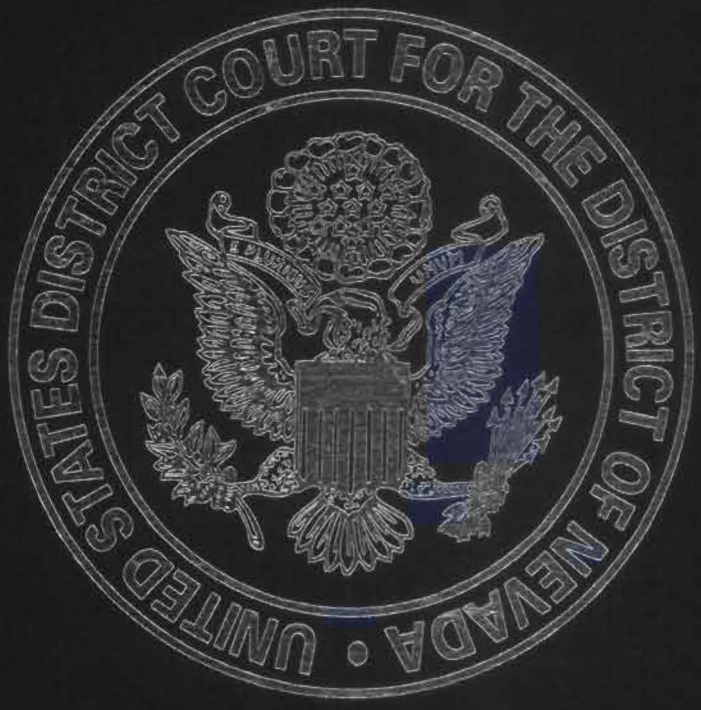
Civil Justice Expense and Delay Reduction Plan of the United States District Court for the District of Nevada



December 1, 1993

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A. Statutory Purpose.

Pursuant to 28 U.S.C. § 471, the United States District Court for the District of Nevada is required to implement a Civil Justice Expense and Delay Reduction Plan. Therefore, the court in order to ". . . facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy and inexpensive resolutions of civil disputes" has developed and adopted this Civil Justice Expense and Delay Reduction Plan (hereinafter Plan).

B. Consideration of the Model Plan.

The Civil Justice Reform Act (CJRA) directs advisory groups and courts to consider the *Model Civil Justice Expense and Delay Reduction Plan* which was developed by the Judicial Conference of the United States and promulgated in October 1992. After considering the options provided in the model plan, the court agrees with the Advisory Group's recommendation to utilize parts of the model plan as the foundation for a custom plan for the District of Nevada. The model plan does not have solutions for all the "principal causes of cost and delay"[1] identified in the district and, therefore, a custom plan is necessary.

C. Plan Components.

The court has considered all the recommendations made by the CJRA Advisory Group. Further, the court affirms (unless otherwise noted) that the Advisory Group's recommendations are included in the court's Plan and are adopted in order to alleviate the five "principal causes of cost and delay" that the Advisory Group has identified (and in which the court concurs) in its study of the District of Nevada. The court also

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[1] 28 U.S.C. § 472(c)(1)(C).

considers all other Local Rules or court procedures not mentioned in this Plan to be still in effect.

1. Court Staffing.

(a) Judgeships.

After careful examination of the "Report of the Civil Justice Reform Act Advisory Group of the United States District Court for the District of Nevada," (hereinafter Report) the court has concluded that a primary source of excessive delay and cost in the district is the inadequate level of judicial positions authorized and filled in both the northern and southern divisions[2] of the district.

The court is severely hampered by its inadequate judicial resources.[3] At the present time, the court has four congressionally authorized district judgeships, but one has been left unfilled for over one year as a result of actions and inaction by members of the Executive and Legislative Branches of government. In October 1993, President Clinton submitted his nominee to the Senate to fill this vacancy. **The court trusts that the Senate will act promptly on the nomination.**

Although it will be helpful, simply filling the one vacancy will only be a small palliative. Under the standard statistical measures, the court requires at least two additional permanent district judge positions (a 50% increase in judicial strength) to meet the demands of its current caseload. Given the court's commitment to the full utilization of magistrate judges and the court's continuing efforts to encourage parties to consent to the disposition of civil cases under 28 U.S.C. § 636(c), the court also needs authorization for two more magistrate judges which would provide the court with an efficient one-to-one ratio of district judges to magistrate judges. New judgeships are imperative because the court can predict with confidence that its caseload will continue to increase rapidly as a result of the burgeoning general population of the state, the expected concomitant increase in the number of attorneys practicing in the state, the projected increase in the state prison population and the

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[2] The State of Nevada constitutes one federal judicial district, but it has been divided into two unofficial divisions because of its large geographical size. Throughout this Plan the terms northern division and southern division refer to these unofficial divisions.

[3] The most recent data reveal that the District of Nevada averages 672 weighted case filings per judgeship which gives the district rankings of second in the U.S. and first in the Ninth Circuit. For more detailed information please see the Judicial Workload Profile in the Appendix of this Plan.

prospect of a new federal correctional facility housing several thousand prisoners being located in the state.

