Report of the Civil Justice Reform Act Advisory Group of the United States District Court for the District of Nevada

May 22, 1993

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Membership of the CJRA Advisory Group for the District of Nevada

George M. Dickerson, Esq., Chair
George V. Allison, Esq.
Andras F. Babero, Esq.
Bruce T. Beesley, Esq.
Cam Ferenbach, Esq.
Franny A. Forsman, Esq.
Kenny C. Guinn
Robert R. Hager, Esq.
R. Gardner Jolley, Esq.
Monte N. Stewart, Esq.
Robert A. McQuaid, Jr., Esq.
John H. Mowbray, Esq.
Brooke Nielsen, Esq.
Margo Piscevich, Esq.
Cal J. Potter, III, Esq.
John C. Renshaw, Esq.
C. Keith Rooker, Esq.
Arthur M. Smith

Professor David I. Levine
Hastings College of the Law and Co-Reporter

Carol C. FitzGerald
Clerk of Court and Co-Reporter

Advisory Group Staff:

Linda Lea Sharer
Chief Deputy Clerk

Cynthia J. Cohn
Operations Manager

R. Jake Herb
Management Analyst

Dr. Robert E. Rucker
Management Analyst

Authors

This report has been authored under the direction of the CJRA Advisory Group by the following individuals.

Co-Reporters:

Professor David I. Levine
Hastings College of the Law

Carol C. FitzGerald, Clerk of Court
U.S. District Court, District of Nevada

Principal Authors:

Dr. Robert E. Rucker, Management Analyst
U.S. District Court, District of Nevada

R. Jake Herb, Management Analyst
U.S. District Court, District of Nevada

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Judicial Officers
U.S. District Court, District of Nevada

Magistrate Judge Harry McKee
U.S. District Court, Eastern District of Texas

Respondents to the Surveys

State of Nevada:

Staff of the Attorney General
Nevada Department of Prisons

State Bar of Nevada

Administrative Office of the United States Courts:

David L. Cook
Chief of the Statistics Division

Sheila D. Barnes
Statistics Division

Federal Judicial Center:

Donna J. Stienstra
Research Division

E.L. Cord Foundation Center for Dispute Resolution

Staff of the Clerk of Court
U.S. District Court, District of Nevada

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Executive Summary

United States District Court, District of Nevada

I. Description of the District of Nevada.

The state of Nevada constitutes one federal judicial district, but it has been divided into two unofficial divisions because of its large geographical size. The southern division has its courthouse in Las Vegas and the northern division's courthouse is in Reno.[1] Divisional headquarters are 443 miles apart.

Tourism, including gaming, is the state's leading industry and the major force driving the economy. Other important contributors to the state's economy are mining, warehousing and distribution of products in the far west, and government operations, including the military. These industries, coupled with no state income tax, a pleasant variety of climates, and a desire to escape from the problems in other areas of the country, have made Nevada the fastest growing state and Las Vegas the fastest growing city in the nation. Nevada's population has grown from barely 800,000 people in 1980 to over 1.3 million in 1993, an increase of over 60%.

There has been a concomitant growth in the number of attorneys and prisoners in the state. From 1986-1992, there has been a 54.1% increase in the number of attorneys who are members of the Nevada State Bar. The state prison population grew even faster, almost quadrupling between 1980 and 1992. Complaints by prisoners have accounted for over 33% of the court's total civil filings over the past 3 years. The state prisons and local jails accounted for nearly all of the *pro se* complaints filed in the northern division of the district. Given the explosive growth in the state's prison population, the Advisory Group expects that the number of prison-related filings will continue to expand.

The Lake Mead National Recreation Area has had an increasing impact on the district court's southern division. The number of petty offenses committed in the recreation area has grown significantly in recent years, and it has changed from a seasonal to a year-round source of petty offenses.

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[1] Throughout this "Report of the Civil Justice Reform Act Advisory Group of the United States District Court for the District of Nevada," the terms northern division, north and Reno will be used interchangeably to refer to the unofficial northern division. The terms southern division, south and Las Vegas will be used interchangeably to refer to the unofficial southern division.

There are 25 reservations of Native Americans within the district, including substantial populations of the Paiute, Western Shoshone, and Washoe tribes. Treaty disputes and other issues of Native American law, which can raise complex questions of federal law (especially regarding water and land use), form part of the court's docket. Some of these lawsuits are the most long-lived of all cases before the court.

II. Court Personnel.

The district is currently authorized four district judges and four magistrate judges. In 1986, the Judicial Conference first recognized the district's need for more judges when it recommended one additional temporary judgeship for the court. Since 1988, the *Biennial Judgeship Survey* has identified the need for one additional permanent district judgeship based upon the weighted case filings per judgeship in the district. The Ninth Circuit Judicial Council recognized the court's need and approved the recommendation. However, when Congress created new judgeships in the "Judicial Improvements Act of 1990," it authorized no new judgeships for the district.

The lack of authorized judgeships allocated to the district has been especially burdensome because of the substantial number of vacant judicial months that have also occurred. There has been a vacant district judgeship since July 1992 (nearly twelve months), and the district has experienced 76.1 months of judicial vacancies from 1983 through June 30, 1993. This is equivalent to losing the district's three active Article III judges for over two years!

Given the judges' 1992 weighted case filings (which ranks them fourth in the U.S. and second in the Ninth Circuit), the district urgently needs a fifth district judge. The statistical data for December 31, 1992, justifies a sixth district judgeship (Appendix E). Based upon the *Biennial Judgeship Survey's* standard that a court should have approximately 400 weighted case filings per judgeship, the Advisory Group projects that the district will need three additional judgeships in the next six years (1993-1999) and one additional judgeship in the following five years (2000-2004) for a total of four new judgeships.

The District Court Clerk's Office is also substantially understaffed. The new work measurement staffing formula, approved September 1992 by the Judicial Conference, reveals that the Clerk's Office should have 57 positions, but because of the current hiring freeze and budget restraints due to the fiscal crisis of the federal government, the Clerk's Office has been restricted to 72% of these positions (41, after attrition).

III. Assessment of Conditions in the District.

A. Civil and Criminal Dockets.

The Advisory Group utilized a variety of data to assess conditions in the District of Nevada. Information developed by the Administrative Office of the United States Courts and statistics compiled within the district were used to examine the condition of the civil and criminal dockets. Through a series of detailed questionnaires (Appendix B), lawyers, their clients, *pro se* litigants, judicial officers, and Advisory Group attorney-members were surveyed for their beliefs and perceptions about litigation in the district. Each judicial officer's time in court was complied and analyzed by event, e.g., type of motion, number and length of sentencing guideline hearings, type of conference held, etc. Reviews of 400 randomly selected pending cases were undertaken, 200 in each divisional office. These cases were examined for the number, type and status of motions, orders and other matters. An evaluation of procedures used by the Clerk's Office was also conducted.

The number of civil and criminal filings commenced in the district increased 10.6% from 1987 to 1992. There was a 9.5% increase in civil cases commenced; most of this increase came after 1990. The number of criminal cases commenced has steadily grown since 1989, with an overall gain of 15.6% from 1987 to 1992. For 1992, 81.1% of the cases commenced in the District of Nevada were civil cases. The number of trials in all categories (civil and criminal, bench and jury) in the district has also risen during the period 1987 to 1992 as a direct result of the surging numbers of cases filed.

There have been substantial changes in the cases composing the civil docket in both the northern and southern divisions. The southern division experienced a significant decrease in contract cases and a sizable increase in actions under statutes. The northern division has experienced a more rapid increase in the number of cases commenced than the southern division. The primary area of growth in filings in the northern division is prisoner civil rights petitions.

In spite of the rapidly growing civil docket in the northern division, the majority of the filings in the district are located in the southern division. This disparity in cases commenced has necessitated that the judges headquartered in the northern division regularly travel to the southern division to adjudicate cases.

Overall the condition of the docket has been good, but is beginning to deteriorate. One significant indication of this deterioration is that after several years of steady or decreasing numbers of pending cases, the number of pending cases has recently been increasing. The district has experienced an especially large increase in the num-

ber of pending criminal cases, and pending civil cases are also rising. This trend is primarily the result of an insufficient number of judges when compared with the district's rapidly growing caseload.

B. Findings From the Questionnaires.

(1) Cost.

It can be generally said that the attorneys, litigants, *pro se* litigants, and judges surveyed did not believe the district had major problems in terms of costs. The attorneys, litigants, and judges did not see discovery as a substantial problem. A minority of attorneys indicated the discovery process is generally abused, and an even smaller number of attorneys and litigants believed that discovery-related extensions increased the costs of specific cases. However, attorneys did not feel too much time was provided for discovery of facts nor did they generally believe that taking depositions excessively increased the costs of their cases. Attorneys also opposed further limitations on the number of depositions which can be taken.

The vast majority of litigants and their attorneys felt that attorney fees were "reasonable" or "about right." A parallel finding was that the majority of litigants did not believe that they incurred any unnecessary financial expenses. Some attorneys and litigants considered the required association of out-of-state attorneys with local counsel to be problematic by unnecessarily increasing costs. Many litigants (defendants) felt the plaintiffs' cases were frivolous; this was especially true for prisoner civil rights cases. The judges concurred, saying that meritless prisoner civil rights cases were the district's biggest problem and wastefully consume the court's time and resources.

(2) Delay.

Responses to the questionnaires by attorneys and litigants indicated that delay is somewhat of a problem in the district. Both opined that delays were predominantly due to the lack of judges in the district.

A majority of attorneys did not believe that discovery-related extensions had a significant impact in delaying a case. Only a small minority of attorneys indicated they believed there should be more control of discovery than what presently exists and is exercised in the district. However, attorneys called for more frequent use of sanctions to prevent delay and other abuses.

Delay was not seen to be caused by frivolous dispositive motions with any regularity except in prisoner cases. However, attorneys indicated there is some delay

caused by the court due to the time taken to make decisions on dispositive motions.

The attorneys and litigants did not cite any other court actions or inactions as causing significant delay in the resolution of cases. Positive responses and comments far outweighed negative ones; for example, magistrate judges were described as making significant positive contributions toward reducing cost and delay, and they received almost no negative comments. Visiting judges also played a helpful role in reducing cost and delay, but they have been unable to compensate for the shortage of judicial personnel in the district.

A substantial reason for the delay in civil cases was the heavy criminal caseload which has priority over civil cases due to "Speedy Trial Act" requirements. The "Sentencing Reform Act" has created an additional burden on the judges as they must spend more time out of court preparing for criminal cases. The "Bail Reform Act" has created more work for the magistrate judges.

(3) Stacked and Master Trial Calendars.

The vast majority of attorneys did not like the stacked and master trial calendars; however, they admitted that these calendars reduced delay over the total number of cases. Attorneys believed these calendars increased costs, but the data from the questionnaires did not fully support this conclusion. Attorneys disliked the uncertainty of trial dates and not knowing before which judge they might finally appear. Nevertheless, the judges believe the master trial calendar is absolutely necessary at this time to insure cases go to trial as quickly as possible.

(4) Differentiated Case Management.

Attorneys provided a mixed set of answers when questioned about differentiated case management. They favored differentiated case management, but were satisfied with the case management currently provided. The judges did not feel that they could provide differentiated case management with the severe judicial shortage the district is currently facing.

(5) Alternative Dispute Resolution.

Only a minority of the attorneys answered that the different forms of ADR which were asked about in the specific case questionnaire would have been helpful for the cases surveyed. On the other hand, a general questionnaire item (not referring to a specific case) found strong support for ADR by the attorneys. The judges and the Advisory Group members also supported ADR. However, litigants rarely used ADR in their cases and were doubtful about its potential usefulness.

C. Electronic Docketing/Case Management System.

After examining the procedures of the court, the Advisory Group found that the Clerk's Office needed an electronic docketing/case management system coupled with high speed data communication lines.

D. Principal Causes of Cost and Delay.

There are five concomitant "principal" causes for cost and delay identified in the District of Nevada:

(1) the inadequate number of judicial officers and other court personnel;

(2) the ever-burgeoning growth of prisoner filings and the insufficient means to manage them;

(3) inadequate attention by the Legislative and Executive Branches to the staffing and financial requirements of the court and by these branches not fully evaluating the impact of new legislation on the court;

(4) the disregard shown by some attorneys in abiding by the *Federal Rules of Civil Procedure* and *Local Rules of Practice* of the District of Nevada coupled with the perceived selective or nonexistent enforcement of the rules and the need to modify the local counsel rule used in the district; and

(5) the use of the master trial calendar (Las Vegas) and stacked calendar (Reno).

IV. Recommendations.

The following recommendations are made in an effort to alleviate the five principal sources of cost and delay[2] that the Advisory Group has identified in its study of the District of Nevada.

A. Court Staffing.

(1) Judgeships.

After careful examination of the court's procedures, the Advisory Group has

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[2] See page 58 for definitions of cost and delay that are used in this Report.

concluded that the major source of cost and delay is the inadequate level of judicial positions authorized and filled in both the northern and southern divisions of the district. At the present time, the court has four congressionally authorized district judgeships, but one has been left unfilled for almost a year as the result of inaction by members of the Executive and Legislative Branches. The Advisory Group trusts that the administration will promptly nominate someone well-qualified to fill this vacancy and that the Senate will act promptly and favorably on the nomination.

Under the standard statistical measures, the court qualifies for two additional permanent district judge positions (a 50% increase in judicial strength) to meet the demands of its current caseload. The court also needs authorization for three more 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 state population, the concomitant increase in the number of attorneys practicing in the state, and the projected increase in state prison population.

The Advisory Group 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 three new magistrate judgeships for the District of Nevada and that any new positions be filled as soon as possible after they are authorized. The Advisory Group recommends that the determination of the headquarters of the district judges should be based upon the apportionment of the trial caseload in the district.

(2) Clerk's Office Staffing.

A related principal cause of cost and delay is the insufficient staffing of the Clerk's Office. The Advisory Group supports the court's efforts to obtain additional Clerk's Office staff. The Advisory Group recommends that Congress and the Judicial Conference of the United States allocate funds for and authorize the staffing of the Clerk's Office in the district at 100% of the positions justified by the work measurement formula rather than the present level of 72%.

An issue related to staffing of the Clerk's Office and one which the court should act 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 Advisory Group concurs with the decision made by the Clerk's Office to develop an electronic docketing/case management system and recommends that development continue. In order to utilize completely the finished electronic docketing system being developed, the Advisory Group 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.

B. Prisoner Filings.

The Advisory Group recognizes that the court must strive to reduce the time and costs required to process prisoner civil rights cases while simultaneously assuring that the due process rights of the prisoners are scrupulously maintained. More efficient processing of prisoner cases will enable the court to allocate more judicial and support staff resources to other cases on the docket. In order to meet these goals, the Advisory Group makes several recommendations with respect to prisoner litigation.

(1) Alternative Dispute Resolution.

The Advisory Group recommends that part of the court's continuing work under the mandate of the CJRA include the exploration of meaningful alternatives for prisoner litigation. In view of the significant impact of prisoner litigation on the court's docket, the Advisory Group recommends that the court appoint a judge to head a Special Study Committee on Prisoner Litigation (hereinafter Special Study Committee). The Special Study Committee will consider including some form of ADR in the development of a coordinated solution to this problem.

(2) Staffing.

The high volume of prisoner litigation creates a significant impact on the workloads of the judicial officers and the Clerk's Office. The Advisory Group recommends the augmentation of staffing levels authorized by Congress, the Executive Branch, and the Judicial Conference of the United States because of the special demands of prisoner litigation. The Advisory Group also recommends that the court regularly assess whether the existing and any augmented staff positions are being efficiently utilized.

(3) Filing Fees.

A majority of the Advisory Group believes that the court should consider revising the *in forma pauperis* filing fee schedule to create a better balance between the goals of using filing fees as a deterrent to frivolous or harassing litigation and as a symbolic measure of the litigation's cost to the court. The fee should not block the prisoners' legitimate rights of access to the justice system. The Advisory Group has proposed a revised fee schedule and recommends it be referred to the Special Study Committee.

(4) Sanctions.

Another way of deterring prisoner litigation that is frivolous or otherwise violates the standards of Fed. R. Civ. P. 11 is to use appropriate sanctions. The Advisory Group recommends the development of appropriate nonmonetary sanctions be a task for the Special Study Committee.

(5) *Pro se* Handbook.

The court may be able to reduce cost and delay by assisting *pro se* litigants in separating out what is potentially meritorious litigation from litigation that is facially nonmeritorious. The Advisory Group recommends the Special Study Committee, in conjunction with the federal bar, consider development of a *pro se* handbook.

(6) Standardized Discovery.

The Advisory Group recommends that the matter of mandatory standardized discovery that would apply in all prisoner or *pro se* cases be referred to the Special Study Committee.

C. Legislative and Executive Branch Responsibilities.

It is apparent that policies or legislation enacted by the Executive and Legislative Branches of the United States can have severe impacts on U.S. District Courts; therefore, the Advisory Group has several recommendations for these branches of government.

(1) Review of Legislation and Policies Impacting U.S. District Courts.

The Advisory Group recommends that Congress and the President review the requirements that current legislative initiatives and Executive Branch policies have on the courts' abilities to meet their missions. This analysis should include a review of the jurisdiction of the U.S. District Courts, policies of the U.S. Government which impact the courts, especially those of the Department of Justice, and the staffing necessary for the courts to meet their missions.

(2) Judicial Impact Assessment.

The Advisory Group suggests that any proposed legislation be required to have a "judicial impact statement" attached to the bill. The statement would be prepared by a proposed Office of Judicial Impact Assessment and should indicate the number of supplemental judicial officers and other resources required to meet the additional

burden of the proposed legislation. The Advisory Group also recommends an examination of existing legislation to determine whether additional resources should be allocated. The President and Congress should veto or vote against any legislation not allocating adequate resources to meet the burdens proposed by any new piece of legislation.

(3) Improve Drafting of Legislation.

Congress should reduce cost and delay in civil litigation by improving the bill drafting process. The Advisory Group recommends that Congress authorize and utilize the proposed Office of Judicial Impact Assessment to help ensure that each new piece of legislation will clearly explain Congress' intent. For example, does a proposed bill grant a private right of action, is prior legislation intended to be modified or repealed (if so, which legislation) and is the new legislation intended to be retroactive or preemptive of state legislation? In addition, language should be in "plain English." These simple requirements will greatly improve a party's understanding of a particular statute's requirements and should decrease the number of civil cases brought because of rectifiable uncertainty in new legislation.

D. Enforcement of Federal and Local Rules.

The Advisory Group recommends the court review and consider more strictly enforcing all rules that affect cost and delay in the district.

(1) Continuances.

The Advisory Group recommends a policy be adopted requiring counsel to certify that they have conferred with and obtained agreement from their clients for all trial continuances. However, the Advisory Group recommends the exclusion of government attorneys from this policy.

(2) Delay Reduction in Motions Practice.

The Advisory Group recommends that any motion not having a responsive memorandum filed within the requisite time should be promptly submitted to the appropriate judicial officer for consideration. The Advisory Group also recommends the court notify the state bar of this recommendation before enacting it.

(3) Sanctions.

According to the survey data, there is a belief among a substantial segment of the attorneys that the judges do not wield their powers to sanction as effectively as

they might. Some well-placed sanctions should serve as deterrents to poor practice and should translate into less delay and cost in civil litigation. Therefore, the Advisory Group recommends the court impose sanctions where appropriate.

(4) Local Counsel Requirement.

