CIVIL JUSTICE REFORM ACT
ADVISORY GROUP
FOR
DISTRICT OF MONTANA

RICHARD F. CEBULL
Chairman

September 4, 1991

PAUL G. HATFIELD
Chief Judge

Mr. Philip Argetsinger
Court Administration Division
Administrative Office of U.S. Courts
Washington, D.C. 20544

Dear Mr. Argetsinger:

Enclosed please find a copy of the final Report of our Civil Justice Reform Act Advisory Group. As you are aware, it is our intention to become an Early Implementation District under § 482(c) of the Civil Justice Reform Act of 1990.

Very truly yours,

Jeremiah C. Lynch
Reporter

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REPORT

OF THE

CIVIL JUSTICE REFORM ACT

ADVISORY GROUP

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MONTANA

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FOR
THE UNITED STATES DISTRICT COURT

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THE DISTRICT OF MONTANA

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Reporter

Mr. Jeremiah C. Lynch

Clerk of the Court

Mr. Lou Aleksich, Jr.

PREFACE

Pursuant to the directive of the Civil Justice Reform Act of 1990, 28 U.S.C. §§ 101-106, 471-482, the advisory group for the United States District Court for the District of Montana presents its report for consideration by the court in its development and implementation of a civil expense and delay reduction plan ("Plan"). The advisory group, comprised of a representative group of federal practitioners, has endeavored to identify the principal causes of cost and delay in civil litigation in the District. Considering the status of the present court procedures and the general litigation practices employed in the District, the advisory group has developed recommendations, which it believes, will improve the civil litigation process in the District.

The civil litigation process of the District has been, and remains a process, when properly utilized, that provides a fair and efficient means to resolve civil disputes. Steps can be taken, however, to improve the process. The recommendations presented are designed to facilitate development, in the early stages of litigation, of a meaningful and comprehensive plan to manage the discovery process, and disposition of a civil case. A cooperative effort by the judicial officers of the District and members of the District's bar is essential to the effective implementation of the recommendations.

Advisory Group

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IN THE DISTRICT OF MONTANA

I.

DISTRICT OF MONTANA

PROFILE

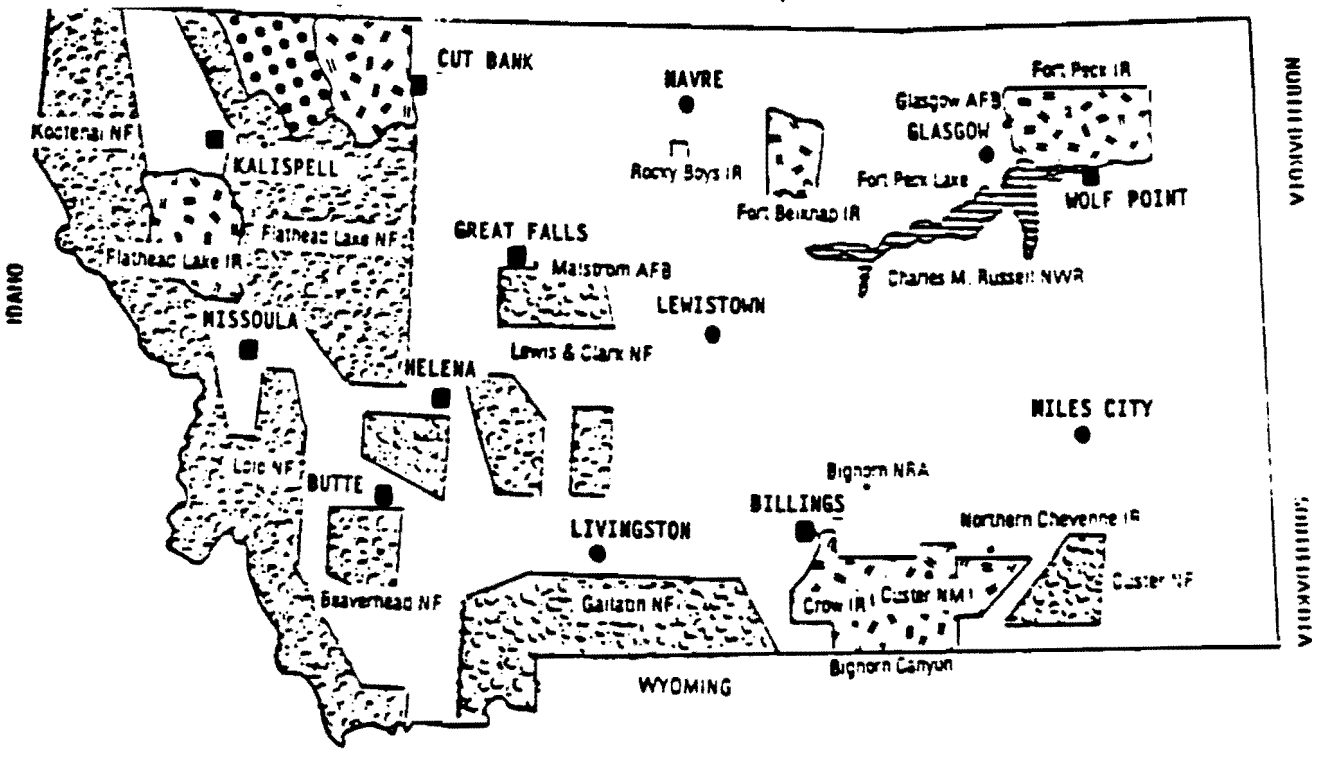
A. GEOGRAPHY

Area: 147,138 square miles

Population: 786,690 (1980)
799,065 (1990)

Principal Federal Enclaves:

Military:	Glasgow and Malmstrom Air Force Bases
Indian Reservations:	Blackfeet; Crow; Flathead; Fort Belknap; Fort Peck; Northern Cheyenne; Rocky Boy's
National Forests:	Beaverhead; Custer; Flathead Lake; Gallatin; Kootenai; Lewis and Clark
National Park:	Glacier
National Wildlife Refuge:	Charles M. Russell
Other:	Bighorn National Recreation Area; Custer National Monument



B. DIVISIONS

Montana, exclusive of Yellowstone National Park, constitutes one judicial district (28 U.S.C. § 106). The District of Montana is presently divided into five, judicially created, divisions as follows:

BILLINGS DIVISION, comprised of the Counties of Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweetgrass, Treasure, Valley, Wheatland, Wibaux and Yellowstone.

BUTTE DIVISION, comprised of the Counties of Beaverhead, Deer Lodge, Gallatin, Madison and Silver Bow.

GREAT FALLS DIVISION, comprised of the Counties of Blaine, Cascade, Choteau, Fergus, Glacier, Hill, Judith Basin, Liberty, Pondera, Teton and Toole.

HELENA DIVISION, comprised of the Counties of Broadwater, Jefferson, Lewis and Clark, Meagher and Powell.

MISSOULA DIVISION, comprised of the Counties of Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders.

The present divisions were created pursuant to a revision of Rule 105-1, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, which was accomplished by order

of the court entered on June 12, 1989. This revision effected the following changes in the 1986 version of Rule 105-1:

1. Dawson, Phillips, Roosevelt, Sheridan and Valley Counties were transferred from the Great Falls Division to the Billings Division.
2. Gallatin County was transferred from the Helena Division to the Butte Division.
3. Park County was transferred from the Helena Division to the Billings Division.

The authorized locations of holding court within the District (28 U.S.C. § 106) are:

CITY	1980 POPULATION	1990 POPULATION	RESIDENT DISTRICT JUDGE
Billings	66,798	81,151	1
Great Falls	56,725	55,097	1
Butte	37,205	33,336	-
Missoula	33,388	42,918	-
Helena	23,938	24,569	1
Havre	10,891	10,201	-
Kalispell	10,648	11,917	-
Miles City	9,602	8,461	-
Lewistown	7,104	6,051	-
Livingston	6,994	6,701	-
Glasgow	4,455	3,572	-

II.

COURT RESOURCES

A. JUDICIAL OFFICERS

1. Article III Judges

The District is currently authorized three Article III judgeships. Historically, the District of Montana was authorized two judgeships. The third judgeship was authorized in 1985. The active judges, their respective dates of entry on duty and duty stations are:

Judge	Date of Entry on Duty	Duty Station
Hon. Paul G. Hatfield	May 12, 1979	Great Falls
Hon. Charles C. Lovell	May 10, 1985	Helena
Hon. Jack D. Shanstrom	May 14, 1990	Billings

At present, the District is fortunate to have the services of one senior judge, the Honorable James F. Battin, who assumed senior status in February, 1990. Senior Judge Battin is stationed in Billings.

2. Magistrate Judges

The District is presently authorized two full-time magistrate judge positions:

Magistrate Judges	Date of Entry on Duty	Office Location
Hon. Robert M. Holter	January 21, 1988	Great Falls
Hon. Richard W. Anderson	January 1, 1991	Billings

The magistrate judges are available for utilization on a district-wide basis, and case references may be made to them by any of the Article III judges.

A third full-time magistrate judge position was authorized for the District in June of 1991. The duty station of the Magistrate Judge will be located in either the Helena or Missoula Division. The location will be determined by the active judges upon consideration of the District workload. With the appointment of the third full time magistrate judge, five of the six part-time magistrate judge positions presently authorized for the District will be terminated. The part-time position in Wolf Point will be retained. The stations of the six part-time positions presently authorized are: Butte, Cut Bank, Helena, Kalispell, Missoula and Wolf Point.

3. Judicial Staff

Each active district judge, as well as the District's only senior judge, has an immediate staff consisting of one secretary and two full-time law clerks. In addition, the District has been authorized a temporary full-time law clerk position for the Helena Division. The term of the temporary law clerk commenced on June 12, 1990, and will expire on June 11, 1991.

Each full-time magistrate judge has an immediate staff consisting of a secretary and one full-time law clerk. With respect to the third full-time magistrate judge position approved for the District by the Judicial Council, a similar immediate staff of one secretary and one full-time law clerk will be provided that magistrate judge.

4. Visiting Judges

The District has utilized visiting judges, ordinarily, on a specific case basis. Table I summarizes the District's utilization of visiting judges for the period 1985 - 1990.

TABLE I

CALENDAR YEAR	NUMBER OF VISITING JUDGES	DIVISION	COURT HOURS TRIAL	COURT HOURS OTHER
1985	6	Billings	225	8
1986	2	Billings	58	-
1990	2	Billings	48	13
1990	7	Missoula	234	77

B. CLERK OF COURT

The Clerk of the District Court, Lou Aleksich, Jr., was appointed in 1979. The Clerk presently maintains his office in the court facility at Billings. The Clerk has 19 authorized staff positions which have been assigned to five divisional offices maintained throughout the District. The majority of the positions are presently assigned to those divisional offices located in the three duty stations of the district judges: Billings - 6 positions; Helena - 5 positions; Great Falls - 6 positions. The Butte and Missoula division offices are each staffed with one deputy clerk.

In 1991, the Clerk received authorization to employ a computer systems analyst. The analyst has responsibility for the administration, installation, hardware maintenance and software implementation of all computer systems in the District. (See, section IIE, infra). The analyst is also responsible for the administration of personal computers located throughout the District, including: systems set up, software installation, software maintenance and updating, trouble shooting and problem diagnosis, and installation of Lexis and Westlaw for the judges, magistrate judges and their respective staffs throughout the District.

The Clerk has experienced a relatively low rate of turnover in personnel. The average length of service of the present Clerk's staff is 7.8 years, with a range in length of service from 17 years to 2 years. The stability of the staff is reflected in the expanded duties it is responsible for in most

divisions, primarily in the areas of scheduling and case management. Specifically, the Clerk's office extensively monitors cases in each division of the court primarily with respect to pending motions, pretrial schedules and trial schedules. (See, section IV B, infra).

C. PROBATION DEPARTMENT

The Chief Probation Officer for the District, Theodore McElhenney, maintains his office in the court facility at Great Falls. In addition to the Chief, whose duties are primarily administrative in nature, the office is authorized 12 officers, with two additional positions authorized for appointment within the next six months. The 12 officers presently on staff are stationed in the various divisions of the court as follows: Billings Division - 3; Helena Division - 3; Great Falls Division - 3; Missoula Division - 2. With respect to the two prospective positions, one officer is expected to be stationed in the Billings Division and the other officer in the Missoula Division.

The total number of personnel in the probation office in the District, inclusive of clerical staff, has shown a dramatic increase since 1987, expanding from 14 positions to a total of 24 positions expected by the end of 1991. During that same time frame, the number of line officers has increased from 7 to 14. The dramatic increase is directly attributable to: (1) the implementation in 1987 of the Sentencing Reform Act of 1984; and

(2) the implementation of the Pretrial Services Act of 1982. Both legislative Acts have expanded the duties of the probation office and placed additional time burdens upon the individual line officers. While the actual caseload of the probation office has not increased dramatically, the additional burdens placed upon the office has necessitated increased staffing.

TABLE I
CASELOAD - SUPERVISION

DIVISION	CASES DECEMBER 31, 1989	CASES DECEMBER 31, 1990
Billings	83	144
Helena	38	48
Great Falls	127	85
Missoula	54	76
TOTALS	302	353

TABLE II

PRESENTENCE REPORTS PREPARED

QUARTER	1989	1990	1991
Jan-March	45	46	55
Apr-June	38	52	--
July-Sept	56	56	--
Oct-Dec	44	89	
TOTALS	173	243	55

Table I reflects the total number of individuals, both on a district-wide and divisional office basis, under the probation office's supervision for the calendar years 1989, 1990 and through March of 1991. The totals do not reflect the commonplace utilization of personnel on an inter-divisional basis to meet varying monthly demand throughout the District.

Table II reflects the actual number of presentence reports prepared by the probation office during the calendar years 1989, 1990, and the first quarter of 1991.

As of the end of the first calendar quarter of 1991, the supervision caseload per line officer was 34. With the addition of three additional officers during the course of 1991, and assuming no dramatic increase in the supervision caseload, the caseload per officer will be reduced to a figure of 27. With regard to presentence reports, each line officer was responsible, based upon total figures for the calendar year 1990, and was required, on the average, to prepare 22 presentence reports per year. Again, with the addition of 3 line officers in the calendar year 1991, and assuming no dramatic increase in the number of criminal filings, each line officer can be expected to be required to prepare 17 presentence reports per year.

The number of felony criminal proceedings filed in the District for the statistical year ending June 30, 1987, was 180, representing an officer to felony case ratio of approximately 26 to 1, and a ratio of defendants per officer of 34 to 1. In contrast, the ratio of felony criminal cases per officer for the

calendar year ending June 30, 1990, was 20 to 1, with a corresponding ratio of defendants per officer of 29 to 1.

D. PHYSICAL FACILITIES

Courtroom facilities are available in the five divisions:

Billings - 3 courtrooms (2 with 12-juror capacity and 1 with 6-juror capacity);

Butte - 1 courtroom (12-juror capacity);

Helena - 1 courtroom (12-juror capacity);

Great Falls - 2 courtrooms (1 with 12-juror capacity and 1 with 6-juror capacity); and

Missoula - 1 courtroom (12-juror capacity).

Each of these referenced courtroom facilities is equipped with adequate jury facilities.

Each of the divisional facilities which is designated as a duty station for an Article III judge, i.e., Billings, Helena and Great Falls, are equipped with library facilities. In that regard, each of the district judge's chambers has Lexis and Westlaw capabilities. Additionally, the court facilities in both Butte and Missoula include a library facility.

E. AUTOMATION

The Administrative Office of the Courts has implemented a long-range plan calling for the automation of the federal court system. The plan of the United States Courts envisions an all-inclusive automation system, denominated JURIST, that will provide easy and reliable access to fully integrated office automation. The stated goal of the plan is:

> To provide federal courts of appeals, district courts and bankruptcy courts fully automated administrative, case management, and electronic docketing systems, inte-grated with word processing, electronic mail, and electronic access from chambers to case management information . . . .

The system is designed to provide employees of the judiciary with a full range of integrated automation tools through a single work station, including word and data processing, and computer assisted legal research. The data processing application will provide judges, clerks, and other support personnel, as well as the public, ready access to court data.

A principal component of JURIST will be the Integrated Case Management System (ICMS) which will include capabilities for electronic docketing and case management including automated case opening and closing, full docketing, scheduling, modeling, indexing, forms generation, public access, and statistical reporting.

The Administrative Office has established a plan calling for full implementation of the ICMS by the end of fiscal year

1992, and has established a schedule for implementation of the ICMS in the district courts. The District of Montana has been designated as an "alternate" district to receive an ICMS in late fiscal year 1991 or in fiscal year 1992. As an alternate, it is most likely that installation will not occur until the latter part of fiscal year 1992. The installation of the ICMS will provide the District with the vital tool to manage its case load on an integrated basis.