Thus the court recommends that the President, Congress (especially Nevada's congressional delegation), the Judicial Conference of the United States, and the Ninth Circuit Judicial Council work to provide prompt authorization for two new district judgeships and two new magistrate judgeships for the District of Nevada and that any new positions be filled as soon as possible after they are authorized. While the court has considered the Advisory Group's recommendation that the determination of the location of the headquarters of any new district judgeships be based solely upon the apportionment of the caseload in the district, the court believes this is just one of many important factors to be weighed in making such a decision. The court will consider this along with all other factors and assign judges based upon the overall needs of the district.

(b) Clerk's Office Staffing.

The court recognizes that the functions performed by the Clerk's Office are absolutely essential to the efficient operation of the court. Thus a related principal cause of delay and cost is the woefully insufficient staffing of the Clerk's Office. Therefore, the court will continue its efforts to obtain additional Clerk's Office staff. **The court recommends that the Judicial Conference of the United States request funds to staff the Clerk's Office for the district at 100% of the positions calculated as necessary using the September 1992 work measurement formula rather than the present authorized level of 72%. The court further recommends that Congress allocate the money necessary to staff the Clerk's Office at 100% of the level justified by the work measurement formula.** The level of staffing authorized for the Clerk's Office should take into account the two factors that make the work of the office especially difficult: the large distance separating the two divisions of the court[4] and the special needs required in processing the high volume of *pro se* and prisoner litigation experienced in this court.

An issue related to staffing of the Clerk's Office and one which the court has acted upon is the long-recognized need to develop a sophisticated electronic docketing/case management computer system to assist in the management of the court's cases in both divisions. **The court concurs in the decision made by the Clerk's Office to develop an electronic docketing/case management system and recommends that development continue. In order to completely utilize the electronic docketing system**

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[4] The district's two divisional offices are 443 miles apart. The divisional office in Las Vegas is geographically closer to other federal districts' headquarters in Phoenix, San Diego, and Los Angeles than the District of Nevada's divisional office at Reno.

being developed, the court also recommends that the Administrative Office of the United States Courts authorize the District of Nevada to purchase high speed data communications lines. The lines will transmit data at sufficient speed so that electronic dockets will be readily accessible by persons operating in either of the divisional offices in the district.

2. *Pro se* and Prisoner Filings.

The court must strive to reduce the time and costs required to adjudicate *pro se* and prisoner cases, especially prisoner civil rights cases, while simultaneously assuring that the due process rights of the *pro se* and prisoner litigants are scrupulously maintained. The court has established a Special Study Committee, headed by a judge, to study and make recommendations to the court on all issues relating to *pro se* and prisoner litigation. Joining the judge as members of the Special Study Committee should be one or both of the CJRA Co-Reporters; selected CJRA Advisory Group members; other appropriate court representatives; and representatives from the office of the United States Attorney, the office of the State of Nevada Attorney General, and NDOP staff from prisons which generate the most litigation. The Special Study Committee should also find ways to include input from *pro se* and prisoner litigants in this process.

(a) Alternative Dispute Resolution.

Part of the court's continuing work under the mandate of the CJRA includes the exploration of meaningful alternatives for *pro se* and prisoner litigation. The court agrees with the Advisory Group that the grievance system in the state prison is not successfully functioning as an alternative to litigating in the federal court. In conjunction with the state of Nevada (principally through discussions with representatives of the state's Attorney General), the Advisory Group has considered certain alternatives to the grievance system, but believes that they may be unduly burdensome and disruptive to the management of the prisons, may be unfairly burdensome on the resources of the state Attorney General's Office, and/or may not afford the prisoners due process as delineated in the relevant precedents of the Ninth Circuit and the Supreme Court.

Despite these problems, the court is confident that a program can and should be developed to effectively provide a just, speedy, and inexpensive mechanism to reduce the large volume of prisoner litigation. In view of the significant impact of *pro se* and prisoner litigation on the court's docket, **the court charges the Special Study Committee to examine meaningful alternatives for *pro se* and prisoner litigation in the District of Nevada.**

(b) Staffing.

As indicated previously in this Plan, the high volume of *pro se* and prisoner litigation creates a particularly significant impact on the workloads of the judicial officers and the Clerk's Office. **The court recommends the levels of staffing authorized for these offices be augmented by Congress and the Judicial Conference of the United States in light of the special needs of *pro se* and prisoner litigation.**

(c) Filing Fees.

At the present time, the court has a modest filing fee schedule for *pro se* and prisoner litigants filing *in forma pauperis* complaints. A majority of the Advisory Group believed that the court should consider revising the filing fee schedule. In the judgment of the court, the primary purpose of the filing fee is for litigants to pay a fair share of the costs associated with filing a case while insuring that such fees do not block anyone's legitimate rights of access to the justice system. **The Advisory Group has developed a proposed revised schedule which the court directs be referred to the Special Study Committee for consideration as part of a more comprehensive examination of *pro se* and prisoner litigation in the district.**

(d) Sanctions.

The court directs the Special Study Committee to consider the development of appropriate monetary and nonmonetary sanctions as they relate to *pro se* and prisoner litigation.

(e) *Pro se* Handbook.

The court recognizes that it may be able to reduce delay and cost by assisting prisoners (and other *pro se* litigants) in separating out what is potentially meritorious litigation from litigation that is facially nonmeritorious. **Therefore the court directs the Special Study Committee, in conjunction with the federal bar, to consider the development of a *pro se* handbook.** The handbook could include such topics as: alternatives available to filing a case in federal court, the need to exhaust administrative remedies before filing in federal court, a description of the legal requirements to substantiate common causes of action under 42 U.S.C. § 1983, a discussion of potential sanctions for frivolous litigation (including the possibility of injunctive relief), sample forms for complaints and discovery requests, etc.