The Advisory Group recognizes that the local counsel requirement is costly to litigants; however, it believes the benefits of this requirement outweigh the costs in most cases. Therefore, the Advisory Group recommends that the court revise Local Rule 120-5(d) so that local counsel is no longer required to attend and be prepared for all proceedings except when ordered by the court.

(5) Continuing Legal Education.

The Advisory Group recommends regular Continuing Legal Education (CLE) classes be established in conjunction with the State Bar of Nevada in order to help reduce the confusion caused by changing court procedures, Federal Rules and Local Rules, and other issues important to the court and the bar of the court. The Advisory Group also recommends attorneys attend the CLE classes on a regular basis.

(6) Pretrial Procedure Handbook.

To lessen confusion concerning the specific practices of the judicial officers in the district, the Advisory Group recommends the court develop and periodically update a *Pretrial Procedure Handbook*. The handbook should be made available for purchase by the bar of the court in a manner similar to that used for distribution of the *Local Rules of Practice*.

E. Stacked and Master Calendar Systems.

The Advisory Group found that attorneys believed the stacked and master calendar systems used in the district contribute to cost and delay. Although additional judicial personnel should help alleviate the problems attendant to these systems, the court cannot rely on the authorization and appointment of new judges. Due to the inevitable delays in authorizing, nominating and confirming new judges, they will not be ready to assume a full caseload for quite some time. Therefore, the Advisory Group recommends that the court attempt to improve the stacked and master calendar system now.

At an appropriate point early in the case and certainly not later than at the time of the issuance of the scheduling order or the pretrial notice order, the parties should be given one of three options. One option would be to leave the case in the present

system. A second option would be for the parties to consent to trial before a specific, known magistrate judge, who could offer a date certain for trial. The third option would be to agree to submit to nonbinding arbitration with selected members of the bar serving as neutral arbitrators. This system of options would enhance the probability that those parties who want to go to trial on a date certain before a known trial judge can do so. Any parties taking one of the latter two options would also alleviate the pressure on the cases remaining on the stacked/master calendar.

Another possible method to lessen the impact of the master and stacked trial calendar systems is to implement a differentiated case management system. The Advisory Group recommends that the court and the Advisory Group continue studying the successes and/or failures of the differentiated case management plans implemented in other districts and in the state of Nevada.

F. Additional Recommendations.

The following recommendations 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 Advisory Group believes may allow the court to reduce cost and delay in civil litigation.

The Advisory Group notes the concern raised by a substantial number of attorneys that the court sometimes caused delay by not ruling promptly on dispositive motions. The Advisory Group believes that oral arguments and bench rulings may speed the resolution of dispositive motions and recommends that more oral arguments be scheduled and bench rulings issued. The Advisory Group also recommends experimentation with allowing argument of motions by telephone.

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

The Advisory Group utilized questionnaires to take into account the needs and circumstances of the active and senior district judges, magistrate judges, litigants, *pro se* litigants, attorneys representing litigants, and the Advisory Group's attorney-members. Additionally, the Advisory Group examined court procedures, 400 pending cases, and held roundtable discussions of the results of all data collected.

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

If the court adopts the plan as proposed by the Advisory Group, the court, litigants, litigants' attorneys, and the Legislative and Executive Branches of

government should make the following significant contributions as a result of the recommendations made by the CJRA Advisory Group:

A. Court. The court will

(1) form a Special Study Committee on Prisoner Litigation;

(2) more strictly enforce all rules that affect cost and delay in the district and impose sanctions where appropriate;

(3) develop a policy which requires counsel requesting trial continuances to certify that their clients have agreed to the continuances;

(4) modify its current policy and direct that the Clerk's Office promptly submit all motions in which the opposing party has not filed a timely response as required by Local Rule 140-4; the court will notify the bar before enacting this change;

(5) modify Local Rule 120-5(d) to remove the automatic requirement that local counsel be prepared for and attend all proceedings with the out-of-state attorneys with whom they associate;

(6) use more oral arguments and issue bench rulings for dispositive motions and experiment with telephonic hearings for oral arguments;

(7) develop and implement options to the stacked and master trial calendars, e.g., the establishment of a nonbinding arbitration program and the assignment of a second magistrate judge who can offer a fixed trial date before a known trial judge for those parties who consent to proceed before a magistrate judge;

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

(9) direct the Clerk's Office to compile and make available for purchase, a handbook on the practices and procedures of the individual district and magistrate judges.

B. Litigants.

(1) Litigants must be consulted and agree to any trial continuances before their attorney may request such a continuance;

(2) litigants will be required to choose between three possible methods for adjudicating their cases: consent to proceed before a magistrate judge, consent to go through nonbinding arbitration, or choosing to remain on the master or stacked trial calendars;

(3) the Special Study Committee will include input from prisoner litigants in the development of alternatives to proceeding in federal court; and

(4) Local Rule 120-5(d), the requirement that local attorneys must be prepared for and attend all proceedings of out-of-state counsel with whom they associate, will be modified, but even with the modification, litigants with out-of-state attorneys must make significant financial contributions to reduce delay for the court, for other litigants, and for other litigants' attorneys; this rule reduces delay caused by out-of-state attorneys unfamiliar with the Local Rules and other court procedures used in the District of Nevada.

C. Litigants' Attorneys. Attorneys will

(1) be members of and participate in the activities of the Special Study Committee;

(2) be required to certify that they have obtained their client's agreement before pursuing trial continuances;

(3) attend CLE classes concentrating on ADR, court procedures, *Federal Rules of Civil Procedure* and *Local Rules of Practice*;

(4) adhere more closely to the requirements of the *Federal Rules of Civil Procedure* and the *Local Rules of Practice* since the court will more strictly enforce the rules; and

(5) purchase the *Pretrial Procedure Handbook* and the *Local Rules of Practice*;

D. Congress and the Executive Branch.

(1) The President and Congress will promptly fill existing vacancies;

(2) the President and Congress will promptly authorize two additional district judgeships, supplement these with three new magistrate judge positions, and augment the Clerk's Office staff for the District of Nevada to 100% of the positions justified by the current work measurement formula;

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

(4) the President and Congress will create an Office of Judicial Impact Assessment; the office would state the number of additional judicial officers and other resources required for existing law and proposed legislation, and the office would help ensure that each new piece of legislation clearly explains Congress' intent.

VII. Explanation of Compliance With 28 U.S.C. § 473(a).

The Advisory Group has considered the six principles and guidelines of litigation management and cost and delay reduction pursuant to 28 U.S.C. § 473(a).

A. Systematic, Differential Treatment of Civil Cases.

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 provides for the systematic, differential treatment of civil cases. Judges use it to tailor specific case management to such criteria as case complexity and the amount of time reasonably needed to prepare the case for disposition.

B. Early and Ongoing Control of Pretrial Process.

The Advisory Group acknowledges the need for early and ongoing control of the pretrial process, and the judges in the District of Nevada provide this control by assessing and planning the progress of their cases through the use of Local Rule 190. Given the extremely large number of cases currently filed per judge in the district, the Advisory Group does not recommend that all judicial officers spend even more time evaluating and planning the progress of their cases.

The Advisory Group believes that early and firm trial dates settle cases earlier and at less cost, but considering the increase in both criminal and civil cases, and the scarcity of judicial resources allocated to the district, it is inconceivable that "firm" trial dates can be meaningfully implemented at this time in the District of Nevada.

Despite the present inability to set "early, firm trial dates," the Advisory Group believes that the court can take some steps, at least on a temporary basis. One step is to give all parties the option of an early, firm trial date with a magistrate judge, and a second option is nonbinding arbitration.

The Advisory Group believes that controlling unnecessary discovery is important, but based on the data collected has concluded that Local Rule 190 is sufficient to control discovery. The Advisory Group's conclusion is that the court needs to more strictly enforce the rules.

The District of Nevada sets deadlines for filing motions and a framework for their disposition at the earliest practical time. The Advisory Group agrees that judicial control of motions practice is desirable, and it recommends the continuation and active enforcement of the existing controls used in the district.

The Advisory Group recommends that the court 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 L.R. 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).

C. Use of Discovery-Case Management Conferences.

The Advisory Group agrees that discovery-case management conferences can be valuable for selected cases in order to explore the parties' receptivity to settlement. A judicial officer can use a series of these conferences to identify and/or formulate the principal issues in contention and, when appropriate, provide for the staged resolution or bifurcation of issues for trial, prepare a discovery schedule and plan, or set early, reasonable deadlines for filing motions and a timeframe for their disposition. Such conferences are already used in the district when the court or the parties determine they are appropriate. The Advisory Group does not believe that the court needs to go beyond the provisions of Local Rule 190-2 at this time.

D. Use of Cooperative Discovery Devices.

The Advisory Group has considered and rejected several proposals calling for the voluntary exchange of information or the use of cooperative discovery devices. The Advisory Group recommends that the court establish a Special Study Committee which would consider a system for disclosure of information without the necessity of formal requests.

E. Conserving Judicial Resources.

The Advisory Group believes that the court has already taken significant action [pursuant to Local Rule 190-1(f)(2)] to conserve 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 data collected by the Advisory Group did not indicate there is a significant problem with the local rule.

F. Alternative Dispute Resolution Programs.

The District of Nevada may use Local Rule 185 to set civil cases for settlement conference, summary jury trial or other alternative method of dispute resolution. In addition, the Advisory Group has recommended arbitration and trials by magistrate judges as alternatives to the stacked/master calendar systems.

VIII. Explanation of Compliance With 28 U.S.C. § 473(b).

Pursuant to 28 U.S.C. § 472(b)(4) the Advisory Group has considered the five litigation management and cost and delay reduction techniques discussed in 28 U.S.C. § 473(b).

The Advisory Group has considered a requirement that counsel for each party jointly present a discovery-case management plan at the initial pretrial conference. The judges in the District of Nevada do not routinely hold a pretrial conference because of the shortage of judicial personnel, but simply issue a scheduling order pursuant to Local Rule 190. Only in special cases does a judicial officer require a joint discovery-case management plan. Until the number of judges in the district is increased, the Advisory Group is concerned that any requirement mandating joint discovery-case management conferences would increase delay and cost in civil litigation.

The district's judicial officers hold settlement conferences when requested or otherwise warranted. When such conferences are held, the judges, generally, require the presence of the litigant or 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. The Advisory Group sees no reason to formalize the practice at this time and recommends continuation of the current procedure.

On the basis of its review of court practices, the Advisory Group does not believe there should be a requirement that the attorney and client sign all requests for extensions of deadlines for completing discovery or for postponing the trial. Such a requirement would result in additional cost and delay if a litigant resides out of state. However, the Advisory Group has recommended that the court implement a requirement that attorneys certify their client agrees with any trial continuances. A judge would be free to implement more stringent requirements if a specific case warrants such action.

The Advisory Group explored the possibilities of a neutral evaluation program early in the litigation process, but is currently unable to recommend such a program. The Advisory Group also considered developing a neutral evaluation program for prisoner civil rights litigation, but does not recommend this program.

IX. Recommended Plan.

The CJRA directs the Advisory Group and the court to consider the *Model Civil Justice Expense and Delay Reduction Plan* developed by the Judicial Conference of the United States. After considering the model plan, the Advisory Group has incorporated parts of the model plan into its recommendations for a customized plan for the District of Nevada (see Appendix C). The model plan does not have solutions for all the "principal causes of cost and delay" identified in the district and, therefore, a custom plan is necessary. The Advisory Group has recommended the following parts of the model plan:

A. development of a *pro se* handbook by a Special Study Committee;

B. consideration of standardized discovery for prisoner cases by a Special Study Committee;

C. encouragement of attorneys to argue motions by telephone; and

D. evaluation of the Northern District of California's differentiated case management plan.

X. Additional Recommendations.

The Advisory Group recommends the court annually assess the condition of the docket, as directed in 28 U.S.C. § 475, starting with data collected during the 1993 statistical year. The court should assess the condition of the docket in consultation with the Advisory Group through a series of joint annual meetings beginning in 1994. The Advisory Group should examine any "appropriate additional actions" necessary to reduce cost and delay in civil litigation. In particular, the Advisory Group believes 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 during the previous year.

Report of the Civil Justice Reform Act Advisory Group of the United States District Court for the District of Nevada

I. Description of the United States District Court for the District of Nevada.

A. Organization and Demographics of the District.

The state of Nevada constitutes one federal judicial district; however, it has been divided for convenience into two unofficial divisions.[3] The southern division, with its courthouse at Las Vegas, is comprised of Clark, Esmeralda, Lincoln, and Nye Counties. The northern division, with its courthouse at Reno, is comprised of Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, Washoe, and White Pine Counties.[4] The court has a separate "Elko" jury division consisting of the following counties: Elko, Eureka, Humboldt, and

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[3] Throughout this "Report of the Civil Justice Reform Act Advisory Group of the United States District Court for the District of Nevada," the terms northern division, north, and Reno will be used interchangeably to refer to the unofficial northern division. The terms southern division, south, and Las Vegas will be used interchangeably to refer to the unofficial southern division. See Local Rule 105.

[4] The court is also authorized to sit in Elko, Ely, Lovelock, and Carson City. See 28 U.S.C. § 108. This authorization is rarely utilized today.

White Pine.

The district traces its origins to the creation of the Nevada Territory in 1861 from the western portion of the Utah Territory and Nevada's subsequent admission to the Union in 1864 as the 36th state. From 1865 until 1961, Congress authorized just one permanent judgeship for the district (see *History of Federal Courts*, 40 F.R.D. 139, 236 (1967)). Permanent judgeships were added in 1961, 1978, and 1984, bringing the court to its present authorized level of four judgeships.

With almost 110,000 square miles of land, Nevada is the seventh largest state in the country in terms of geographical size. Long one of the most sparsely populated states, in recent years Nevada has experienced explosive population growth, especially in Clark County (where Las Vegas is located).

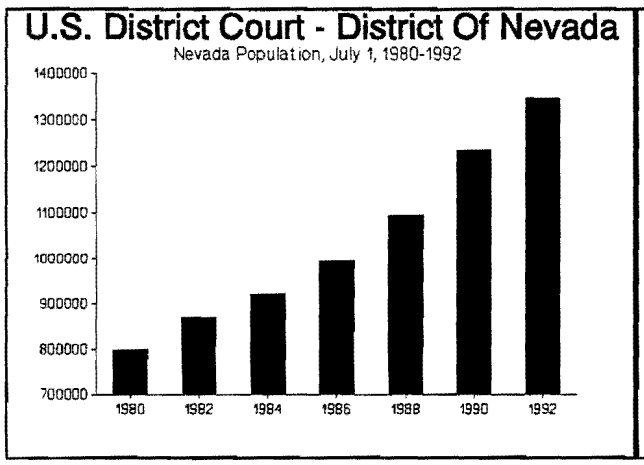

Figure 1

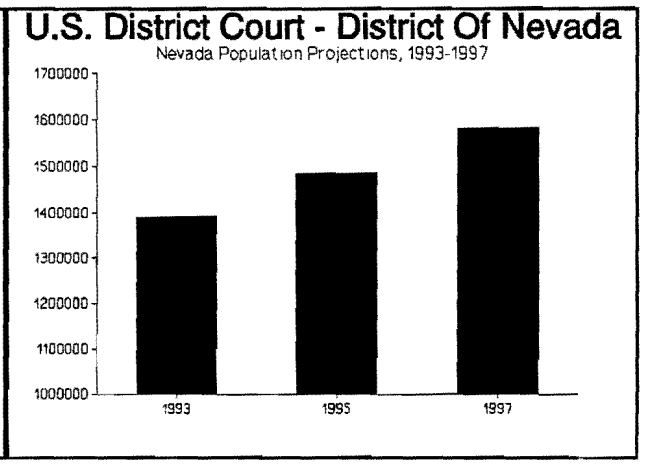

Figure 2

Tourism, including gaming, is the state's leading industry and the major force driving the economy. Other important contributors to the state's economy are mining, warehousing and distribution of products in the far west, and government operations,

including the military. These industries, coupled with no state income tax, a pleasing variety of climates, and increasingly for many, a desire to escape from the problems in other areas of the country, have made Nevada the fastest growing state and Las Vegas the fastest growing city in the nation. Nevada's population has grown from barely 800,000 people in 1980 to over 1.3 million in 1992, an increase of over 60% (Figure 1). The state demographer's office forecasts that the population will grow robustly by 3-4% annually for at least the next five years (Figure 2). The population of Clark County, where nearly two-thirds of the state's residents now live, is expected to double again by the year 2030.[5]

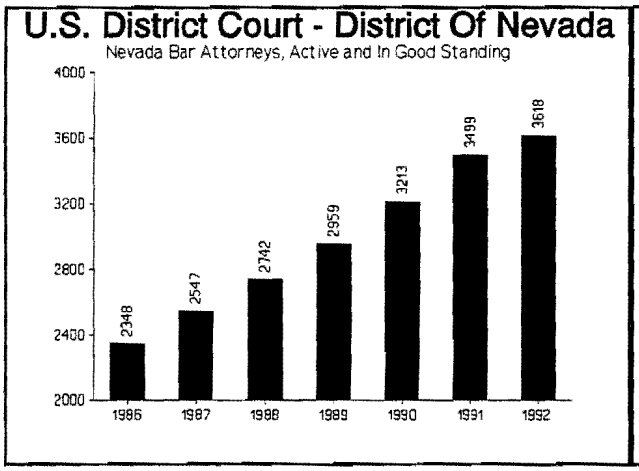

Figure 3

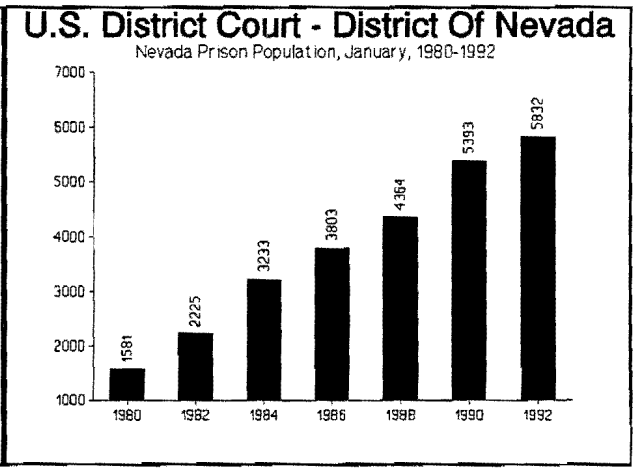

Figure 4

The number of lawyers in the state has grown at an even faster rate than the

[5] Please use care when reading the different graphs presented in this report. Although most of the graphs in the report are the same size, the scales used on the x- and y-axes substantially vary. This is especially true for the y-axis (the vertical one which frequently represents the percent of cases for the figures in Section II). Thus, two graphs may be side-by-side and the bars within may be the same length, but the numbers or percentages can be significantly different.

general population. In just the seven years between 1986-1992, there has been a 54.1% increase in the number of attorneys who are members of the Nevada State Bar (the number of lawyers went from 2,348 in 1986 to 3,618 for 1992, Figure 3). One can assume that the substantial population increase in the state, along with the significant growth in the number of lawyers, will continue to generate an increasing number of federal case filings in the years to come.

Although most citizens of the state live in Clark County (Las Vegas, North Las Vegas, Henderson, Boulder City, and Laughlin) or Washoe County (Reno and Sparks), many Nevada lawyers must travel great distances to appear at court if they do not live near Las Vegas or Reno. If a case is filed in Las Vegas but is assigned to a judge from the northern division, the attorneys may be required to travel from Las Vegas to Reno for a court appearance, a distance of 443 miles. Keeping the two divisions coordinated and the workload balanced requires a great deal of regular travel, usually between Reno and Las Vegas, for judicial officers[6] and other court personnel, especially the Clerk, the Chief Deputy Clerk, and courtroom support staff.