III.

WORKLOAD OF THE COURT

A. DISTRICT TOTAL VOLUME

1. Case Activity

The case activity report is based upon activity reported for the statistical year, July 1 through June 30. In the statistical year ending June 30, 1990, civil and criminal filings for the District were 990, representing a decrease of 17.9 percent from the filings realized for 1989. The decrease represented a rather sharp decline after the filings had remained relatively stable over the previous three-year period. The number of filings was 27 percent less than the filings in 1986, when the filings in the District peaked at 1363. The total case volume for the District for the 6-year period 1985 to 1991 is summarized in Table I and Diagram I.

TABLE I

DISTRICT - TOTAL CASE VOLUME

STATISTICAL YEAR	FILINGS	TERMINATIONS	PENDING
1985	1357	1248	1378
1986	1363	1202	1540
1987	1200	1212	1528
1988	1194	1065	1656
1989	1205	1295	1568
1990	990	1106	1429
1991	1003	1305	1097
% CHG. 1985-91	-26%	+5%	-9%

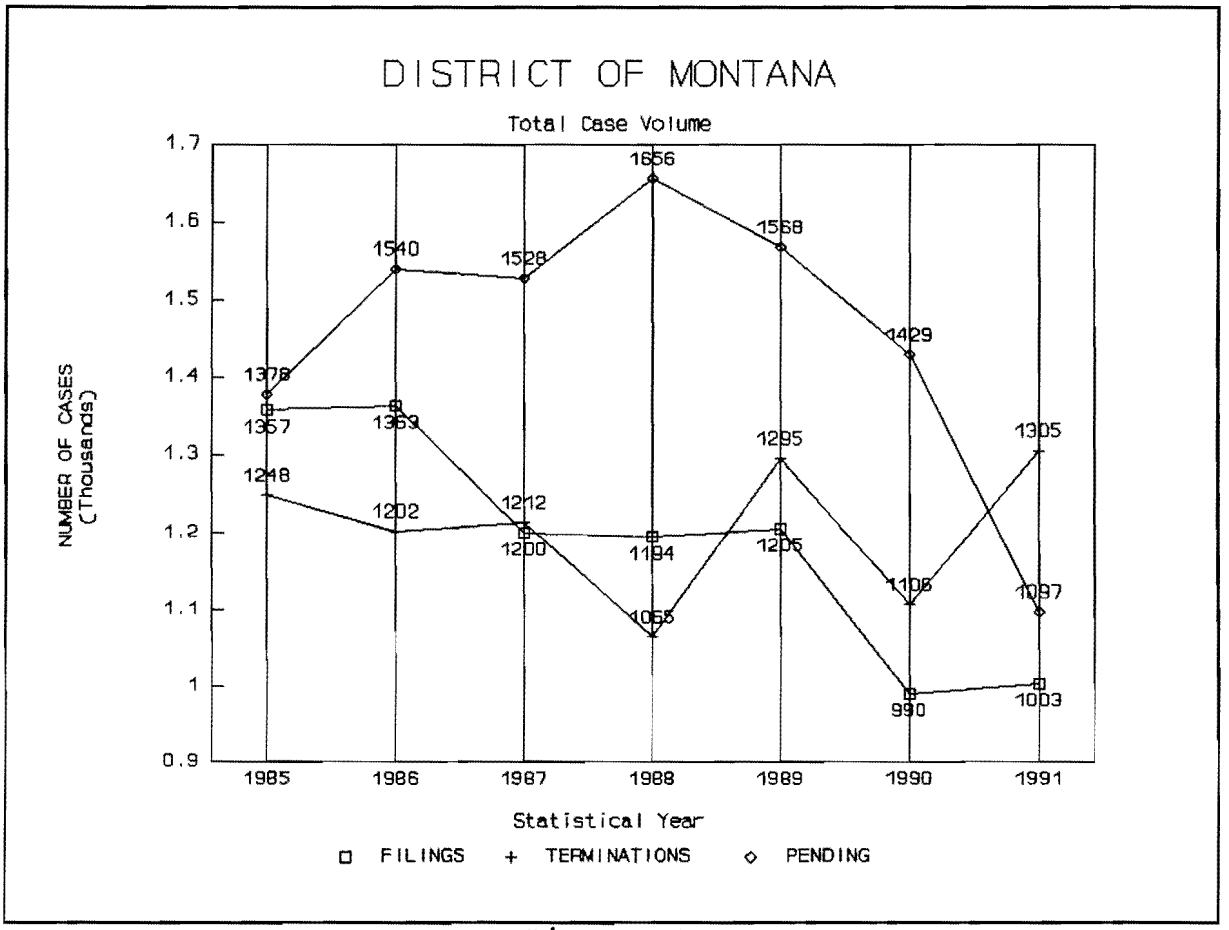


Diagram I

The filings for the 1991 statistical year show a slight increase over the 1990 figures with total filings of 1003. There were 1,305 cases terminated in 1991, a 17.9 percent increase over 1990, and an 11 percent increase from the average number of cases terminated per year for the previous 5-year period, i.e., 1176. The filings for the 1991 statistical year show a slight increase with total filings of 1003. The number of total cases pending at the close of statistical year 1991 was 1097. The average duration [1] of cases in the District declined from 18 months in 1988 (the peak year for pending cases) to 10 months in 1991.

2. Median Disposition Time

The median disposition time of cases (filings to disposition) in the District increased slightly during the five-year period 1985-1990. The median disposition time in the District remains higher than the national average. See, Table II. The significant reduction in pending cases accomplished by the District from 1988 - 1991 may explain the increase in median disposition time, as a substantial number of "older" cases have been terminated.

3. Trial Activity

The number of civil and criminal trials held in 1990 declined by 22 percent over 1985 levels. Trial activity based upon actual trial hours, however, increased.

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1. The ratio of pending cases to annual case terminations is used to estimate the average duration in years of the district's cases. See J. Shapard, "How Caseload Statistics Deceive", May 2, 1991 (Federal Judicial Center).

TABLE IV

CIVIL CASE VOLUME

STATISTICAL YEAR	FILINGS	TERMINATIONS	PENDING
1985	1194	1088	1304
1986	1188	929	1454
1987	1023	1035	1437
1988	1017	914	1531
1989	994	1088	1425
1990	772	914	1260
1991	761	1074	947
% CHG. 1985-91	-36%	-1%	-27%

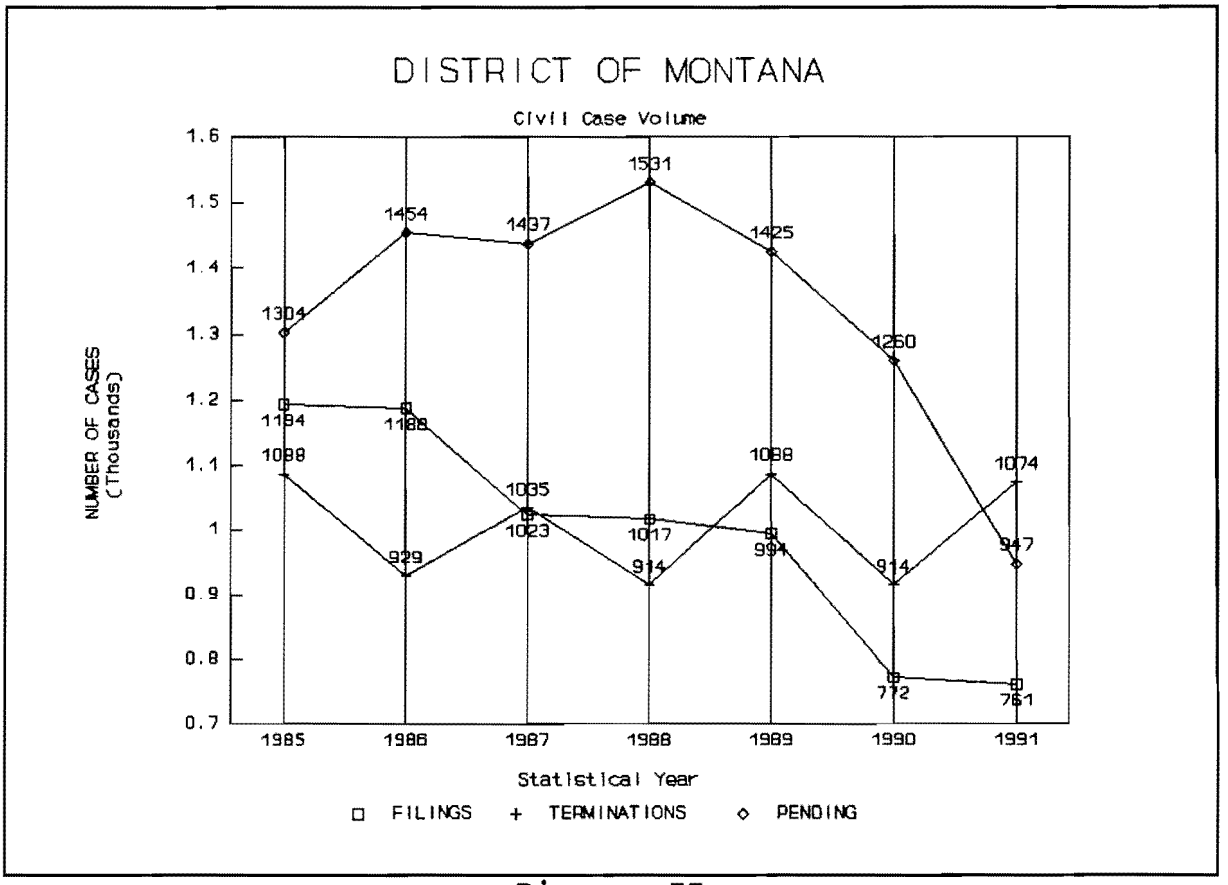

Diagram II

Undoubtedly, a myriad of factors serves to explain the decrease in the civil case filings for the period 1985-1991. An assessment of the broad categories of civil cases reveals the areas of litigation where the greatest decrease has occurred between 1985 and 1990. Table V provides a summary of the total number of civil cases filed according to general type, and whether the United States was a party or the case was a private suit. The decline in the actual number of cases was 422. The category of cases reflecting the largest decline was contract cases for recovery of government benefits, 186 cases or 44% of the total decrease. Private tort cases accounted for 20% of the total decrease, a decrease in actual numbers of 80 cases.

TABLE V

CIVIL VOLUME - NATURE OF SUIT

	1985	1990	+/-
TOTAL CIVIL CASES	1,193	772	-421
UNITED STATES, TOTAL	476	272	-204
CONTRACT . . .			
Recovery (V.A., Medicare,etc)	218	32	-186
Other Contract	40	18	- 22
CONDEMNATION	18	--	- 18
REAL PROPERTY	58	83	+ 25
TORT ACTIONS	23	29	+ 6
CIVIL RIGHTS	17	4	- 13
PRISONER PETITIONS	3	16	- 13
SOCIAL SECURITY	50	49	- 1
FORFEITURES	12	3	- 9
OTHER	37	38	+ 1
PRIVATE CASES, TOTAL	717	500	-217
CONTRACT	192	135	- 57
REAL PROPERTY	10	14	+ 4
TORT ACTIONS, TOTAL	247	167	- 80
FELA	(34)	(32)	(-2)
AUTO PERS INJURY	(48)	(28)	(-20)
OTHER PERS INJURY	(148)	(85)	(-63)
PERSONAL PROPERTY	(17)	(22)	(+ 5)
CIVIL RIGHTS	68	33	- 35
PRISONER PETITIONS, TOTAL	115	65	- 50
LABOR LAW SUITS	44	36	- 8
OTHER	41	50	+ 9

2. Civil Trial Activity

The number of total civil trials held in the District during each of the referenced statistical years is reflected in section II A 2, Table III, supra. The number of civil trials held in 1990 was 23, a significant decrease from the previous five years. The unusually small number should be considered in light of the number of criminal trials during the same period, as well as the vacancy in an authorized judgeship which occurred during this time frame.

3. "Three-Year-Old" Cases

The number of civil cases pending in the District for a period of three years or more had, at the close of the 1990 statistical year, increased by 230 percent since 1985. The total number of three-year old cases was 205, representing 15.8 percent of the District's pending civil caseload. A note of caution is in order. The numbers stated are those reflected in the records maintained by the Administrative Office. Cognizant of the dramatic increase in the pending number of three-year old cases, the District undertook to reconcile its records with those of the Administrative Office. As of the close of the 1991 statistical year, the total number of pending three-year old cases stood at 80.

TABLE VI

THREE-YEAR OLD CASES

STATISTICAL YEAR	NUMBER	PERCENT OF TOTAL PENDING CIVIL CASES
1985	62	4.8%
1986	93	6.4%
1987	87	6.1%
1988	168	11.0%
1989	197	13.8%
1990	205	16.3%
1991	80	8.4%
% CHG. 1985-91	+29%	+54%

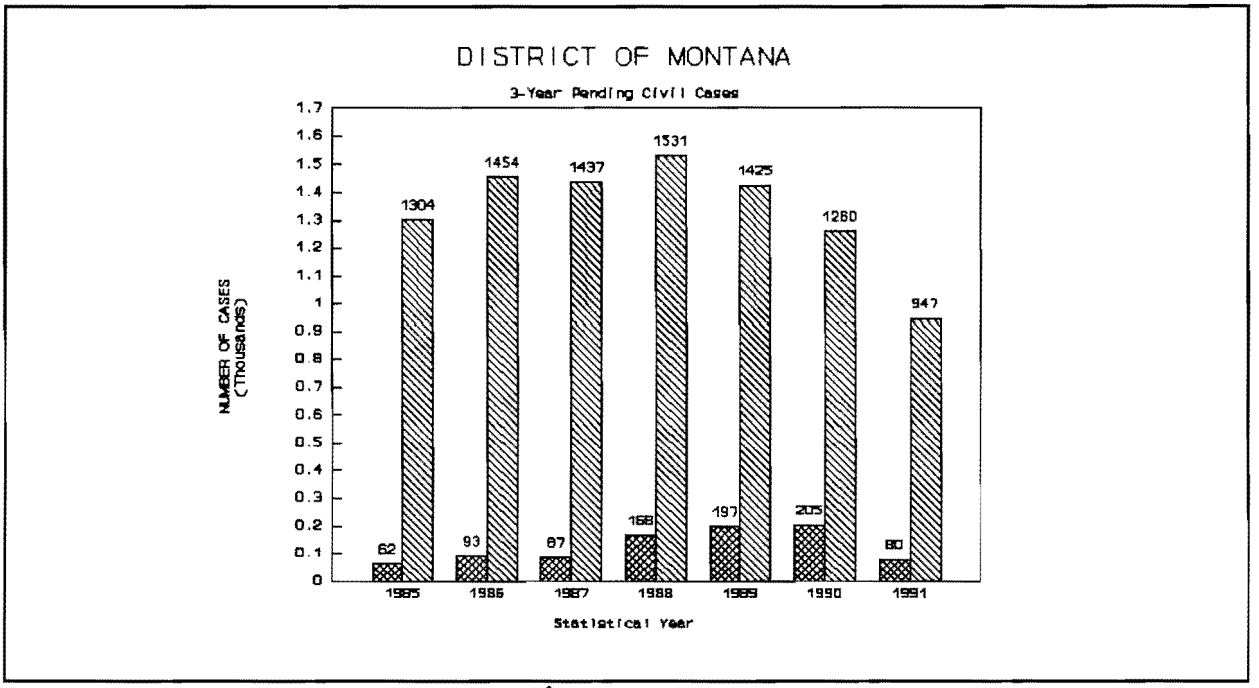

Diagram III

TABLE VII
CRIMINAL CASE VOLUME

STATISTICAL YEAR	FILINGS FELONY CASES	FILINGS DEFENDANTS	TERMINATIONS FELONY CASES
1985	159	209	160
1986	171	209	273
1987	174	251	177
1988	170	240	151
1989	208	282	207
1990	214	320	192
1991	242	353	231
%CHG 85-91	+52%	+69%	+44%

D. CRIMINAL CASE VOLUME

1. Case Activity

Criminal felony case filings in the statistical year 1990 totaled 214, representing an increase of 35 percent over criminal felony case filings in 1985. The percent change marks a gradual increase in criminal felony filings over the five-year period. The criminal felony case terminations reflected a corresponding increase of 20 percent during the same five-year period.