The court could require *pro se* litigants, including prisoners, to certify that they have read and understood the material in the handbook. Such a certification might make the court less reluctant to sanction a *pro se* litigant who has violated a rule that is clearly covered in the handbook.

(f) Standardized Discovery.

Since the potential for reducing delay and cost exists, the court directs the Special Study Committee to consider the development of mandatory standardized discovery that could apply in all prisoner or *pro se* cases.[5]

3. Legislative and Executive Branch Responsibilities.

It is apparent to this court that certain policies or legislation enacted by the Executive and Legislative Branches of the United States can have a severe impact on the U.S. District Court. With this in mind, the court has several recommendations for the Executive and Legislative Branches of government.

First, **this court recommends that Congress and the Executive Branch review the requirements that current legislative initiatives and Executive Branch policies may have on the court's ability to fulfill its functions.**[6] This analysis should include a review of the jurisdiction of the federal courts, in general, and the U.S. District Court, in particular, and policies of the U.S. Government, especially the Department of Justice, which impact the court, and the staffing necessary for the court to meet its mission.[7]

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[5] The court also directs the Special Study Committee to consider the proposed amendments to the rules for civil procedure.

[6] This court is in the process of developing a mission statement as part of its Long Range Plan. The Long Range Plan will be completed and adopted by the court in early 1994.

This court further suggests that the President and Congress consider the insightful comments of Chief Judge Wallace in his introductory remarks delivered at the 1993 Ninth Circuit Conference when he discussed the mission of the U.S. courts. Chief Judge Wallace indicated that the mission of the federal courts has not been clearly formulated and, therefore, it is as yet undetermined how many judges are needed to carry out this mission.

Judge Wallace proposed the creation of a national conference, with representatives from all three branches of government, to study the problems facing the federal court system and to develop a mission statement of the federal courts. Until such a mission statement is clearly articulated and adopted then the size and structure of the judiciary will be determined by arbitrary limits or requests and not by enunciated principles derived from a clearly articulated mission of the federal courts.

[7] Although this court does not favor the abolition of diversity jurisdiction, it does encourage Congress to consider further limitations on such jurisdiction and greater

Second, **this court urges Congress to be more cognizant of the potential impacts of legislation on the judiciary when contemplating new legislation and urges individual Congressional members and Congress as a whole to seek input from the Judicial Conference and its judicial committees before proposing such legislation and to ascertain as nearly as possible the impact any proposed legislation would have on judicial resources (both financial and staffing).** At the present time, staffing provided to the judiciary and the Administrative Office is inadequate to conduct comprehensive judicial impact studies and Congress should appropriate adequate funds for such purposes. With the resources currently available it is impossible for the judiciary to measure the impact of each piece of legislation.

Third, and finally, **the court recommends that a formal, legal process be adopted which would require a continuing dialogue between the three branches of government with leadership from the various branches meeting at least annually to develop, among other things, methods for assessing the impact that legislative enactments, regulatory processes, and procedures will have on the federal judiciary as well as the potential impact of actions taken by the federal judiciary on the Legislative and Executive Branches.**

4. Enforcement of Federal and Local Rules.

The court shares the view of the Advisory Group that the *Federal Rules of Civil Procedure* and the *Local Rules of Practice* should be fairly and firmly enforced and the court will continue its efforts to do so.

(a) Continuances.

The court considered the concept of requiring counsel to obtain the written consent of the parties for extension of time for filing motions, responses, etc., and rejected the policy because it is believed such a requirement would result in additional delay and cost. With regard to trial continuances, the court may adopt a policy which requires counsel to certify that they have conferred with and obtained agreement from their clients for the continuances. **Therefore, the court directs the Standing Committee on the Local Rules for the District of Nevada to consider this modification to the Local Rules.**

(b) Delay Reduction in Motions Practice.

The court directs the Clerk's Office to promptly submit to the appropriate

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restraint by Congress in creating new federal causes of action in civil and criminal cases.

judicial officer for consideration any motion not having a responsive memorandum filed within the requisite time (as required by Local Rule 140-4).[8] The court also directs the Clerk's Office to notify the state bar of this change before enacting the recommendation. By implementing this policy, the court can reduce delay in motions practice.

(c) Sanctions.

According to the Report, there is a belief among a substantial segment of the attorneys with experience in the district that the judges do not exercise their powers to sanction as effectively as they might, especially in the context of discovery proceedings. The court recognizes that sanctions serve as both general and specific deterrents to poor practice and could translate into reduced delay and cost in civil litigation. **Accordingly, the court will continue to closely monitor proceedings and consider the imposition of sanctions when warranted.**

(d) Local Counsel Requirement.

The court recognizes that the local counsel requirement is costly to litigants. It believes the benefits of this requirement outweigh the costs in most cases. However, the court agrees with the recommendation of the CJRA Advisory Group that the court should consider modification of this requirement. **Therefore, the court directs the Standing Committee on the Local Rules for the District of Nevada to consider revising Local Rule 120-5(d), and to consider modifying the requirement compelling local counsel to attend and be prepared for all proceedings, except when ordered by the court.** This change will not significantly reduce the benefits of Local Rule 120-5(d), but may reduce the cost of the rule to litigants represented by out-of-state attorneys who associate with local counsel.