The Nevada Department of Prisons (NDOP) has almost 6,000 prisoners under its supervision. (The state prison population has almost quadrupled from 1980 to 1992, Figure 4.) Reflecting the expectation that the prison population will continue

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[6] Judge McKibben regularly travels from Reno to Las Vegas (see *infra*). Senior Judge Reed travels two or three times per year to Las Vegas and annually travels 317 miles to Ely, Nevada, to hear prisoner and other cases. Judge Reed also travels 289 miles to Elko, Nevada, each year to hold court. It is anticipated that magistrate judges in Las Vegas will also begin traveling 293 miles to Ely.

to soar in Nevada, a new state prison is under construction in Pershing County (Lovelock), and completion is anticipated by July 1993.

Complaints by prisoners have accounted for over 33% of the court's total civil filings over the past three years. The state and local prisons and jails accounted for nearly all of the *pro se* complaints filed in the northern division of the district. One of NDOP's maximum security correctional facilities, the Ely State Prison, is the court's largest single source of prisoner civil rights lawsuits. At the present time, there are only two *pro se* law clerks and one death penalty law clerk to assist the court in processing prisoner lawsuits. Given the explosive growth in the prison populations in the state, the Advisory Group expects that the number of prison-related filings will continue to expand.

The Lake Mead National Recreation Area has had an increasing impact in the district's southern division. The number of petty offenses committed at the recreation area has grown substantially in recent years.[7] What was once a seasonal problem (largely in the summer) has become a significant source of petty offenses all year round. With the planned development of casinos, hotels, and golf courses immediately adjacent to the recreation area and the continued growth of the Las Vegas metropolitan area, the Advisory Group projects an increasingly burdensome caseload of petty offenses in the coming years.

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[7] The Lake Mead Recreation Area saw over 9.3 million visitors in 1992, which was a 6.8% increase compared to 1991 visitation. Over 10 million visitors are expected in 1995, and over 12 million in the year 2000.

The district also includes a substantial population of Native Americans of the Paiute, Western Shoshone, and Washoe tribes. There are 25 reservations within the district. Treaty disputes and other issues of Native American law, which can raise complex questions of federal law (especially regarding water and land use), form part of the court's docket. Some of these lawsuits are the most long-lived of all cases pending before the court.

B. Court Personnel.

At the present time, the court personnel are:

(1) District judges in regular active service.[8]

Chief U.S. District Judge Lloyd D. George (Las Vegas)
Appointed in 1984 by President Reagan

U.S. District Judge Howard D. McKibben (Reno)[9]
Appointed in 1984 by President Reagan

U.S. District Judge Philip M. Pro (Las Vegas)
Appointed 1987 by President Reagan

Since 1988, the *Biennial Judgeship Survey* has identified the need for one

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[8] There is one judicial vacancy in the judgeships authorized for the district which was created when former Chief Judge Reed assumed senior status in July 1992. President Bush nominated a candidate for the vacancy, but the nomination expired when the United States Senate took no action before adjourning in 1992. It is not known when President Clinton will make a new nomination.

[9] Due to the overall caseload distribution within the district, Judge McKibben handles a portion of the civil filings in the Southern Division and regularly travels to Las Vegas for three months of each year to assist with civil and criminal trials on the master trial calendar.

additional permanent judgeship in the district based upon the workload.[10] The Ninth Circuit Judicial Council has recognized the court's need for the additional judgeship and has approved the request. In June 1990, the Judicial Conference of the United States Courts recommended that the district receive a temporary position. However, when Congress most recently created new judgeships nationally in the "Judicial Improvements Act of 1990," it authorized no new judgeships for the district.

Looking ahead, the Advisory Group estimates that there will be increased needs for additional judgeships in the future. Based upon the *Biennial Judgeship Survey's* standard that a court's weighted filings should approximate 400 per judgeship,[11] the Advisory Group projects that the district will need three additional judgeships in the next six years (1993-1999) and one additional judgeship in the following five years (2000-2004) for a total of four new judgeships.[12]

The crisis in the district would be eased immeasurably if Congress and the Executive Branch minimized judicial vacancies. Since 1983, this district has

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[10] In 1986, the Judicial Conference first recognized this need when it recommended one additional temporary judgeship for the court.

[11] The most recent statistical year (1992) reveals that the U.S. District Court, District of Nevada ranks second in the Ninth Circuit and fourth in the U.S with 582 weighted case filings per judge (see Appendix E).

[12] These projections are based on a 3 1/2% annual growth in weighted case filings which correlates with the projected population increases for the state. Unless successful actions are taken to reduce the number of civil filings, and particularly, prisoner civil rights filings, the caseload for the district may increase at an even faster rate.

experienced substantial judicial vacancies:

1983:	8.0	Vacant Judicial Months
1984:	16.9[13]	
1985:	15.0	
1986:	12.0	
1987:	12.0	
1988:	0.7	
1989:	0.0	
1990:	0.0	
1991:	0.0	
1992:	5.5	
1993:	6.0	

76.1 Total Vacant Judicial Months (through June 30, 1993).

From 1983 through June 30, 1993, there were a total of 480 authorized judicial months allocated to the district. During this time, the effective judicial vacancy rate was almost 16% of the authorized level.

(2) Senior district judges.[14]

Senior U.S. District Judge Roger D. Foley (Las Vegas)
Appointed in 1962 by President Kennedy; senior status since October 1982

Senior U.S. District Judge Edward C. Reed, Jr. (Reno)
Appointed in 1979 by President Carter; senior status since July 1992

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[13] Although the position was technically filled, one judge was not available to assist with the caseload for 6.9 months of 1984, all of 1985 and 1986, and 4.0 months of 1987.

[14] At his request, Senior Judge Roger D. Foley had his name removed from the draw of new case assignments effective September 1, 1990. Although he assumed senior status on July 15, 1992, Senior Judge Reed has continued to carry a full civil and criminal caseload. This district lost the services of Senior Judge Bruce R. Thompson upon his death in February 1992.

(3) Magistrate judges.[15]

Magistrate Judge Phyllis Halsey Atkins (Reno)
Appointed in 1982
Reappointed in 1990

Magistrate Judge Lawrence R. Leavitt (Las Vegas)
Appointed in 1987

Magistrate Judge Robert J. Johnston (Las Vegas)
Appointed in 1987

Magistrate Judge Roger L. Hunt (Las Vegas)
Appointed in 1992

The Judicial Conference of the United States has authorized four magistrate judgeships for the district. This provides the district with a district judge - magistrate judge ratio of 1:1, which other districts have found to be a useful minimum ratio. However, this level of authorization does not take into account several factors suggesting that the district needs more magistrate judgeships:

(a) Senior Judge Reed's full caseload will generate matters which could be handled by a magistrate judge,

(b) until it is filled, the present judicial vacancy creates pressure on the dockets of the district judges in active service,

(c) if Congress approves the longstanding recommendation for new judgeships for the district, each new judge will need the assistance of at least one

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[15] All the magistrate judges handle a complete range of duties as authorized by 28 U.S.C. § 636. At the present time, there are no part-time magistrate judges authorized for the district. From June 1971-October 1982, the district had a part-time magistrate in Elko. From June 1971-January 1976, and April 1976-October 1982, the district had a part-time magistrate position in Reno. The district also had a part-time magistrate position in Las Vegas from June 1971-October 1972, and March 1978-December 1987.

magistrate judge,

(d) the caseload of the district is projected to increase at a rapid rate, and

(e) the district's substantial docket of prisoner cases is particularly well-suited to be handled by magistrate judges.

In view of these factors, the Advisory Group projects that the district will need three to four additional magistrate judgeships in the next five years.

(4) Bankruptcy judges.[16]

Chief Bankruptcy Judge Robert C. Jones (Las Vegas)
Appointed in 1983

Bankruptcy Judge James H. Thompson (Reno)
Appointed in 1985

Bankruptcy Judge Linda Riegle (Las Vegas)
Appointed in 1988

(5) Other district court personnel.

Carol C. FitzGerald, Clerk of Court (Las Vegas)

Linda Lea Sharer, Chief Deputy Clerk (Reno)

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[16] A list of the district's bankruptcy judges is included in this report in order to recognize the bankruptcy judges as members of the official "family" of the court. By statute, bankruptcy judges are judicial officers of the district court to which they are attached, but constitute a distinct unit of that court, 28 U.S.C. § 151. Although the district court has appellate jurisdiction over the work of the bankruptcy judges, conditional on the consent of the parties, it has referred its appellate jurisdiction in bankruptcy matters to the Bankruptcy Appellate Panel of the Ninth Circuit, 28 U.S.C. § 158 and Local Rule 980. The Bankruptcy Appellate Panel has indicated its willingness to travel to the District of Nevada to conduct hearings. The operation of its bankruptcy court having only a limited impact on the district court's docket, the Advisory Group makes no other reference to bankruptcy proceedings in this report except to note that an increasing number of litigants appealing bankruptcy judgments choose the option of appearing in district court.

There are 45 people employed in the District Court Clerk's Office: 29 1/2 in Las Vegas and 15 1/2 in Reno; one position is shared between Las Vegas and Reno. Under the September 1992 work measurement staffing formula, the Clerk's Office is entitled to have 57 positions, but because of the current hiring freeze and budget restraints due to the fiscal crisis of the federal government, the Clerk's Office has been restricted to 72% (41) of these positions after attrition.

Each district judge has a personal staff consisting of two law clerks[17] and one secretary, as well as access to a pool of court recorders/reporters who are a part of the Clerk's Office staff. Each magistrate judge has a personal staff consisting of one law clerk, one secretary, and access to the pool of court reporters/recorders.

C. Description of Local Rules and Relevant Court Procedures.

As one starting point, the Advisory Group has examined the district's *Local Rules of Practice* and the court's procedures to determine the extent to which the district is already meeting the goals of the Civil Justice Reform Act (CJRA).

(1) Local Rules.

The district's Standing Committee on the Local Rules periodically reviews and recommends revisions to the *Local Rules of Practice*. The court most recently adopted revised rules and established February 1, 1992, as the effective date for their application to pending cases. The Advisory Group identified the following Local Rules

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[17] The chief judge has 3 law clerks.

as being particularly focused upon the goals of the CJRA:[18]

(a) Rule 120: Attorneys -- Admission to Practice -- Standards of Conduct -- Law Students.

Rule 120-2 makes eligible for admission to the bar of the court any attorney who has been admitted to practice before the Supreme Court of the State of Nevada. The court can require members of the state bar who are not Nevada residents to associate with a resident co-counsel in a particular case and specify the responsibilities of each attorney.

Rule 120-5 allows attorneys admitted to practice elsewhere who have been retained to appear in a particular case in this court to submit a verified petition for permission to practice in the particular case. Rule 120-5(d) requires attorneys permitted to practice under this rule to associate as co-counsel a resident member of the bar of the court. The resident attorney must personally attend and be fully prepared for all proceedings in the court.[19]

(b) Rule 140: Motions.

Rule 140-2 imposes page limits on briefs and memoranda of points and

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[18] Unless otherwise indicated, the Local Rules examined here were in effect prior to the passage of the CJRA. Copies of the Local Rules referred to are attached to this Report as Appendix D.

[19] There are also special provisions for attorneys employed by the United States (Rule 120-6), organized legal services programs (Rule 120-7, effective February 1, 1992) and supervised law students (Rule 120-10) to practice in the district.

authorities unless otherwise ordered by the court.[20]

Rule 140-7, which governs motions for summary judgment, requires each party to file a concise statement setting forth each material fact which the party claims is or is not genuinely in issue, citing particular portions of the record or information obtained during discovery or other matters upon which the party relies.

(c) Rule 150: Requests for Extension of Time (effective February 1, 1992).

This rule requires that anyone requesting an extension of time by motion or stipulation must disclose the existence of all extensions which have been previously granted by the court or the clerk in both the body and the title of the document.

(d) Rule 185: Settlement Conference and Alternative Methods of Dispute Resolution.

The court may set "any appropriate case for settlement conference, summary jury trial or other alternative method of dispute resolution, as it may choose." However, summary jury trials have been employed only three to four times in the past ten years. None of the other common forms of alternate dispute resolution are used with any regularity in the district.

(e) Rule 190: Pretrial Procedure -- Civil Cases.

Rule 190-1(a) requires the judge assigned to a civil case (with limited exceptions such as reviews of administrative agency decisions and *habeas corpus* petitions) to enter a scheduling order which sets deadlines for amended and additional

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[20] The limitation on page length for reply briefs was enacted February 1, 1992.

pleadings, motions and completion of discovery. Rule 190-1(b) sets a time limitation for completion of discovery whether or not a scheduling order is entered in a case. Rule 190-1(c) generally limits the number of interrogatories propounded to each party by any other party to 40 including sub-parts.

Rule 190-1(f)(2) states that discovery motions will not be considered unless a statement by moving counsel is attached which certifies that counsel have had a personal consultation and made a sincere, but unsuccessful effort to satisfactorily resolve the matter.

Rule 190-2 provides that the court will not conduct pretrial conferences except upon its specific order. However, any party may make a written request for one or more conferences "in order to expedite disposition of any case, particularly one which is complex or in which there is delay." In addition, the court may set pretrial conferences on its own initiative.

Rule 190-3(a) provides for the court to issue a pretrial notice order upon the close of discovery which sets the date for submission of the joint pretrial order. Rule 190-3(b) requires the plaintiff's counsel, upon receipt of the pretrial notice order, to take the initiative to have counsel who will try the case to personally discuss settlement and to prepare a proposed joint pretrial order which, *inter alia*, states what matters of law and fact are and are not in contention.

(f) Rule 215: Petitions for Writs of *Habeas Corpus* Pursuant to 28 U.S.C. § 2241 and § 2255, Motions Pursuant to 28 U.S.C. § 2255, Motions Pursuant to

Fed. R. Crim. P. 35 and Civil Rights Complaints Pursuant to 42 U.S.C. § 1983.

Rule 215 details the information required in an action for any type of post-conviction relief and for civil rights actions under 42 U.S.C. § 1983 (which are most commonly brought by incarcerated prisoners). The rule also provides that any such action filed by a person not represented by counsel shall be on court-approved forms.

(g) Rule 500: United States Magistrate Judges.

Rule 500-3 grants magistrate judges the power to hear and finally determine any pretrial matter not specifically enumerated as an exception in 28 U.S.C. § 636(b)(1)(A). Rules 500-4 through 500-8 grant magistrate judges the power to make proposed findings and recommendations on a variety of other matters including on those matters which have been excluded under § 636(b)(1)(A) from final determination by magistrate judges. Rule 500-9 authorizes magistrate judges to conduct pretrial and settlement conferences and to exercise general supervision of civil and criminal calendars.

(h) Rule 505: Conduct of Civil Trials by Magistrate Judges.

Pursuant to 28 U.S.C. § 636(c), this rule provides for the conduct and disposition of civil cases by full-time magistrate judges with the consent of the parties and upon referral by the district judge to whom the case is assigned.

(2) Practices of Different Divisions and Specific Judges.

To assist the Advisory Group in its work, the Clerk's Office prepared a *Pretrial Procedure Handbook* which details the individual practices of the court's district and

magistrate judges.[21] It also provides information regarding the differences between procedures in the northern and southern divisions.[22] This section of the Report highlights those practices already in place in the court which concern the goals of the CJRA.

Case Assignment: Case assignments are made by random draw according to a formula established by the court in August 1990 and amended in November 1992. In the southern division, two random draws are conducted, one to assign the case to an active district judge and a second to assign the case to a magistrate judge. In the northern division, cases are assigned by random draw, but are not routinely assigned to the magistrate judge in Reno.[23]

Pretrial Procedure: Local Rule 190 is the basic tool used to govern the conduct of pretrial procedure in civil cases. Pursuant to Fed. R. Civ. P. 16(b) and Local Rule 190, the district judges have prepared a standard scheduling order bearing all of their signatures which the Clerk's Office issues in all non-exempt cases,[24] (attached as

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[21] The handbook was prepared prior to Magistrate Judge Hunt's appointment in 1992.

[22] Because of its size, the entire handbook has not been made an appendix to this report. Examples of the most important documents can be found in Appendix G.

[23] There is only one magistrate judge in the northern division.

[24] One judge no longer uses the standard scheduling order with the signature of all the district judges. Additionally, the practices of the judges vary in terms of the amount of time allowed for completion of discovery and filing of pretrial motions. For example, while one judge reviews the filings to determine how much time to allow for discovery in each civil case (generally 60-120 days), a another judge automatically

Appendix G). The district judges do not routinely hold pretrial conferences. Some of the judges hold status conferences.

Motions practice is governed by Local Rule 140, although individual practices of judges vary. Motions are tracked for consideration by the court in the clerk's automated case management system[25] using the "ultimate due date," a 41-day time period which allows for the filing of all responses and replies and service by mail.

Trial Calendar Management: Although cases are assigned to individual judges for pretrial purposes, because of the press of the caseload, judges do not set fixed trial dates for their cases. In the southern division, all cases are set for trial on a three-week stacked master trial calendar. All judges, including visiting judges who have been generally assigned to the court, and Judge McKibben and Senior Judge Reed (when they sit in Las Vegas), try cases from the master calendar on a tandem basis.[26] In the northern division, Senior Judge Reed and Judge McKibben use an individual stacked calendar. Counsel are advised approximately two weeks in advance of the trial date the sequence in which cases will be tried in the stack.

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allows 180 days for discovery.

[25] The automated case management system also tracks other key dates such as the service date under Fed. R. Civ. P. 4(j), dates established in the scheduling order for the cut-off of discovery and pretrial motions, any pretrial conference date, and date of last action for determining if a case can be dismissed for want of prosecution under Local Rule 220.

[26] In other words, case assignments do not matter; the next available judge will try the next case on the master trial calendar.

References to Magistrate Judges: The court has prepared a notice of right to consent to disposition of a civil case by a magistrate judge. In the southern division, the notice is issued automatically by the intake clerk.[27] In the northern division, the notice is sent at the direction of the district judge on a case-by-case basis only, and usually only after a joint pretrial order has been filed by the parties.

In the northern division, cases are referred to the magistrate judge for settlement conferences on a case-by-case basis only. In the southern division, the practices of the district judges vary. Chief Judge George, Judge Pro and Senior Judge Foley routinely delegate to the magistrate judge assigned to the case the responsibility for determining whether to hold a settlement conference in a particular case.[28] Judge McKibben now uses magistrate judges for settlement conferences for his Las Vegas docket on a case-by-case basis.

Other matters are also routinely referred to the magistrate judges as well. For example, reviews of decisions of administrative agencies (Social Security, etc.) are generally referred to the magistrate judges for disposition. In the southern division, civil discovery matters are automatically referred to the assigned magistrate judge for disposition.

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[27] For Judge Pro, if the consent/declination is not received, a second one is mailed with the scheduling order and must be returned within 60 days thereafter.

[28] Two of the Las Vegas magistrate judges require counsel to prepare a detailed settlement conference statement which is used only *in camera* and one does not use such a statement.

In April 1992 (i.e., subsequent to enactment of the CJRA), the court established a discovery "hot line" program. Special Order 81 (see Appendix G) makes a magistrate judge available on an emergency basis to informally and quickly resolve discovery disputes.