2. Trial Activity

The number of total criminal trials held in the District during each of the referenced statistical years is reflected in Section III B 2, Table III, supra.

E. DIVISIONAL CASE VOLUME

1. Civil Volume

The civil filings in all divisions declined steadily from 1985-1990. The decline continued in statistical year 1991.

TABLE VIII
CIVIL VOLUME PER DIVISION

STATISTICAL YEAR	FILINGS BLGS	BUTTE	HEL	G.F.	MISS.
1985	318	256	47	329	243
1986	358	222	88	274	246
1987	345	80*	131	241	225
1988	326	93	137	232	228
1989	276	77	159	279	202
1990	265	92	58**	190	167
1991	254	93	49	197	170
% CHG. 1985-91	-20%	--	--	-40%	-30%

* (Revision of Local Rule 105-1, dated June 12, 1986, -- transfer of Gallatin, Park and Powell Counties to Helena Division (See, Sec. I B, supra, p.2)).

**(Revision of Local Rule 105-1, dated June 12, 1989, -- transfer of Gallatin County to Butte Division, and Park County to Billings Division (See, Sec. I B, supra, p.2)).

2. Criminal Volume

TABLE IX
CRIMINAL VOLUME PER DIVISION (FELONY ONLY)

STATISTICAL YEAR	BILLINGS CASES	(DEFS)	BUTTE CASES	(DEFS)	HELENA CASES	(DEFS)	G.FALLS CASES	(DEFS)	MISSOULA CASES	DEFS
1985	23	(33)	17	(28)	8	(11)	95	(110)	16	(27)
1986	30	(32)	19	(23)	8	(9)	94	(117)	20	(28)
1987	26	(34)	16	(27)	25	(46)	75	(97)	32	(47)
1988	34	(48)	13	(24)	17	(25)	75	(99)	31	(44)
1989	43	(70)	14	(24)	27	(36)	89	(106)	35	(46)
1990	73*	(117)	23	(29)	18	(24)	54	(85)	45	(64)
1991	83	(118)	22	(33)	22	(29)	52	(77)	63	(96)
%CHG 85-91	+261%	(+258%)	+29%	(+18%)	+175%	(+164%)	-45%	(-30%)	+294%	(+256%)

*(Revision to Local Rule 105-1, dated June 12, 1989 (See, Sec. I B, supra, p.2)).

F. WORKLOAD PROFILE PER JUDGESHIP

The District is divided into five geographical divisions (see, Sec. I B, p.2, supra). The workload of the District is allocated by the chief judge of the District through assignment of each division to a particular judge, who is responsible for all cases assigned to that division. Although the District's local rule allows papers for a case to be filed in any office in the District, the case is assigned to the division where the events occurred or the parties or property are situated, and in accordance with the law of the State of Montana. Local Rule 105-3(a). Any

procedure utilized for case assignment has ramifications effecting ultimate disposition of the District's workload. The utilization of geographical divisions in the District of Montana increases accessibility in the District encompassing an exceptionally large geographical area. The judges of the District are essentially assigned permanently to hear cases in a particular division. The chief judge is vested with authority to make changes in the makeup of the particular divisions in order to insure an equitable distribution of the caseload.

The five divisions of the District are assigned to the three district judges as follows:

Hatfield, J., Chief Judge - Butte and Great Falls

Lovell, J. - Helena and Missoula

Shanstrom, J. - Billings

District Judge Shanstrom entered on duty as an Article III judge on May 16, 1990. Prior to assuming senior status on February 13, 1990, senior judge James F. Battin was, during the time frames addressed, chief judge of the District of Montana, and had responsibility for the Billings Division of the court.

Table X sets forth the average workload per authorized judgeship in the District of Montana for the ten-year period of time 1980 through 1990. The District was authorized a third Article III judgeship in 1985.

TABLE X
AVERAGE WORKLOAD PER JUDGESHIP

1980 -- 1991

STATISTICAL YEAR	NUMBER OF JUDGES	C A S E S FILINGS	TERMINATIONS	PENDING
1980	(2)	361	296	355
1981	(2)	414	352	416
1982	(2)	456	407	465
1983	(2)	510	417	558
1984	(2)	604	527	635
1985	(3)	452	416	459
1986	(3)	454	401	513
1987	(3)	400	404	509
1988	(3)	398	355	552
1989	(3)	402	432	523
1990	(3)	330	369	476
1991	(3)	334	435	366

TABLE XI
COURT ACTIVITY
PER JUDGESHIP

STATISTICAL YEAR	TRIALS CIVIL	COMPLETED CRIMINAL	TRIAL HOURS	OTHER HOURS
1985	13	20	376	322
1986	11	10	320	262
1987	8	12	251	244
1988	9	10	322	247
1989	10	9	324	237
1990	7	14	322	214

*** Judge James F. Battin assumed Senior Status February 13, 1990.**
**** Judge Charles C. Lovell entered on duty May 10, 1985.**
***** Judge Jack D. Shanstrom entered on duty May 14, 1990.**

G. SENIOR JUDGES

Historically, senior judges have been an integral part of the judicial work force in the District. For the time frame analyzed in the present report, senior judges were responsible for a significant amount of the work accomplished by the District. For the greater portion of the period 1985 through 1987, the District was fortunate to have the services of three senior judges, the Honorables William D. Murray, William J. Jameson and Russell E. Smith, who provided invaluable assistance to the court during that period when the District realized a remarkable increase in civil litigation.

Through the 1988 statistical year, these judges accounted for court activity in the following totals:

CIVIL TERMINATIONS	**359**
CRIMINAL TERMINATIONS	**58**
TRIAL HOURS	**411**
OTHER HOURS	**239**

The Honorable James F. Battin is now the District's only on-duty senior judge. Pursuant to the case assignment plan implemented in the Billings Division, Judge Battin is assigned civil cases on a co-equal basis with the other two judicial officers stationed in the Billings Division, maintaining a civil case load of 105 cases as of April 30, 1991. The magnitude of the case load maintained by Judge Battin provides the District with an additional full-time judicial officer.

H. MAGISTRATE JUDGES

The first full-time magistrate judge position was authorized for the District of Montana, Billings Division, in 1983. A second magistrate judge, authorized for the Great Falls Division, entered on duty in 1988. The District is awaiting authorization for a third full-time magistrate judge position, expected to be authorized by August, 1991. Since the authorization of the first magistrate judge position in 1983, the District has strived to utilize the magistrate judges in an extensive and effective manner. Referrals by the Article III judges to the magistrate judges have

been extensively encouraged among the District's Article III judges. Additionally, the Article III judges encourage parties in civil litigation to consider consenting to the transfer of jurisdiction to the magistrate judges.

With the authorization of the magistrate judge positions, the court has established an effective settlement process, utilizing the magistrate judges, on a district-wide basis, to conduct settlement conferences. The settlement conference procedure has become an integral part of the court's civil pretrial procedure. Properly utilized, the settlement process affords litigants the opportunity to expeditiously and cost-effectively reach a compromise agreement and settlement of civil cases.

The court continually strives to enhance the utilization of the magistrate judges throughout the District. Recently, in the case assignment plan implemented in the Billings Division, the magistrate judge in that division has entered into the civil case assignment system on a co-equal basis with the Article III judges stationed in that division. The court is in the process of exploring similar case assignment procedures in the other four divisions of the District. Since the advent of the magistrate judge positions in the District, the court has seen a steady increase in cases where the parties have consented to transfer the jurisdiction to the magistrate judges. From all indications, the number of consents will undoubtedly increase as the bar and litigants become fully aware of the potential the magistrate judges provide litigants for a time and cost efficient resolution of civil cases.

Complete statistical information regarding the civil case activity of the District, for which the magistrate judges are responsible, is not available. The Administrative Office has not maintained a reporting system for the magistrate judges equivalent to that maintained for the Article III judges. The 1990 Annual Report of the Ninth Circuit reveals the number of total civil matters referred to the magistrate judges in the District as 350 in 1989 and 334 in 1990. The number of consent cases terminated by the magistrate judges during those same years was 38 and 39, respectively.

IV.

COURT PROCEDURES

A. ASSIGNMENT PROCEDURES

The assignment of cases is accomplished pursuant to directive of Local Rule 105-3. Civil cases are assigned to the division where the events occurred or the parties or property are situated, and in accordance with the law of the State of Montana. Criminal cases are assigned to that division where venue properly lies in accordance with the Federal Rules of Criminal Procedure. The initial assignment of cases to individual judges derives from the divisional assignment, since the workload of each division is assigned to a specific judge. Local Rule 105-2(b). The District has, to date, continued to assign cases based upon geographical divisions, as opposed to assignment at random, or in rotation. Based upon civil filings in the District for the 1991 statistical year, the geographical assignment appears to be a relatively equitable division of civil cases:

DIVISIONS	ASSIGNED	CASES FILED 1991
Butte\Great Falls	Hatfield, J.	294
Missoula\Helena	Lovell, J.	222
Billings	Shanstrom, J.	257

Reassignment of civil cases where necessitated by recusal, disqualification, backlog, etc., is accomplished pursuant to directive of the Chief Judge.

B. CASE MONITORING

Cases are monitored, in general, by the Clerk's office in each of the five divisional offices, to insure compliance with the service of process requirements of Fed.R.Civ.P. 4 as well as the deadlines established by the scheduling order implemented in civil cases. With respect to the latter aspect of the monitoring process, the Clerk's office in each division prepares a monthly report which sets forth the critical deadlines for every civil case contained upon the division's docket. The report notes the dates for all critical steps in the pretrial and trial process, including identification of pending motions. The report is revised monthly and a revised copy submitted to the judge assigned a particular division.

The civil caseload of each judge is also monitored by his immediate staff with particular emphasis placed upon the motions which have been submitted to the judge for determination.

C. PRETRIAL PROCEDURE

Fed.R.Civ.P. 16 was amended in 1983 to encourage pretrial management to meet the needs of modern litigation. See, Adv.Comm. Note to 1983 Amendment of Rule 16. Local Rule 235 was implemented by the District of Montana to accomplish the goal contemplated by the 1983 amendment to Rule 16, i.e., early assertive scheduling and case management by the court. Local Rule 235 is designed to achieve the objective of efficient and expeditious disposition of cases through early judicial management and establish uniformity

on a district-wide basis. The actual procedures adopted by the individual judges of the District in satisfaction of Rule 235, although generally similar, are not uniform. Differences exist primarily in the conduct of Rule 16 conferences and the methodology used for establishing a trial date. The following is a brief synopsis of the pretrial procedure presently used by the various judges of the District. This synopsis addresses the six principal aspects of the pretrial procedure.

1. Rule 16 Conference

Consistent with the mandate of Fed.R.Civ.P. 16, Local Rule 235-2 directs that a preliminary pretrial conference is mandatory in every civil case. Local Rule 235-3 sets forth the specific matters to be addressed at the time of the preliminary pretrial conference. The conduct of the conference varies with the individual judges of the District.

Only one judge (Hatfield), requires a written preliminary statement to be filed by counsel for the parties prior to the conference. The statement must include a factual outline of the case, persons to be joined, jurisdictional issues, controlling legal issues, unusual problems anticipated in the discovery process, and a proposed timetable for the accomplishment of the various pretrial tasks, including discovery and submission of a proposed final pretrial order. The person charged with responsibility for conducting the preliminary pretrial conference varies with the judge's preference and the complexity of the

particular case. The conference may be conducted by the judicial officer assigned the case, a law clerk, or a deputy clerk of court.

All judges of the District do implement differential case management based upon complexity, implementing a discovery schedule tailored to the complexity of the case. The notable difference in the Rule 16 conference relates to the establishment of a trial date. One judge (Battin) establishes a specific trial date at the time of the pretrial conference. One judge (Lovell) does not ordinarily establish a specific trial date at the time of the preliminary pretrial conference, but sets a specific date for submission of a final pretrial order, at which time the trial date is established based upon the status of the court's trial docket. Two judges (Hatfield and Shanstrom) have implemented a "tracking" system, whereby non-complex cases may be given a specific trial date at the time of the preliminary pretrial conference, but complex cases, or cases with anticipated discovery problems, are not given a specific trial date. Ordinarily, submission of a final pretrial order is the event which triggers placement of the latter cases upon the trial calendar. The time frame in which the case is set for trial after submission of the final pretrial order varies by judge. Examples of scheduling orders used in the various divisions are provided in Appendix I.

2. Discovery

The scheduling order implemented by all judges establishes a date certain for the completion of discovery. The liberality with which extensions of the discovery deadlines are

granted differs with the individual judges. In general, the judges are inclined to grant extensions when stipulated to by all parties. There exists, however, a growing concern among some of the judges that the discovery deadline be more stringently enforced in order to enable the court to effectively control its trial docket.

No provision exists in the local rules of procedure that places general limitations upon discovery. All judges share the general attitude that the court should avoid unnecessarily intervening in the discovery process. All encourage the informal resolution of discovery disputes. Where necessary, however, the judges will convene Fed.R.Civ.P. 26(f) conferences in order to insure the cases remain on the discovery schedule implemented by the court. There exists an inclination among the judges to utilize Rule 26(f) conferences as a tool conducive to more assertive case management.

The imposition of sanctions appears, generally, to be the exception rather than the rule. All judges view the imposition of sanctions as necessary, however, to curb discovery abuses. The full array of sanctions allowed by Fed.R.Civ.P. 37 are employed by the judges in appropriate circumstances.

Magistrate judges are utilized on a case by case basis to assist the judges in resolving discovery disputes. Discovery disputes are not routinely referred to the magistrate judges, but the use of these judicial officers appears to be reserved for the more involved discovery disputes which may result in the expenditure of an inordinate amount of the judge's time.

3. Motion Practice

As previously noted, motions are monitored by the Clerk's office, with the motion being brought to the attention of the judge upon completion of briefing in accordance with the time frame established by Local Rule 220-1. No provision exists in the local rules of procedure requiring counsel to periodically advise a judicial officer of matters pending under advisement for an extended period of time. None of the judges routinely schedule a law and motion day, but determine the necessity of conducting a hearing on a case by case basis. The frequency with which hearings are scheduled varies by judge.

Magistrate judges are available to assist the judge in resolution of pretrial motions. The majority of judges prefer to use the magistrate judges for disposition of non-dispositive motions. In general, the judges remain circumspect in referring dispositive motions to the magistrate judges for recommended decision pursuant to 28 U.S.C. § 636(b), based upon concerns of maximizing efficiency of judicial personnel. No limitations presently exist in the local rules of procedure upon the size of briefs presented in support of any motion.

4. Settlement

All judges of the District routinely schedule civil cases for a settlement conference before a judicial officer, normally the magistrate judges. This process has proven especially effective.

Although the various judges utilize non-judicial officers to conduct mediation in particular cases, settlement conferences appear to be the sole tool ordinarily utilized by the court as a form of alternative dispute resolution.

Although Judge Shanstrom has experimented with the use of summary jury trials on a limited basis, the process has not been used to any great extent in the District.

5. Trial Calendaring

As previously noted, the practice among the District's judges regarding the establishment of a trial date varies, ranging from a general practice of establishing a trial date at the time of the preliminary pretrial conference, to establishing a trial date at the time the proposed final pretrial order is submitted for consideration by the court. With the advent of differential case management, the general trend appears to be developing whereby the judges utilize a "track" system, setting a date certain for trial in simple cases, while reserving the establishment of a trial date in complex cases until the judge is assured discovery will be completed and the case ready for trial. Depending on the particular judge's calendaring process, more than one trial is scheduled on a particular trial date. The stringency with which a trial date is adhered to varies by judge, and the discretion to extend the trial date exercised on a case by case basis.

6. Final Pretrial Conference

Final pretrial conferences are routinely held in all civil cases. The majority of judges view the final pretrial conference as the final essential step in the pretrial process necessary to narrow the issues to be presented at trial, and insuring that trials will not unnecessarily be elongated by the presentation of extraneous matters. In that regard, some judges have indicated they may impose specific time constraints upon trials, limiting the number of hours each party would have to present their respective cases in chief. Although this practice is gaining acceptance in other district courts, the practice has not been utilized by any of the judges in this District.

A majority of the judges view the final pretrial conference as a last opportune time to explore settlement possibility, thereby avoiding the unnecessary commitment of court resources to trial.

V.

RECOMMENDATIONS TO IMPROVE THE CIVIL LITIGATION PROCESS IN THE DISTRICT OF MONTANA

INTRODUCTION

The condition of the civil docket of the District has improved dramatically in the recent past. The decline in civil case filings has obviously been a significant factor leading to improvement. However, the judicial officers of the District have engaged in a concerted effort to reduce backlog in the civil docket. The effort has proven successful. Differential case management, to the extent implemented, and extensive utilization of magistrate judges have proven to be successful tools in the efficient and expeditious disposition of civil cases in the District.