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[8] It is the court's belief that a substantial proportion of the motions not having a responsive memorandum filed within the requisite time occur in *pro se* cases, especially those involving prisoners. The court directs the Special Study Committee to conduct further research on this topic. Should the court's belief on this issue be confirmed, then a policy will need to be implemented to alleviate this problem because of Ninth Circuit case law as it directly relates to prisoner cases. The court further directs the Special Study Committee to specifically address this issue in their consideration of the *pro se* handbook.

The Standing Committee on the Local Rules for the District of Nevada is currently revising the Local Rules and it is a distinct possibility that the Local Rules will be renumbered. Therefore the court urges caution when using this Plan as a reference to future versions of the Local Rules.

(e) Continuing Legal Education.

In order to help reduce the confusion caused by changing court procedures, Federal Rules, Local Rules, and other issues important to the court and members of the bar, **the court will convey a recommendation to the State Bar of Nevada and other appropriate organizations that regular Continuing Legal Education (CLE) classes should be established with input from the court concerning U.S. District Court procedures, Federal Rules, Local Rules, and related topics. The court recommends that attorneys attend the classes on a regular basis.**

(f) Pretrial Handbook.

To lessen confusion concerning the specific practices of the judicial officers in the district, **the court will develop in 1994 and periodically update a *Pretrial Procedure Handbook* such as the one given to the Advisory Group when developing their Report.** The handbook will be made available for purchase in a manner similar to the *Local Rules of Practice*, and **the court also recommends that attorneys and *pro se* litigants purchase the handbook.** It will be a goal of the court in 1994 for the judges to review the differences in their practices and move toward more uniform pretrial practices.

5. Stacked and Master Calendar Systems.

As noted in the Report, the Advisory Group found that the stacked and master calendar systems used in the district contribute to delay and cost.[9] Although additional judicial personnel should help alleviate the problems attendant to the stacked and master calendar systems, the court cannot rely on obtaining new judges when needed.

The court believes that the parties may be assisted by modifications of the existing systems. **The court has instituted exclusive civil trial months as a response to the delay some civil cases experience because of all civil cases being stacked behind criminal cases.** The court initiated this experiment in November 1993, and has chosen the months of November and April as civil trial months. The court's goal is to provide, as much as possible, firm trial dates for civil cases in these two months.

While it is hoped that the civil trial months will alleviate many of the problems

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[9] The systems were necessary implementations as a result of the increase in the district's caseload without a corresponding increase in the judicial resources authorized for the court. The systems are less than ideal solutions, but under the district's present difficult circumstances, the two systems are better than the alternative of using a purely individual calendaring system.

identified by the CJRA Advisory Group concerning the stacked and master trial calendars, the court recognizes that similar or other problems may still occur. **Therefore the court has formed an Ad Hoc Committee on the Stacked and Master Trial Calendar Systems to further study these systems and possible alternatives.** The committee is composed of a district judge, magistrate judge, the Clerk of Court, lawyer representatives, and court staff. This Ad Hoc Committee will give further consideration to possible modifications of the stacked and master calendar systems, including the recommendations made by the CJRA Advisory Group. Matters to be considered in this regard include, but are not limited to (1) the present system; (2) methods to encourage consents to proceed before a magistrate judge for the disposition of motions and trials pursuant to 28 U.S.C. § 636 (c); (3) nonbinding arbitration; and, (4) differentiated case management.[10]

6. Additional Actions by the Court.

The following actions which the court will take are not in response to any of the five "principal causes" of cost and delay identified by the Advisory Group. Nevertheless, they are ideas which the court believes may allow the court to reduce delay and cost in civil litigation.

The court notes the concern raised by a substantial number of attorneys as set forth in the Report that the court at least sometimes caused delay by not setting more oral arguments and not ruling promptly from the bench on dispositive motions. **The court will review and study the possibility of scheduling more oral arguments and issuing more bench rulings.**

The court will continue its practice of allowing argument of motions by telephone and, where appropriate, expand this practice.

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[10] Differentiated (differential) case management refers to the court's administration of cases where the judicial officers employ various time tracks and degrees of intervention as determined by the complexity or type of case. The amount of supervision a case receives is often determined shortly after the case is filed and an initial determination of the complexity of the case is made. The greater a case's complexity the more judicial intervention it will need and the case will also probably take longer to move through the judicial system. Some courts have differentiated case management tracks such as simple, standard, and complex, with cases on each subsequent track requiring increasing amounts of judicial management. Differentiated case management has also been used to refer to the administration of selected cases which have a common cause of action, such as asbestos cases.

D. Schedule of Implementation.

The court will commence implementation of each element of this Plan on or before December 1, 1993. All cases will be subject to this Plan, including cases filed prior to the Plan's implementation, unless an exclusion is specifically granted by a judicial officer.

E. Explanation of Compliance With 28 U.S.C. § 473(a).[11]

The court has considered the six ". . . principles and guidelines of litigation management and cost and delay reduction . . ." pursuant to 28 U.S.C. § 473(a) and recognizes their value. Compliance with 28 U.S.C. § 472(b)(4) is explained in the following section.

