTIONS

34. Do you agree or disagree that the majority of attorneys in the District consistently file frivolous dispositive motions? N = 257

_2_ a. Strongly agree 0.8%

12 b. Agree 4.7%

41 c. Undecided 16.0%

152d. Disagree 59.1%

50 e. Strongly disagree 19.5%

35. Does the Court delay rendering decisions on dispositive motions? N = 254

13 a. Almost always 5.1%

102b. Sometimes 40.2%

119c. Rarely 46.9%

20 d. Never 7.9%

36. Would you favor bench rulings on dispositive motions? N = 258

62 a. Almost always 24.0%

163b. Sometimes 63.2%

28 c. Rarely 10.9%

_5_ d. Never 1.9%

F. COSTS OF LITIGATION

37. In general, do continuances necessitate repeated reviews of the case so that the cost is significantly increased? N = 240

94 a. Yes; if yes, in what percent of cases does this happen? _____ % 39.2%

Generally speaking how much does this increase the cost of a case? _____ %

146b. No 60.8%

38. Do you believe expert witnesses generally charge excessive fees? N = 254

79 a. Almost always 31.1%

170b. Sometimes 66.9%

_5_ c. Rarely 2.0%

_0_ d. Never 0.0%

39. Do you believe the Court should limit the number of expert depositions? N = 247

64 a. Yes; if yes, what should the number be limited to? ____ 25.9%

183b. No 74.1%

40. Do you believe the Court should limit the length of expert depositions? N = 249

42 a. Yes; if yes, what length do you suggest? _____ hours 16.9%

207b. No 83.1%

41. Do you believe the Court should generally deny parties the opportunity to depose experts and, in place of depositions, require the parties to rely upon full and complete written designations of opinions and the basis of opinions? N = 251

30 a. Yes 12.0%

221b. No 88.0%

42. Do you think the Court should limit the number of witnesses used for the trial of a case? N = 253

20 a. Yes; if yes, what should that limit be? _____ 7.9%

223b. No 92.1%

43. Do you think the Court should limit the number of testimonial experts used for the trial of a case? N = 252

50 a. Yes; if yes, what should that limit be? _____ 19.8%

202b. No 80.2%

44. Do you believe the Court should more carefully evaluate the qualifications of expert witnesses testifying at trial? N = 254

135 a. Yes 53.1%

119 b. No 46.9%

G. ALTERNATIVE DISPUTE RESOLUTION

45. If available in the District, would arbitration, mediation, or other forms of Alternative Dispute Resolution be helpful? N = 231

	Helpful	Not Helpful	Don't Know
a. Arbitration	103 42.6%	56 23.1%	83 34.3%
b. Mediation	149 62.1%	32 13.3%	59 24.6%
c. Summary jury trial	74 32.0%	39 16.9%	118 51.1%

d. Other, please specify

---

46. Should the Court consider the expanded use of Alternative Dispute Resolution (ADR)? N = 237

159a. Yes 67.1%

78 b. No 32.9%

47. Do you believe Alternative Dispute Resolution should be N = 246

207a. Voluntary 84.1%

39 b. Mandatory (but non-binding); if mandatory, for 15.9%

_ 1. All cases

_ 2. Some cases, which ones?

---

48. Do you believe that some form of Alternative Dispute Resolution technique should be used?

a. Prior to filing an action 82 1. Yes 37.4% 137 2. No 62.6%

b. Early in the discovery process 125 1. Yes 55.3% 100 2. No 44.2%

c. After discovery is completed 158 1. Yes 70.9% 63 2. No 28.3%

H. GENERAL QUESTIONS

49. If costs associated with civil litigation in the District are too high, what suggestions or comments do you have for reducing the costs? (Please check all that should be used.) N = 202

126a. Alternative Dispute Resolution

116b. Pre-discovery settlement conference

96 c. Court ordered mediation (early neutral evaluation)

26 d. Other, please specify

---

50. Should the District promulgate or delete any additional local rules to reduce costs and/or delay of litigation?

N = 189

30 a. Yes 15.9%

159b. No 84.1%

If yes, please explain

_____

51. Do you have any additional suggestions or comments on how the District can reduce the time or costs of litigation? _____

II. SPECIFIC CASE QUESTIONS

For purposes of this section, we ask that you refer to your most recent completed case in the District (whether completed by trial, dispositive motion or settlement). Your most recent completed case will provide a specific, concrete reference for this set of questions.

A. TIMELINESS OF LITIGATION IN THIS CASE

52. How many months from filing date to disposition date did this case last? Please check the one answer below that reflects the duration of the case for your client.

__ 1	__ 7	__ 13	__ 19	24 More than 24
__ 2	__ 8	__ 14	__ 20	
__ 3	__ 9	__ 15	__ 21	
__ 4	__ 10	__ 16	__ 22	
__ 5	_ 11	__ 17	__ 23	
__ 6	37 12	26 18	__ 24	

(Note: the three totals entered were the three modal responses.
Every blank was selected at least once.)

53. In your opinion, how many months should this case have taken from filing to disposition under circumstances in which the court, all counsel, and all parties act reasonably and expeditiously, and there were no obstacles such as a backlog of cases in the District?

_____(Months)

54. If the case took longer than you believed reasonable, please indicate what factors contributed to the delay. Begin with a (1) indicating the main cause of the delay, a (2) indicating the second leading cause, continuing with (3) and subsequent numbers. (You do not need to rank all of the items; rank only those which you believe contributed to the delay.)