The advisory group has identified the causes of delay and cost in the civil litigation process of the District. Not surprisingly, they arise from a multitude of sources both in court procedures and the litigation practices of the bar. No identifiable category of cases exists in the District that could be viewed as especially burdening the District, consuming resources and causing a general delay in the disposition of civil cases. The recommendations and comments that follow focus on the causes of cost and delay. To the extent these causes can be alleviated or

eliminated by procedural changes, these changes have been recommended.

Delay and cost also occur because of the misuse of the procedural rules by the practicing bar. Considering the civil case activity of the District, the number of judicial officers, and the limited number of federal practitioners, the advisory group is convinced that the most effective means of eliminating abuse and improving the civil litigation process is to implement a comprehensive pretrial procedure, designed to control the discovery process and motion practice through assertive judicial management. The judicious use of a peer review process and educational efforts will serve to bolster the effort to reduce cost and delay through the elimination of abusive litigation practices.

A. CASE ASSIGNMENT PROCEDURES

RECOMMENDATIONS:

1. Assignment of Civil Cases to Magistrate Judges:

The Plan should establish civil case assignment procedures which directly integrate all magistrate judges of the District in the civil litigation process.

IMPLEMENTATION

Adoption of a case assignment plan in each division of the five divisions of the District which provides for either:

(a) automatic assignment of civil cases to a magistrate judge at the time of filing, subject to specifically excepted classes of cases; or

(b) assignment of a magistrate judge to supervise pretrial aspects of civil cases, and disposition of pretrial motions not excepted from the jurisdiction of the magistrate judge under 28 U.S.C. § 636(b)(1)(A).

2. Consent Notification Procedure:

The Plan should adopt a procedure which provides a party with adequate notice of his or her right to have any or all civil proceedings conducted by an Article III judge. The procedure should also provide, however, that failure to timely demand assignment of a case to a district judge will be deemed a waiver of the right and a consent by the party to have a magistrate judge hear and determine any pretrial matter and to conduct any and all trial proceedings and order entry of judgment in the case.

IMPLEMENTATION

This recommendation would require the promulgation of a local rule of procedure expressly advising the parties of the necessity to timely assert their right to have a proceeding conducted by an Article III judge. The advisory group suggests

the following modification to Rule 105-2 of the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA be adopted:

RULE 105-2. ASSIGNMENT OF CASES.

(d) Consent to Proceed Before a Magistrate Judge

The right to have all civil proceedings conducted by a United States District Judge appointed pursuant to Article III of the United States Constitution shall be preserved to the parties inviolate.

Any party to a civil action that has been assigned to a magistrate judge pursuant to subsection (c) of this rule may demand that all pretrial matters excepted from the jurisdiction of the magistrate judge by 28 U.S.C. § 636(b)(1)(A) be heard and determined, and all trial proceedings conducted and judgment entered, by an Article III judge, by serving upon the other parties a demand therefor in writing at anytime after the commencement of the action and not later than ten (10) days after the service of the last responsive pleading as defined by Fed.R.Civ.P., Rule 7. Such demand may be endorsed upon a pleading of the party. The failure of a party to serve a demand as required by this rule and to file it as required by Fed.R.Civ.P. 5(d) constitutes a waiver by the party to have any pretrial matter heard and determined, or

trial proceedings conducted and judgment entered, by an Article III judge, and a consent by the party to have the magistrate judge hear and determine any pretrial matter and to conduct any or all trial proceedings and order the entry of judgment in the case.

(See, Appendix III for full text of proposed Rule 105-2, RULES OF PROCEDURE FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.)

COMMENT

The assignment of the District's workload is accomplished pursuant to the directive of Local Rule 105-3. Initial assignment of cases to individual district judges derives from the divisional assignment, since the workload of each division is assigned to a specific judge. Local Rule 105-2(b). The District has, to date, continued to assign cases based upon geographical divisions, as opposed to assignment at random, or in rotation.

The full-time magistrate judges appointed in the District of Montana are authorized to perform the full range of duties prescribed by 28 U.S.C. § 636. Local Rule 400-1. The District has not adopted local rules specifically governing the assignment of civil matters to the magistrate judges. Rather, the District has followed a discretionary assignment of duties by individual judges to individual magistrate judges. Recently, however, in a case assignment plan implemented in the Billings Division, the magistrate judge in that division has entered into the civil case

assignment system on a co-equal basis with the Article III judges stationed in that division.

The magistrate judges have become an integral part of the civil dispute resolution system of the District. The magistrate judges are the cornerstone of the District's alternative dispute resolution system, having developed an efficient and expeditious case settlement process. The use of the magistrate judges has gained wide acceptance among the bar and litigants of the District.

Review of the 1990 Annual Report of the Ninth Circuit reveals the number of consent cases terminated by the full-time magistrate judges in the District declined by a total of one case from 39 to 38 (a 2.6% change). The number of total civil matters referred to the United States Magistrate Judges declined from a total of 350 to 334 between the 1989 and 1990 statistical years (ending June 30, 1990). The decrease in both the consent cases and number of civil matters referred to the magistrate judges appears to be due largely to the overall decrease in the civil case volume of the District which declined from 914 to 772 cases and is not attributable to any reluctance of the judiciary or litigants to utilize magistrate judges.

The advisory group believes the increased utilization of the magistrate judges throughout the civil litigation process will prove to be the singularly most effective tool which can be implemented in the District to ensure effective case management and defeat delay and cost in the civil litigation process. The increased utilization of magistrate judges in the civil litigation

process will be an essential element of the differential case management system contemplated by the advisory group. See, section V.C, Pretrial Activity. The requirement that a judicial officer actively participate in the pretrial proceedings will place a significant demand upon the district judges. The incorporation of the magistrate judges in the case assignment process will operate to alleviate the burden on district judges while enhancing the overall effectiveness of the case management system. Accordingly, the advisory group recommends the Plan implemented by the District adopt assignment practices which allow the full utilization of the three full-time magistrate judges appointed in the District, by insuring the assignment of civil cases to the magistrate judges early in the litigation process. This recommendation is consistent with the recommendation reached by the Ninth Circuit Judicial Council's United States Advisory Committee, see, "Study of Magistrates Within the Ninth Circuit of Appeals" (August 15, 1990), that magistrate judges be directly incorporated in the civil case assignment process.

Specifically, the Plan implemented by the District must adopt procedures which provide for the automatic assignment of civil cases, except those cases specifically identified by the judges as properly assigned to a district judge in the first instance. In the alternative, the advisory group suggests the adoption of assignment practices which allow magistrate judges to supervise the pretrial aspects of civil cases. The latter practice

would allow a district judge to exercise discretion on a case by case basis.

As noted, the District maintains five divisional offices which, in general, lie significant distances apart. At present, there are no judicial officers stationed in two of the divisions. The judicial officers, as schedules permit, attempt to accommodate the litigants and counsel by conducting proceedings at the court facilities in those divisions. However, the counsel and litigants are often required to under-take significant travel during the course of a case to attend proceedings in the court facility in the division where the judicial officer assigned to the case is stationed. The direct assignment of civil cases to magistrate judges for pretrial proceedings would allow magistrate judges, whose schedules ordinarily remain more flexible than the active judges, to conduct proceedings on a regular basis in the court facilities in these divisions. The availability of the magistrate judges to conduct proceedings in those divisions would prove to be a significant step in reducing costs to litigants.

The second aspect of the present recommendation relates to the establishment of a proper procedure for notifying parties of their right to demand civil proceedings be conducted by a district judge. If civil cases are automatically assigned to the magistrate judge, the District should consider adopting a local rule of procedure requiring parties to timely demand reassignment of a case to a district judge. The failure to make a timely demand should be deemed a waiver of the right to have all matters

determined by an Article III judge, and a consent to the jurisdiction of the magistrate judge to whom the case is assigned. The requirement would allow cases to be assigned promptly to the judicial officer who will be responsible for the case through disposition. The prompt assignment will facilitate case management planning.

B. CASE MONITORING AND INFORMATION SYSTEM

RECOMMENDATION:

The Plan must provide for the adoption of a civil case monitoring system conducive to the active judicial management of each civil case filed with the court.

IMPLEMENTATION

The Clerk of Court would be required to perform the following tasks:

(1) Develop an information and reporting system which allows ready access to case-specific information essential to the active management of every civil case.

The format of the system should be designed to provide the following information relative to every case placed upon the court's civil docket:

(a) Date of filing

(b) Date of preliminary pretrial conference

(c) Deadline established for completion of discovery

(d) Date for submission of proposed final pretrial order

(e) Dates of any amendments to pretrial scheduling order

(f) Date of trial; specific identification of cases not scheduled for trial within eighteen months of the date of filing

(g) Pending motions; date motion taken under advisement

(2) Monitor each case to insure:

(a) compliance with the service of process requirements prescribed by Rule 4(j) of the Federal Rules of Civil Procedure;

(b) a preliminary pretrial conference is scheduled in accordance with the directive of Local Rule 235-1;

(c) compliance with the deadlines established by pretrial scheduling order; and

(d) compliance with the mandate of Local Rule 235-4 regarding the establishment of a trial date.

(3) Prepare a monthly report which sets forth the information referenced in subsection (1) for every civil case pending before each judicial officer. A copy of the report shall

be provided the particular judicial officer and the chief judge of the District.

(4) Prepare a monthly report for each judicial officer of the District which reflects all motions, or other matters, that each officer has had under advisement as of the date of the report, for a period of time in excess of forty-five (45) days. A copy of each report shall be provided the chief judge of the District.

COMMENT

The effectiveness of any civil case management system is dependent upon the existence of an information system which provides the court with ready access to: (1) aggregate statistical information concerning the court's entire case load, and (2) individual case information.[2] The Administrative Office of the United States Courts maintains a national reporting system which reports the workload and case processing statistics each district court is required to maintain. This aggregate statistical information, published annually in the Federal Court Management Statistics (MGMT REP.), measures primarily the caseload activity and inventory of each district court, and provides time standards which may be used to assess delay in the disposition of civil cases. The information may be used to determine the effectiveness

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1. M. Solomon, CASEFLOW MANAGEMENT IN THE TRIAL COURT (1987), American Bar Association Division of Judicial Services Lawyer's Conference Task Force on Reduction of Litigation Cost and Delay.

of the District's management system on an aggregate basis. The aggregate case activity and inventory of the individual judicial officers of the District are, in turn, compiled, and reported to the chief judge of the District, and distributed to all judicial officers of the District on a monthly basis. This compilation and report allows the chief judge to monitor workload distribution among the judicial officers as well as the workload activity of each judicial officer.

The more important information which must be regularly compiled and monitored in order to allow each judicial officer to effectively manage his or her caseload, is the case-specific information which reflects the activity in a particular case. Individual case activity is presently monitored, in general, by the Clerk of Court's office in each of the five divisional offices of the District, to insure compliance with both the service and process requirements of Rule 4 of the Federal Rules of Civil Procedure, and the deadlines established by the scheduling order implemented in civil cases. With respect to the latter aspect of the monitoring process, the Clerk's office in each division prepares a monthly report which sets forth the critical deadlines for every civil case contained upon the division's docket. The report notes the dates for all critical steps in the pretrial and trial process, including identification of pending motions. The report is revised monthly and revised copies submitted to the judge assigned the workload of a particular division. This monitoring system provides each judicial officer timely access to case

specific information, and a monthly update on the status of the divisional caseload in its entirety. Consequently, each judicial officer can review all pending matters on a monthly basis. The review procedure is effective in "troubleshooting" cases that may be languishing and reducing backlog by ensuring inactive cases are dismissed.

The advisory group recommends the monitoring and information system informally utilized on a divisional basis, be implemented and standardized throughout the District in order to facilitate access to individual case information on a district-wide basis. The format of the present information and reporting system should be expanded to include two additional items of case-specific information:

(1) the dates of any amendments to the pretrial scheduling order originally implemented in the case; and

(2) specific identification of cases not scheduled for trial within the eighteen-month period prescribed by Local Rule 235-4.

The additional items of information suggested would assist the judicial officer in identifying specific cases, parties or counsel that must be monitored closely to insure a particular case progresses in a timely fashion. The advisory group suggests the reporting form set forth in Appendix III be utilized on a district-wide basis.

In that regard, the advisory group notes the unwarranted continuances of either the deadlines established for the

accomplishment of discovery or trial, whether done at the insistence of the litigants, counsel or the court, is a principal cause of both delay and cost in the District. A firm and consistent continuance policy is essential to the effectiveness of a civil case management system.[3] The advisory group views the preliminary pretrial conference mandated by Rule 16 of the Federal Rules of Civil Procedure as the "linchpin" of the civil case management system. If enforcement of the dates established at the conference is the norm, it will necessarily result in the conference being more substantive; requiring both the court and counsel to be prepared to comprehensively address the matters contemplated by Rule 16. The effective monitoring of each case will facilitate the establishment of a firm and consistent continuance policy.

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2. Defeating Delay, Lawyer Conference Task Force on Reduction of Litigation Cost and Delay (American Bar Association, 1986).

C. PRETRIAL ACTIVITY

RECOMMENDATIONS:

1. Assertive Judicial Management

The Plan should mandate assertive judicial management of pretrial activity through direct involvement of the judicial officer to whom the case is assigned in the establishment, supervision and enforcement of a case-specific plan for discovery and disposition.

IMPLEMENTATION

Promulgation of a local rule of procedure that:

(a) requires the judicial officer to timely convene and conduct a preliminary pretrial conference as contemplated by Rule 16, Federal Rules of Civil Procedure;

(b) requires the establishment of a plan for the accomplishment of discovery and disposition that the judicial officer, in consultation with counsel for the litigants, finds is suitable to the circumstances of the case;

(c) insures enforcement through the establishment of dates certain for the accomplishment of critical pretrial matters and monitoring of case progress; and

(d) provides for non-complex cases to be excepted from the standard pretrial procedure, but insures the excepted cases will proceed to disposition in timely fashion.

The advisory group suggests the following revision to Local Rule 235:

RULE 235-1. PRELIMINARY PRETRIAL CONFERENCE

(a) Not later than forty-five (45) days after a case is at issue, or one hundred twenty (120) days after filing of the complaint, whichever comes first, the judge or magistrate judge to whom the case is assigned shall hold a preliminary pretrial conference to discuss the matters included in the preliminary pretrial statements and discuss and schedule the following matters:

(1) joinder of additional parties;

(2) amendment of pleadings;

(3) filing motions;

(4) identification of expert witnesses;

(5) completion of discovery;

(6) filing of proposed final pretrial order;

(7) the date for any other pretrial conferences deemed advisable by the presiding judicial officer;

(8) trial, if applicable; and

(9) any other dates necessary for appropriate case management.

All parties receiving notice of the conference shall attend in person or by counsel ultimately responsible for trying the case, prepared to discuss the implementation of a pretrial scheduling order conducive to the efficient and expeditious determination of the case.

(b) Every party shall serve a Pre-Discovery Disclosure Statement required by Local Rule 200-5(a) not later than fifteen (15) days prior to the date set for the preliminary pretrial conference.

(c) Every party shall file a Preliminary Pretrial Statement no later than seven (7) days prior to the date set for the conference. The statement shall include a brief factual outline of the case. The statement shall also address

(1) issues concerning jurisdiction;

(2) identifying, defining and clarifying issues of fact and law genuinely in dispute;

(3) making stipulations of fact and law and otherwise narrowing the scope

of the action to eliminate superfluous issues;

(4) deadlines relating to joinder of other parties and amendments to pleadings;

(5) the pendency or disposition of related litigation;

(6) propriety of special procedures including reference to a master or a magistrate judge;

(7) controlling issues of law which the party anticipates presenting for pretrial disposition;

(8) anticipated course of discovery, and time frame for completion, including (a) any proposed limitations upon the methods and extent of discovery; and (b) procedure for management of expert witnesses;

(9) propriety of modifying standard pretrial procedure established by Local Rule 235;

(10) advisability of the case being considered for placement upon the court's expedited trial docket in accordance with Rules 235-4(a); and

(11) prospect for compromise of case and feasibility of initiating settlement negotiations or invoking alternate dispute resolution procedures.

(d) The following categories of cases shall be excepted from the requirements of the present rule:

(1) Appeals from proceedings of an administrative body of the United States of America.

(2) Petitions for a Writ of Habeas Corpus.

(3) Proceedings under the Bankruptcy Code, Title 11, United States Code.