> **§ 473(a)(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;**

The court currently and prior to the passage of the CJRA has regularly utilized Fed. R. Civ. P. 16(b) and Local Rule 190 (Pretrial Procedure In Civil Cases) to facilitate management of its docket. Local Rule 190, either directly or through implication, provides for the ". . . systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case . . . ."[12] The court has considered the "principles and guidelines" of systematic "differential treatment of civil cases" in developing this Plan and concludes that the components of the Plan include these "principles and guidelines."

> **§ 473(a)(2) early and ongoing control of the pretrial process through involvement of a judicial officer in-**
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> **(A) assessing and planning the progress of a case;**
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> **(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that-**

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[11] This section has been included pursuant to 28 U.S.C § 472(b)(4).

[12] 28 U.S.C. § 473(a)(1).

(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or
(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;
(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and
(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

(1) Assessing and Planning the Progress of a Case.

The court acknowledges the need for judicial officers to provide ". . . early and ongoing control of the pretrial process . . . ."[13] Judicial officers in the District of Nevada provide such "ongoing control" by "assessing and planning the progress"[14] of their cases through the use of Local Rule 190. However, given the extremely large number of cases currently filed per judge in the district, the court cannot realistically implement a recommendation that all judicial officers spend even more time evaluating and planning the progress of their cases as a general matter. When more judges are appointed for the district, the court believes that it would be an appropriate time to consider revising Local Rule 190-2, which provides that the court will generally not conduct pretrial conferences.

(2) Setting Early, Firm Trial Dates.

The court believes that the current procedures of using a stacked trial calendar in the northern division and master trial calendar in the southern division do not preclude a general policy of ". . . setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint . . . ."[15] The court recognizes that setting early and firm trial dates contributes to early settlement of cases and reduces costs. The court will continue to set early and firm trial dates where the calendar and caseload make it practical to do so. However, given the staggering and increasing criminal caseload, the large number of civil cases in the district, and the scarcity of judicial resources allocated to the district, it is increasingly difficult to provide "firm" trial dates on a consistent and general basis at

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[13] 28 U.S.C. § 473(a)(2).

[14] 28 U.S.C. § 473(a)(2)(A).

[15] 28 U.S.C. § 473(a)(2)(B).

this time in the District of Nevada.[16] However, this is another matter which should be revisited soon after augmentation of the judicial personnel authorized for the district and a report from the Ad Hoc Committee on the Stacked and Master Trial Calendar Systems.

Despite the decreasing ability to set "early, firm trial dates" as a general matter, the court can take some steps to rectify the problem, at least on a temporary basis. For example, the policy adopted by the court giving all parties the option of an early, firm trial date with a magistrate judge, rather than the more indefinite date with the stacked/master calendar, has helped to accomplish this goal.

(3) Control of Discovery.

Through Local Rule 190, the court already controls in great detail ". . . the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion . . . ."[17] The court is cognizant of the Advisory Group's conclusion, which is derived from the responses to the questionnaires, that the written rules regarding discovery are adequate. The court agrees that controlling unnecessary discovery is important, but based on the data collected, believes it has been demonstrated that Local Rule 190 is basically sufficient to control discovery. The court agrees with the CJRA Advisory Group on the need for strict enforcement of the rules and the court will continue to provide such enforcement. Therefore, the court reaffirms the continuation of current discovery practices.[18]

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[16] Additionally, for the district's judicial officers to certify that ". . . the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice . . ." or ". . . the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases . . ." (28 U.S.C. § 473(a)(2)(B)) would do nothing, but increase the judicial and clerical workload in an already understaffed district. The latter issues are already addressed by the judicial officers as they make such determinations on a daily basis when they perform their case management and allow trial continuances.

[17] 28 U.S.C. § 473(a)(2)(C).

[18] This is especially true in view of the court's April 1992 creation of a discovery "hot line" in Special Order 81, which makes a magistrate judge available on an emergency basis to informally and quickly resolve discovery disputes. The court will monitor the success of the hot line program and will consider appropriate adjustments as the court and the bar gain more experience with the program.

(4) Deadlines for Motions.

The District of Nevada currently sets ". . . at the earliest practicable time, deadlines for filing motions and a time framework for their disposition . . . ."[19] pursuant to Local Rule 140 (motions) and Local Rule 190. The court agrees that judicial control of motions practice is desirable; it generally endorses a continuation and active enforcement of the existing controls used in the district.

There is one specific area that could benefit from an adjustment in the current practice. In the course of data collection, the Advisory Group discovered that although over 40% of the motions do not have any opposition filed, the court did not act upon unopposed motions as promptly as one might expect.[20] Therefore, the court will take steps to adhere more closely to the time schedule for motions established in Local Rule 140. In particular, all motions not having a responsive memorandum in opposition filed within the 15-day period should be promptly submitted to the appropriate judicial officer for summary consideration under Local Rule 140-6 (failure of the opposing party to file a memorandum of points and authorities in opposition constitutes consent to the granting of the motion).

§ 473(a)(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer-

(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to-

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[19] 28 U.S.C. § 473(a)(2)(D).

[20] As noted earlier in this Plan, it is the court's belief that many of these unopposed motions are in *pro se* cases, especially prisoner cases. The court will ask the Special Study Committee to further study this matter and report the findings to the court so that the court may take appropriate action.