II. Assessment of Conditions in the District.

The Advisory Group utilized a variety of techniques for assessing conditions in the District of Nevada. Information developed by the Administrative Office of the United States Courts and statistics compiled within the district were used to examine the condition of the civil and criminal docket and to compare the nature and growth of these dockets. Lawyers, their clients, *pro se* litigants, judicial officers, and Advisory Group attorney-members were surveyed for their beliefs and perceptions about litigation in the district. The time spent in court by each judicial officer was compiled and analyzed by event, e.g., type of motion, number and length of sentencing guideline hearings, type of conference held, etc. Reviews of 400 randomly selected pending cases were undertaken, 200 in each divisional office (Las Vegas and Reno), and the number, type, and status of motions, orders, and other matters were evaluated. Lastly, an evaluation of procedures used by the Clerk's Office was also conducted.

A. Condition of the Docket.

Information utilized by the Advisory Group in evaluating the docket primarily covers a six-year period from 1987 through 1992, for the statistical years ending on June 30, and is subaggregated by each divisional office where available. Data developed within the district were also utilized.

Overall, the total civil and criminal filings commenced have increased 10.6%,

going from 2,062 total filings in 1987 to 2,281 in 1992 (Figure 5).[29] For 1992, eighty-one percent (81.1%) of the cases commenced in the District of Nevada were civil cases. Criminal cases have increased from 18.0% of the total cases commenced in 1987 to 18.9% in 1992.

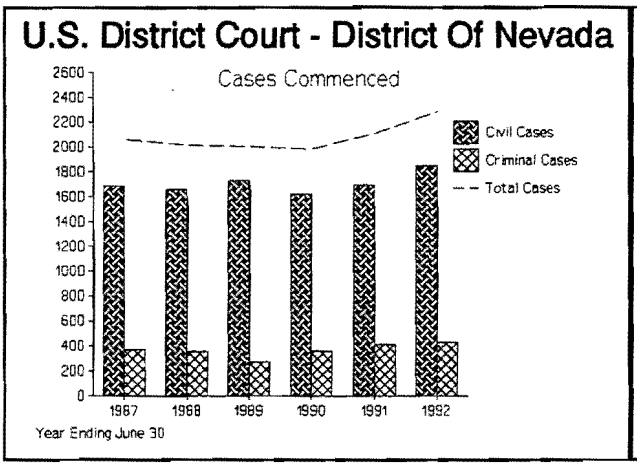

Figure 5

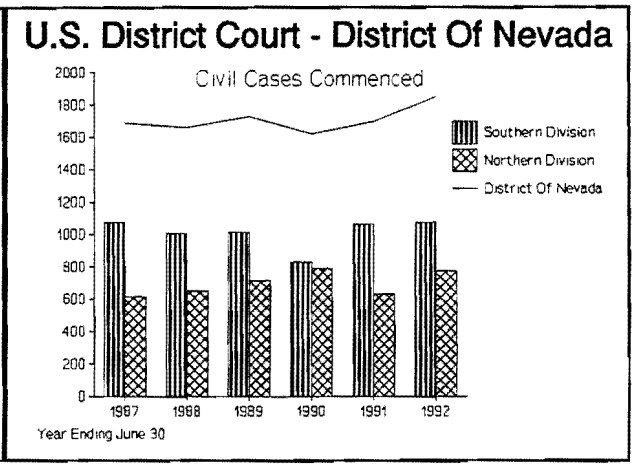

Figure 6

(1) Civil Docket.

In 1987, 1,690 civil cases were commenced in the district while 1,851 were filed in 1992, a <u>9.5%</u> increase (Figure 6).[30] Las Vegas had 1,076 cases filed in

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[29] Total filings include all criminal cases commenced, i.e., felonies, misdemeanors, transfers, etc.

[30] Please be aware that the discussions included in the text of the report frequently provide only limited descriptions of the more detailed data analysis conducted and presented in graphic form within the figures. For example, statistics were provided for the years 1987 and 1992 in the sentence preceding this footnote. The reader can gain a better understanding of what happened in the district by examining Figure 5. By looking at this graph and the line representing the total number of cases commenced, one can see that the largest portion of the increase in cases occurred in 1991 and 1992. Figure 5 also demonstrates that the proportion of civil and criminal cases has not remained constant during this period. Analysis of subsequent figures will disclose that the number of cases commenced, terminated, and pending have not

1987, which was 63.7% of the total cases filed during that year while Reno had 614 or 36.3% of the total cases commenced. By 1992, 1,078 cases were commenced in the southern division and 773 in the northern division; Reno's share of the total civil cases commenced increased to 41.8% while the Las Vegas share declined to 58.2%.

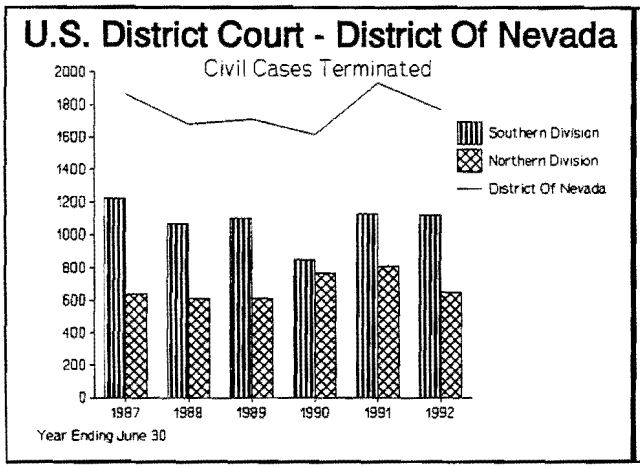

Figure 7

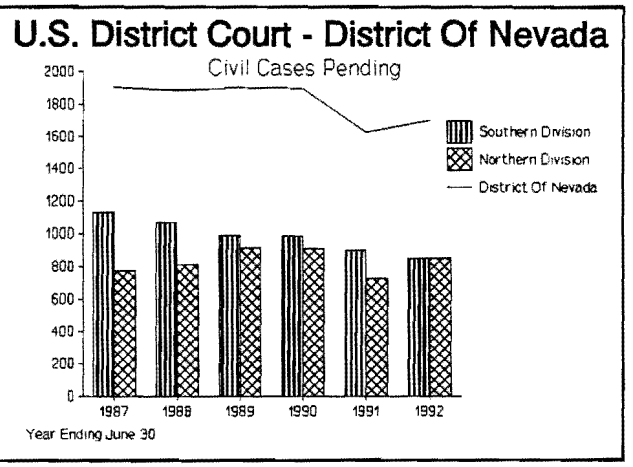

Figure 8

Civil cases terminated in the District of Nevada decreased 5.1% from 1,865 terminations in 1987 to 1,770 terminations in 1992 (Figure 7). The northern division contributed 34.3% of all cases terminated, 640 terminations in 1987, and the southern division 65.7%, 1,225 terminations. In 1992, Reno contributed 36.7%, 650, and Las Vegas 63.3%, 1,120, of the terminations in the district.

From 1987 to 1992, pending civil cases in the district declined 10.8%, from 1,904 in 1987 to 1,699 in 1992. By the end of 1992, the northern division had 848

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varied in a purely straight-line trend. This is to be expected as laws and social conditions change, and these changes affect the composition of cases making up the court's docket. Readers are encouraged to consider not only the text, but the data contained within the numerous figures and tables presented in this report which will help provide a superior understanding of the court's docket.

pending cases which is approximately the same number of pending cases as the southern division's 851 (Figure 8). Between 1987 and 1992, the absolute number of pending cases in Reno increased, as did Reno's percentage of the district's total pending cases. Reno's proportion rose from 40.7% (774 of 1,904) in 1987 to 49.9% (848 of 1,699) in 1992. During the same period, Las Vegas experienced a decline in pending cases, going from 1,130 (59.3% of the district's total) in 1987 to 851 (50.1%) in 1992.

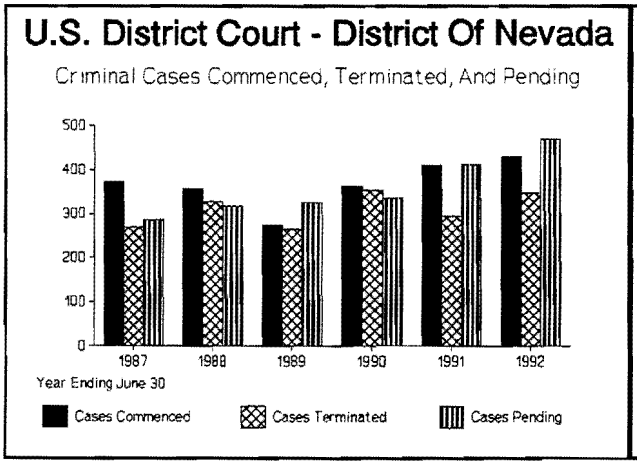

Figure 9

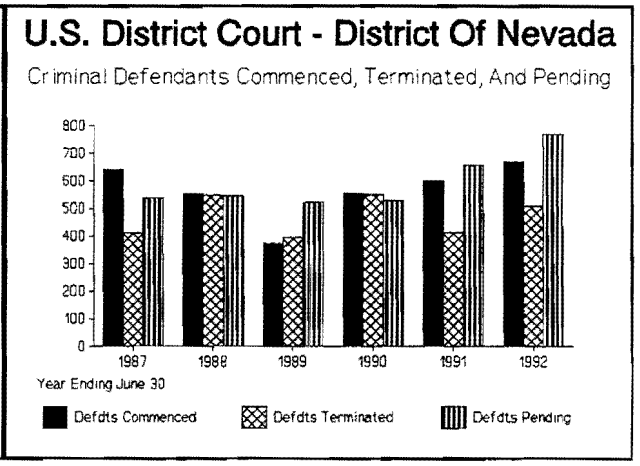

Figure 10

(2) Criminal Docket.

Criminal cases commenced annually in the district between 1987 and 1992, increased from 372 to 430 cases, a 15.6% increase (Figure 9). Criminal cases terminated increased 29%, 269 criminal cases in 1987 to 347 criminal cases in 1992. **Pending criminal cases increased 63.8%, from 287 in 1987 to 470 in 1992.**

The number of criminal defendants rose from 642 to 670 defendants, a 4.4% increase from 1987 to 1992 (Figure 10). The number of criminal defendants

terminated for 1987 equaled 412, and this number climbed to 510 in 1992, a 23.8% increase. **Pending criminal defendants rose from 540 to 772, a 43% growth.**

(3) Trends In Case Filings.

The civil docket's composition in the southern division has undergone significant changes for the period 1987 to 1992 (Figure 11). There was a 39.1% decline in contract actions filed between 1987 and 1992, dropping from 460 to 280 cases. Real property actions increased from just 2 filed in 1987 to 18 in 1992, and tort actions increased 7.1%, going from 98 filed in 1987 to 105 in 1992. The commencement of actions under statutes[31] increased 30.8%, growing from 516 in 1987 to 675 in 1992.

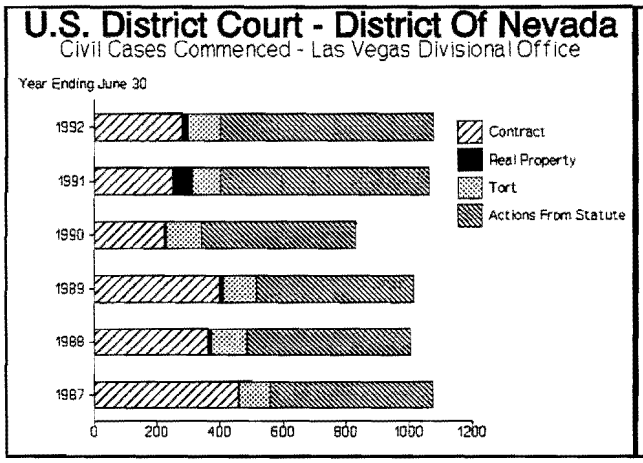

Figure 11

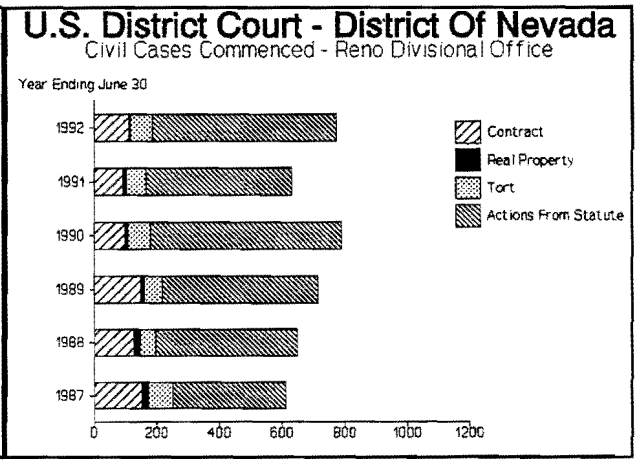

Figure 12

The components of the civil docket have also changed dramatically in the

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[31] Actions under statutes include antitrust, bankruptcy, banks and banking, civil rights, commerce, environmental matters, deportation, prisoner petitions, forfeiture and penalty, labor laws, protected property rights, securities, commodities and exchanges, social security laws, R.I.C.O, state reapportionment, tax suits, Freedom of Information Act, constitutionality of state statutes, and other statutory actions.

northern division for the same period (Figure 12). Contract actions declined by 28.6% of their 1987 total in Reno, falling from 154 contract actions in 1987 to 110 contract actions in 1992. Real property actions decreased 73.7%, from 19 in 1987 to 5 in 1992, and tort actions declined 10.1%, from 79 in 1987 to 71 in 1992. For actions under statutes, filings increased 62.2%, growing from 362 in 1987 to 587 in 1992.

Much of the reduction or the slower growth in contract, tort, and real property actions in both the northern and southern divisions was apparently due to the November 19, 1988, change in diversity jurisdiction in the U.S. District Court.[32]

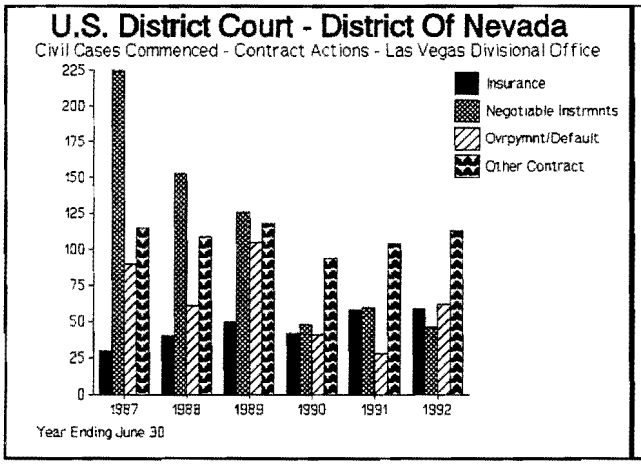

Figure 13

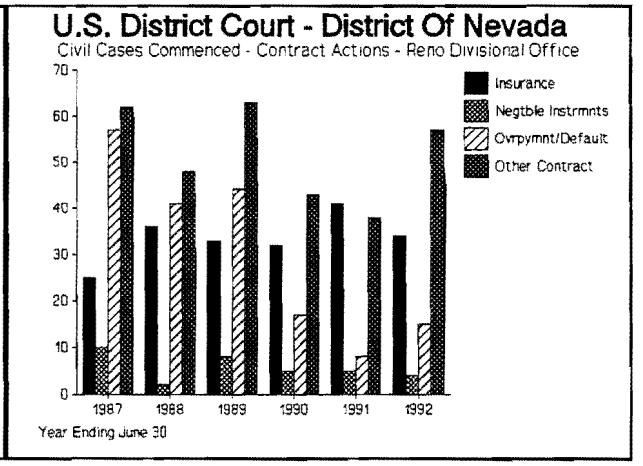

Figure 14

The decrease in contract filings can be primarily traced to the reduction of negotiable instruments filings (Figure 13 and Figure 14). In Las Vegas, such actions have decreased from a high of 225 filed in 1987 to 46 actions during 1992, a 79.6%

[32] Jurisdiction of the U.S. District Court in diversity of citizenship cases changed from $10,000 to $50,000, effective November 19, 1988, for matters in controversy exceeding the sum or value shown above [28 U.S.C. §1332(a)]. Total diversity of citizenship cases in the District of Nevada have declined 25.2% between 1987 and 1992.

reduction. The number of filings for negotiable instruments in the northern division was much smaller in comparison to the southern division. Reno had only 10 cases dealing with negotiable instruments in 1987, and just 4 in 1992, a 60% reduction.

Although contract actions have been on a downward trend, one component, insurance filings, have increased in both the northern and southern divisions (Figures 13 and 14). From the period 1987 to 1992, Reno's cases have increased 36%, from 25 to 34 cases, while Las Vegas' cases have increased 96.7%, from 30 to 59 cases.

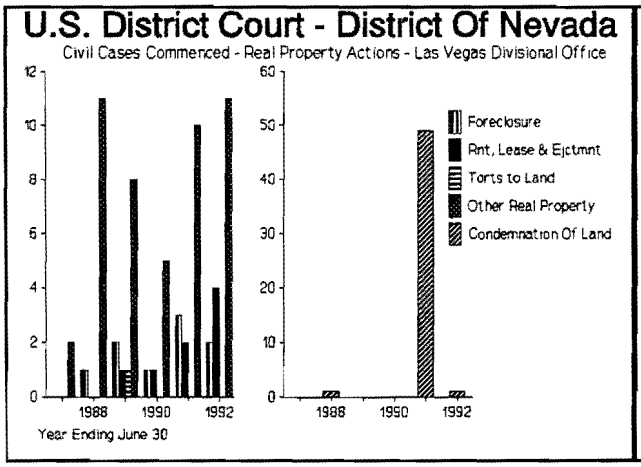

Figure 15

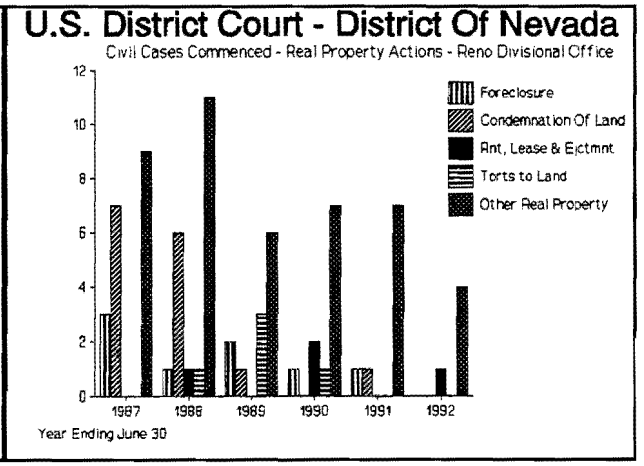

Figure 16

Virtually all real property actions have decreased in the northern division, but they have made a dramatic increase in the southern division (Figures 15 and 16). All components of Reno's real property caseload have decreased except actions regarding rents, leases, and ejectments which grew from none in 1987 to 1 in 1992. However, Las Vegas had strong growth in land condemnation cases in 1991. Filings increased from no cases in 1987 to 49 cases in 1991. This one time increase does not appear to be an indication of an increasing trend in land condemnation cases in Las Vegas

since the number of filings in 1992 totaled just 1 case.[33]

Product liability personal injury torts have shown a slight upward trend in the District of Nevada, while other personal injury torts have declined in the northern division (Figures 17 and 18). Product liability cases commenced in Reno have increased from 7 filed in 1987 to 29 in 1992, a 314.3% increase, while other personal injury cases declined 28.8%, from 52 to 37. In Las Vegas, product liability filings were relatively stable, only increasing from 15 in 1987 to 16 in 1992.