District Court Judge (if applicable):

_ a. Excessive case management by the court.
_ b. Inadequate case management by the court.
_ c. Dilatory actions by counsel.
_ d. Dilatory actions by the litigants.
_ e. Court's failure to rule promptly on motions.
_ f. Backlog of criminal cases on court's calendar.
_ g. Backlog of civil cases on court's calendar.
_ h. Indecisiveness of the judge.
_ i. Court's failure to enforce the rules.
_ j. Inaccessibility of the judge.
_ k. Not enough judges.
_ l. Do not know.
_ m. Other, please specify

_____

55. Do you believe the civil rules expedited the resolution of this case? N = 236

127a. Yes 53.8%
71 b. No 30.1%
38 c. Don't know 16.1%

56. Do you believe that, as a result of the imposition of the civil rules in this case, there was a loss of justice in the ultimate result? N = 240

8 a. Yes 3.3%
214b. No 89.2%
18 c. Don't know 7.5%

57. Was the original trial date postponed? N = 235

77 a. Yes; if yes and if you know, what was the reason? 32.8%
158b. No 67.2%

58. Did you seek any pretrial or trial continuances? N = 235

43 a. Yes; if yes, how many? _____ What was the total number of days, weeks, or months these added to the case? _____ 18.3%

192b. No 81.7%

B. MANAGEMENT OF THIS LITIGATION

As defined above, "case management" refers to oversight and supervision of litigation by a judge, magistrate judge, or by routine court procedures such as standard scheduling orders. See I.B. supra for further details of the definition.

59. The following list contains several case management actions that can be taken by the court. For each listed action, please circle one number to indicate whether or not the court took such action in this one case.

		Was Taken	Was Not Taken	Not Sure	Not Applicable
a.	Held pretrial activities to a firm schedule	1	2	3	4
b.	Set time limits on allowable discovery	1	2	3	4
c.	Enforce time limits on allowable discovery	1	2	3	4
d.	Narrowed issues through conferences	1	2	3	4
e.	Narrowed issues through other methods	1	2	3	4
f.	Ruled promptly on pre-trial motions	1	2	3	4
g.	Set a trial date early in the case	1	2	3	4
h.	Conducted settlement discussions	1	2	3	4
i.	Facilitated settlement discussions	1	2	3	4
j.	Exerted firm control over trial	1	2	3	4
k.	Other, please specify	1	2	3	4

---

60. How would you characterize the level of case management by the Court in this case? N = 237

9 a. Intensive 3.8%

46 b. High 19.4%

122c. Moderate 51.5%

36 d. Low 15.2%

18 e. Minimal 7.6%

4 f. None 1.7%

2 g. Do not know 0.8%

61. Was a judicially hosted "settlement conference" used in this case? N = 238

31 a. Yes 13.0%

207b. No; if not, could a judicially hosted settlement conference have been beneficially used in this case? 87.0%

_ 1. Yes

__2. No; if no, why would such a conference not have been beneficial?

_____

__ 3. Do not know

62. Do you believe more effort should have been used early in the process to narrow the issues involved in this case? N = 238

62 a. Yes 26.1%

176b. No 73.9%

63. For this specific case, do you believe a scheduling conference would have been preferable to standard scheduling orders? N = 238

65 a. Yes 27.3%

173b. No 72.7%

C. DISCOVERY

64. We are assessing the impact of the discovery process on the timeliness of litigation. In your most recent completed case: N = 227

a. What was the impact of any extension(s) on this case in terms of costs? (Please check one)

42 1. Increased costs, by what percent 18.5% _____

_1 2. Decreased costs, by what percent 0.4% _____

1843. No impact 81.1%

b. What was the impact of any extension(s) on this case in terms of time? N = 217

69 1. Increased the length by - 31.8% _____

_1 2. Decreased the length by - 0.5% _____ please go to 11d

1473. No impact, please go to 64(d) - 67.7%

c. How long did the extensions ultimately delay the final resolution of this case? _____

d. How many depositions were taken in this case? _____

e. Were unnecessary depositions taken by counsel for either party? (Please check one) N = 227

20 1. Yes; if yes, please indicate how many depositions were unnecessary. _____ 8.8%

2072. No 91.2%

f. Did taking depositions excessively increase the costs of this specific case? N = 223

32 1. Yes; if yes, please explain 14.3%

1912. No 85.7%

g. Did obtaining copies of depositions excessively increase the costs of this specific case? N = 222

28 1. Yes; if yes, please explain 12.6%

1942. No 87.4%

h. Were discovery practices other than depositions responsible for delay in disposition of this case?

_ 1. No; if no, please go to question 65

_ 2. Yes; if yes, please check all of the discovery practices which caused delays.

_ aa. Failure of counsel to respond in timely manner to discovery requests.

_ bb. Failure of the Judge to rule on discovery matters in a timely manner.

_ cc. Failure of the Magistrate Judge to rule on discovery matters in a timely manner.

_ dd. Unavailability of the Judge to resolve discovery disputes.

_ ee. Unavailability of the Magistrate Judge to resolve discovery disputes.

_ ff. Use by counsel of unnecessary Interrogatories, Requests for Production of Documents or Requests for Admissions.

_ gg. Unnecessary requests for extension of time by counsel.

_ hh. Other, please explain

_ ii. In what ways could the court have managed the litigation to avoid the delays attributable to abuse of the discovery process?

_ 1. More frequent use of available sanctions to curb discovery abuses.

_ 2. More frequent status checks to monitor the discovery process.

_ 3. Greater Court involvement in the scheduling of discovery.

_ 4. Other, please explain

---

65. Would the use of a joint discovery plan (agreed to by the parties) have expedited the processing of this case? N = 226

62 a. Yes 27.4%

164b. No 72.6%

66. For this specific case, were the costs of discovery? N = 230

29 a. High 12.6%

39 b. Slightly high 17.0%

116c. About right 50.4%

15 d. Slightly low 6.5%

31 e. Low 13.5%

67. Would the use of a Magistrate Judge as a "discovery referee" have helped alleviate some of the problems associated with discovery in this case? N = 224

39 a. Yes, please explain when and how they would help 17.4%

185b. No 82.6%

D. COSTS OF LITIGATION IN THIS CASE

68. Please estimate the amount of money that was realistically at stake in this case for your client.

$_____ N = 224

69. What type of fee arrangement did you have in this case? N = 234

48 a. Hourly rate 20.5%

78 b. Hourly rate plus expenses 33.3%

1 c. Hourly rate with a maximum 0.4%

3 d. Set fee 1.3%

83 e. Contingency 35.5%

21 f. Other, please describe 9.0%

---

70. Given the amount at stake in this case, were the fees and costs incurred in this case by your client

N = 230

7 a. Much too low 3.0%

13 b. Slightly too low 5.7%

168c. About right 73.0%

35 d. Slightly too high 15.2%

7 e. Much too high 3.0%

71. Please indicate the total cost your client spent on this case for each of the categories listed below. If you are unable to categorize your client's costs, please indicate the total cost.