(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) phase discovery into two or more stages; and

(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

The court agrees that discovery-case management conferences may be valuable for complex cases, and for other selected cases, in order to explore ". . . the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation . . . ."[21] Using a series of discovery-case management conferences at which the presiding judicial officer ". . . identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial . . . ,"[22] ". . . prepares a discovery schedule and plan . . . ,"[23] or ". . . sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition . . ."[24] also may be valuable. However, such conferences are already in use in the district when the court or the parties determine it is appropriate. The court does not believe that it needs to go beyond the provisions of Local Rule 190-2 at this time.

§ 473(a)(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

The court agrees ". . . encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices . . ."[25] is beneficial to the litigants, the litigants' attorneys, and the court. The court has considered and rejected several

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[21] 28 U.S.C. § 473(a)(3)(A).

[22] 28 U.S.C. § 473(a)(3)(B).

[23] 28 U.S.C. § 473(a)(3)(C). The District of Nevada has not developed any procedures to ". . . identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and (ii)phase discovery into two or more stages . . . ." The court does not believe that evidence uncovered in the District of Nevada warrants development of any such procedures, but will continue to monitor this situation.

[24] 28 U.S.C. § 473(a)(3)(D).

[25] 28 U.S.C. § 473(a)(4).

proposals calling for the "voluntary exchange of information" or the use of "cooperative discovery devices." However, the court has established the Special Study Committee which will consider a system for disclosure of information without the necessity of formal requests.

§ 473(a)(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion;

The court believes that through Local Rule 190-1(f)(2) it is already taking significant action to further the ". . . conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion . . . ."[26] The data collected by the Advisory Group do not indicate there is a significant problem with this rule.

§ 473(a)(6) authorization to refer appropriate cases to alternative dispute resolution programs that-

(A) have been designated for use in a district court; or

(B) the court may make available, including mediation, minitrial, and summary jury trial.

The court agrees ". . . authorization to refer appropriate cases to alternative dispute resolution programs . . ."[27] is valuable. Under Local Rule 185 the court may ". . . set any appropriate civil case for settlement conference, summary jury trial or other alternative method of dispute resolution, as it may choose." In addition, the court has implemented trial by magistrate judge and it will consider implementing arbitration as an alternative to the stacked/master calendar systems.

Implementation of procedures for the conduct of trials and disposition of civil cases by a magistrate judge upon consent of the parties pursuant to 28 U.S.C. § 636(c) and Local Rule 505.

Pursuant to Local Rule 505-1, the court has designated all full-time magistrate judges of this district to exercise all jurisdiction in civil jury and non-jury cases pursuant to 28 U.S.C. § 636(c). For several years the court has encouraged litigants in civil cases to consider the option of consenting to proceed before a magistrate

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[26] 28 U.S.C. § 473(a)(5).

[27] 28 U.S.C. § 473(a)(6).

judge in civil cases, and routinely makes the necessary consent forms available in most civil cases. In response to the concerns addressed by the CJRA Advisory Group in their Report, the court takes this opportunity to restate its commitment to the full utilization of the consent trial provisions for disposition of civil cases before a magistrate judge under 28 U.S.C. § 636(c), and encourages all counsel to consider this viable option.

F. Explanation on Compliance With 28 U.S.C. § 473(b).[28]

Pursuant to 28 U.S.C. § 472(b)(4) the court has considered the five ". . . litigation management and cost and delay reduction techniques . . ." and ". . . such other features as the district court considers appropriate . . ." as specified in 28 U.S.C. § 473(b). The court recognizes the value of considering the five "cost and delay reduction techniques" proposed pursuant to 28 U.S.C. § 473(b) and explains its compliance with 28 U.S.C. § 472(b)(4) in the following section.

§ 473(b)(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

The court has considered the requirement that ". . . counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference . . . ."[29] Due in large part to the shortage of judicial personnel, the judges in the District of Nevada do not routinely hold a pretrial conference, but simply issue a scheduling order pursuant to Local Rule 190. The court will continue to designate selected cases wherein a joint discovery-case management plan will be required. Until the number of judges in the district is increased, the court is concerned that any requirement mandating an initial pretrial conference to present a joint discovery-case management plan would increase delay and cost in civil litigation.

§ 473(b)(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

Judicial officers in the District of Nevada do not normally hold pretrial conferences. Settlement conferences are held when requested or otherwise warranted. When such conferences are held, the judges follow the practice of requiring the presence of the litigants or ". . . an attorney who has the authority to

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[28] This section has been included pursuant to 28 U.S.C § 472(b)(4).

[29] 28 U.S.C. § 473(b)(1).

bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters . . . ."[30] If the court revises its policy regarding pretrial conferences, it will certainly consider implementing this requirement. However, the court does not believe that any further action on this matter is appropriate at this time.

§ 473(b)(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

On the basis of the Report and the court's review of its own practices, the court does not believe ". . . a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request . . ."[31] would significantly help to decrease cost and delay in civil litigation. In certain instances, where a litigant resides out of state or even outside the country, such a requirement would only result in additional costs and delay. A judge is free to implement this requirement in a specific case if the situation warrants such action. However, the court will implement a requirement that attorneys certify that their client agrees with any trial continuances.

§ 473(b)(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

The Advisory Group has explored the possibility of ". . . a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation . . . ."[32] The Advisory Group has considered the possibility of developing a neutral evaluation program for prisoner civil rights litigation and is unable currently to recommend such a program. In addition, the Advisory Group has considered and rejected such a program for other types of civil litigation. The court concurs in the Advisory Group's recommendations on these matters.