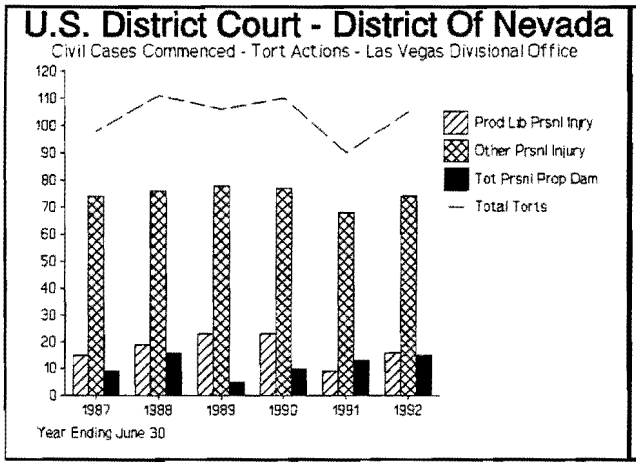

Figure 17

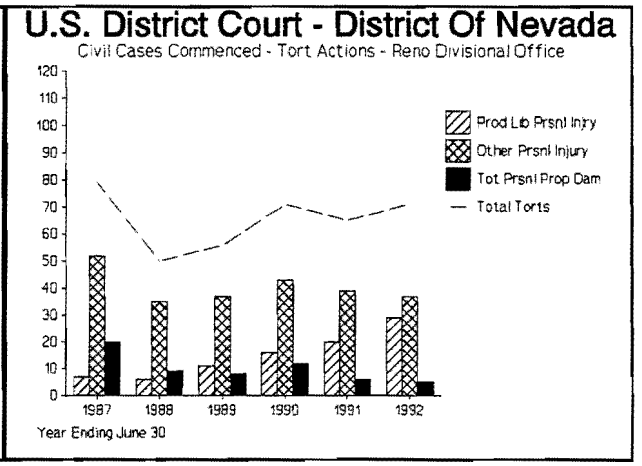

Figure 18

The primary area of growth for actions under statutes in the northern division is prisoner petitions (predominantly prisoner civil rights) cases (Table 1). Prisoner cases in the northern division grew substantially from 202 filings in 1987 to 373 in 1992, an 84.7% increase. Nonprisoner civil rights cases rose from 46 in 1987 to 73 in 1992, a 58.7% increase.

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[33] The land condemnation cases commenced in 1991 were from a single large condemnation action, the Kern River Gas Transmission Project.

Table 1

Northern Div Actions From Statutes	1987	1988	1989	1990	1991	1992
Antitrust	5	0	1	2	1	2
Bankruptcy	29	26	25	27	19	22
Banks	1	0	0	0	0	1
Civil Rights	46	48	43	60	69	73
Prisoner	202	270	315	398	279	373
Forfeiture	12	12	5	15	6	18
Labor	15	22	25	36	31	25
Protected Property Rights	4	6	3	12	8	9
Securities	3	5	1	2	3	2
Social Security	3	6	1	4	2	3
Tax Suits	14	26	24	16	12	11
Other Actions	28	33	55	40	36	48
Total	**362**	**454**	**498**	**612**	**466**	**587**

Table 1

Prisoner cases decreased 17.5% in Las Vegas, going from 228 filed in 1987 to 188 filed in 1992 (Table 2). The decrease in prisoner civil rights cases was more than offset by an 117.3% increase in nonprisoner civil rights cases which grew from 52 in 1987 to 113 in 1992. Other actions under statutes grew from 92 in 1987 to 164 in 1992, a 78.3% increase.

Table 2

Southern Div Actions From Statutes	1987	1988	1989	1990	1991	1992
Antitrust	1	2	3	4	3	4
Bankruptcy	14	18	21	15	21	19
Banks	1	2	2	3	0	5
Civil Rights	52	72	60	68	94	113
Prisoner	228	172	172	170	300	188
Forfeiture	5	10	21	30	30	67
Labor	52	57	62	40	64	54
Protected Property Rights	8	17	26	23	16	31
Securities	12	9	5	9	7	4
Social Security	2	6	4	1	3	0
Tax Suits	49	79	23	28	17	26
Other Actions	92	76	99	98	105	164
Total	**516**	**520**	**498**	**489**	**660**	**675**

Table 2

Of the prisoner petitions filed in the district, civil rights filings are by far the largest component in both the north and the south (Figures 19 and 20). In Las Vegas, for the period 1987 to 1992, prisoner civil rights cases decreased 38.9%, dropping from 162 to 99 cases filed. During the same period in Reno, prisoner civil rights cases increased from 149 to 310, a 108.1% increase.

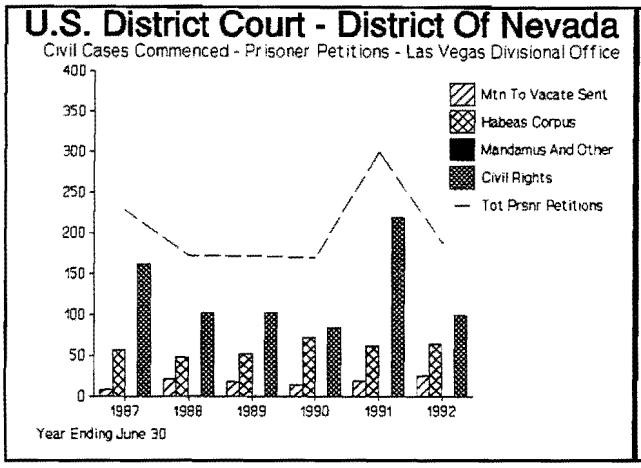

Figure 19

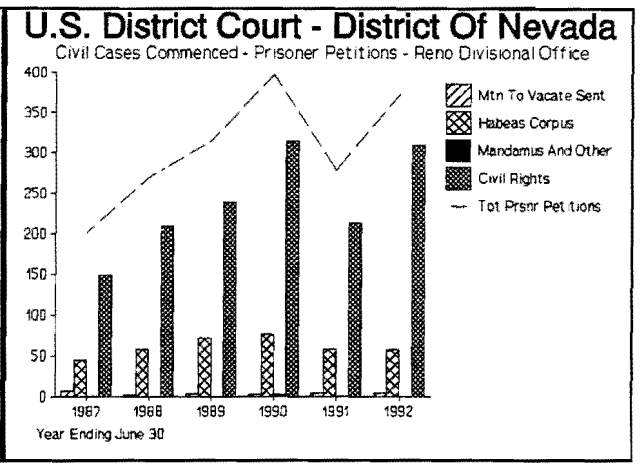

Figure 20

Habeas corpus **cases in Las Vegas increased from 57 in 1987 to 64 in 1992, a 12.3% increase (Figure 19). During the same period in Reno, *habeas corpus* cases increased 28.9%, going from 45 to 58 petitions (Figure 20).** Although not as many *habeas corpus* petitions were commenced as civil rights complaints during this period, *habeas corpus* cases, especially death penalty cases, require more of the court's time and effort to adjudicate. Therefore, such a large percentage increase in petitions has a very significant impact on the civil docket.

The number of civil cases in the District of Nevada pending less than one year has increased while the number of cases pending longer than a year has decreased (Figure 21). In 1987, a total of 1,070 cases were pending less than one year; by 1992, this figure had increased to 1,191 cases, an 11.3% increase. Cases pending from one to two years decreased by 30.5%, from 476 (1987) to 331 (1992) cases. **The decline for civil cases pending from two to three years was from 187 (1987) to 118 (1992) cases or 36.9%. The number of cases pending over three years was**

reduced by 65.5%, from 171 (1987) to 59 (1992) cases. In spite of these admirable statistics which demonstrate the judges' successful accomplishments, the number of pending cases has once again begun increasing as seen in the 1992 data.

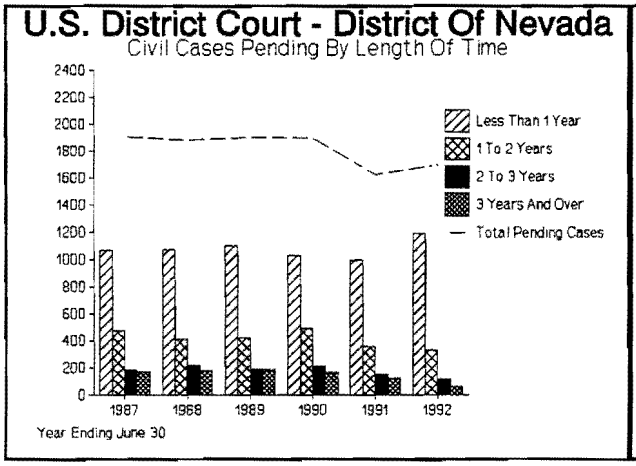

Figure 21

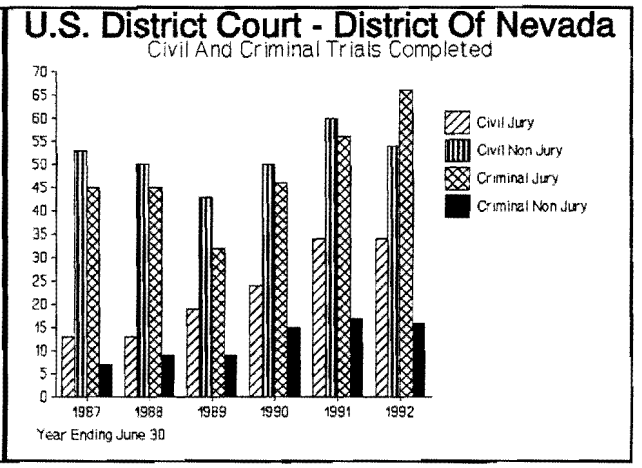

Figure 22

All categories of trials have increased for the period 1987 to 1992, (Figure 22).[34] Civil jury trials have increased from 13 in 1987 to 34 in 1992, a 161.5% increase. Although not as dramatic a change over the same period, civil nonjury trials have increased from 53 to 54. Criminal jury trials rose from 45 in 1987 to 66 in 1992 (46.7%), and criminal nonjury trials went from 7 in 1987 to 16 in 1992, for a 128.6% increase.

Criminal cases commenced increased from 372 in 1987 to 430 in 1992, a 15.6% increase (Figure 23). During the same period, felony cases increased 28.1%,

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[34] These data include only those trials conducted by district judges and a single case tried by a circuit judge. They include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions and other contested proceedings in which evidence was introduced. All trials conducted by magistrate judges are excluded.

from 310 to 397.[35] Felony cases have increased every year since 1989.

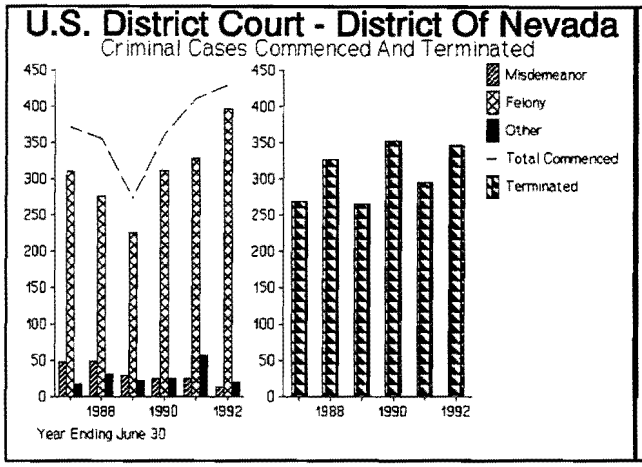

Figure 23

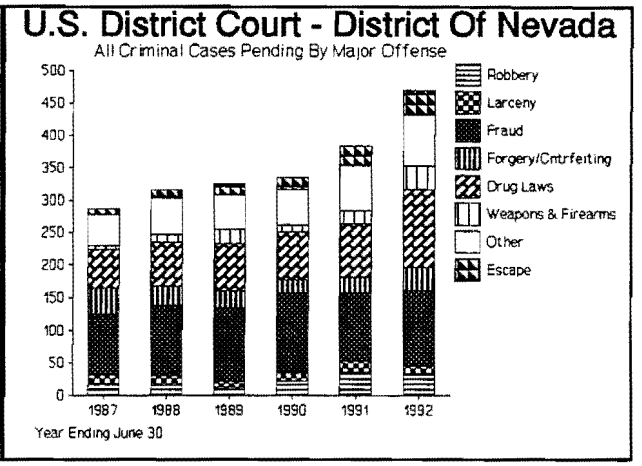

Figure 24

The general trend in criminal cases terminated has been upward for 1987 through 1992 (Figure 23). Criminal cases terminated increased from 269 to 347 (29%). Terminated felony cases rose 60.2%, leaping from 196 (1987) to 314 (1992). A comparison of the total number of criminal cases commenced with those terminated (Figure 23) reveals that in every year during this period more criminal cases were commenced than terminated. In fact, the disparity has significantly increased in the past two years.

Pending criminal cases increased 63.8%, from 287 in 1987 to 470 in 1992 (Figure 24). The number of pending criminal cases increased every year in this period. Felony cases pending during the same period increased 72.1%, expanding from 265

[35] Felony cases decreased in 1988 and 1989 due to a one-time occurrence of the "Company" drug trial. The trial lasted 16 months and not only consumed large amounts of the judicial and court support staff's time but also reduced the amount of time the U.S. Attorney could devote to other criminal prosecutions in the district.

to 456. Pending robbery cases increased by 77.8%, growing from 18 to 32, and pending fraud cases rose from 93 to 116, a 24.7% increase. Pending criminal cases which were drug-related increased from 59 to 120 (103.4%).

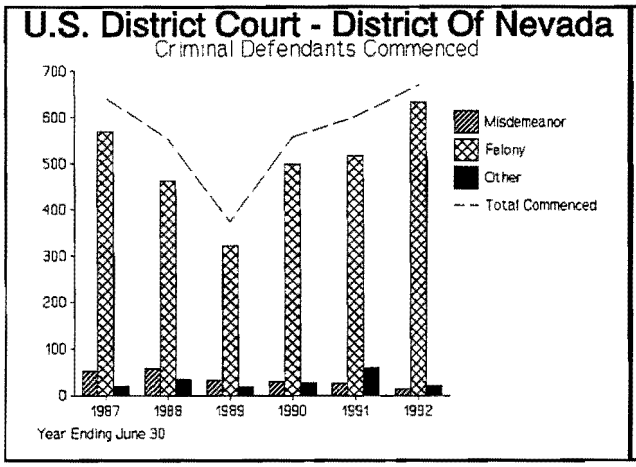

Figure 25

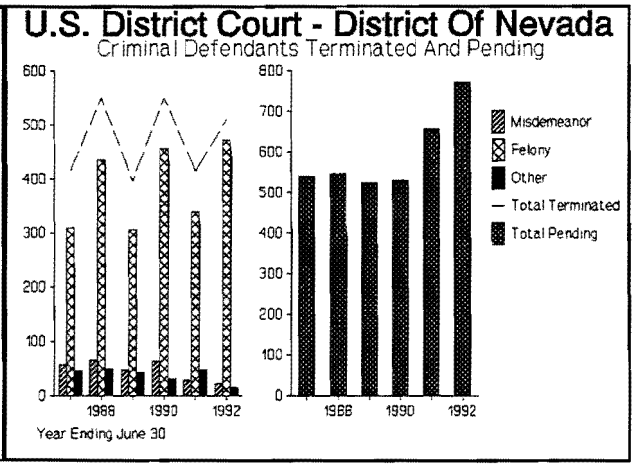

Figure 26

Defendants in criminal cases increased 4.4%, from 642 (1987) to 670 (1992), and felony defendants rose from 570 (1987) to 633 (1992), an 11.1% increase (Figure 25). The total number of criminal defendants increased each year since 1989.

Criminal defendants terminated and defendants with pending cases have increased dramatically from 1987 to 1992 (Figure 26). Terminations of criminal defendants increased 23.8%, from 412 to 510. The number of felony defendants terminated grew from 310 to 472, a 52.3% increase. Pending criminal defendants increased from 540 in 1987 to 772 in 1992, a 43% increase.[36]

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[36] The Advisory Group urges caution when examining these data and statistics. It found a substantial increase in defendants in criminal cases and these numbers are larger than the number of criminal defendants terminated (which also grew dramatically during this same period, 1987-1992). Thus the reader should not be misled when s/he sees that the increase of felony defendants terminated (measured as a percent)

Disposition of criminal defendants in the district by dismissal declined from 71 in 1987 to 41 in 1992, a 42.3% decrease (Figure 27).[37] The 1992 statistic may be an anomaly because all other years during this period had approximately the same number of dismissals or it may be indicative of a new trend.

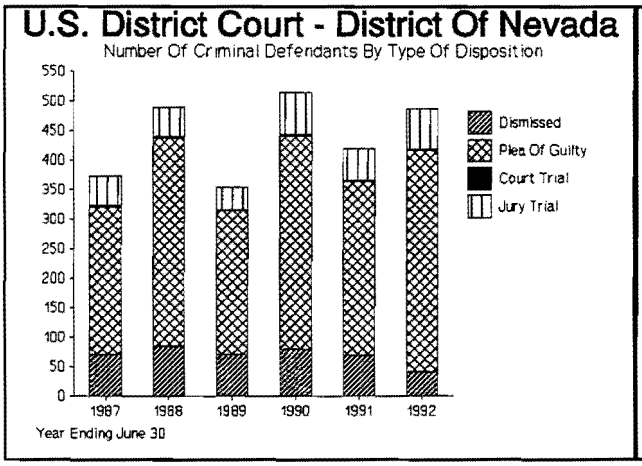

Figure 27

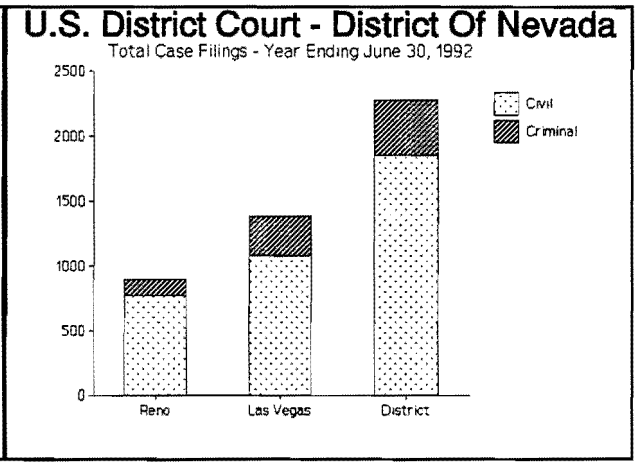

Figure 28

Guilty pleas disposing of criminal cases increased <u>50.6%</u>, from 249 in 1987 to 375 in 1992 (Figure 27). Additionally, the percentage of guilty pleas in relation to total dispositions was 66.8% in 1987 and increased to 77% in 1992. Thus, the number of guilty pleas (as a percentage of total dispositions) has increased 10.2%

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was larger than the increase in the pending criminal defendants (also measured as a percent, but using a different base number). The <u>absolute</u> number of pending criminal defendants was a larger increase than the increase in criminal defendants terminated.

Because more criminal cases were filed than terminated, the total number of pending criminal cases and pending criminal defendants increased during this period. For example, in 1992 there were 670 criminal defendants in cases commenced, but only 510 criminal defendants were terminated. Thus the number of pending criminal defendants increased by 160 in 1992 alone (Figure 26).

[37] Figure 27 does not include misdemeanors or petty offenses.

over the five year-period and remains the primary method of disposition for criminal defendants in the District of Nevada.

The number of criminal defendants disposed of by trial (either court or jury) increased from 53 in 1987 to 71 in 1992, a 34% increase (Figure 27). Additionally, the percentage of criminal defendants disposed of by trial rose slightly from 14.2% in 1987 to 14.6% in 1992.