__ a. Attorneys' fees $ _____

__ b. Attorneys' expenses (photo-copying, postage, travel expenses, etc.) $ _____

__ c. Consultants $ _____

__ d. Expert witnesses $ _____

__ e. Depositions $ _____

__ f. Other, please describe $ _____

__ g. TOTAL cost of litigation $ _____

72. For this case, were there sufficient delays so that you had to review the case materials at an added cost to your client? N = 232

39 a. Yes; if yes, what percent did this increase the cost of litigating this case? _____% 16.8%

193b. No 83.2%

73. Did continuances necessitate repeated reviews of this case so that the cost was significantly increased?

N = 223

22 a. Yes; if yes, how much did this increase the cost of this case? _____% 9.9%

201b. No 90.1%

E. ALTERNATIVE DISPUTE RESOLUTION

74. If they had been available in the District, would arbitration, mediation, or other forms of alternative dispute resolution have been helpful in this case?

	Helpful	Not Helpful	Don't Know
a. Arbitration	41	118	52
b. Mediation	73	102	44
c. Summary jury trial	32	104	56
d. Other, please specify	____	____	____

75. Were you the attorney for N = 232

126a. Plaintiff 54.3%

106b. Defendant 45.7%

76. Did your client N = 232

94 a. Settle 40.5%

77 b. Win 33.2%

36 c. Lose 15.5%

25 d. Other, please specify 10.8%

General Comments

III. DEMOGRAPHIC INFORMATION ABOUT YOUR FEDERAL COURT PRACTICE

77. Overall, how many years have you practiced law? 1 yr. to 46 yrs.

N = 250

78. How many years have you practiced in the federal District Court system in South Dakota?

1 yr. to 46 yrs. N = 250

79. Please identify your gender: 24 Female 224 Male.

N = 248

80. How many cases (approximately) have you handled in the federal District Court system in South Dakota?

28 have handled 100 or more.

a. How many of these cases have gone to trial? 0 to 100.

N = 240

81. During any given calendar year, how many cases, on average, do you have in the federal District Court system in South Dakota? 52% have 2 or less on average.
N = 237

82. Of the average volume of your federal cases (see No. 81), in which of the District's four Divisions do you primarily practice? N = 250

76 a. Western (Rapid City) 30.4%

25 b. Central (Pierre) 10.0%

24 c. Northern (Aberdeen) 9.6%

105d. Southern (Sioux Falls) 42.0%

20 e. No one Division is my primary location 8.0%

83. In your view, the level of "civility" (apart from technical compliance with the civil rules) among attorneys practicing in the District is: N = 251

75 a. Very high 29.9%

112b. High 44.6%

51 c. Adequate 20.3%

12 d. Poor 4.8%

1 e. Very low 0.4%

THANK YOU FOR YOUR TIME AND COMMENTS

Please return the completed questionnaire in the enclosed envelope. Should you have misplaced the return envelope, please mail the completed survey to:

William F. Clayton
Clerk, U.S. District Court
400 S. Phillips Avenue, #220
Sioux Falls, SD 57102

APPENDIX D:

The Local Rules of the District

LOCAL RULES OF PRACTICE

of the

United States District Court

for the

District of South Dakota

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

In the Matter of the Adoption of Local Rules of Practice in Civil Cases for the District of South Dakota

ORDER

The Local Rules of Practice set out herein having been approved by the Court and by the Eighth Circuit Judicial Council,

IT IS ORDERED the Local Rules of Practice set out herein are declared to be the practice rules applicable to all civil actions in the District of South Dakota, and are supplemental to the Federal Rules of Civil Procedure, and shall be in full force and effect on and after the first day of July, 1992.

Dated this 2nd day of June, 1992.

JOHN B. JONES
Chief Judge
United States District Court

RICHARD H. BATTEY
District Judge
United States District Court

ATTEST:
WILLIAM F. CLAYTON
Clerk
(SEAL OF COURT)

Filed: June 2, 1992

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UNITED STATES DISTRICT COURT

for the

DISTRICT OF SOUTH DAKOTA

JUDGES

Hon. John B. Jones, Chief Judge

Sioux Falls, South Dakota

Hon. Richard H. Battey, Judge

Rapid City, South Dakota

Hon. Fred J. Nichol, Senior Judge

Sioux Falls, South Dakota

Hon. Andrew W. Bogue, Senior Judge

Rapid City, South Dakota

Hon. Donald J. Porter, Senior Judge

Pierre, South Dakota

CLERK

William F. Clayton

Sioux Falls, South Dakota

DIVISIONS OF

DISTRICT OF SOUTH DAKOTA

The State of South Dakota constitutes one judicial district, divided into four divisions. (28 U.S.C. § 122)

(1) The NORTHERN DIVISION comprises the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink and Walworth.

The place of holding Court is at Aberdeen.

(2) The SOUTHERN DIVISION comprises the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton.

The place of holding Court is at Sioux Falls.

(3) The CENTRAL DIVISION comprises the counties of Buffalo, Dewey, Faulk, Gregory, Haakon, Hand, Hughes, Hyde, Jerauld, Jones, Lyman, Mellette, Potter, Stanley, Sully, Todd, Tripp, and Ziebach.

The place of holding Court is at Pierre.

(4) The WESTERN DIVISION comprises the counties of Bennett, Butte, Custer, Fall River, Harding, Jackson, Lawrence, Meade, Pennington, Perkins, and Shannon.

The place of holding Court is at Rapid City or Deadwood.