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[30] 28 U.S.C. § 473(b)(2). Under Local Rule 190-3(b), the court requires counsel ". . . who will try the case for the parties and who are authorized to make binding stipulations . . ." to ". . . personally discuss settlement . . ." and to prepare a proposed joint pretrial order which covers a set of issues designed to streamline the presentation of the case at trial.

[31] 28 U.S.C. § 473(b)(3).

[32] 28 U.S.C. § 473(b)(4).

§ 473(b)(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

The court agrees ". . . upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference . . . ."[33] Currently, the judicial officers in the District of Nevada informally require someone able to bind the parties be present during settlement discussions. The court sees no reason to formalize the practice at this time and will continue the current procedure.

§ 473(b)(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

Having considered all of the recommendations of the Advisory Group, the court does not have any "other features"[34] it wishes to include in this Plan, but anticipates new and innovative concepts will be identified and implemented as needed.

G. Consideration of the Needs and Circumstances of the Court, Litigants, and Litigants' Attorneys.

The Advisory Group considered the ". . . particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys . . ."[35] by utilizing extensive questionnaires designed to learn the beliefs and perceptions of the active and senior district judges, magistrate judges, the Advisory Group's attorney-members and a scientific sampling of attorneys, litigants, and *pro se* litigants. Additionally, an examination of court procedures, 400 pending cases and roundtable discussions of the results of all data collected by the Advisory Group has led to a careful consideration of the "particular needs and circumstances" required under 28 U.S.C. § 472(c)(2). Included among these are contingency fee limits. The court agrees with the CJRA Advisory Group and does not believe that a limit on contingency fees in the District of Nevada would ". . . ensure just . . . resolutions of

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[33] 28 U.S.C. § 473(b)(5).

[34] 28 U.S.C. § 473(b)(6).

[35] 28 U.S.C. § 472(c)(2).

civil disputes"[36] as mandated by the CJRA.

The court has considered the CJRA Advisory Group's Report and has also taken into account the needs and circumstances of the court, litigants, and litigants' attorneys when developing this Plan.

H. Significant Contributions by the Court, Litigants, Litigants' Attorneys, Congress, and the Executive Branch.

Full implementation of the Plan developed by the court will result in the court, the litigants, the litigants' attorneys, and the Executive and Legislative Branches of government making the following "significant contributions" [28 U.S.C. § 472(c)(3)]:

1. Court. The court

(1) has formed a Special Study Committee on *Pro Se* and Prisoner Litigation and appointed a district judge, a magistrate judge, Clerk's Office staff, and representatives from the CJRA Advisory Group, the United States Attorney, the state Attorney General's staff and the Nevada Department of Prison's staff to sit on the committee;

(2) has reviewed and will strictly enforce all rules that affect delay and cost in the district and will consider the imposition of sanctions where appropriate;

(3) directed the Standing Committee on the Local Rules for the district to consider a policy requiring counsel requesting trial continuances to certify that their clients have agreed to the continuances;

(4) has referred to the Special Study Committee for its consideration and recommendations on the possible modification of the court's current policy concerning the submission of motions in which the opposing party has not filed a timely response;

(5) has directed the Standing Committee on Local Rules to consider modification of Local Rule 120-5(d), in particular, the removal of the requirement that local counsel attend all proceedings with the out-of-state attorneys with whom they associate;

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[36] 28 U.S.C. § 471.

(6) will attempt to schedule more oral arguments and issue more bench rulings for dispositive motions where appropriate and expand its practice of allowing oral arguments by telephone;

(7) has formed an Ad Hoc Committee on the Stacked and Master Trial Calendar Systems to develop suggestions to lessen the delay and cost inherent in the use of these systems as well as consider the establishment of a nonbinding arbitration program and the assignment of a magistrate judge who can offer a fixed trial date before a known trial judge for those parties who choose to consent to proceed before a magistrate judge;

(8) has directed the Clerk's Office to continue developing an electronic case management system; and

(9) has planned to regularly update the *Pretrial Procedure Handbook* given to the Advisory Group and will make the revised handbook available for purchase in a manner similar to the *Local Rules of Practice*;

2. Litigants and Attorneys.

Litigants and their attorneys will be required to comply with this Plan, the *Federal Rules of Civil Procedure*, the *Local Rules of Practice* and any Special Orders issued by this court.

3. Congress and the Executive Branch. The court recommends that

(1) Congress promptly confirm the President's nomination to fill the district's existing judicial vacancy;

(2) the President and Congress promptly authorize two additional district judgeships;

(3) the Judicial Conference approve two new magistrate judge positions for the district;

(4) the Clerk's Office staff for the District of Nevada be augmented to 100% of the positions justified by the current measurement formula;

(5) all Executive Branch policies and current legislative initiatives be reviewed for their impact on the court's ability to meet its mission; and

(6) a formal, legal process be adopted which would require a continuing dialogue between the three branches of government with leadership from the various branches meeting at least annually to develop, among other things, methods for assessing the impact that legislative enactments, regulatory processes, and procedures will have on the federal judiciary as well as the potential impact of actions taken by the federal judiciary on the Legislative and Executive Branches.