The number of criminal defendants disposed of by trial in the district has increased since 1987, but the period under examination (1987-1992) experienced substantial variation in the number of defendants disposed of by trial. According to Administrative Office data for the District of Nevada, the years with the fewest number of criminal defendants disposed of by trial were 1987 (53), 1988 (52), 1989 (39), and 1991 (56). The years with the most criminal defendants disposed of by trial were 1990 (75) and 1992 (71).

There may be a pattern in these numbers with the three highest years for criminal defendants disposed of by trial occurring in 1990, 1991, and 1992. However, the 56 defendants in 1991 was only marginally higher than the numbers in the 1980s.

The number of criminal trials increased each year 1990 (61), 1991 (73), and 1992 (85). As one would expect, the amount of judges' time spent in criminal trials also substantially increased during this period, 1990 (852 hours), 1991 (1471.5 hours), and 1992 (1569.5 hours).

The amount of time the judges spent in court, which includes not only trials,

but other proceedings, such as working on arraignments and pleas, sentencing, motions, pretrial conferences, grand juries, and other proceedings also substantially increased. Total in-court hours for 1990 were 2703, 1991 had 3616 in-court hours, and 1992 saw 3868 in-court hours.

The conclusion is that the district has experienced a substantial growth in the numbers of criminal defendants, criminal cases commenced, criminal cases pending, criminal defendants pending, criminal trials, and hours spent in criminal trials.

(4) Impact of Disparate Caseload Between Divisions.

In 1992, there were 1,851 civil cases and 430 criminal cases commenced in the District of Nevada (Figure 28, page 52). 1,078 civil cases were filed in Las Vegas and 773 in Reno. In Las Vegas, 307 criminal cases were commenced, and Reno had 123 cases filed.[38] There was a total of 1,385 cases filed in Las Vegas during 1992, and 896 were filed in Reno.

In order to more efficiently balance divisional caseloads, Judge McKibben is temporarily assigned to the southern division for three months each year. This reassignment requires increased travel not only for Judge McKibben, but also for his staff and the deputy clerks assigned to assist him. Staffing levels in each division are such that the Clerk's Office has inadequate numbers of qualified personnel who can be temporarily reassigned to Judge McKibben when he travels to Las Vegas.

It is unclear how much travel will increase in the district when a judge is

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[38] The data on the number of criminal cases filed in each division were developed by the Clerk's Office for the District of Nevada.

confirmed to fill the position vacated by Judge Reed. If Senior Judge Reed does not continue to carry a substantial caseload, travel of both staff and judges should be similar to the current situation. However, if Senior Judge Reed continues to accept a full or a partial draw of cases, it is apparent that one or both active district judges in the northern division and support staff will be doing much more traveling to and from the southern division because of the inequities of the current and future expected filings between the two divisions within the District of Nevada.

(5) Need For More District Judges.

There is a clear and ever-growing need for additional district judges in the District of Nevada. Weighted filings per district judge were **582** in 1992. **This ranks the District of Nevada fourth in the U.S. and second in the Ninth Circuit for weighted filings per judge.**[39] The *Biennial Judgeship Survey* has established that the maximum ideal workload for a district judge should be about 400 cases a year. Adding one new permanent district judge to the District of Nevada, based on 1992 data, would have given 5 judges an average weighted caseload of 466 cases during 1992. This adjusted figure is well above the 400 recommended.[40]

The Advisory Group anticipates the District of Nevada will require the services of a sixth district judge during the 1993 statistical year, a seventh during the 1999

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[39] See the Judicial Workload Profile in Appendix E.

[40] *The History of Federal Judgeships Including Procedures and Standards Used in Conducting Judgeship Surveys*, Washington D.C.: The Administrative Office of the United States Courts, February 1991, p 12.

statistical year, and an eighth by 2004, using a 3.5% yearly growth rate based on the projected growth rate for population in Nevada (Figure 29).[41] Additionally, the actual growth rate of 2.04% for weighted cases per district judge in the District of Nevada was also used to predict the expected number of district judges needed in the district, assuming the growth in filings continues at the average rate for 1987-1992.

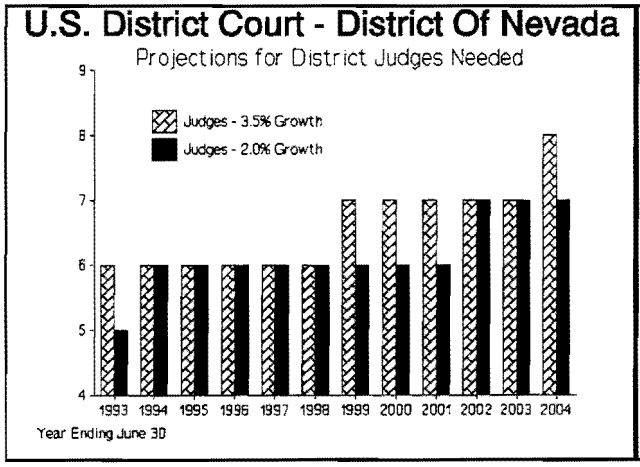

Figure 29

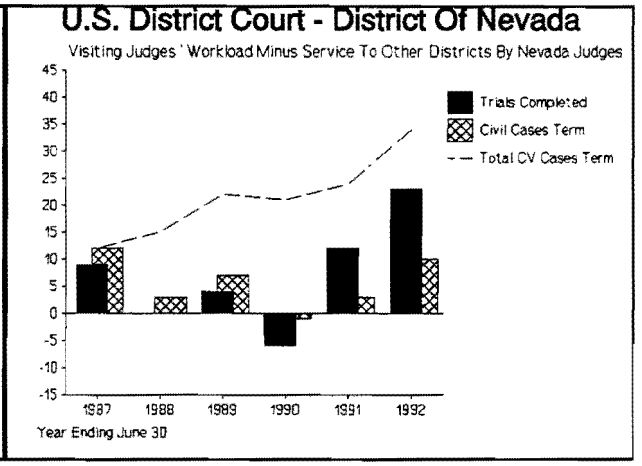

Figure 30

The use of visiting judges to the district, although very beneficial, is not in large enough numbers to affect the need for the additional judges shown above (Figure 30). From 1987 to 1992, visiting judges helped the district terminate a net total of 34 civil cases and completed a total of 42 trials (both criminal and civil). After the current vacancy in the northern division is filled, the Advisory Group recommends the next two district judge positions allocated to the District of Nevada be stationed in the

[41] The 3.5% growth rate is greater than the 2.04% actual growth rate for case filings during the period 1987 through 1992. Weighted case filings per judge increased at an annualized rate of 6.5% from June 30, 1992 to December 31, 1992 (601 weighted case filings per judge as of December 31, 1992, Appendix E).

southern division. Given 1992 data, this would allow the four existing and two proposed district judges to better equalize the divisional and per judge caseload, reducing each judge's weighted case filings to just above 400 per judge.

(6) Conclusion.

Overall the condition of the docket has been good, but it is beginning to deteriorate. As shown in the preceding sections, there are several reasons for this:

(1) the district has an insufficient number of authorized judicial personnel to manage the large number of cases commenced;

(2) the number of civil and criminal cases commenced in the district has been increasing at a rapid rate over the last few years; and

(3) the percentage of prisoner cases commenced was a larger proportion of the district's civil docket in 1992 than in 1987.

The district has made remarkable efforts to reduce the number of pending cases; nevertheless, the quantity of both criminal and civil pending cases has recently increased. Since 1987, the number of pending civil cases aged one year and older has dramatically decreased, but the number of pending cases less than a year old have grown substantially. The latter increase is directly attributable to a rapidly growing civil and criminal caseload, and an inadequate number of judges authorized for and appointed in the district.

Prisoner cases commenced in the district have increased from 25% of the civil cases filed in the district in 1987 to over 33% of the court's civil filings for the past three years (1990 - 1992). If the percentage of prisoner cases had remained constant since 1987, the District of Nevada would have had 419 fewer cases filed during the

period 1990 - 1992. The growth in prisoner cases had a significant negative impact on the condition of the docket. These cases have forced the judicial officers to reduce the time they can devote to other civil cases and increased delay in civil litigation.

B. Cost and Delay.

The Civil Justice Reform Act mandates that each federal district court in the United States examine cost and delay associated with civil litigation in the district. It is possible to presume that all costs and delays derived during the civil litigation process are excessive. However, the Advisory Group rejects this as an unreasonable position because any conflict resolution process must, by its very nature, involve some cost and delay to settle disputes. One may ask how acceptable and excessive costs and delays in civil litigation should be defined.

The Advisory Group makes a distinction between acceptable cost and delay and excessive cost and delay in civil litigation. Acceptable costs and delays can be construed as those costs and delays incurred in an efficiently managed civil litigation process. Conversely, excessive costs and delays can be defined as unnecessary costs and delays in an efficiently managed litigation process.

With the preceding definitions in mind, the Advisory Group has first examined a plethora of evidence gathered in the District of Nevada for examples of cost and delay in civil litigation, and second, has chosen to focus on the "principal causes"[42]

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[42] The "principal causes" reported are related to the Advisory Group's definition of excessive costs and delays in civil litigation, i.e., "principal causes" generate excessive cost and delay in civil litigation.

contributing to cost and delay as required under 28 U.S.C. § 472(c)(1)(C).

(1) Evidence of Cost and Delay.

The Advisory Group has selected several methods to examine the issues of cost and delay in the District of Nevada. Foremost among the methods utilized were questionnaires completed by active and senior district judges, magistrate judges, attorneys, litigants, *pro se* litigants, and the Civil Justice Reform Act Advisory Group attorney-members. The questionnaires (see Appendix B) asked about litigation experiences in the District of Nevada. A second technique employed was the analysis of 200 pending cases (a combination of civil and criminal cases) in each of the northern and southern divisions. Additionally, a review of judicial time spent in court for a six-month period was undertaken, and the procedures utilized by the court, and more specifically, those of the Clerk's Office were also examined.

The findings presented in the following section focus on the potential problem areas of cost and delay, and are based on the responses to questionnaires by attorneys, attorney-members of the CJRA Advisory Group, litigants, *pro se* litigants, and the federal district judges and magistrate judges who either practice before, have cases heard by or represent the U.S. District Court, District of Nevada.[43] The Advisory Group is cognizant that these two variables (cost and delay) are multi-dimensional and are interrelated but have endeavored to separate them in the

[43] Please see Appendix A for a discussion of the research methodology used to create the questions and the sampling techniques employed to select the cases, attorneys and litigants.

following analyses for ease of readability and comprehension.

(a) Cost.

(i) Discovery.

A large majority of the lawyers in both the northern and southern divisions believed discovery costs were too high. There were 88.1% of the attorneys in the north and 88.6% of those in the south (district total 88.4%) who indicated discovery costs were anywhere from "sometimes too high" to "always too high" (Figure 31).[44] Of these responses, a plurality of 43.8% in the northern division and an identical 43.8% in the southern division responded that discovery costs were "generally too high."[45] No one answered that discovery costs were "too low!"

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[44] Please note that when one examines the graphs not all of the percentages reported for each division nor those reported for the whole district will total to 100%. Some questions did not have a response from everyone in the sample. A second, related point should also be kept in mind. The number of responses upon which the percentages were based varies from item to item. Thus, one should be cautious when comparing percentages from one graph to another. A third point is that the reader should not attempt to simply add the percentages between the northern and southern divisions and divide by 2 to calculate the percentage for the district. The percentages for each division are calculated according to the number of responses within a specific division. For example, the northern division had more litigants respond than did the southern division. Therefore, 25% of the northern litigants' answers constitute more answers than 25% of the southern litigants' answers. The northern division litigants were a larger proportion of the total district litigants who answered the questionnaire than were the southern division litigants.

[45] The wording of the items from the questionnaires shown in the figures has been modified because of the space limitations of the graphics software used in this report. For the exact wording of each item please refer to the copies of the questionnaires contained in Appendix B.

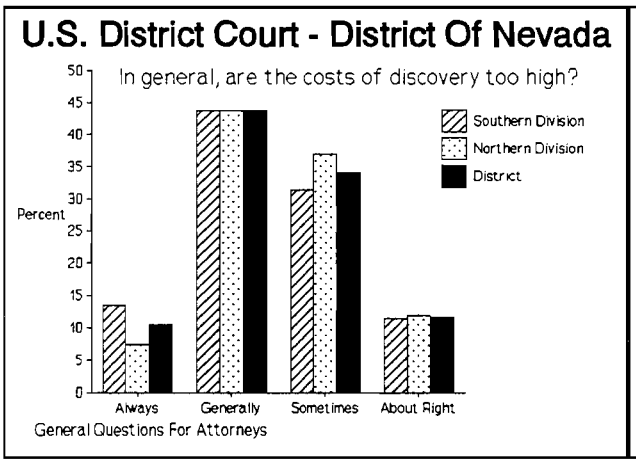

Figure 31

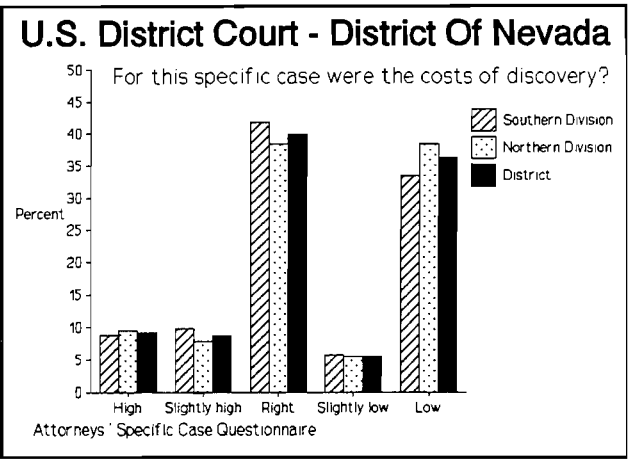

Figure 32

The attorney-members of the Civil Justice Reform Act Advisory Group[46] were just as adamant on this issue. Almost twenty percent (18.2%) said that discovery costs were "always too high." Another 45.5% said they were "generally too high." Only 18.2% chose the category that discovery costs were "sometimes too high," and 18.2% said they were "normally about right." Once again, no one responded that discovery costs were "too low."

While the attorneys' responses on the general questionnaire reveal discovery costs are perceived to be too high, their answers about the impact of discovery for the specific cases included in the sample do not support a similar conclusion. When attorneys were asked about the costs of discovery in specific cases, the Advisory

[46] As a general rule, the CJRA Advisory Group attorney-members' answers to the questionnaires will not be directly discussed in this report unless they are substantially different from the answers of the attorneys in the sample. Also please be aware that when the CJRA Advisory Group attorney-members' answers to the questionnaires are discussed the Report may use different titles (such as leaving off "attorney-members") to minimize the redundancy.

Group found some interesting answers. No one answer category had a majority of the responses, but the largest was discovery costs were "about right" (39.9%), followed closely by discovery costs for this specific case were "low" (36.2%) (Figure 32). A total of 17.8% indicated that the discovery costs were "slightly high" or "high."[47]

Only 14.5% of the responding attorneys in the sample said that discovery extensions increased the cost of the particular cases they were questioned about. Over four out of five (83.8%) said discovery extensions had "no impact" in terms of costs (Figure 33).

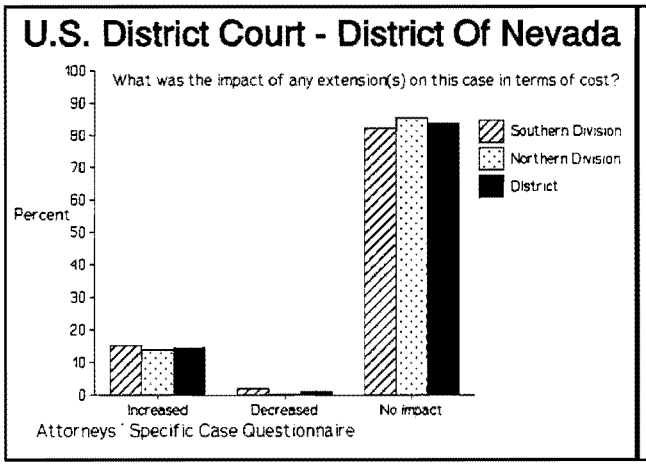

Figure 33

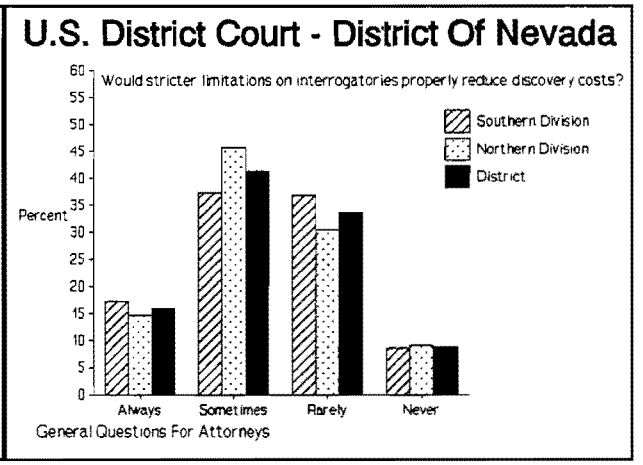

Figure 34

The attorneys were split in their answers about limiting interrogatories and requests for production as a means to reduce the costs of discovery (Figure 34). A

[47] It is the consensus of the Advisory Group that the cost of discovery in federal court is greater than in state court because of the requirement to comply with the discovery cutoff date contained in the court-imposed scheduling orders, resulting in discovery which would not have been taken if a realistic trial date were closer to the discovery cutoff date. This is a function of the lack of firm trial dates due to the use of the master trial and stacked calendars.

majority (57.5%) checked answer categories that such limits would "almost always" or at least "sometimes" properly reduce costs of discovery, but 42.5% checked that it would "rarely" or "never" accomplish this goal.

Attorneys' answers were divided on abuse of discovery. As one might expect, the issues surrounding discovery and the roles it plays in cost and delay are intertwined and not easily separable. Approximately one-third (33.2%) of the responding attorneys checked that they "strongly agree" or "agree" that attorneys generally abuse the discovery process. On the other hand, an even larger proportion, 46.8%, "disagree" or "strongly disagree" with that statement (Figure 35).

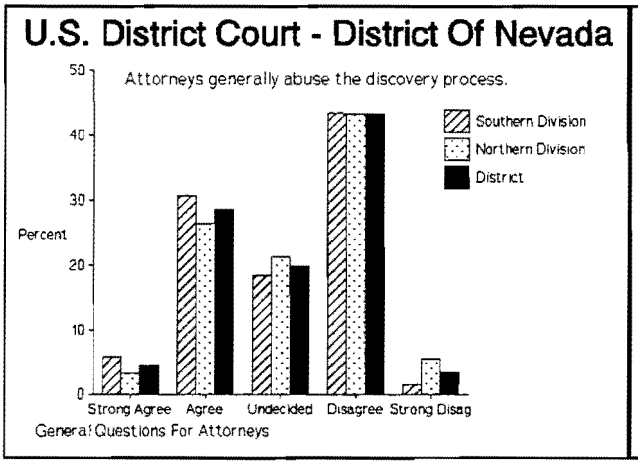

Figure 35

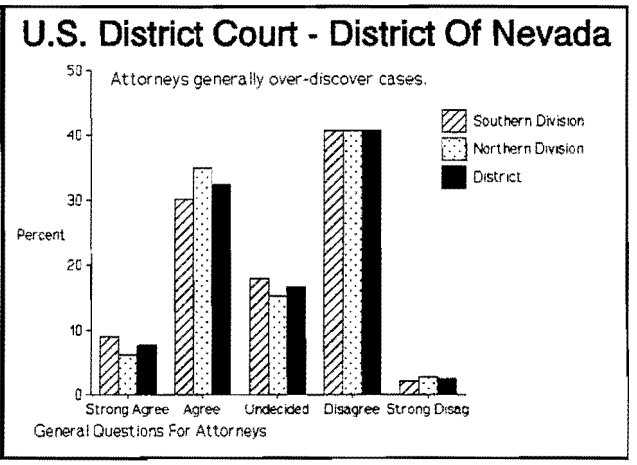

Figure 36

When asked if attorneys generally over-discover cases, the Advisory Group found a somewhat similar pattern with 40.2% selecting one of the "agree" answers, but 43.2% "disagree(ing)" (Figure 36). Although some respondents report instances of over-discovering a case, this problem appears to have only modest correlation with too much discovery time. **A substantial majority of attorneys (80.7%) did not feel**

there was too much time provided for the discovery of facts (Figure 37).