PREFACE

INDIVIDUAL CALENDARS

The Court operates on an individual calendar system. Each Judge in active service assumes responsibility for the cases, both civil and criminal, filed in the Division of the Judge's residence. The Chief Judge shall assign responsibility for cases in any Division in which there is no active Judge residing. The schedule as to the presiding Judge for the regular session of court in each division is fixed from time to time by court order. All preliminary motions, etc., will be heard insofar as practicable, by the Judge who will be presiding at the session of court at which the case will be tried. Inquiries as to motions or other matters having to do with a particular case may be addressed to the Clerk at Sioux Falls, Rapid City, or Pierre, as appropriate, for the attention of the Judge who will be presiding at the court at which the case will be tried.

LOCAL RULE NUMBERING

These Local Rules have been numbered consistently with the Federal Rules of Civil Procedure and the conventions of the United States Judicial Conference's Local Rule Project. Generally, the number of each of the Local Rules is dictated by the number of the corresponding rule in the Federal Rules of Civil Procedure.

Local Rule 1.1

Scope of the Rules.

(A) Title and Citation.
These Rules shall be known as the Local Rules of Practice for the United States District Court for the District of South Dakota.
They may be cited as "D.S.D. LR _____"

(B) Effective Date.
These Rules become effective on July 1, 1992.

(C) Scope of Rules.
These Rules shall apply in all proceedings in civil actions.

(D) Relationship to Prior Rules; Actions Pending on Effective Date.
These Rules supersede all previous rules promulgated by this Court or any judge. of this Court. They shall govern all applicable proceedings brought in this Court after they take effect. They also shall apply to all proceedings pending at the time they take effect, except to the extent that, in the opinion of the Court, the application thereof would not be feasible or would work injustice, in which event the former rules shall govern.

Cross-reference:
Local Rules Project, Model Local Rule 1.1 (1989).

Local Rule 4.1

COPIES OF PLEADINGS

(A) NUMBER OF COPIES FOR FILING
A sufficient number of copies of all papers and pleadings prepared by litigants or counsel, including the original summons or any other papers to be signed and certified by the Clerk, which are required for service, shall be furnished at the time of filing. The original and the copies shall conform to the original as completely as is practicable before submission to the Clerk.

(B) FILING WITH THE CLERK'S OFFICE
The original and one true copy of all papers and pleadings shall be filed with the Clerk.

(C) NO FILING WITH THE COURT
No copies of any paper or pleading shall be sent or delivered to the Court, unless otherwise ordered.

Cross-reference:
former Local Rule 4,§ 4 (1984).

Local Rule 5.1

FILING

Subject to D.S.D. LR 26.1, all papers after the complaint required to be served upon a party shall be filed with the Clerk within a reasonable time thereafter, not to exceed five days.

Cross-reference:
former Local Rule 4,§ 3 (1984).

Local Rule 5.2

PROOF OF SERVICE

An attorney's certificate of service, the written admission of service by the party or the party's attorney, or an affidavit shall be sufficient proof of service of pleadings or papers under Fed. R. Civ. P. 5.

Cross-reference:
S.D.C.L. 15-6-5(b) (1990).

Local Rule 7.1

MOTIONS: ORAL ARGUMENT

Oral argument shall be had only upon order of the Court. Requests for oral argument shall be made by separate statement at the conclusion of the motion or response, or by any party by a separate pleading filed within ten days after the filing of the motion or response.

Cross-reference:
former Local,Rule 4,§ 8(A) (1984).

Local Rule 7.2

MOTIONS: BRIEFS

(A) REQUIRED WRITTEN BRIEF

There shall be served on opposing counsel and filed with the Clerk with every motion raising a question of law, except oral motions made during a hearing or trial, a brief containing the specific points or propositions of law with the authorities in support thereof on which the moving party will rely, including the Rule on the basis of which the motion is made. On or before twenty days after service of a motion and brief, unless otherwise specifically ordered by the Court, all opposing parties shall serve and submit to the Court briefs containing the specific points or propositions of law with authorities in support thereof in opposition to that motion. The movant may submit to the Court a

reply brief within ten days after service of the brief in opposition.

(B) PAGE LIMITATION ON BRIEFS

Briefs, and any attachments other than documentary evidence attached in accordance with D.S.D. LR 56.1(A), shall not exceed twenty-five pages, unless prior approval has been obtained from the Court.

Cross-reference:
former Local Rule 4,§ 8(B) (1984).

Local Rule 10.1

IDENTIFICATION

A paper or pleading presented shall plainly show the caption of the case, a description or designation of the contents and in whose behalf the same is offered for filing. All papers presented after the initial pleading must bear the file number assigned to the case. All pleadings must be signed. Names and addresses and telephone numbers shall be typed or printed under all signatures.

Cross-reference:
former Local Rule 4,§ 2 (1984).

Local Rule 15.1

MOTIONS TO AMEND PLEADINGS

In addition to other requirements of these Local Rules, any party moving to amend pleadings shall file a copy of the proposed amended pleadings with the motion.

Cross-reference:
former Local Rule 4,§ 8(F) (1984).

Local Rule 16.1

SCHEDULING CONFERENCES

Pursuant to Fed. R. Civ. P. 16(b), this Court has determined that its pretrial conference procedures are inappropriate for certain types of cases and hereby exempts the following: social security appeals, bankruptcy appeals, all appeals under the Administrative Procedures Act, habeas corpus actions brought under either 28 U.S.C. § 2254, 28 U.S.C. § 2255 or 28 U.S.C. § 2241, all actions brought under 28 U.S.C. § 1345, and

actions in which none of the defendants have been served with process.

Cross-reference:
former Local Rule 12 (1984).

Local Rule 26.1

FILING OF DISCOVERY MATERIALS

Each divisional office of the Clerk has procedures for filing discovery material. Contact the Clerk's office in the division in which a particular case is filed to determine the filing procedure for discovery materials. See the Preface to these Rules.

Cross-reference:
former Local Rule 13,§ 1 (1984).

Local Rule 26.2

PRESERVATION AND DISPOSAL OF DEPOSITIONS

(A) All depositions which have been read or offered into evidence by agreement of parties, or at the trial or submission of the case to the Court, shall become a permanent part of the file.