(4) Actions prosecuted by the United States of America to collect upon a debt.

(5) Forfeiture actions prosecuted by the United States of America.

(6) Any case which the judge or magistrate judge to whom the case is assigned orders to be excepted from the requirements of the present rule.

In those cases excepted from the requirements of the present rule, the assigned judicial officer shall, not later than forty-five (45) days from the date the case is at issue, or one hundred twenty (120) days after filing of the initial pleading, establish a schedule for final disposition of the case.

235-2 PRETRIAL SCHEDULING ORDER

After the Preliminary Pretrial Conference, the presiding judge or magistrate judge shall immediately enter an order summarizing the matters discussed and action taken, setting a schedule limiting the time for those matters referred to in Rule 235-1(a) and covering such other matters as are necessary to effectuate the agreements made at the conference.

The scheduling order shall specifically designate whether the case has been placed upon the court's expedited trial docket pursuant to Rule 235-4(a).

235-3 STATUS CONFERENCES

Status conferences may be held in any case as deemed necessary by the judge or magistrate judge to whom the case is assigned. A party may move the assigned judicial officer to convene a status conference by filing an appropriate motion advising the judicial officer of the necessity for a conference.

2. Preliminary Pretrial Conference

The Plan should adopt provisions designed to insure informed participation at the preliminary pretrial conference by all counsel and the presiding judicial officer.

IMPLEMENTATION

With specific reference to the second recommendation, a local rule of procedure should be adopted which requires all parties to file, in advance of the conference, a written statement addressing certain specifically identified matters deemed critical to the development of a realistic and efficient discovery plan and schedule for disposition.

The advisory group suggests Local Rule 235-1 be revised as previously set forth. Included in the proposed revision is a requirement that a written statement be filed in advance of the preliminary pretrial conference (235-1(b)). (See, Appendix IV for full text of proposed Rule 200-5, RULES OF PROCEDURE FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.)

COMMENT

The advisory group perceives assertive judicial management of pretrial activity to be the most essential ingredient to the implementation of a plan which will reduce cost and delay in the civil litigation process of the District. The advisory group encourages the District to resist attempting to reduce cost and delay through the imposition of arbitrary pretrial deadlines and limitations upon discovery. Rather, the District should develop a civil case management scheme centered on the direct involvement of a judicial officer in the establishment, supervision and enforcement of a plan for discovery and timetable for disposition suitable to the circumstances of the case. A management scheme based upon active judicial involvement in the pretrial stage will not only facilitate the expeditious resolution of cases but will enhance the quality of the process through encouraging appropriate preparation by attorneys. A case management system requiring the informed and active participation of all attorneys and a judicial officer in the establishment of a case specific management plan will promote cooperation among attorneys in the discovery process and preclude an attorney from utilizing the process as a strategic weapon. Ongoing supervision by the judicial officer will operate to curb discovery abuse and insure disposition of the case in a time-frame which will allow full, yet efficient, development of the case.

The procedure proposed by the advisory group contemplates the preliminary pretrial conference will be a significant event to

be participated in fully by informed counsel; a goal envisioned by Rule 16 of the Federal Rules of Civil Procedure. The proposed rule calls for the parties' submission of a preliminary pretrial statement in advance of the preliminary pretrial conference. It is suggested the preliminary pretrial statement would prove effective in requiring attorneys to undertake a considered review of the subjects specifically identified in Rule 16 as properly considered at the initial pretrial conference. Submission of the statement will also provide the presiding judicial officer the opportunity to formulate specific solutions to perceived problems.

The proposed rule incorporates a specific list of subjects to be addressed which is more extensive than the subjects delineated in Rule 16. Two of the subjects are of special import. First, the parties would be required to address the propriety of identifying any special procedures which should be implemented in the case. The primary purpose of this subject is to require the parties to consider whether the reference of any aspect of the case to a magistrate judge would serve to expedite disposition of the case. The extensive utilization of the magistrate judges in the District dictates that reference to a magistrate judge be considered by the parties and the court during the preliminary stage of the pretrial process. Inclusion of this requirement would serve to enhance utilization of the magistrates and assist in efficient management of the court's caseload. Second, the parties must consider placement of the case upon the "expedited" trial docket, which the advisory group suggests should be included in the

Plan. The implementation of an expedited trial docket would provide parties with the option of obtaining a fixed trial date at the time of the preliminary pretrial conference, subject to the requirement that the parties adhere strictly to the pretrial scheduling order implemented. It is suggested the establishment of an expedited trial docket would encourage the parties to accomplish discovery in an economic and efficient manner in the interest of receiving an expedited trial setting.

Rule 16(b) of the Federal Rules of Civil Procedure permits each district court to exempt certain categories of cases in which the burdens of scheduling orders exceed the administrative efficiency that would be gained. The proposed rule is designed to exempt those cases in which extensive judicial involvement and case management is not warranted. The proposed rule does require, however, that in those excepted cases the court enter a general schedule for disposition of the case, to insure the case proceeds to disposition in timely fashion.

The District has extensively utilized preliminary pretrial conferences in an effort to develop discovery plans and timetables for disposition on a case by case basis. The advisory group finds, however, the conferences have generally lacked the detail and intensity necessary to insure the implementation of an effective case management plan. Two factors have contributed to this result: (1) the lack of participation, on a consistent basis, of the judicial officer to whom the case is assigned; and (2) a lack of preparation by attorneys based upon a lack of appreciation

of the utility of the preliminary pretrial conference in controlling the course of discovery and disposition. The mandatory participation by a judicial officer in the preliminary pretrial conference will prove vital to the success of the differential case management system contemplated by this report. Active judicial involvement is necessary to insure adequate preparation by attorneys in the development of an informed case management plan. A majority of the judges of the District have established a de facto differential case management system. The rule suggested by the advisory group would effectively serve to implement a differential case management system on a district-wide basis.

D. TRIAL SCHEDULING

RECOMMENDATION:

The Plan should adopt a trial scheduling procedure which mandates the establishment of firm trial dates, while providing a flexibility in scheduling which facilitates differential case management and optimum utilization of judicial resources.

IMPLEMENTATION

Promulgation of a local rule of procedure that provides for the establishment of:

(1) an expedited trial docket; cases placed upon the docket to be set for trial on a date certain not to exceed six (6) months from the date of the preliminary pretrial conference; and

(2) a general trial docket; cases placed upon the docket to be set for trial on a date certain not more than ninety (90) days from the date of submission of a proposed final pretrial order.

Development of internal operating procedures relating to the transfer of civil cases among judicial officers which will ensure that every case placed upon the expedited trial docket will be tried as scheduled.

The advisory group suggests the court adopt a local rule along the following format:

(a) Expedited Trial Docket

(1) The court shall establish an expedited trial docket. A case placed upon the expedited trial docket shall be set to commence trial on a date certain not later than six (6) months from the date of the preliminary pretrial conference.

(2) At the time of the preliminary pretrial conference, any party may request placement of the case upon the expedited trial docket. If all parties consent to placement of the case upon the expedited trial docket, the assigned judicial officer shall place the case upon the expedited trial docket, establishing a date certain for trial in the pretrial scheduling order. By consenting to placement upon the expedited trial docket, the parties agree the trial shall not be continued absent a showing that a continuance is necessary to prevent manifest injustice.

(b) General Trial Docket

Unless a trial date has been established by previous order, the judge or magistrate judge to whom the case is assigned shall, within thirty (30) days of the submission of a proposed final pretrial order, convene a status conference for the purpose of determining the readiness of the case for trial and establishing a trial date.

Pursuant to the status conference the judicial officer to whom the case is assigned shall immediately enter a final scheduling order which establishes dates for the following:

(1) a final pretrial conference unless deemed unnecessary by the judicial officer;

(2) filing of each party's proposed charge to the jury, or, where appropriate, proposed findings of fact and conclusions of law; and

(3) trial; the date established shall not be more than sixty (60) calendar days from the date of the status conference, unless the assigned judicial officer's trial docket precludes accomplishment of trial within that time frame, in which event the case shall be given priority on the next trial calendar. In the event the trial date established is beyond eighteen (18) months from the date the complaint was filed, the judge or magistrate judge to whom the case is assigned shall enter an order certifying that (i) the demands of the case and its complexity render a trial date within the eighteen-month period incompatible with serving the ends of justice; or (ii) the trial cannot be reasonably held within the eighteen-month period because of the status of the judicial officer's trial docket.

COMMENT

In its enactment of the Civil Justice Reform Act of 1990, Congress acknowledged that scheduling and adherence to a firm trial date is an absolutely vital feature of any caseflow management system.[4] At present, the rules of procedure of the District do not establish a uniform procedure for setting a trial calendar. The judges of the District have implemented various procedures for setting a trial calendar. Whatever procedure is implemented, there remains the ever present and unpredictable element that trials will be continued at the last minute resulting not only in the effective loss of available trial time, but a likely increase in cost to litigants as additional time will be expended by counsel in preparing for the new trial date. Furthermore, as a practical matter, serious settlement negotiations do not, oftentimes, occur until a trial date is firmly established. Effective calendaring will foster utilization of judicial resources and reduce the cost of litigation.

The advisory group believes more effective calendaring can be achieved through differential case management, including the establishment of an "expedited" trial docket and a "general" trial docket.

The existence of an expedited trial docket would foster the expeditious and cost efficient resolution of non-complex cases

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3. Defeating Delay, Lawyer's Conference Task Force on Reduction of Litigation Costs and Delay (American Bar Association 1986).

as well as more complex cases in which counsel and the litigants timely and efficiently complete discovery. For the differential case management system to achieve its intended purpose, it is essential that trial of cases placed upon the expedited trial docket will occur as scheduled. The Plan should provide for the implementation of internal operating procedures which ensure the availability of a judicial officer to conduct the trial if the assigned judicial officer is unavailable.

A case placed upon the expedited trial docket would be set to commence trial not later than six months from the date of the preliminary pretrial conference. The parties would be able to obtain an expedited trial setting on a date certain if all parties agree to the expedited procedure. Implementation of the expedited trial docket would encourage parties to complete discovery and all other trial preparations in a timely manner, thereby reducing cost and delay to the parties. The expedited procedure would allow parties to avoid the inconvenience associated with a congested trial calendar. The present suggestion contemplates the adoption of an amendment to Local Rule 235-1 previously suggested, since a substantive preliminary pretrial conference would be an essential prerequisite to an informed decision regarding placement of a particular case upon the expedited trial docket.

In many cases the use of an expedited trial setting will not be feasible. Accordingly, the advisory group recommends the District adopt a general procedure to be utilized in establishing a trial date in the ordinary or complex case. The rule suggested

is designed to avoid a loss of available trial time by establishing a "triggering" date, that being the date upon which the parties submit a proposed final pretrial order. The rule requires the judicial officer to whom the case is assigned to convene a status conference within thirty days of the date the parties submit a proposed final pretrial order for the purpose of determining the readiness of the case for trial and establishing a trial date. The judicial officer would be required to enter a final scheduling order establishing: (a) a final pretrial conference date; (b) a date for filing proposed charges to the jury or proposed findings of fact and conclusions of law; and (3) a trial date. Most importantly, the rule mandates the establishment of a trial date not more than sixty calendar days from the date the status conference is convened.

The format of the rule is designed to provide the certainty of a trial date necessary for effective caseflow management, while providing the flexibility necessary to insure that the case will proceed to trial in an orderly and efficient manner. More importantly, by operating to insure that a case is not scheduled upon the court's trial docket until it is ready for trial, the rule fosters the efficient and effective use of judicial resources by avoiding the waste associated with last minute continuances of trials. At the same time, the rule provides the flexibility necessary to deal with emergencies which inevitably arise in certain cases.

The advisory group endorses a calendar system which utilizes the submission of a proposed final pretrial order as the triggering date for the establishment of a trial date. The proposed rule is designed to allow modification to avoid prejudice occurring to any of the parties while protecting against the waste of available trial time. The mandatory limitation upon the time within which the case must be scheduled for trial following the submission of the final pretrial order provides the certainty of trial necessary to assure complete preparation for trial by both the court and the attorneys.

The advisory group recommends implementation of the trial calendaring system through the adoption of a local rule in order to establish a uniform trial calendaring procedure throughout the District.

E. CONTROL OF DISCOVERY

RECOMMENDATIONS:

1. Assertive Judicial Management

The Plan should adopt procedures designed to manage the discovery process through assertive judicial management of every civil case.

IMPLEMENTATION

The recommendation would require the promulgation of the local rules of procedure previously suggested in section C, Pretrial Activity.

2. Prediscovery Disclosure

The Plan should require the prompt disclosure of information in the parties' possession which is relevant to the issues presented for resolution.

IMPLEMENTATION

This recommendation would require the promulgation of a local rule requiring mandatory and timely disclosure of certain specifically enumerated items of information in the possession of the parties. The advisory group endorses the adoption of the following proposed local rule of procedure (See, Appendix IV for full text of proposed Rule 200-5, RULES OF PROCEDURE FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA):

RULE 200-5. DISCOVERY AND DISCOVERY RESPONSES

(a) Pre-Discovery Disclosure

Before any party may initiate discovery, and not later than fifteen (15) days in advance of the preliminary pretrial conference, the party shall disclose, in writing, to every opposing party to the full extent known to the party:

(1) the factual basis of every claim or defense advanced by the disclosing party. In the event of multiple claims or defenses, the factual basis for each claim or defense.

(2) the legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

(3) the identity of all persons known or believed to have substantial discoverable information about the claims or defenses, and a statement of the subject matter of that information;

(4) a description, including the location and custodian of any tangible evidence or relevant documents that are reasonably likely to bear substantially on the claims or defenses;

(5) a computation of any damages claimed; and

(6) the substance of any insurance agreement that may cover any resulting judgment.

The disclosure obligation is reciprocal and continues throughout the case.

3. Excessive Interrogatories

The Plan should not impose general limitations upon the use of the tools of discovery, but should direct the establishment of a case specific discovery plan. However, the promulgation of a local rule of procedure which establishes a presumption that more than fifty (50) interrogatories is excessive, would operate to refine the use of interrogatories in the discovery process.

IMPLEMENTATION

The Plan would call for the promulgation of a local rule of procedure. The advisory group proposes the following local rule of procedure:

RULE 200-5. DISCOVERY AND DISCOVERY RESPONSES

(a) (see Appendix V)

(b) (see Appendix V)

(c) (see Appendix V)

A party upon whom interrogatories have been served may seek relief from responding to interrogatories which are excessive in number. For the purpose of this rule, more than fifty (50) interrogatories, including subparts, shall be considered excessive, unless the party propounding them can establish that the

interrogatories are not unduly burdensome and have been propounded in good faith, and have been tailored to the needs of the particular case, and are necessary because of the complexity of the case or other unique circumstances which justify service of more than fifty (50) interrogatories.

4. Discovery Motions

The Plan should mandate that parties attempt to informally resolve discovery disputes as a prerequisite to seeking judicial intervention.

IMPLEMENTATION

A local rule of procedure would have to be adopted that precludes a party from presenting a discovery motion to the court unless counsel for the moving party certifies that all counsel involved have conferred in a good faith effort to resolve all disputed issues.

The advisory group endorses the modification of Local Rule 200-5 through the adoption of the following proposed local rule of procedure:

RULE 200-5. DISCOVERY AND DISCOVERY RESPONSES

(a) (see Appendix V)

(b) (see Appendix V)

(c) (see Appendix V)

(d) (see Appendix V)

(e) Discovery Motions

(1) All motions to compel or limit discovery shall set forth, in full, the text of the discovery originally sought and the response made thereto, if any, and identify the reason why the proposed discovery is objectionable or should be limited.

(2) The court will deny any motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure, unless counsel shall have conferred concerning all disputed issues before the motion is filed. If counsel for the moving party seeks to arrange such a conference, and opposing counsel wilfully refuses or fails to confer, the judge may order the payment of reasonable expenses, including attorney's fees, pursuant to Fed.R.Civ.P. 37(a)(4). Counsel for the moving party shall include in the motion a certificate of compliance with this rule.

5. Peer Review

The advisory group recommends the Plan provide for the establishment of a committee of practicing members of the District bar which, upon request of a judicial officer of the District, would sit to review the

discovery practices and other litigation conduct of attorneys. The committee would be required to conduct necessary hearings for the purpose of presenting recommendations to the court concerning the imposition of sanctions.

IMPLEMENTATION

This recommendation would require the promulgation of a standing order by the active district judges providing for the establishment of a peer review committee composed of practicing members of the District bar. The committee would be required to develop, in consultation with the district judges, operative guidelines.