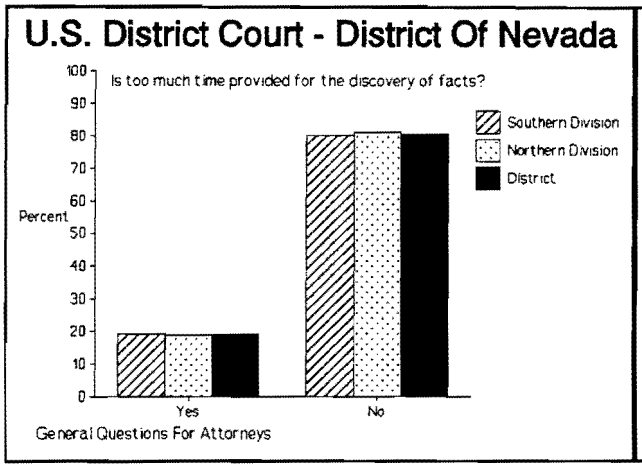

Figure 37

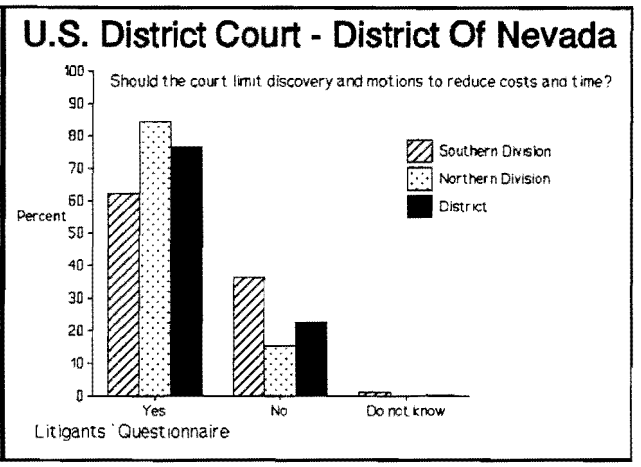

Figure 38

The attorneys made numerous suggestions concerning discovery in their written comments. One suggestion is that all parties turn over <u>all</u> discovery materials as early as possible in the litigation except where privilege applies. Another suggestion was to limit discovery, especially by large firms with wealthy clients, ". . . because they simply try to wear down the small firms . . ." or those whose clients have "less deep pockets." Related to this was a call for tough sanctions against attorneys who engage in global discovery for purposes of driving up costs and trying to force an unjust settlement.

Litigants believe discovery and motions should be limited. An examination of the data presented in Figure 38 reveals that the litigants feel much more strongly about the need for the court to limit pretrial discovery and motions practice in order to reduce attorneys' fees, expenses and the time involved in litigating cases in the federal courts. Over three-fourths (76.7%) of those responding wanted the court to

limit discovery and motions. It should be pointed out that a sizable minority (22.9%) opposed such limitations.

Some of the litigants' written comments were, "I have found discovery costs . . . to be out of control and completely at the mercy of overzealous, well-financed attorneys." "Limit discovery . . . what was originally intended to be (a) good purpose has grown like a cancer . . . too expensive to determine every detail . . . most cases usually settle but only after completion of very expensive discovery . . . litigators are often not negotiate/settlement oriented . . . ."

The *pro se* litigants' answers to their questionnaires revealed that they evaluated the overall impacts of discovery as relatively minor.[48] Only 17.7% indicated that extensions increased the costs of their cases (32.9% said extensions did not increase discovery costs and 49.4% indicated that they did not know if extensions created any changes in discovery costs). Of the twelve litigants who wrote in a percent concerning how much the costs increased, there was a fairly uniform distribution from 10-50% with one person saying an extreme 300%. None indicated discovery extensions decreased the costs of their case.

Perhaps more surprising is the fact that the *pro se* litigants were much less favorably disposed to limiting discovery than were the regular litigants, even when it means reducing fees, expenses, and the time litigating. Only 39.6% said they would

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[48] Because of the small number of *pro se* litigants' questionnaires mailed out and returned (96), discussions of the findings about them will be based on all of their returns, both from the northern and southern divisions, taken as a whole.

favor such action while 45.8% were opposed.

The judges[49] indicated they felt the costs of discovery were generally too high. As a group, they believed stricter limitations on interrogatories/requests for production would reduce the costs of discovery "sometimes." They were undecided about abuse of discovery by attorneys in the district. As one judge wrote, "some always do, some never do." Likewise, the majority of judges selected the "undecided" answer category on the question concerning over-discovery, although they said they do see frequent abuses. Only one judge responded that s/he "agree(d)" that over-discovery was a problem in this district. All of the judges said attorneys take an excessive number of depositions "sometimes."

The judges did not support the creation of a rule to have the attorneys and parties sign all requests for extensions of discovery or postponement of the trial. They favored a policy which requires attorneys to certify that they (the attorneys) have contacted their party and the party approved of the extension or postponement.

The judges voiced strong support for the voluntary exchange of information through the use of cooperative discovery devices. (See the proposed amendment of Fed. R. Civ. P. 26, effective 12/1/93.)

The local rules were cited by some judges as helping prohibit consideration of discovery motions unless accompanied by a certification that the moving party had

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[49] When the term "judges" is used in this Report, it should be understood to include both district and magistrate judges unless noted otherwise.

made a reasonable and good faith effort to reach an agreement with opposing counsel. All of the judges approve of this rule.

(ii) Deposition and Discovery-Related Costs.

The attorneys indicated a problem existed because of the high costs associated with obtaining copies of depositions. Over three-fourths of the attorneys responding to the surveys (77.5%) said that the costs for obtaining copies of depositions were "too high." There was almost no difference in the proportions between the northern and southern divisions' answers to this question.

However, these observations should be tempered by the attorneys' answers in the specific case questionnaires. Only a very small proportion of the attorneys (11.7% for the district) answered that "obtaining copies of depositions excessively increased the costs of this specific case" (Figure 39).

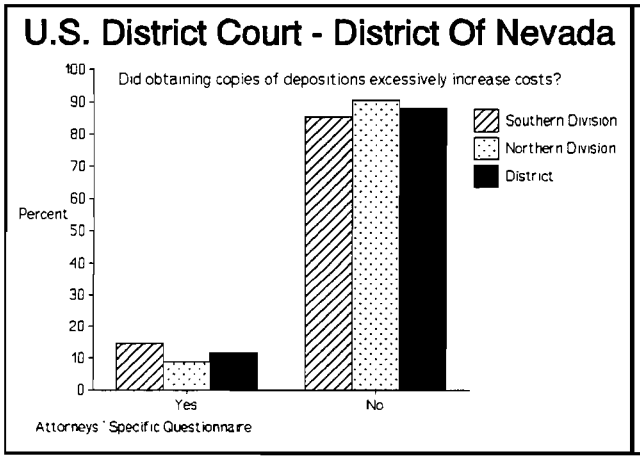

Figure 39

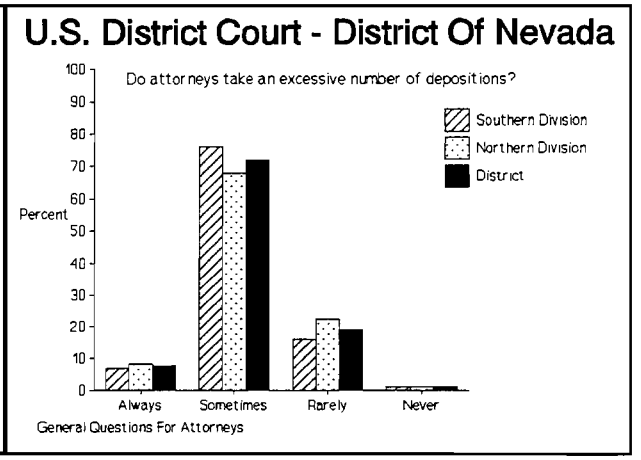

Figure 40

Sometimes attorneys take an excessive number of depositions. Closely related to this topic are the issues of how many depositions should be taken and how costly

it is to take depositions. As you can see in Figure 40, the attorneys expressed the opinion that an excessive number of depositions are taken with some frequency. In spite of these opinions, **only a small minority of the attorneys (10.6% for the district, Figure 41) suggested that taking depositions excessively increased the costs of the specific cases they were asked about.**

The CJRA Advisory Group attorney-members' answers followed a similar pattern, with 72.7% answering that attorneys "sometimes" take an excessive number of depositions. The remaining 27.3% answered that this "rarely" occurs. None of the Advisory Group members chose "never" or "almost always." The Advisory Group was split over the issue of limiting discovery depositions; half felt they should be limited, and half did not want any limitations.[50]

A majority (54.6%) of the attorneys expressed their belief that the costs of taking depositions are so high that litigants are unable to pursue the desired course of legal action. Figure 42 reveals that the findings were consistent for attorneys in both the northern and southern divisions. The judges wrote they were unsure if the costs of taking depositions were so high that litigants were unable to pursue the desired course of legal action. Likewise, they were unsure about the costs for copies

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[50] The members of the Advisory Group believe the court-imposed standard scheduling order controlling discovery and the resulting remoteness of the trial date can produce excessive costs which would not necessarily be incurred if a more realistic trial date and discovery schedule were implemented. In other words, discovery costs could be curbed if the trial date was closer to the discovery cut-off date.

of depositions.

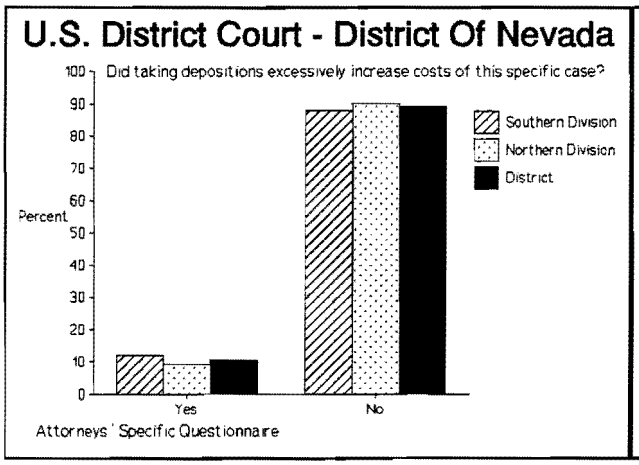

Figure 41

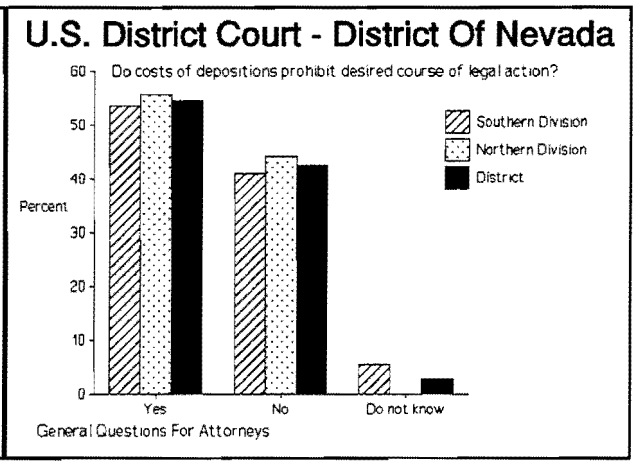

Figure 42

The vast majority of attorneys clearly did not believe the number of discovery depositions should be limited (Figure 43). Over three-fourths (76%) opposed limiting discovery depositions, while only 23.8% supported such limitations. A relatively small **5.9% of the attorneys replied that unnecessary depositions were taken in the specific cases** about which they were queried. A large majority (93.4%) said that unnecessary depositions were not taken.

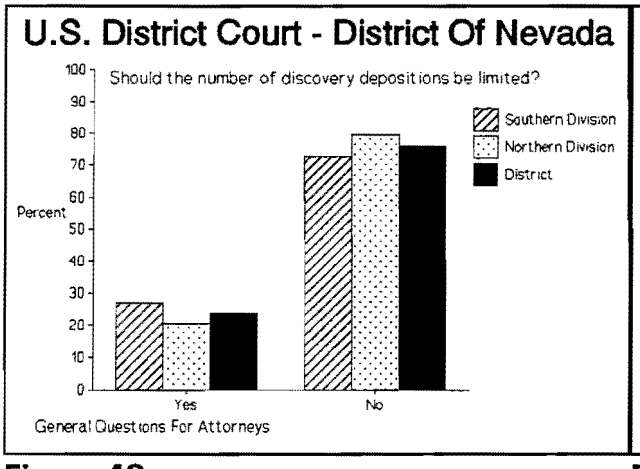

Figure 43

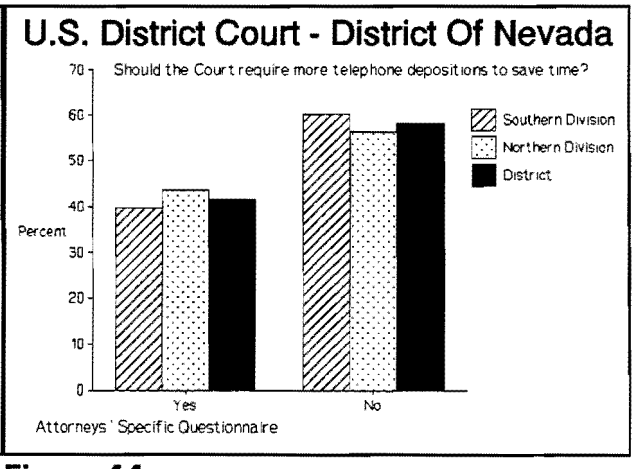

Figure 44

The judges answered that depositions should be limited, but only on a case-by-case basis. However, one judge suggested limiting the number of depositions and permitting the attorneys to apply for additional depositions which could be granted on the showing of good cause.

A majority of the attorneys opposed the court requiring more frequent utilization of telephone depositions to save time, although a large minority did support this practice. Nearly sixty percent (58.3%) opposed greater use of telephone depositions and 41.7% favored this practice (Figure 44). The judges were unsure about requiring telephone depositions. They felt such depositions might be beneficial and were worth trying. The judges would especially encourage the use of telephones when the parties are in remote areas. The judges said that telephone hearings can be great time savers.

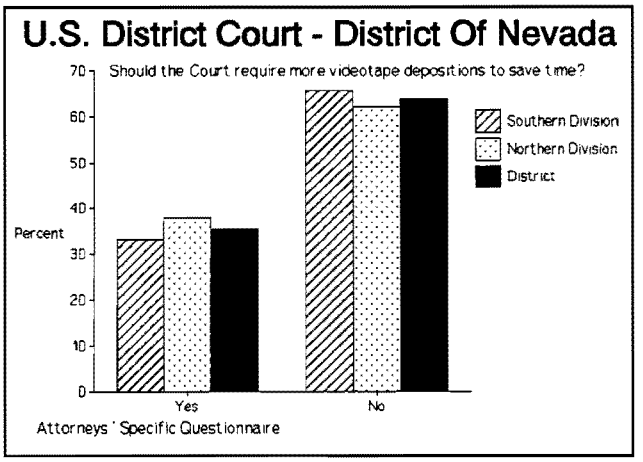

Figure 45

The attorneys also did not favor the court requiring more use of videotape depositions to save time (Figure 45). Sixty-four percent responded negatively to the

query about the use of videotaped depositions while 35.5% supported their use. The majority of the judges felt videotaped depositions would not save time and might even take longer. One judge did feel they would save time.

Given the attorneys' responses to the items on both the general questionnaire and the specific case questionnaire it seems reasonable to conclude that although taking depositions is expensive, it is a necessary tool which is worth the expense. As one attorney wrote, ". . . all depositions increase the time and costs involved in a case, but most are necessary." One attorney went even further, suggesting the deposition process may even lead to a more rapid settlement of the case.

The Advisory Group found almost no evidence that costs of taking depositions have prohibited litigants from achieving access to the legal system, and, therefore, this cannot be said to be a substantial problem in this district. The findings also suggest significant abuses of taking depositions occur in a decided minority of cases, at least from the attorneys' perspective.

One thought-provoking suggestion came from an attorney's written comments when s/he wrote that a short deposition may save time and money, and lead to a settlement, but s/he would like the option of returning for a longer deposition if it is deemed necessary. The idea is to keep deposition costs as low as possible. If attorneys are permitted only one opportunity to take a deposition, it would appear some feel compelled to make the depositions long, intense sessions where they cover every conceivable point. This latter approach obviously raises costs and makes for

greater inconvenience on everyone's part.

A minority of *pro se* litigants were critical of the legal process and its participants. Only 6.1% of the *pro se* litigants answered that unnecessary depositions were taken by either party. Still fewer (5.6%) said that depositions increased the cost of their case more than was necessary. A relatively small 8.3% said that obtaining copies of depositions increased the costs of the case more than was necessary.

The *pro se* litigants were critical of lawyers; 26.1% of these litigants said lawyers failed to respond within a reasonable time to discovery requests. These litigants criticized attorneys for making unnecessary requests for more time (27.1%).

Not as many of the *pro se* litigants were critical of the judges; only 20.9% of the *pro se* litigants selected the answer, "the district judge failed to rule on discovery matters within a reasonable time." They were even less critical of the magistrate judges, with 13.6% saying, "the magistrate judges failed to rule on discovery matters within a reasonable time." Some *pro se* litigants (13.6%) were also critical of the unavailability of the district judges to resolve discovery disputes.

Approximately 20-25% of the *pro se* litigants selected answer categories revealing opinions which said there should be more frequent use of available penalties to curb discovery abuses, more frequent status checks to watch the discovery process, and greater court involvement in the scheduling of discovery.

(iii) Continuances.

The findings were mixed on whether continuances require additional review of

cases by attorneys, and, therefore, increase the cost of the cases. In answering a question on the general questionnaire a majority of the attorneys (61.5% in both divisions) replied that continuances significantly increased costs by necessitating repeated reviews of the cases. However, two questions on the specific case questionnaire which asked about increased costs because of delay and continuances revealed that the majority of attorneys did not believe these factors (87.5% for delay and 93.8% for continuances) contributed to increased costs in the particular cases included in the sample.

(iv) Expert Witnesses.

The attorneys who practice in the United States District Court, District of Nevada, clearly believe that expert witnesses charge excessive fees. Over 35% said this "almost always" happens, and an additional 55-60% indicated it happens at least "sometimes" (Figure 46). Again, the answers for the northern and southern divisions were very close. The CJRA Advisory Group attorney-members were in total agreement. Over one-third (36.4%) said expert witnesses "almost always" charge excessive fees, and the remaining 63.6% said this happens at least "sometimes." The attorneys opposed limiting the number of expert depositions (65.1%) and were even more adamantly opposed to limiting the length of expert depositions (77.0%). They want to retain their ability to depose experts (88.6%) and not rely upon written opinions. They do not want the court to limit the number of witnesses for a trial (81.4%), although they are not as strongly opposed to limiting the number of expert

witnesses (59.9%). They are marginally (50.3%) in favor of the court challenging the qualifications of expert witnesses testifying at trials.