(B) After the ultimate conclusion of the case, depositions not offered or received into evidence may be withdrawn by the parties taking the deposition. All unclaimed depositions may be disposed of by the Clerk after giving thirty days' notice to the attorneys of record of the Clerk's intention to do so.

Cross-reference:
former Local Rule 13,§ 2 (1984).

Local Rule 29.1

DISCOVERY STIPULATIONS MADE IN OPEN COURT OR WRITING

No stipulation, agreement, or consent between parties or their attorneys in respect to any proceeding in this Court shall be binding unless made in open court and entered in the minutes or reduced to writing and subscribed by the parties or their attorneys. Such stipulation or agreement relating to changing the place of trial, continuing cases to a later date, extending time to answer or otherwise plead, or setting any matter down for hearing, shall not be binding unless an order of the Court be made thereon and filed.

Cross-reference:
former Local Rule 10 (1984).

Local Rule 37.1

CONDITIONS FOR DISCOVERY MOTIONS

No objection to interrogatories, or to requests for admissions or to answers to either or relating to other discovery matters shall be heard unless it affirmatively appears that counsel have met and attempted to resolve their differences through an informal conference. Counsel for the moving party shall call for such conference before filing any motion relating to discovery matters. At least three days prior to the hearing, or sooner as the Court may require, the counsel for the parties or the parties shall file a statement setting forth the matters upon which they have been unable to agree together with briefs in support of or in opposition to their respective contentions.

Cross-reference:
former Local Rule 4,§ 8(C) (1984);
Local Rules Project, Model Local Rule 37.1 (1989).

Local Rule 39.1

TRIALS

(A) OPENING STATEMENTS IN JURY TRIALS

After a jury has been selected and sworn, the party upon whom rests the burden of proof may briefly, and without argument, make an opening statement to the jury. Thereafter, the adverse party may briefly, and without argument, make an opening statement to the jury.

(B) NUMBER OF COUNSEL

On the trial of any action only one counsel on a side shall be permitted to examine or cross-examine each witness, and not more than two attorneys on a side shall sum up the case to the jury unless the Court shall otherwise order. Upon interlocutory questions only one attorney on a side shall be permitted to argue except by special permission of the Court before argument opens. The moving party shall be heard first followed by the respondent's argument. The movant may reply confining any remarks to the points first stated and a pertinent answer to respondent's argument. Thereafter discussion on the question shall be closed unless the Court requests further argument.

Cross-reference:
former Local Rule 15,§§ 1 and 2 (1984).

Local Rule 40.1

CONTINUANCES

(A) CONSENT OF PARTIES REQUIRED

In no event shall a case be continued without the approval of the Court. Unless the Court shall deem it unnecessary, any party seeking a continuance shall do so by motion, which shall include the affidavit of the party seeking the continuance or of some person who knows the facts upon which the application is founded. The affidavit shall contain the grounds for the continuance. If the continuance is sought because of the absence of a material witness, the affidavit must show that the party applying for the continuance has a valid cause of action or defense and has used due diligence to prepare for trial, the nature and kind of diligence used, the names and, residences of absent witnesses, and the substance of the testimony expected to be given by such witnesses.

(B) WHEN WITNESS ABSENT

Unless, in the opinion of the Court, justice shall require it, the trial will not be continued or postponed on account of the absence of a witness if the adverse party will admit that the witness, if present, would testify as stated in the affidavit; but in such case, the applicant may read the testimony of such witness as stated in his affidavit, subject to all proper objections which might be interposed if the witness were present. Every continuance or postponement granted upon application shall be upon such terms as the Court may impose.

Cross-reference:
former Local Rule 11,§§ 1 and 2 (1984).

Local Rule 43.1

TRIAL EXHIBITS

(A) CUSTODY OF CLERK

All exhibits offered and received in evidence shall be delivered to the Clerk for filing and shall remain in the custody of the Clerk as part of the record in the case. Exhibits that are offered but refused may be delivered to the Clerk for filing at the option of the party making the offer, unless the Court shall require that such be filed. Before judgment in a case becomes final, exhibits filed in the case may not be taken from the custody of the Clerk without an order of the Court and certified copies of such original exhibits being filed in lieu of the originals. The party withdrawing the original exhibits shall pay to the Clerk any costs incurred.

(B) WITHDRAWAL OR DISPOSAL AFTER JUDGMENT BECOMES FINAL

(1) CIVIL CASES.

After a judgment in a civil case has become final, or the time for appeal has elapsed, exhibits shall be claimed by the party to whom they belong. Any exhibits not claimed and withdrawn within sixty days after the ultimate conclusion of a judgment may be destroyed or otherwise disposed of by the Clerk after giving thirty days' notice to the attorneys of record of the Clerk's intention to do so.

(2) RECORD OF WITHDRAWAL OR DISPOSAL.

In a civil case, a receipt specifying the exhibits shall be obtained from the party withdrawing them, and the receipt shall be filed in the case. Exhibits destroyed or otherwise disposed of by the Clerk shall be accounted for by a statement prepared and filed in the case by the Clerk, stating the date such action was taken and the date notice of intention to do so was given to the attorneys of record.

Cross-reference:
former Local Rule 5,§§ 1 and 2(A) and (C) (1984).

Local Rule 47.1

EXAMINATION OF JURORS

The voir dire examination of trial jurors may be conducted by the Court or by counsel, or both, as the Court may direct.

Cross-reference:
former Local Rule 14,§ 2 (1984).

Local Rule 48.1

NUMBER OF JURORS

In all civil jury cases, the jury shall consist of not less than six members, to be determined by the Court.

Cross-reference:
former Local Rule 14,§ 1(A) (1984).

Local Rule 51.1

INSTRUCTIONS

(A) REQUIRED PRETRIAL FILING OF INSTRUCTIONS

Each party shall file, as ordered by the Court, with the Clerk all proposed jury instructions which reasonably can be anticipated in advance of trial. In all civil cases, each party shall submit a "statement of the case" instruction.