COMMENT

Civil litigation in this District, as it is in every federal district court, is a costly and time-consuming process. The unnecessary cost and delay attendant civil litigation in this District are, as is generally recognized, primarily attributable to excessive and protracted discovery disputes. The lack of cooperation and increased tension among attorneys is most pronounced in the discovery process.

The advisory group reiterates its position that timely judicial involvement in pretrial activity through assertive management will prove the more prudent and effective means to control discovery disputes and minimize cost and delay. The advisory group believes the District should strive to make the imposition of sanctions the exception, not the rule, but that

sanctions should be imposed in a firm and consistent manner where no other alternative exists to curb discovery abuse.

The advisory group urges the adoption of a methodology to control and enhance the discovery process, which is based upon the early and active involvement of a judicial officer in the development of a case management plan. Undoubtedly, attorneys should be required to attempt to resolve discovery disputes informally in the first instance. The court, however, must stand ready to assist the attorneys in resolving discovery disputes in an expeditious and effective manner.

The limited size of the regularly practicing members of the federal bar in the District renders judicial involvement the most effective tool in controlling discovery and restoring cooperation and civility among attorneys. The advisory group is confident the enhanced dialogue which will occur in the cooperative development of a case management plan will operate to alleviate tension through early and reasonable resolution of potential discovery disputes.

The advisory group strongly recommends the establishment of a peer review process in the District to assist the court in monitoring the litigation practices of attorneys, and in particular, discovery practices. The committee would be available to review referrals by a judicial officer concerning improper or abusive litigation practices. The committee would assist the court by recommending appropriate measures designed to curb particular untoward litigation practices.

The advisory group encourages the adoption of a local rule of procedure which calls for the prediscovery disclosure of information in the parties' possession which is relevant to the issues presented for resolution in a particular case. The intent of the suggested rule is to insure that the specifically delineated items of information are promptly disclosed early in the course of litigation, avoiding unnecessary and protracted discovery and to enhance the prospect of early resolution through settlement.

The advisory group exhaustively explored the utilization of a variety of means to facilitate the timely exchange of information within each party's possession without the need for extensive discovery, e.g., approved uniform interrogatories and requests for production. The advisory group is convinced the mandatory pretrial disclosure of the listed information would prove the most effective means to accomplish an early exchange of relevant information and evidence.

F. MOTIONS PRACTICE

RECOMMENDATIONS:

1. Assertive Judicial Management

The Plan must insure that motion activity in a civil case is controlled through the development of a case management plan that (a) identifies the principal issues to be presented to the court for pretrial resolution, and (b) establishes a time frame for disposition of the pretrial motions consistent with the orderly and efficient disposition of the case.

IMPLEMENTATION

Promulgation of the local rule of procedure as previously suggested in section VI, C, Pretrial Activity.

2. Time

The case management plan must establish a date certain by which all pretrial motions must be filed.

IMPLEMENTATION

Promulgation of the local rule of procedure as previously suggested in section VI, C, Pretrial Activity.

3. Limitation of Supporting Memoranda

The Plan should provide that memoranda filed in relation to any pretrial motion shall not exceed thirty-five (35) pages.

IMPLEMENTATION

Promulgation of a local rule of procedure. The advisory group recommends amending local Rule 220 by incorporating a rule identical to Rule 220-4, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON:

RULE 220-1. MOTIONS

(g) Briefs. Briefs on motions shall contain an accurate statement of the questions to be decided, set forth succinctly the relevant facts and the argument of the party with supporting authorities, and not be longer than 35 pages (exclusive of exhibits, table of contents, and cover) without prior court approval. Briefs exceeding 20 pages shall have a table of contents and a table of cases with page references.

4. Summary Judgment

The Plan should require a motion for summary judgment be accompanied by a statement specifically identifying the facts the movant believes are uncontroverted. The response of an adverse party should be accompanied by a statement specifically identifying the facts the adverse party believes establish a genuine issue of material fact.

IMPLEMENTATION

The advisory group recommends adoption of the following proposed local rule of procedure:

RULE 220-4. MOTIONS FOR SUMMARY JUDGMENT

(a) Any party filing a motion for summary judgment shall also file a "Statement of Uncontroverted Facts" which shall set forth separately from the memorandum of law, and in full, the specific facts on which that party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (e.g., affidavit, deposition, etc.).

Any party opposing a motion for summary judgment must file a "Statement of Genuine Issues", setting forth the specific facts, which the opposing party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party.

In the alternative, the movant and the party opposing the motion shall jointly file a stipulation setting forth a statement of the stipulated facts if the parties agree there is no genuine issue of any material fact. Such stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

5. Pending Motions

The advisory group recommends adoption of a local rule of procedure requiring counsel to advise the court, in writing, of any motion that has been pending for determination for a period in excess of sixty (60) days. The court would be required to issue an order reporting the motion under advisement.

IMPLEMENTATION

The recommendation would require promulgation of a local rule of procedure. The following proposed rule is recommended for adoption.

RULE 220-7. REMINDER TO THE COURT OF PENDING MATTERS

(a) In the event a judicial officer has under advisement any matter, including, but not limited to a motion or a decision in a bench trial, for more than sixty (60) days, all counsel shall promptly file a joint request with the court that a decision upon the pending matter be made without further delay. The request shall be prepared by the moving party in the case of a motion, and by the plaintiff in the case of a bench trial. The request shall be joined in by all counsel of record, who shall cooperate with counsel preparing the request in its completion and filing. The request may be made by letter and shall

particularly describe the matter under advisement with a statement of the date the matter was taken under advisement.

(b) If the judicial officer does not render his decision within thirty (30) days of the date of the request is presented, the judicial officer shall immediately issue a written report as to the status of the pending matter. A copy of the written report from the judicial officer shall be served upon the chief judge of the District.

(c) As long as the matter remains under advisement, a similar request, as mandated by subsection (a), shall be made to the judicial officer at intervals of forty-five (45) days. A similar report, as mandated by subsection (b), shall be issued by the judicial officer.

COMMENT

The advisory group finds the misuse of motions practice in the District, although not pronounced, is a causative factor of delay and cost in civil litigation. The differential case management employed by the various judicial officers of the District has attempted to control motion practice by establishing specific time frames for the presentation and disposition of motions in the scheduling order implemented in civil cases. Although the procedure has generally proven effective, greater

control of the motions practice would be achieved by the direct involvement of a judicial officer in the development of a case management plan. The comprehensive preliminary pretrial conference, suggested by this report, will present an opportune occasion for counsel, with the assistance of the judicial officer, to identify the principal issues that exist in a case and should properly be presented to the court for pretrial resolution. Comprehensive identification of issues will facilitate a narrowing of issues and assist in the development of a comprehensive case management plan which provides for the orderly and efficient disposition of pretrial motions. Assertive judicial management in the preliminary stages will operate to curb improper use of motions practice as a tactical weapon.

The case management plan must establish a date certain by which all pretrial motions are to be presented to the court for resolution. Undoubtedly, as discovery proceeds and cases are readied for trial, issues not previously identified may arise. Establishing a date certain by which all pretrial motions must be filed, however, serves to avoid the untimely filing of motions that would jeopardize an established trial date.

The imposition of limitations upon the size of memoranda presented in support of a motion should be incorporated into the Plan. Limitations upon the size of memoranda have long been in existence in the federal appellate courts. Similar limitations upon memoranda would prove conducive to reducing cost and delay associated with the resolution of pretrial motions at the district

court level. The presiding judicial officer would certainly retain discretion to waive the limitation where necessary to ensure a complete presentation of issues.

Motions for summary judgment pursuant to Rule 56 of the Federal Rules of Procedure are, generally, the pretrial motions which prove to be the most time consuming in both preparation and resolution. The advisory group suggests the summary judgment process may be enhanced by requiring parties to specifically and completely identify facts which bear upon the motion for summary judgment and which are, or are not, in dispute. This requirement would not only assist the judicial officer in resolving the motion, but should prompt the parties to stipulate to facts which are not in dispute.

Delay in the resolution of pretrial motions is a major cause of the delay which exists in the civil litigation process of the District. The cause for delay in resolution of pretrial motions cannot be attributed solely to the bar or to the court. Nonetheless, in order to defeat the delay associated with the resolution of pretrial motions, the advisory group recommends the adoption of a local rule which would require counsel for all parties to jointly notify a judicial officer of any matter that has been retained under advisement for a period in excess of sixty days. In the event the judicial officer does not resolve the matter within thirty days after notification, the officer shall be required to issue a report as to the status of the matter under advisement. The advisory group believes the notification procedure

will ensure that the untimely resolution of pretrial motions, or other matters under submission, will not jeopardize the case management plan implemented in the case.

G. ALTERNATIVE DISPUTE RESOLUTION

RECOMMENDATIONS:

1. The Plan should affirm the district's commitment to the utilization of magistrate judges as the principal alternative means for resolution of civil litigation. The timely reference of a case to a magistrate judge for settlement assistance must be considered a critical aspect of every case management plan.

IMPLEMENTATION

Adoption of a local rule of procedure as previously suggested in section III C, Pretrial Activity, mandating consideration of alternative dispute resolution at the preliminary pretrial conference, in conjunction with the following suggested local rule of procedure:

235-5 SETTLEMENT CONFERENCE

The judge or magistrate judge to whom a civil case is assigned may, upon written request of any party filed in the record, or upon the judicial officer's own initiative, order the parties to participate in a settlement conference to be convened by the court. Each party, or a representative of each party with authority to participate in settlement negotiations and effect a complete compromise of the case, shall be required to attend the settlement conference. The judicial officer may, in his or her discretion, preside over the settlement conference.

2. Mediation Services

The Plan should provide for the establishment and maintenance of a list of court-approved mediation masters, available to assist the parties in formally mediating civil disputes.

3. Early Neutral Evaluation

The process of early neutral evaluation was examined by the advisory group. The group concluded that, although a program of early neutral evaluation would prove beneficial, sufficient resources are not presently available to support such a program on a mandatory basis. The advisory group urges the Federal Practice Section of the State Bar of Montana to undertake a development program for early neutral evaluation, and work with the judiciary to implement such a program.

COMMENT

The District has successfully utilized the settlement conferences before magistrate judges as a means of alternative dispute resolution. Commencing essentially with the appointment of the first full-time magistrate judge in the District, the judges of the District have engaged in the practice of referring civil cases to the magistrate judges to conduct settlement negotiations. Mandatory attendance by litigants or their representative with full

authority to compromise the dispute is required. The format employed is dependent upon the precise magistrate judge's preference. Referral for settlement may be made pursuant to the request of the parties or upon the assigned judicial officer's own initiative. There exists no automatic provisions for referral but the decision is made by the assigned judicial officer upon consideration of the circumstances of the particular case. In general, the judicial officer explores the possibility of settlement through reference to a magistrate judge at all stages of the proceedings. The process, which has proven highly successful, is reputed among members of the bar as well as regular litigants, to be effective and cost efficient.

The advisory group recommends the Plan direct the continued use of the referral process by codifying the present practice through the promulgation of an appropriate local rule of procedure. The process provides litigants with an effective alternative method for resolving civil cases. The advisory group advocates utilization of the referral process as opposed to the establishment, at this juncture, of a court-wide program of alternate dispute resolution. The proven proficiency of the present practice renders it more desirable than a court-wide program. The success and acceptance of the referral practice as well as its efficiency in terms of cost to litigants dictate continuation of the practice. The advisory group acknowledges that limiting the available means of alternate dispute resolution to the referral process imposes a significant burden upon the magistrate

judges. The size of the District and the number of magistrate judges available, however, renders continuation of the practice feasible. The reward gained from the timely disposition of cases through the settlement procedure ultimately operates to conserve judicial resources by minimizing the number of cases that must actually be tried.

Consistent with the goal of effective case management advocated by the present report, the consideration of referral of a case for settlement negotiations before a magistrate judge should be a matter specifically discussed in the initial case management conference as well as a matter which should be explored throughout all stages of the civil litigation process.

While the advisory group does not endorse the establishment of a court-wide program of early neutral evaluation, mediation or arbitration, the advisory group believes the court should maintain a standing list of mediation masters approved by the court. Notwithstanding the success of the settlement referral process, there will undoubtedly exist cases in which the burdens imposed by exhaustive settlement negotiations may not justify the required commitment of time by the magistrate judge. To assist the parties in facilitating mediation of the dispute, the judicial officer assigned to the case may suggest a mediation master from the list to assist the parties in reaching a compromise and settlement.

H. FINAL PRETRIAL PROCEEDINGS

RECOMMENDATIONS:

The District presently utilizes final pretrial conferences to ensure the case proceeds to trial in orderly fashion. The Plan should ensure the practice continues by incorporating a requirement that the final pretrial proceedings are comprehensive.

IMPLEMENTATION

Modification of Local Rule of procedure 235-6 and 235-7 to provide as follows:

235-6 FINAL PRETRIAL ORDER

(a) Procedure

Counsel for the parties shall prepare and sign a proposed consolidated final pretrial order to be lodged with the Clerk of Court by the date established in the pretrial scheduling order. It shall be the responsibility of counsel for the plaintiff(s) to convene a conference of all counsel at a suitable time and place. The purpose of the conference is to arrive at stipulations and agreements conducive to simplification of the triable issues and to otherwise jointly prepare a proposed final pretrial order. If counsel for any party is unreasonably refusing to cooperate in the

preparation of the pretrial order, the opposing party shall move the court to enter an appropriate order.

(b) Form and Content

(1) Nature of Action. A plain, concise statement of the nature of the action.

(2) Jurisdiction. The statutory basis of jurisdiction and factual basis supporting jurisdiction.

(3) Jury; Nonjury. Whether a party has demanded a jury of all or any of the issues and whether any other party contests trial of any issue by jury.

(4) Agreed Facts. A statement of all material facts that are not in dispute.

(5) Disputed Factual Issues. A concise narrative statement of each material issue of fact in dispute. This statement shall include a concise narrative of each party's contentions to each material issue of fact in dispute

(6) Relief Sought. The elements of monetary damage, if any, and the specific nature of any other relief sought.

(7) Points of Law. A concise statement of each disputed point of law with respect to liability and relief, with reference to pertinent statutory and decisional law. Extended legal argument shall not be included.

(8) Amendments; Dismissals. A statement of requested or proposed amendments to the pleadings, or dismissals of parties, claims or defenses.

(9) Witnesses. Each party shall identify by name and address all prospective witnesses, and specifically designate those who are expected to be called as an expert witness.

(10) Exhibits; Schedule, and Summaries. An exhibit list furnished by the Clerk of Court shall be completed by each party and appended to the proposed pretrial order. The list shall include all documents or other items that the party expects to offer as an exhibit at trial, except for impeachment or rebuttal. Each party shall set forth on the

exhibit list all objections based upon foundation.

(11) Discovery Documents. A list of all answers to interrogatories and responses to requests for admissions that a party expects to offer at trial.

(12) Bifurcation, Separate Trial of Issues. A statement whether bifurcation or separate trial of specific issues is feasible and advisable.

(13) Estimate of trial time. An estimate of the number of court days counsel for each party expects to be necessary for the presentation of their respective cases in chief.

235-7. FINAL PRETRIAL CONFERENCE

The final pretrial conference shall be convened by the assigned judicial officer at the time designated, and shall be attended by the attorneys who will be trying the case.

Unless otherwise ordered, counsel for the parties shall, not less than seven (7) days prior to the day on which the final pretrial conference is scheduled, accomplish the following:

*(a) **Exchange of Exhibits.***

Exchange copies of all items expected to be offered as exhibits, and all schedules, summaries, diagrams, charts, etc., to be used at trial, other than for impeachment or rebuttal.

The copies of the proposed exhibits shall be premarked for identification, with the plaintiff's proposed exhibits being identified by numbers 1 to 500 and the defendant's by numbers 501 to 1000. Upon request, a party shall make the original or the underlying documents of any proposed exhibit available for inspection.

*(b) **Deposition Testimony.** Serve and file statements designating excerpts from depositions (specified by witness, page and line reference) proposed to be offered at trial other than for impeachment and rebuttal.*

The opposing party shall, at the time of the final pretrial conference, serve and file a statement which sets forth both (1) any objection to the excerpts of each deposition identified; and (2) any additions to the excerpts of each deposition (specified by witness, page and line reference) that he/she proposes to offer.

COMMENT

The final pretrial order and conference provide the vehicle to ensure that a civil case proceeds to trial in an orderly

and expeditious fashion. The assertive management of the final pretrial conference by the judicial officer who will preside during trial is critical to the effectiveness of the conference. Joint preparation of a comprehensive proposed final pretrial order by the parties' attorneys will facilitate "streamlining" the case for trial.