I. Annual Assessment of the Docket.

The court accepts the Advisory Group's recommendation to assess annually the condition of the docket, as required by 28 U.S.C. § 475, starting with data collected during the 1993 statistical year. The court also agrees with the Advisory Group's rejection of the recommendation of the Judicial Conference Committee on Court Administration and Case Management (attachment D of the Model Plan) to ". . . state the procedures that will be followed for future assessments and revisions . . ." in the Plan. Therefore, the court and the Advisory Group will determine the procedures necessary to comply with 28 U.S.C. § 475 on a periodic basis and such procedures are not included in this Plan.

The court will evaluate the condition of the docket in consultation with the Advisory Group through a series of joint annual meetings held each year beginning in 1994. The court, in consultation with the Advisory Group, will examine any "appropriate additional actions" necessary to reduce delay and cost for civil litigation in each year following the adoption of this Plan. In particular, the court concurs with the Advisory Group's opinion in the Report that it would be desirable for the court to consider revising several of its practices after additional judicial resources are made available to the district. The annual meeting would be an appropriate place to consider these changes in light of the developments over the previous year.

J. Effective Date.

This Civil Justice Expense and Delay Reduction Plan shall become effective December 1, 1993.

It is so ORDERED.

Dated this 8 day of November, 1993.

LLOYD D. GEORGE
CHIEF UNITED STATES DISTRICT JUDGE

HOWARD D. McKIBBEN
UNITED STATES DISTRICT JUDGE

PHILIP M. PRO
UNITED STATES DISTRICT JUDGE

APPENDIX

Appendix A

U.S. DISTRICT COURT – JUDICIAL WORKLOAD PROFILE

	NEVADA		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1993	1992	1991	1990	1989	1988		
OVERALL WORKLOAD STATISTICS	Filings*		2,581	2,264	2,049	1,953	1,967	1,948		
	Terminations		2,248	2,095	2,179	1,929	1,933	1,948		
	Pending		2,485	2,155	2,015	2,214	2,205	2,166		
	Percent Change In Total Filings Current Year		Over Last Year...	14.0					12	2
			Over Earlier Years...		26.0	32.2	31.2	32.5	5	2
	Number Of Judgeships		4	4	4	4	4	4		
	Vacant Judgeship Months		11.5	0.0	0.0	0.0	0.0	0.7		
ACTIONS PER JUDGESHIP	FILINGS	Total	645	566	512	488	492	487	5	1
		Civil	541	463	425	406	432	415	7	1
		Criminal Felony	104	103	87	82	60	72	9	4
	Pending Cases		621	539	504	554	551	542	7	1
	Weighted Filings**		672	598	501	455	431		2	1
	Terminations		562	524	545	482	483	487	5	1
	Trials Completed		38	43	42	34	26	29	23	3
MEDIAN TIMES (MONTHS)	From Filing To Disposition	Criminal Felony	8.9	6.7	7.1	6.4	7.8	6.7	88	14
		Civil	8	9	10	10	9	11	20	5
	From Issue To Trial (Civil Only)		17	22	18	17	19	21	47	7
OTHER	Number (and %) of Civil Cases Over 3 Years Old		64 3.3	59 3.5	121 7.4	164 8.6	184 9.7	179 9.5	20	3
	Average Number of Felony Defendants Filed per Case		1.6	1.6	1.6	1.6	1.4	1.7		
	Jurors	Avg. Present for Jury Selection	35.97	40.14	36.92	34.32	36.35	38.20	56	4
		Percent Not Selected or Challenged	24.8	29.2	24.8	23.9	28.6	27.8	29	3

* Filings Only Include Criminal Felony Actions And Transfers From Other Districts.

** Weighted Filings Based On 1979 Federal District Court Time Study.

Source: Administrative Office of the United States Courts.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORDER APPOINTING)
)
SPECIAL STUDY COMMITTEE) SPECIAL ORDER NO. 83
ON *PRO SE* AND PRISONER LITIGATION)
)

The court appoints the Special Study Committee on *Pro Se* and Prisoner Litigation which will be composed of people in the following positions:

District Judge, Committee Chair
Magistrate Judge
Clerk of Court
Representatives of the Civil Justice Reform Act Advisory Group
United States Attorney, or designee
State of Nevada Attorney General, or designee
Nevada Department of Prisons Director, or designee
and other representatives of the Clerk's Office
staff as shall be designated by the court

It is so ORDERED.

Dated this 8 day of Nov., 1993.

Lloyd D. George
Chief, U.S. District Judge

Howard D. McKibben
U.S. District Judge

Philip M. Pro
U.S. District Judge

AO 72
(Rev.8/82)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORDER APPOINTING)
)
AD HOC COMMITTEE)
ON THE STACKED) SPECIAL ORDER NO. 84
AND MASTER TRIAL)
CALENDAR SYSTEMS)
)

The court appoints the Ad Hoc Committee on the Stacked and Master Trial Calendar Systems which will be composed of people in the following positions:

District Judge, Committee Chair
Magistrate Judge
Clerk of Court
Lawyer Representatives
Master Trial Calendar Clerk
and other representatives of the Clerk's Office staff as shall be designated by the court

It is so ORDERED.

Dated this 8 day of November, 1993.

Lloyd D. George
Chief, U.S. District Judge

Howard D. McKibben
U.S. District Judge

Philip M. Pro
U.S. District Judge