(B) FORM OF INSTRUCTIONS

All proposed instructions shall identify the party submitting the instruction and specifically cite the authority or authorities upon which it is based.

(C) SERVICE OF INSTRUCTIONS

Copies of such proposed instructions shall be served on all parties.

Cross-reference:
former Local Rule 15,§ 3 (1984).

Local Rule 54.1

TAXATION OF COSTS

(A) PROCEDURE

Before costs may be taxed, the prevailing party entitled to recover costs shall file a verified bill of costs upon forms which may be obtained from the Clerk. Proof of service of a copy upon the party liable for costs shall be endorsed thereon. opposing counsel may within five days thereafter file with the Clerk exceptions to the costs or any specific item therein.

The Clerk shall then tax costs, and upon allowance, the costs shall be included in the judgment or decree. The action of the Clerk may be reviewed by the Court, on motion of either party, served within five days thereafter.

(B) DEFAULT

In a default case, the Clerk shall tax costs as matter of course without notice.

(C) ATTORNEY'S FEES

In any case in which attorney's fees are recoverable under the law applicable to that case,, a motion for attorney's fees shall be filed with the Clerk with proof of service within fourteen days after the entry of judgment or after an order of dismissal under circumstances permitting the allowance of attorney's fees except as provided under the Equal Access to Justice Act when the motion shall be filed within thirty days. objections to an allowance of fees must be filed within ten days after service on the party against whom the award of attorney's fees is sought. The Court will then determine the appropriate attorney's fees, if any, without further hearing, unless in the Court's opinion a hearing is needed to resolve serious factual disputes between the parties.

On its own motion, the Court may grant an allowance of reasonable attorney's fees to a prevailing party in appropriate cases.

The petitioner shall attach to his motion an affidavit setting out the time spent in the litigation and any factual matters pertinent to the petition for attorney's fees. The respondent may

by counter affidavit controvert any of the factual matters contained in the petition and may assert any factual matters bearing on the award of attorney's fees.

A failure to present a petition for an award of attorney's fees may be considered by the Court to be a waiver of any claim for attorney's fees.

Cross-reference:
former Local Rule 18 (1984).

Local Rule 56.1

MOTION FOR SUMMARY JUDGMENT

(A) USE OF DOCUMENTARY EVIDENCE

If documentary evidence is to be offered in support of or against a motion, and the same is susceptible of convenient copying, copies thereof shall be served and filed with the Clerk by the moving party with the motion, and by the adverse party with its brief in opposition to the motion. If such documentary evidence is not susceptible of convenient copying, the party shall in lieu thereof furnish a concise summary or statement of the contents thereof, and shall make the original available to the adverse party for examination.

(B) MOVING PARTY'S REQUIRED STATEMENT OF MATERIAL FACTS.

Upon any motion for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, in addition to statements of law above required there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Each material fact in this Local Rule's required statement shall be presented in a separate, numbered statement and with an appropriate citation to the record in the case.

(C) OPPOSING PARTY'S REQUIRED STATEMENT OF MATERIAL FACTS.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried. The opposition shall respond to each numbered paragraph in the moving party's statement with a separately numbered response and appropriate citations to the record.

(D) EFFECT OF OMISSION: SANCTION

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

Cross-reference:
former Local Rule 4,§ 8(D) (1984).

Local Rule 58.1

MANDATE

Upon receipt of a mandate from an appellate court, the Clerk shall forthwith file and enter the same of record. The Clerk shall serve a notice of the entry by mailing a copy of the mandate to the respective parties affected thereby and shall make a note in the docket of the mailing. In the event that the mandate provides for costs or directs a disposition other than an affirmance, the prevailing party shall submit an order to this court in conformity with said mandate.

Cross-reference:
former Local Rule 19 (1984).

Local Rule 65.1

MOTIONS FOR PRELIMINARY AND PERMANENT INJUNCTION

In all cases wherein the moving party seeks both a preliminary and permanent injunction, the matters shall be deemed consolidated for trial unless otherwise specifically ordered by the Court.

Cross-reference:
former Local Rule 4,§ 8(E) (1984).

Local Rule 68.1

SETTLEMENT

The deadline for settling civil cases shall be the close of business hours ten days prior to the date set for trial, unless otherwise ordered by the Court. In any case settled after the deadline, the Court may consider imposing sanctions including, but not limited to, the costs of assembling and empaneling the jurors, on the parties or counsel for violation of this Local Rule.

Cross-reference:
former Local Rule 15,§ 4 (1984).

Local Rule 77.1

OFFICE OF THE CLERK

(A) OFFICIAL STATION

The official station of the Clerk of the Court shall be at Sioux Falls.

(B) DEPUTY STATION

Deputy Clerks of Court, in such numbers as may be required, shall be stationed at Sioux Falls, Pierre and Rapid City.

Cross-reference:
former Local Rule 1 (1984).

Local Rule 83.1

MEDIA COVERAGE

No camera or other picture-taking device, radio or television broadcasting equipment or voice-recording instrument, whether or not court actually is in session, shall be brought into any federal court building or place of holding proceedings before; a United States District Judge or Magistrate Judge in this district for use during the trial or hearing of any case, or proceeding incident to any case, or in connection with any session of the United States grand jury. This rule, however, shall not apply to official court reporters in attendance at any trial, hearing or proceedings and where, in connection with the duties of such court reporters, a voice-recording instrument is used.

Cross-reference:
former Local Rule 21(D) (1984).

Local Rule 83.2

ATTORNEYS

(A) BAR OF THE COURT

The Bar of this Court shall consist of those attorneys admitted to practice before this Court.

(B) ELIGIBILITY

Any person of good moral character who is an active Member of the South Dakota State Bar shall be eligible for admission to the Bar of this Court as hereinafter provided.

(C) PROCEDURE FOR ADMISSION

An attorney who is eligible to practice law as provided in Section (B) may apply for admission to the Bar of this Court. The application sequence shall be as follows:

(1) Applicants must complete a written application in the Division of their residence or in the Division where the trial of a case in which they are chief counsel will be heard. Forms are available from the Clerk of Court.