The rules of procedure proposed for adoption do not differ significantly from Rules 235-6 and 235-7 of the Rules of Procedure of the United States District Court for the District of Montana. Proposed Rule 235-6 is designed, however, to require a more comprehensive proposed final pretrial order. Proposed Rule 235-7 is designed to streamline the process of exchanging exhibits and deposition excerpts.

VI.

CONCLUSION

Civil litigation is, by its very nature, a time consuming and expensive proposition. Efficiency in the litigation process can, however, reduce both time and expense. The goal envisioned by Congress in its enactment of the Civil Justice Reform Act of 1990 is to facilitate access to federal court by reducing the cost and delay attendant to civil litigation (28 U.S.C. §472 (c)(3)). Congress realized, however, that the best means of increasing litigation efficiency in a particular federal district court necessarily depends upon the circumstances and needs of the district.

The District of Montana, while encompassing a large geographic area, has maintained an efficient civil litigation process. The increase in civil litigation activity and changes in litigation practice, however, necessitate the District adopt procedures conducive to maintaining the quality of the litigation process. Because of its limited size, both in terms of civil litigation activity and practicing bar, the District can effectively manage the civil litigation process through assertive judicial management of civil litigation and maintenance of a high degree of professionalism in the members of the bar.

The advisory group has recommended the implementation of a comprehensive pretrial procedure. The procedure calls for the

active and informed participation of both counsel and a judicial officer in the development of a specific management plan in every civil case. Through the mutual development of a case management plan, the judicial officer and counsel can ensure the civil litigation process accomplishes its intended purpose, i.e. the fair and efficient disposition of civil disputes.

The effectiveness of the Plan implemented by the District will depend upon the mutual cooperation of the judiciary and the bar. The necessary cooperation can be fostered, in the first instance, through an educative process that will facilitate complete understanding by both the judiciary and the bar of the potential which assertive judicial management possesses for reducing cost and delay in civil litigation.

The advisory group intends to hold meetings with lawyers throughout the state of Montana to receive comments upon, and constructive suggestions to, its report. The advisory group will be present at the Montana Trial Lawyer annual meeting on August 24, 1991, at Bigfork, Montana, and the Federal Practice Section of the State Bar of Montana on October 11, 1991, in Great Falls, Montana. Arrangements are also being made for a meeting with the Defense Trial Lawyers in the near future.

APPENDIX I

SAMPLE PRETRIAL SCHEDULING ORDERS

UTILIZED IN THE DISTRICT OF MONTANA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

Plaintiff(s),	Cause No. CV _____
vs.	**MEMORANDUM OF PRELIMINARY PRETRIAL CONFERENCE AND ORDER**
Defendant(s).	*****

Pursuant to a preliminary pretrial conference conducted _____, 19___,

IT IS ORDERED:

1. Counsel for plaintiff and counsel for defendant shall each file with the Court, during the week of _____, 19___, a written report indicating (a) discovery that has been completed, (b) depositions to be taken, (c) interrogatories to be answered, and (d) any problems anticipated in the discovery process.

2. All discovery shall be completed in accordance with the **Federal Rules of Civil Procedure**, but, in any event, no later than _____, 19___. The duty to supplement discovery beyond the preceding date shall be governed by **Rule 26(e), Fed.R.Civ.P.**

3. All written discovery shall be served so as to allow the responding party sufficient time to reply, within the time periods set by the **Federal Rules** and paragraph 2 above.

4. **EXPERT WITNESSES**

The identity and address of any person whom either party expects to call as an expert witness at trial shall be disclosed to the Court no later than 45 days prior to the original discovery cutoff date. Any interrogatories served pursuant to **Rule 26(b)(4)(A)(i), Fed. R. Civ. P.**, with respect to experts so named, shall be responded to within 20 days of the date of service of said interrogatories. Depositions of experts so named shall be taken only by stipulation of counsel or upon order of the Court, in accordance with **Rule 26(b)(4)(A)(ii)**. Extension of the discovery deadline does not serve to extend the deadline for disclosure of experts. FAILURE TO FULLY COMPLY WITH THE PROVISIONS OF THIS

PARAGRAPH SHALL RESULT IN EXCLUSION OF ANY UNDISCLOSED EXPERT'S TESTIMONY AT TRIAL.

5. All motions, including motions in limine and motions for summary judgment (including partial summary judgment) shall be filed on or before _____, 19___, for oral argument no later than _____, 19___.

6. Counsel for the parties shall convene an attorneys' conference during the week of _____, 19___, for the purpose of completing the final pretrial order in the form prescribed.

7. The final pretrial order shall be filed on or before _____, 19___. The final pretrial order supersedes all pleadings previously filed, and no new party may be joined, or the pleadings amended, after the preceding date except by leave of Court for good cause shown.

8. Counsel for the parties shall appear before the Court, in Chambers at Billings, Montana, at _____ o'clock __.m., on _____, 19___, for the final pretrial conference. Counsel shall be prepared to discuss settlement possibilities. In that connection, all parties with ultimate settlement authority in this case shall either be present in person at the final pretrial conference or be available to the Court by telephone at that time.

9. That if a jury panel is to be called, counsel must confirm the need for a jury panel by giving notice to the Clerk of Court by _____, 19___. Failure to do so may result in the imposition of jury costs. See Rule 245-8.

10. Trial of this case shall commence before the Court, sitting _____ a jury, in Billings, Montana, at _____ o'clock __.m., on _____, _____, 19___, as Case No. _____ on that date.

11. Upon the request of counsel for any party, the Court may order that a settlement conference be held before a United States Magistrate Judge.

NOTE: A continuance of any deadline set by this order does NOT extend any other deadline.

DONE and DATED this _____ day of _____, 19___.

_____
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

GREAT FALLS DIVISION

ORDER SETTING

DISCOVERY SCHEDULE

Pursuant to order of this court, counsel attended a preliminary pretrial conference with the court on _____ _____. As a result of said conference,

IT IS HEREBY ORDERED that the parties shall adhere to the following schedule designed for the timely and orderly disposition of this matter:

1. All motions for leave to amend the pleadings, including such motions designed to join additional parties, shall be filed on or before _____.

2. All discovery shall be completed on or before __ _____. With respect to the specific methods of discovery the parties shall:

(a) Serve all requests for admissions on or before _____. The party upon whom the requests are served shall have the time specified by Rule 36(a), Federal Rules of Civil Procedure, within which to serve answers or objections addressed to the matters in the requests for admission.

(b) Serve all requests for production of documents on or before _____. The party upon whom the requests are served shall have the time specified by Rule 34(b), Federal Rules of Civil Procedure, within which to serve a response or objection to the request.

(c) Serve all interrogatories on or before _____ _____. The party upon whom the interrogatories are served shall have the time specified by Rule 33(a), Federal Rules of Civil Procedure, within which to serve answers to the interrogatories. If some interrogatories cannot be answered within that time, a reason shall be stated for the failure to so answer.

The present order regarding interrogatories contemplates inclusion of answers supplementing previously answered interrogatories. The intent of the present deadline is to insure that the parties fully respond to all interrogatories by the date set forth.

(d) Identify, by written statement to be filed in the record on or before _____, each person having knowledge of factual matters involved in this action whom a party intends to call as a witness at trial.

As soon as practicable, but in no event less than forty-five (45) days prior to the time for completion of all discovery, the parties shall, if requested pursuant to Rule 26(b)(4), Fed.R.Civ.P., identify each person the party expects to call as an expert witness at trial, and shall state the subject matter and the substance of the facts and opinions on which the expert is expected to testify and a summary of the grounds for each opinion. The deadline set forth contemplates inclusion of supplemental responses so that as of the deadline date the identities of ALL expert witnesses have been fully disclosed.

(e) Notice all depositions to be taken on or before _____. Said notice shall be served upon all other parties at least ten (10) days in advance of the date scheduled for a deposition. All depositions, including depositions for the perpetuation of testimony, are to be taken on or before _____.

3. Attend an attorneys' pretrial conference, to be convened by counsel for the plaintiff, for the purpose of assisting counsel in the preparation of a pretrial order, on or before _____. See, RULES 235-4, 235-5 and

235-6, RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

4. File all motions to compel discovery prior to the close of the discovery schedule set forth herein. File all other motions no later than twenty (20) days after the close of discovery. If the court determines that a hearing on said motion is necessary, the court will schedule a hearing and notify the parties accordingly.

5. File a pretrial order, prepared in accordance with Rule 235-6 of the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, on or before __ _____. Counsel are to be advised, however, that contrary to the directive of Rule 235-6(b)(5), the exhibits identified on the exhibit sheet shall NOT be transmitted to the Clerk of Court with the final pretrial order, but shall be transmitted pursuant to further order of the court at the time the matter is scheduled for trial.

IT IS FURTHER ORDERED that the foregoing schedule shall not be modified without leave of court upon a showing of good cause. ANY MOTION SEEKING LEAVE TO MODIFY THE PRESENT SCHEDULING ORDER SHALL BE ACCOMPANIED BY AN AFFIDAVIT OF COUNSEL FOR THE MOVING PARTY STATING THE REASONS FOR SUCH MODIFICATION. IN ADDITION, THE MOTION SHALL BE ACCOMPANIED BY A WRITTEN STIPULATION OF COUNSEL FOR ALL PARTIES IF THERE EXISTS A CONSENSUS ON THE NEED FOR SUCH MODIFICATION, OR OTHERWISE STATE WHICH PARTIES OBJECT TO SUCH MODIFICATION.

THE MOVING PARTY SHALL PREPARE AND LODGE A PROPOSED ORDER WHICH PATTERNS THE PRESENT ORDER AND INCLUDES A PRECISE DATE FOR EACH ITEM SET FORTH HEREIN.

DATED this _____ day of _____, 19_____.

_____
PAUL G. HATFIELD, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

GREAT FALLS DIVISION

_____

ORDER SETTING TRIAL

_____

JURY TRIAL

IT IS HEREBY ORDERED that the above-entitled case is scheduled for trial before the court, with a jury, on Tuesday, the _____ day of _____, 19___, at the hour of 9:30 o'clock A.M., in the courtroom of the above-entitled court at _____, as case number _____.

Counsel will meet with the court for the final pretrial conference on _____, the _____ day of _____, 19___, at the hour of ___ o'clock ___.M., in the courtroom of the above-entitled court at GREAT FALLS, at which time counsel are to be prepared for the settlement of instructions.

Each of the parties shall file his charge to the jury, IN NARRATIVE FORM, with an extra copy for the court's use, on or before _____. Counsel shall keep in mind that the charge should encompass all rules of law applicable to the evidence adduced. Appropriate citations should be noted by use of footnote.

IT IS FURTHER ORDERED that counsel will adhere to the following housekeeping procedures for an orderly trial of this matter:

(1) The exhibits are to be properly tagged and exchanged with opposing counsel prior to their being filed with the court.

(2) The original document exhibits are to be filed with the Clerk of Court in _____, on or before _____ _____.

(3) The copies of the document exhibits will be submitted for the exclusive use of the court and will be contained in a three-ring binder and filed with the Clerk in _____, on or before _____.

(4) Each exhibit contained in the three-ring binder, and the originals filed with the Clerk, will bear an extended tab showing the number of the exhibit.

(5) Each document exhibit will be paginated, including any attachments thereto.

(6) Each exhibit will be numbered 1 to 500 (plaintiff) or numbered 501 to 1,000 (defendant) in the order each is presented as nearly as possible.

(7) Do not duplicate exhibits submitted by opposing parties as an exhibit may be used by either of the parties.

(8) Counsel will file an exhibit list, with enough copies for all counsel, and three for the court's use, separate from the one contained in the pretrial order, on or before _____. The exhibit list will have two blank columns for the dates each exhibit is marked and admitted.

(9) Counsel will file a witness list, with enough copies for all counsel, and three for the court's use, separate from the one contained in the pretrial order, on or before _____. The witness list will have two blank columns to accommodate the dates each witness testifies.

IT IS FURTHER ORDERED that counsel for plaintiff and counsel for defendant notify the Clerk of Court during the week of _____, of the necessity of calling the jury panel. If a jury panel is called and not needed, counsel must give the Clerk of Court notice by _____, with subsequent written notice to that effect.

---

1. Notification to the Clerk of Court must be made in writing or by telephone call. If no notification is received, the Clerk will summon the requisite number of jurors for the date set for trial. The costs of calling a jury will be assessed to the parties if the jury is called but not needed.

IT IS FURTHER ORDERED that in the event the date set for trial herein is vacated, discovery shall be reopened ONLY with leave of court. ANY MOTION SEEKING LEAVE TO MODIFY THE DISCOVERY SCHEDULE SHALL BE ACCOMPANIED BY AN AFFIDAVIT OF COUNSEL FOR THE MOVING PARTY STATING THE REASONS FOR SUCH MODIFICATION. IN ADDITION, THE MOTION SHALL BE ACCOMPANIED BY A WRITTEN STIPULATION OF COUNSEL FOR ALL PARTIES IF THERE EXISTS A CONSENSUS ON THE NEED FOR SUCH MODIFICATION, OR OTHERWISE STATE WHICH PARTIES OBJECT TO SUCH MODIFICATION.

DATED this _____ day of _____, 19____.

_____
PAUL G. HATFIELD, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CR

-vs-

O R D E R

,

Defendant.

****

IT IS ORDERED:

This case is set for trial on Tuesday, August 13, 1991 at 9:30 a.m. in the courtroom, United States Courthouse, Helena, Montana before the undersigned sitting with a jury.

All pretrial motions shall be filed within ten (10) days of the date of arraignment.

Any plea agreement should be received in the Clerk's Office, Helena by July 30, 1991. Except for good cause shown, no plea agreement will be considered by the Court thereafter. Late filing may result in assessment of costs of imposition of sanctions.

Proposed voir dire questions and proposed jury instructions shall be on file with the Clerk of this Court in Helena by August 2, 1991. An extra copy shall be mailed directly to the presiding judge.

To aid and assist the court in preparing for this trial and in trying the case,

IT IS FURTHER ORDERED that the government shall submit to the court on or before August 2, 1991 a trial brief setting forth its anticipated proof, witnesses to be called, evidence to be submitted, and any evidentiary problems or issues of law associated therewith. The trial brief shall include legal authority as to the government's position on all legal issues and evidentiary rulings. The trial brief need not be served on or furnished to opposing counsel.

Counsel for defendant may, but is not required to, submit to the court a similar trial brief from defendant's perspective, and need not serve same on the government.

To enable the court to operate in the most efficient manner possible, it is essential that this schedule be strictly adhered to by the parties.

Dated this _____day of May, 1991.

CHARLES C. LOVELL
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

Plaintiffs,

-vs-

Defendant.

CV

MEMORANDUM OF DISCOVERY CONFERENCE and ORDER

****

A discovery conference was held in this matter on May 15, 1991 at which time counsel for the parties agreed upon deadlines governing the course of discovery.

IT IS THEREFORE ORDERED that counsel shall adhere to the following discovery schedule:

1. That all discovery be completed by November 15, 1991. A duty to supplement discovery beyond the preceding date may be imposed by Rule 26e(3), Fed.R.Civ.P.

2. That all motions, including motions in limine and motions for summary judgment (including partial summary judgment) be filed on or before November 30, 1991. BRIEFING SHALL BE IN ACCORDANCE WITH

LOCAL RULE 220-1.

3. That all answers to interrogatories be made by November 15, 1991.

4. That counsel for each party file with the court on or before September 16, 1991 a written report indicating the status of (a) discovery that has been completed, (b) interrogatories to be answered, (c) depositions to be taken, (d) expert witnesses who will be called and (e) any problems anticipated in the discovery process, together with the current status of settlement negotiations. Such report shall be in pleading form.

5. That counsel for plaintiff convene an attorneys' conference during the week of March 2, 1992 for the purpose of completing the final pretrial order in the form prescribed by local rule.

6. That the Final Pretrial Order in the form prescribed by local rule, signed by counsel for all parties, be lodged on or before March 16, 1992. No new parties may be joined or the pleadings amended after this date except by leave of court for good cause shown. This order must be lodged by this date regardless of whether pending motions remain undecided by the court.

NOTE: A continuance of any deadline DOES NOT AUTOMATICALLY EXTEND any unspecified deadlines.

SETTLEMENT DATE ORDER: The Settlement Date is the latest date

by which a case should reasonably be settled, if it is to settle at all, and after which late settlement due to the fault of one or more of counsel or the parties, causes injury and inconvenience to the court for which sanctions should be imposed. THE SETTLEMENT DATE IN THIS CASE IS March 9, 1992.