(2) Applicants must consent to an inquiry concerning their fitness and qualifications for admission. Submission of the completed admission application shall be considered such consent, and a waiver of any privacy.

(3) The Clerk's Office shall make any inquiry that may be deemed necessary to obtain information concerning an applicant's character and fitness to practice law.

(4) At least two active Judges in this District must approve each applicant before an applicant may be admitted.

(5) The Clerk's office shall report to the active Judge in the Division in which the application for admission is filed the approval or disapproval of the other active Judges.

(6) When the approval or disapproval of the application is recorded, the applicant will be notified of the results.

(7) Applicants approved will have a day and time scheduled for the admission ceremony.

(8) The applicant for admission shall appear in person for the admission ceremony with a member of this bar who will vouch for the legal qualifications, integrity and good moral character of the applicant. Upon oral motion of a member of the bar, taking the prescribed oath, signing the roll of attorneys in the Clerk's Office and paying the required fee, the applicant will be admitted. The Clerk shall then issue a Certificate of Admission.

(D) OATH OF ADMISSION

The following oath or affirmation shall be administered to an applicant for admission to the Bar of this Court:

> You do solemnly (swear or affirm) that you will support and defend the Constitution of the United States and that you will faithfully demean yourself as an attorney and officer of this Court, uprightly and according to law, with all good fidelity as well as the Court as to your clients, SO HELP YOU GOD.

(E) APPEARANCE OF ATTORNEY, PRO HAC VICE

An attorney who is not a member of the bar of the United States District Court for the District of South Dakota may, upon motion, participate in the conduct of a particular case in this Court, but such motion may be, allowed only if he or she associates with a member in good standing of the bar of this Court. Such member shall sign all pleadings filed and shall continue in the case unless another member attorney admitted to practice in this Court shall be substituted. The member attorney shall be present in Court during all proceedings in connection with the case, unless otherwise ordered, and shall have full authority to act for and on behalf of the client in all matters, including pretrial conferences as well as trial or any other hearings. It shall be sufficient to make service of any motion, pleading, order, notice, or any other paper upon the member attorney who shall assume responsibility for advising his or her associate of any such service.

(F) GOVERNMENT ATTORNEYS

Attorneys admitted to practice in a District Court of the United States but who are not qualified under this rule to practice in the District Court of South Dakota may, nevertheless, if they

are representing the United States of America, or any officer or agency thereof, practice before this Court in any action or proceeding in this Court in which the United States or any officer or agency thereof is a party.

(G) DISBARMENT AND DISCIPLINE

(1) Any member of the bar of this Court who has been suspended or disbarred from the bar of the State of South Dakota or who has been convicted of any criminal offense in any United States District Court shall, upon appropriate notice from the Clerk of Court, be suspended from practice before this Court. The member will thereupon be afforded the opportunity upon notice to show good cause within twenty days why there should be no disbarment. Upon the member's response to the order to show cause, the member shall be entitled to a hearing or upon the expiration of twenty days if no response is made, the Court will enter an appropriate order.

(2) Any member of the bar of this Court may be disbarred, suspended from practice for a definite time, or reprimanded for good cause shown, after opportunity has been afforded such member to be heard.

(3) All applications for the disbarment or discipline of members of the bar of this Court shall be made to or before the Chief Judge of this Court unless otherwise ordered by him. At least two judges of this Court shall sit at the hearing of such applications, unless the attorney against whom the disbarment or disciplinary proceedings are brought states in writing or in open Court the member's willingness to proceed before one judge.

(4) It shall be the duty of the United States Attorney, under direction of this Court, to investigate charges against any member of this bar. If, as a result of the investigations, the United States Attorney shall be of the opinion that there has been a breach of professional ethics by a member of this bar, the United States Attorney, as an officer of the Court having special responsibilities for the administration of justice, shall file and prosecute a petition requesting that the alleged offender be subjected to appropriate discipline, including disbarment, suspension or reprimand. Such duties may, with approval of a majority of the judges, be delegated to any member of the bar of this Court approved by them.

(H) REINSTATEMENT OF DISBARRED AND SUSPENDED ATTORNEYS

(1) An attorney who has been suspended or disbarred in this Court may petition for reinstatement at any time. Upon the filing of such petition with the Clerk of Court, the Chief Judge shall make an order setting a date for the hearing on said petition on notice of not less than twenty days. The petitioner shall cause a copy of said petition and order for hearing to be served forthwith on the United States Attorney who shall be in attendance on the date of said hearing. The United States Attorney shall investigate the facts alleged in the petition for reinstatement, and shall present to the Court, in affidavit form or otherwise, any facts in support of, or against the granting of said petition. Two judges

of this Court shall sit at the hearing on said petition, and the order denying or granting reinstatement shall be made in writing by said judges.

(2) An attorney who has been suspended or disbarred by the Supreme Court of the State of South Dakota and thereafter reinstated by that Court to practice in the state courts shall not be permitted to practice in this Court, notwithstanding such reinstatement, until a petition for reinstatement as prescribed in paragraph (1) above, incorporating in addition a certified copy of the order of reinstatement by the Supreme Court of the State of South Dakota, has been filed in this Court and reinstatement ordered after a hearing as above provided.

(I) LAW STUDENTS

(1) Student Practice

Any law student acting under a supervising attorney shall be allowed to make an appearance and participate in proceedings in this Court pursuant to these rules.

(2) Eligibility

To be eligible to appear and participate, a law student must:

(a) Be a student in good standing in a law school approved by the American Bar Association.

(b) Have completed legal studies amounting to four semesters or the equivalent if the law school is on some other basis than a semester basis.

(c) File with the Clerk of Court:

(i) A certificate by the dean of the law school that he or she is of good moral character and possesses the above requirements and is qualified to serve as a legal intern. The certificate shall be a form prescribed by the Court.