NOTE: Continuance of any specified deadline does not automatically extend any unspecified deadlines.

Dated this _____day of May, 1991.

_____
CHARLES C. LOVELL
UNITED STATES DISTRICT JUDGE

RECEIPT ACKNOWLEDGED:

COUNSEL FOR _____

APPENDIX II

PROPOSED DOCKET MONITORING FORM

CAUSE NO.	CASE NAME	COUNSEL	PPTC	DISCVY	PTO	STLMT	TRIAL	PENDING MTNS - OTHER
CV-88-056-BU RMH - CONSENT Failure to Warn of Chemical Use Filed: 09/21/88	Earl W. and Kathleen Roadarmel -vs- Great Western Chemical Co. and Exxon Corporation	Donald B. White W. Lee Stokes Gary L. Graham Robert M. Carlson	03/02/89		Filed 01/24/91		Case #1 w/jury in Butte on 07/08/91	Pltf's mtn/limine filed 06/28/91
CV-88-057-BU RMH - CONSENT Wrongful Termination Filed: 09/22/88	Wayne Gageby -vs- Lawry's & Lipton, Inc.	Michael J. McKeon Donald C. Robinson	03/16/89	10/15/91	Due 11/18/91 & jury instrs	Request filed by 10/15/91	Case #1 w/jury in Butte on 01/06/92	Status reports due 09/01/91 FPTC set 11/18/91
CV-90-049-GF RMH - CONSENT Equipment Sales Dispute Filed: 04/05/90	David Dickman, d/b/a Dickman Excavating -vs- Ford New Holland, Inc.	K. Dale Schwanke Keith Strong	06/27/90	08/13/91	Due 09/20/91	Request due 09/01/91	Case #1 w/jury on 10/15/91	FPTC set at 10:00 a.m., 09/20/91
CV-90-105-M RMH - CONSENT FELA Filed: 08/31/90	James Kampf -vs- Burlington Northern Railroad Co.	Fredric A. Bremseth Gregory R. Todd Kurt W. Kroschel	11/15/90	09/01/91	Due 10/22/91	Set for 9:30 a.m. in Blgs w/Judge Anderson on 09/23/91	W/jury in Missoula on 11/04/91	Mtn/continuance of trial filed 05/13/91 FPTC in Great Falls set on 10/22/91

APPENDIX III

PROPOSED RULE 105 OF THE RULES OF PROCEDURE

OF THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

RULE 105-2. ASSIGNMENT OF CASES

(a) Jurisdiction

All of the judges of the District of Montana, including the senior judges designated to serve in Montana by the chief judge of the circuit, shall have jurisdiction over all criminal and civil cases filed in the District of Montana, and may make and sign any orders, decrees or judgments.

(b) Assignment of Division Workload

For the purpose of allocating the work of the judges, however, the chief judge of the District shall by order, assign each of the divisions of the court to one of the judges thereof. All applications for orders in cases pending in any division shall be made to the judge to whom the division is assigned unless by order of the chief judge, a particular cause is specifically assigned to a judge other than the one regularly assigned, in which case application for orders shall be to the judge so specifically assigned.

(c) Assignment of Cases to Magistrate Judges

The judge to whom the work of a particular division is assigned may direct that any civil case filed within that division be assigned to any magistrate judge of the District of Montana in accordance with 28 U.S.C. § 636, and Rule 400-1 of the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

(d) Consent to Proceed Before a Magistrate Judge

The right to have all civil proceedings conducted by a United States District Judge appointed pursuant to Article III

of the United States Constitution shall be preserved to the parties inviolate.

Any party to a civil action that has been assigned to a magistrate judge pursuant to subsection (c) of the present rule may demand that all pretrial matters excepted from the jurisdiction of the magistrate judge by 28 U.S.C. § 636(b)(1)(A) be heard and determined, and all trial proceedings conducted and judgment entered, by an Article III judge, by serving upon the other parties a demand therefor in writing at anytime after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to the issue. Such demand may be endorsed upon a pleading of the party. The failure of a party to serve a demand as required by this rule and to file it as required by Fed.R.Civ.P. 5(d) constitutes a waiver by the party to have any pretrial matter heard and determined, or trial proceedings conducted and judgment entered, by an Article III judge, and a consent by the party to have the magistrate judge hear and determine any pretrial matter and to conduct any or all trial proceedings and order the entry of judgment in the case.

APPENDIX IV

PROPOSED RULE 235 OF THE RULES OF PROCEDURE

OF THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

RULE 235-1. PRELIMINARY PRETRIAL CONFERENCE

(a) Not later than forty-five (45) days after a case is at issue, or one hundred twenty (120) days after filing of the complaint, whichever comes first, the judge or magistrate judge to whom the case is assigned shall hold a preliminary pretrial conference to discuss the matters included in the preliminary pretrial statements and discuss and schedule the following matters:

(1) joinder of additional parties;

(2) amendment of pleadings;

(3) filing and hearing motions;

(4) identification of expert witnesses;

(5) completion of discovery;

(6) filing of proposed final pretrial order;

(7) final pretrial order conference;

(8) a trial date, if applicable;

(9) any other dates necessary for appropriate case management.

All parties receiving notice of the conference shall attend in person or by counsel, prepared to discuss the implementation of a pretrial scheduling order conducive to the efficient and expeditious determination of the case.

(b) Every party shall serve a Pre-Discovery Disclosure Statement required by Local Rule 200-5(a) not later than fifteen (15) days prior to the date set for the preliminary pretrial conference.

(c) Every party shall file a Preliminary Pretrial Statement no later than seven (7) days prior to the date set for

the conference. The statement shall include a brief factual outline of the case. The statement shall also address:

(1) issues concerning jurisdiction;

(2) identifying, defining and clarifying issues of fact and law genuinely in dispute;

(3) making stipulations of fact and law and otherwise narrowing the scope of the action to eliminate superfluous issues;

(4) deadlines relating to joinder of other parties and amendments to pleadings;

(5) the pendency or disposition of related litigation;

(6) propriety of special procedures including reference to a master or a magistrate judge;

(7) controlling issues of law which the party anticipates presenting for pretrial disposition;

(8) anticipated course of discovery, and time frame for completion, including procedure for management of expert witnesses;

(9) propriety of modifying standard pretrial procedure established by Local Rule 235;

(10) advisability of the case being considered for placement upon the court's expedited trial docket in accordance with Rules 235-4(a); and

(11) prospect for compromise of case and feasibility of initiating settlement negotiations or

invoking alternate dispute resolution procedures.

(d) The following categories of cases shall be excepted from the requirements of the present rule:

(1) Appeals from proceedings of an administrative body of the United States of America.

(2) Petitions for a Writ of Habeas Corpus.

(3) Proceedings under the Bankruptcy Code, Title 11, United States Code.

(4) Actions prosecuted by the United States of America to collect upon a debt.

(5) Forfeiture actions prosecuted by the United States of America.

(6) Any case which the judge or magistrate judge to whom the case is assigned orders to be excepted from the requirements of the present rule.

In those cases excepted from the requirements of the present rule, the assigned judicial officer shall, not later than forty-five (45) days from the date the case is at issue, or one hundred twenty (120) days after filing of the initial pleading, establish a schedule for final disposition of the case.

235-2 PRETRIAL SCHEDULING ORDER

After the Preliminary Pretrial Conference, the presiding judge or magistrate judge shall immediately enter an order summarizing the matters discussed and action taken, setting a schedule limiting the time for those matters referred to in Rule 235-1(a) and covering such other matters as are necessary to effectuate the agreements made at the conference.

The scheduling order shall specifically designate whether the case has been placed upon the court's expedited trial docket pursuant to Rule 235-4(a).

235-3 STATUS CONFERENCES

Status conferences may be held in any case as deemed necessary by the judge or magistrate judge to whom the case is assigned. A party may move the assigned judicial officer to convene a status conference by filing an appropriate motion advising the judicial officer of the necessity for a conference.

235-4 TRIAL SETTING

(a) Expedited Trial Docket

(1) The court shall establish an expedited trial docket. A case placed upon the expedited trial docket shall be set to commence trial on a date certain not later than six (6) months from the date of the preliminary pretrial conference.

(2) A party may, at the time of the preliminary pretrial conference, request placement of the case upon the expedited trial docket. With the consensus of the parties, the assigned judicial officer shall place the case upon the expedited trial docket, establishing a date certain for trial in the pretrial scheduling order. By consenting to placement upon the expedited trial docket, the parties agree the trial shall not be continued absent a showing that a continuance is necessary to prevent manifest injustice.

(b) General Trial Docket

Unless a trial date has been established by previous order, the judge or magistrate judge to whom the case is assigned shall, within thirty (30) days of the submission of a proposed final pretrial order, convene a status conference for the purpose of determining the readiness of the case for trial and establishing a trial date.

Pursuant to the status conference the judicial officer to whom the case is assigned shall immediately enter a final scheduling order which establishes date for the following:

(1) a final pretrial conference unless deemed unnecessary by the judicial officer;

(2) filing of each party's proposed charge to the jury, or, where appropriate, proposed findings of fact and conclusions of law; and

(3) trial; the date established shall not be more than sixty (60) calendar days from the date of the status conference, unless the assigned judicial officer's trial docket precludes accomplishment of trial within that time frame, in which event the case shall be given priority on the next trial calendar. In the event the trial date established is beyond eighteen (18) months from the date the complaint was filed, the judge or magistrate judge to whom the case is assigned shall enter an order certifying that (i) the demands of the case and its complexity render a trial date within the eighteen-month period incompatible with serving the ends of justice; or (ii) the trial cannot be reasonably held within the eighteen-month period because of the status of the judicial officer's trial docket.

235-5 SETTLEMENT CONFERENCE

The judge or magistrate judge to whom a civil case is assigned may, upon written request of any party filed in the record, or upon the judicial officer's own initiative, order the parties to participate in a settlement conference to be convened by the court. Each party, or a representative of each party with authority to participate in settlement negotiations and effect a complete compromise of the case, shall be required to attend the settlement conference. The judicial officer may, in his or her discretion, preside over the settlement conference.

235-6 FINAL PRETRIAL ORDER

(a) Procedure

Counsel for the parties shall prepare and sign a proposed consolidated final pretrial order to be lodged with the Clerk of Court by the date established in the pretrial scheduling order. It shall be the responsibility of counsel for the plaintiff(s) to convene a conference of all counsel at a suitable time and place. The purpose of the conference is to arrive at stipulations and agreements conducive to simplification of the triable issues and to otherwise jointly prepare a proposed final pretrial order. If counsel for any party is unreasonably refusing to cooperate in the preparation of the pretrial order, the opposing party shall move the court to enter an appropriate order.

(b) Form and Content

(1) Nature of Action. A plain, concise statement of the nature of the action.

(2) Jurisdiction. The statutory basis of jurisdiction and factual basis supporting jurisdiction.

(3) Jury; Nonjury. Whether a party has demanded a jury of all or any of the issues and whether any other party contests trial of any issue by jury.

(4) Agreed Facts. A statement of all material facts that are not in dispute.

(5) Disputed Factual Issues. A concise narrative statement of each material issue of fact in dispute. This statement shall include a concise narrative of each party's contentions to each material issue of fact in dispute

(6) Relief Sought. The elements of monetary damage, if any, and the specific nature of any other relief sought.

(7) Points of Law. A concise statement of each disputed point of law with respect to liability and relief, with reference to pertinent statutory and decisional law. Extended legal argument shall not be included.

(8) Amendments; Dismissals. A statement of requested or proposed amendments to the pleadings, or dismissals of parties, claims or defenses.

(9) Witnesses. Each party shall identify by name and address all prospective witnesses, and specifically designate those who are expected to be called as an expert witness.

(10) Exhibits; Schedule, and Summaries. An exhibit list furnished by the Clerk of Court shall be completed by each party and appended to the proposed pretrial order. The list shall

include all documents or other items that the party expects to offer as an exhibit at trial, except for impeachment or rebuttal.

(11) Discovery Documents. A list of all answers to interrogatories and responses to requests for admissions that a party expects to offer at trial.

(12) Bifurcation, Separate Trial or Issues. A statement whether bifurcation or separate trial of specific issues is feasible and advisable.

(13) Estimate of trial time. An estimate of the number of court days counsel for each party expects to be necessary for the presentation of their respective cases in chief.

235-7. FINAL PRETRIAL CONFERENCE

The final pretrial conference shall be convened by the assigned judicial officer at the time designated, and shall be attended by the attorneys who will be trying the case.

Unless otherwise ordered, counsel for the parties shall, not less than seven (7) days prior to the day on which the final pretrial conference is scheduled, accomplish the following:

(a) Exchange of Exhibits. Exchange copies of all items expected to be offered as exhibits, and all schedules, summaries, diagrams, charts, etc., to be used at trial, other than for impeachment or rebuttal.

The copies of the proposed exhibits shall be premarked for identification, with the plaintiff's proposed exhibits being identified by numbers 1 to 500 and the defendant's by numbers 501 to 1000. Upon request, a party shall make the original or the underlying documents of any proposed exhibit available for inspection.

(b) Deposition Testimony. Serve and file statements designating excerpts from depositions (specified by witness, page and line reference) proposed to be offered at trial other than for impeachment and rebuttal.

The opposing party shall, at the time of the final pretrial conference, serve and file a statement which sets forth both (1) any objection to the excerpts of each deposition identified; and (2) any additions to the excerpts of each deposition (specified by witness, page and line reference) that he/she proposes to offer.

APPENDIX V

PROPOSED RULE 200-5 OF THE RULES OF PROCEDURE

OF THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

RULE 200-5. DISCOVERY AND DISCOVERY RESPONSES

(a) Pre-Discovery Disclosure

Before any party may initiate discovery, that party shall disclose, in writing, to every opposing party:

(1) the factual basis of every claim or defense advanced by the disclosing party. In the event of multiple claims or defenses, the factual basis for each claim or defense.

(2) the legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

(3) the identity of all persons known or believed to have substantial discoverable information about the claims or defenses, and a summary of that information.

(4) a description, including the location and custodian of any tangible evidence or relevant documents that re reasonably likely to bear substantially on the claims or defenses;

(5) a computation of any damages claimed; and

(6) the substance of any insurance agreement that may cover any resulting judgment.

The disclosure obligation is reciprocal and continues throughout the case.

(b) Responses to Discovery

Answers and objections to interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure, and responses and objections to requests for admission pursuant to Rule 36 of the Federal Rules of Civil Procedure shall identify and quote each interrogatory or request for admission in full immediately preceding the statement of any answer or objection.

(c) Excess of Interrogatories

A party upon whom interrogatories have been served may seek relief from responding to interrogatories which are excessive in number. For the purpose of this rule, more than fifty (50) interrogatories, including subparts, shall be considered, unless the party propounding them can establish that the interrogatories are not unduly burdensome, have been propounded in good faith, have been tailored to the needs of the particular case, and are necessary because of the complexity or other unique circumstances of the case.

(d) Demand for Prior Discovery

Whenever a party makes a written demand for discovery which took place prior to the time he became a party to the action, each party who has previously provided responses to interrogatories, requests for admission or requests for production shall furnish to the demanding party the documents in which the discovery responses in question are contained, for inspecting and copying, or a list identifying each such document by title, and upon further demand shall furnish to the demanding party, and at the expense of the demanding party, a copy of any listed discovery

response specified in the demand; or, in the case of request for production, shall make available for inspection by the demanding party all documents and things previously produced. Furthermore, each party who has taken a deposition shall advise the demanding party of the availability of a copy of the transcript at the latter's expense.

(e) Discovery Motions

(1) All motions to compel or limit discovery shall set forth, in full, the text of the discovery originally sought and the response made thereto, if any, and identify the reason why the proposed discovery is objectionable or should be limited.

(2) The court will deny any motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure, unless counsel shall have conferred concerning all disputed issues before the motion is filed. If counsel for the moving party seeks to arrange such a conference, and opposing counsel wilfully refuses or fails to confer, the judge may order the payment of reasonable expenses, including attorney's fees, pursuant to Fed.R.Civ.P. 37(a)(4). Counsel for the moving party shall include in the motion a certificate of compliance with this rule.

(f) Filing Discovery Papers

Originals of responses to requests for admissions or production and answers to interrogatories shall be served upon the party who made the request or propounded the interrogatories, and that party shall make such originals available for use by any other party at the time of any pretrial hearing or at trial. Likewise, the deposing party shall make the original transcript of a

deposition available for use by any party at the time of any pretrial hearing and at trial, or filing with the court if so ordered.