(ii) A certificate in a form prescribed by the Court that he or she has read and agrees to abide by the rules of the Court, and all applicable codes of professional responsibility and other relevant federal practice rules.

(iii) A notice of appearance in each case in which he or she is participating or appearing as a law student intern. Such notice shall be in the form prescribed by the Court and shall be signed by the supervising attorney and client.

(d) Be introduced to the Court in which he or she is appearing by an attorney admitted to practice in this Court.

(3) Certificate of Admission

Upon the completion and filing of the certificates required by subdivisions (I) (2) (c) (i) and (ii) of this rule, the Clerk shall issue a certificate of admission to the law student in a form to be prescribed by the Court. This certificate shall expire

contemporaneously with the expiration date of the dean's certificate unless it is sooner withdrawn. Any law student's certificate of admission may be terminated at any time by a judge of this Court without notice or hearing and without any showing of cause.

(4) Restrictions

No law student admitted under these rules shall:

(a) Request or receive any compensation or remuneration of any kind from the client but this shall not prevent the supervising attorney, law school, public defender, or the government from paying compensation to the law student nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

(b) Appear in Court without the presence of the supervising attorney.

(c) File any documents or papers with the Court that he or she has prepared which have not been read, approved and signed by the supervising attorney and consigned by the law student.

(5) Supervising Attorneys

Any person acting as a supervising attorney under this rule must be admitted to practice in this Court and shall:

(a) Assume personal professional responsibility for the conduct of the law student being supervised.

(b) Co-sign all pleadings, papers and documents prepared by the law student.

(c) Advise the Court of the law student's participation, be present with the student at all times in Court, and be prepared to supplement oral or written work of the student as requested by the Court or as necessary to ensure proper representation of the client.

(d) Be available for consultation with the client.

Cross-reference:
former Local Rule 2 (1984), as amended, May 1, 1989.

Local Rule 83.3

ASSIGNMENT OF OFFICIAL REPORTERS

Persons appointed to permanent positions as official reporters will be assigned to provide court reporting services for regular active judges.

Where an official reporter, occupying a permanent position, is assigned to a regular active judge and, as a result of the judge taking senior status, being elevated to another court, resigning, retiring, or dying, the judgeship becomes vacant, the reporter will continue to retain his full status and salary during the period in

which the judgeship is vacant. During such period, the official reporter shall be available for assignment to provide any court reporting services needed by this Court.

Cross-reference:
former Local Rule 3 (1984).

Local Rule 83.4

FORM OF PAPERS

At the request of the Archivist of the United States and upon recommendation of its Court Administration Committee, the Judicial Conference of the United States has adopted the 8 1/2 x 11 inch paper size standard.for use,throughout the Federal Judiciary and has directed the elimination of the use of legal size paper measuring 8 1/2 x 14 inches.

All papers or pleadings shall be presented on white paper without backs and shall be legibly typewritten or printed without erasures or interlineation materially defacing them and if consisting of more than one sheet be fastened at the top. Matter shall appear on one side only and shall be double-spaced, except quoted material. Papers not in the required form shall not be filed without leave of the court. Exhibits attached to pleadings shall be similarly typewritten, printed, or otherwise reproduced in clear, legible, and permanent form.

Cross-reference:
former Local Rule 4,§ 1 (1984).

Local Rule 83.5

REMOVAL OF FILES OR WITHDRAWAL OF PAPERS

(A) TEMPORARY REMOVAL

No file, or pleading, or paper belonging to the files of the Court, shall be taken from the office or custody of the Clerk except upon order of the Court made after a showing of good cause and specifying the time within which the same shall be returned to the Clerk. A receipt for files so taken shall be delivered to the Clerk by the party removing the same.

(B) PERMANENT WITHDRAWAL

Upon such terms as the Court may order, a party may permanently withdraw a paper or record from the files.

Cross-reference:
former Local Rule 4,§ 7 (1984).

Local Rule 83.6

CLERK'S FEES

(A) FILING FEES

(1) ACTIONS.

Except in seaman's suits, any party commencing any civil action, suit or proceedings, whether by original process, removal or otherwise, shall pay to the Clerk the statutory filing fee before the case will be filed and process issued thereon. (28 U.S.C. § 1914)

(2) APPEALS.

Upon the filing of any separate or joint notice of appeal or application for an appeal or upon the receipt of any order allowing, or notice of the allowance of an appeal or of a writ of certiorari, the statutory fee shall be paid to the Clerk of the District Court, by the appellant or petitioner. (28 U.S.C. § 1917)

(3) HABEAS CORPUS.

Upon the filing of any petition or application for a writ of habeas corpus, the petitioner or applicant shall pay to the Clerk the statutory filing fee. (28 U.S.C. § 1914)

(B) MISCELLANEOUS FEES

The Clerk shall collect from parties such additional fees only as are prescribed by the Judicial Conference of the United States and prepayment of such fees may be required by the Clerk before furnishing the service therefore.

(C) REFUSAL TO FILE BY CLERK

The Clerk is authorized to refuse to docket or file any suit or proceeding, writ, or other process, or any paper or papers in any suit or proceeding until the required filing fees are paid, except as otherwise ordered by the Court in proceedings in forma pauperis. (28 U.S.C. § 1914(c))

(D) CITATION FOR NON-PAYMENT

If any fees or costs are due and payable to the Clerk or United States Marshal, and remain unpaid after demand therefor, the Court may issue its citation to the party, or to counsel for the party, to show cause why such fees or costs should not then and there be paid.

Cross-reference:
former Local Rule 6 (1984).

Local Rule 83.7

MARSHAL'S FEES

(A) PREPAYMENT OF FEES

Except as otherwise provided by statute, or by order of court, the United States Marshal may require a deposit to cover all fees and expenses prescribed by law for performing the services requested by any party. (28 U.S.C. § 1921)

(B) FORM 285

Every party requesting the United States Marshal to serve any process, including an original summons, must furnish with every process delivered to the Marshal an executed United States Marshal Form 285. Said forms are available in the Marshal's Office or in the Clerk's Office.

Cross-reference:
former Local Rule 7 (1984).