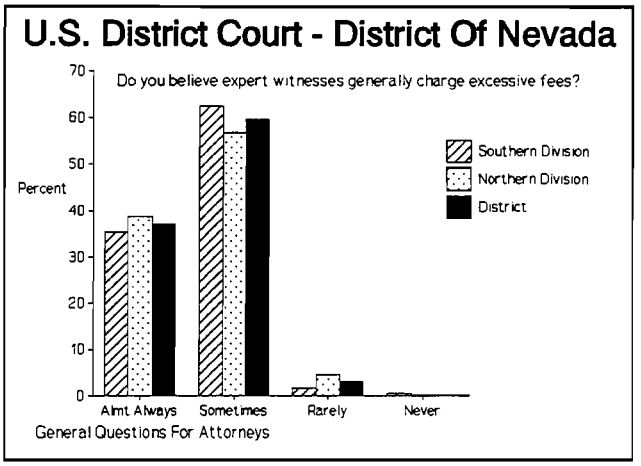

Figure 46

The Advisory Group attorney-members supported a limitation on the number of expert depositions (72.7%), and even more strongly supported limiting the number of experts used for a trial (81.8%), but they adamantly opposed limiting the length of expert depositions (81.8%). Although the judges generally felt they were careful about challenging the qualifications of expert witnesses, the Advisory Group's answers provide unequivocal support for the court to even more carefully challenge the qualifications of expert witnesses testifying at trial (81.8%).[51]

The judges felt that expert witnesses charge excessive fees; they selected answer categories ranging from "sometimes" to "almost always." They believed the

[51] The Supreme Court may soon be providing some advice on this issue in *Daubert v. Merrill-Dow Pharmaceutical Co.* - F.2d - (9th Cir. 1991), Cert. granted, 113 S.Ct. 320 (1992).

court should limit the number of expert depositions, with some suggesting one per issue, others saying this should be done on a case-by-case basis, and another preferring counsel to make a motion before the deposition would be permitted. The length of depositions should be limited on a case-by-case basis. The majority of judges believed the court should deny parties the opportunity to depose experts, and the court should "require the parties to rely upon full and complete written designations of opinions and the basis of the opinions." The judges also favored limiting the number of witnesses on a case-by-case basis.

The litigants were much less knowledgeable and opinionated about expert witnesses and the fees charged by these witnesses. Approximately three-fourths of the litigants did not respond to the question about expert fees and of those who did, only 16.2% felt the fees were unreasonable.[52]

(v) Attorney Fees.

The fees charged by the attorneys are a substantial part of the cost of a case. Although the attorneys felt they charged reasonable fees, these same attorneys, including the members of this Advisory Group, were of the opinion that their clients would not agree with this assessment. In other words, the attorneys believed their clients would answer that they paid too much for their attorneys' legal services. **Answers to the questionnaires revealed that a large majority of the attorneys said the**

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[52] Only 3.1% of the *pro se* litigants said they used expert witnesses. Because these responses are such a small number, it would be inappropriate to perform any statistical analysis of their answers in this section.

fees and costs were "about right," but their responses ranged all the way from "too high" through "too low" (Figure 47).

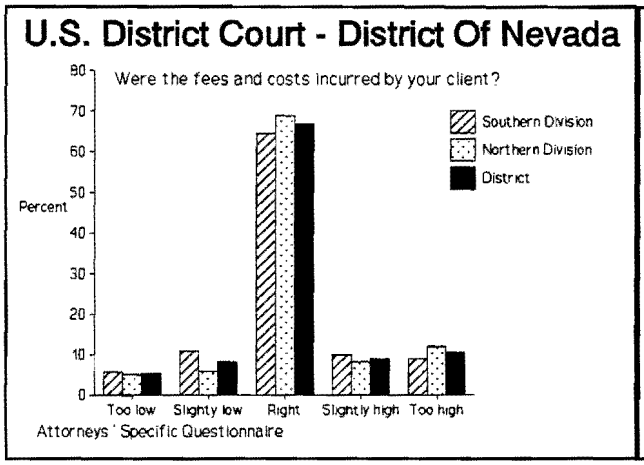

Figure 47

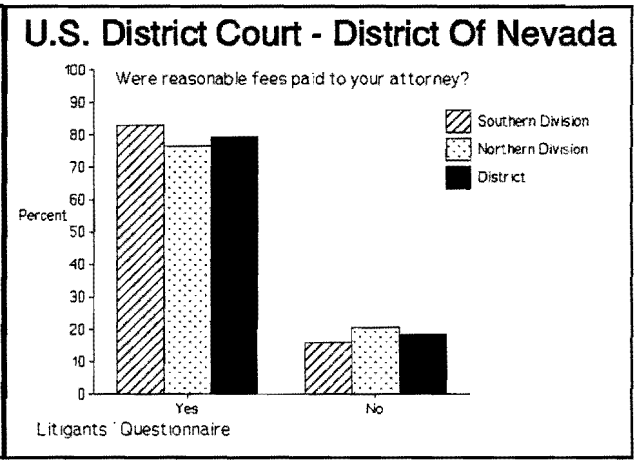

Figure 48

Litigants believed they paid reasonable attorney fees. The attorneys' answers were not surprising, but the litigants' answers were. Almost eighty percent (79.5%) responded that their fee arrangement resulted in reasonable fees being paid to their attorney (Figure 48).[53] As usual, there were only slight differences in the responses between the northern and southern divisions.

A related question asked the litigants if they believed they incurred any unnecessary attorney's fees. Only a relatively small minority, 18% for the district, said they had incurred any unnecessary attorney's fees. There was little difference in the litigants' answers between the two divisions (Figure 49).

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[53] It is advisable to insert a word of caution concerning these findings. The CJRA Advisory Group mailed all of the questionnaires (except the judges') to the attorneys, who in turn, forwarded the litigant questionnaires to their clients. It is possible that a selection process occurred relative to which litigants did or did not receive questionnaires; and, therefore, bias may have occurred in the findings.

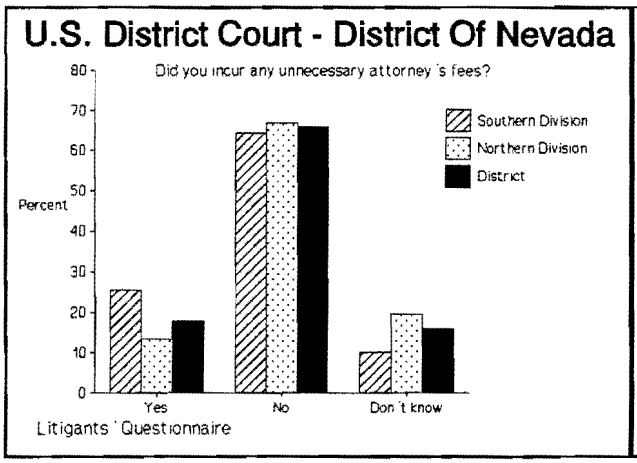

Figure 49

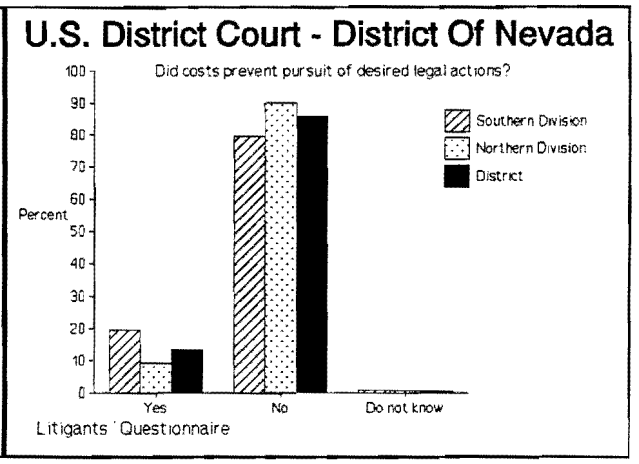

Figure 50

Question 26 (litigants' questionnaire) asked if the costs (attorney's fees, expert witnesses, travel, etc.) of this particular litigation prevented the litigants from pursuing the legal actions they desired. In other words, were the costs so high that they were forced into settlement, prevented from going to trial, or accepted a disposition that was unsatisfactory? The litigants answered with a resounding "no" (Figure 50).

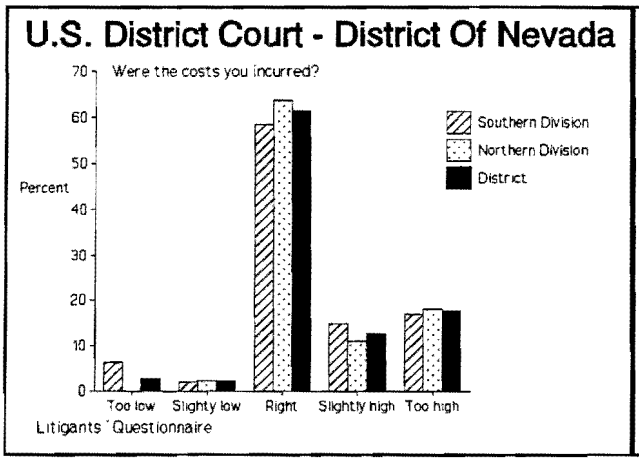

Figure 51

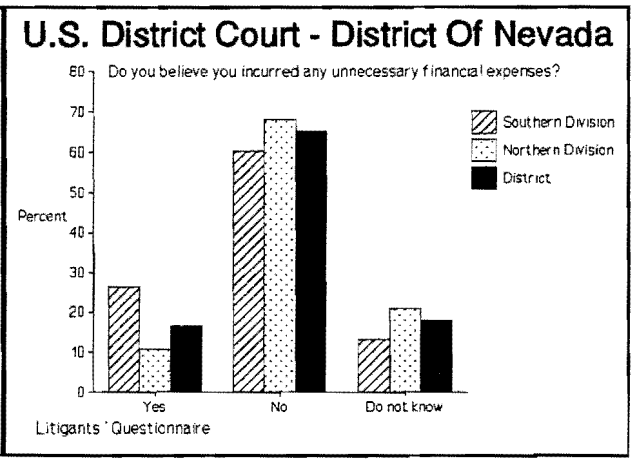

Figure 52

The litigants' answers correlated fairly well with their attorneys' responses when they were asked if the costs incurred for this case were too high given the

amount at stake in the case. The majority (61.5%) said the costs were "about right." However, 30.3% checked an answer that the costs were either "slightly high" or "much too high" (Figure 51).[54]

One complaint found in the attorneys' and litigants' answers to the questionnaires was a cost-related problem which arose when some local attorneys associate with out-of-state attorneys practicing in the district court (through the use of verified petitions as required by Local Rule 120-5). An out-of-state attorney wrote that his client was charged literally thousands of dollars by a local attorney who did virtually nothing on the case. Some (presumably out-of-state) litigants complained that they incurred the additional expense of having to hire Nevada attorneys because their attorney was not a member of the Nevada bar. It was the litigants' opinion that the Nevada attorneys really did nothing, but add to their costs.

(vi) Unnecessary financial expenses.

The majority of litigants did not feel they incurred any unnecessary financial expenses (65.3%), (Figure 52). However, almost one in six (16.5%) indicated that they did incur unnecessary expenses. Another 18.1% said they did not know.

The litigants' answers to the open-ended part of this question were enlightening. **It was a fairly common response for litigants to write that their opponent's case**

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[54] This last statistic could be misleading if viewed in isolation. The dissatisfaction expressed in these answers appears to be associated with legal costs for cases in which it was believed that the other parties had weak or frivolous cases. Please consider the comments in the following section on unnecessary financial expenses.

was frivolous, and, therefore, any expenses incurred were unnecessary. Several attorneys and litigants wrote that the legal position taken by their opponent was unreasonable.[55] One indicated that their attorney's fees were as much as ten times what the case settled for ($50,000 in fees vs. $5,000 for the settlement).

It is also clear from the written comments that a number of cases in the northern division were prisoner cases which many of the opposing attorneys and their litigants believed were a waste of time and money. Many attorneys working on prisoner cases can have their comments paraphrased into the following statement: the case settled for $20 after three years of litigation.

(vii) *Pro se* litigants.

***Pro se* litigants provided written comments suggesting they experienced substantial costs.** This was especially true of those litigants who were prisoners and indicated they were unable to afford such costs. For those filing *in forma pauperis*, many said they should not only have their filing fees waived, but should have an attorney appointed.

They protested that copying costs and postage made it prohibitive to adequately pursue their case. One litigant (presumably a prisoner) wrote, "A prisoner, if he is lucky, makes $10 a month working. He is financially unable to pay the cost of bringing a lawsuit." Another litigant alleged the costs to the *pro se* are driven up

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[55] Of course, the Advisory Group recognizes that these characterizations are in the eye of the beholder.

by the Attorney General's office filing unnecessary motions to which s/he must respond.

And yet another *pro se* litigant (presumably not a prisoner) wrote, ". . . you really can't put a price on the emotional expense, but going *pro se* was like working a second job and taking valuable time away from my children."

(b) Delay.

(i) Length of the case.

One of the most direct ways to determine if delay is a problem in the court is to ask the litigants. **The majority of the plaintiffs (68%) indicated that the time from first contacting an attorney to the filing of the case was "about right"** (Figure 53). A little over thirteen percent (13.1%) said this period was either "long" or "too long." On the other end of the continuum, no one answered that this time was "too short," and only 1.6% said it was "short."

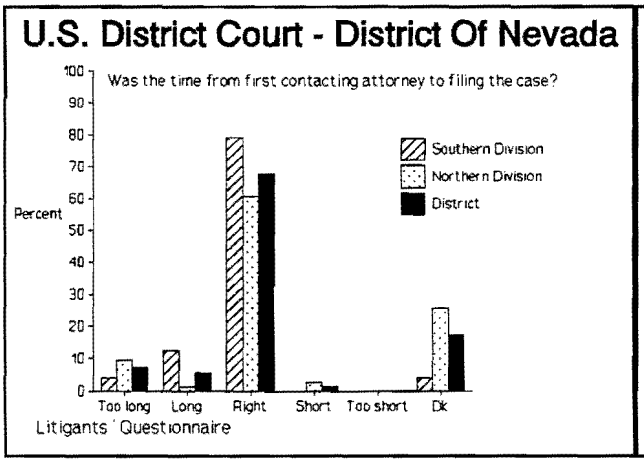

Figure 53

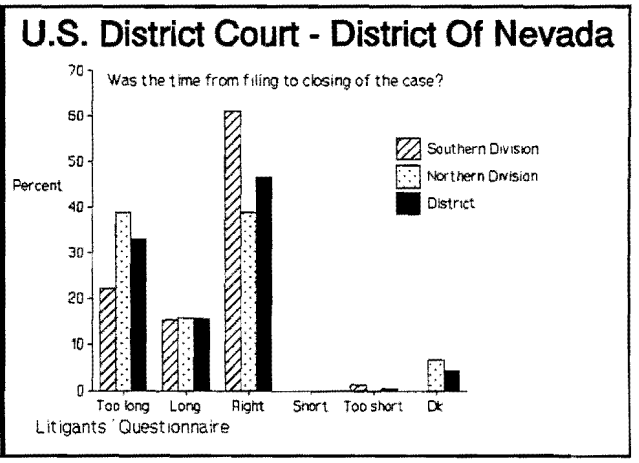

Figure 54

However, the time from filing to closing was considered "too long" by 33%,

and another 15.5% considered it "slightly too long" (for a total of 48.5%). "About right" was selected by less than one-half (only 46.5%). Another way to examine this issue is to note that none of the litigants chose an answer which indicated this period was "slightly short," and only 0.5% said it was "too short." Over half (54.5%) of those litigants in the northern division who responded to this question said that the time from filing to closing of the case was "slightly too long" or "much too long." Although the problem was not seen to be as severe by the southern litigants, a quite substantial 37.5% selected one of these two categories (Figure 54).[56]

Yet another way to examine the reasonableness of the length of a case is to examine people's perceptions of how long resolution of the case should have taken and compare this with the actual time of resolution. This type of analysis can be conducted in many different ways, and the Advisory Group selected two. First, the Advisory Group asked the opinions of the attorneys because they are the ones most intimately involved with the cases, and lawyers have the professional experience to make relatively knowledgeable judgments. Second, the Advisory Group went to the other extreme and analyzed the responses of the *pro se* litigants.

The attorneys indicated that the cases they were asked about took an average

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[56] One cannot definitively say why the litigants in the northern division felt their cases were taking too long. The actual length of their cases was not (statistically) significantly different from those in the southern division. Perhaps, it is not a coincidence that this finding was in the northern division and the vast majority of prisoner cases are in the northern division. (The nonprisoner litigants may feel that any time spent on such cases is "too long.") The northern division also has fewer judicial resources, including only one magistrate judge.

of almost six months (mean = 5.77) longer than they should have under relatively ideal circumstances where the court, all counsel, and all parties acted reasonably and expeditiously; and there were no obstacles such as a backlog of cases. However, it was extremely interesting to discover that, **for the district as a whole, exactly one half of the specific case questionnaires revealed the attorneys felt the time it took to resolve the case was exactly right or even less than it should have been.**

There were no statistically significant differences between the attorneys' perceptions on this issue in the northern and southern divisions. The data for specific case questionnaires in both divisions had 50% of the cases resolved in the same amount of time as "ideal" or less time than what the attorneys indicated was ideal. The average length of time the dispositions exceeded the attorneys' ideal was also very close with the southern division's mean equalling 5.45 months too long and the northern divisions mean equalling 6.03 months too long. The modal (most common) response for both divisions was 0, in other words, exactly what the length should have been. The median was 0 for the southern division and 0.5 months, or only one-half a month too long for the northern division. These are quite admirable statistics and a tribute to the efficiency of the court's handling of cases.

Analysis of the *pro se* data revealed that these litigants thought their cases had taken an average of 6.1 months longer than they believed they should have lasted (please note that this is very similar to what the attorneys answered). *Pro se* cases do, in fact, last longer than a normal case with an average of 14.4 months. However,

it should be pointed out that 22.1% of these cases actually lasted a shorter time than the *pro se* litigants felt they should. Another 11.7% said the case lasted exactly the right amount of time, for a total of 33.8% saying the time was right or short. Again, this demonstrates expeditious handling of such cases.

The attorneys indicated that the original trial date was rarely postponed; only 16.6% answered that their trial was postponed. The vast majority (82.9%) said their trial date was not postponed.[57]

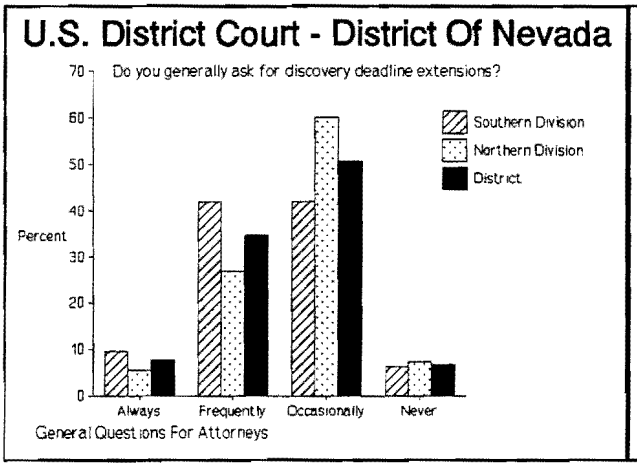

Figure 55

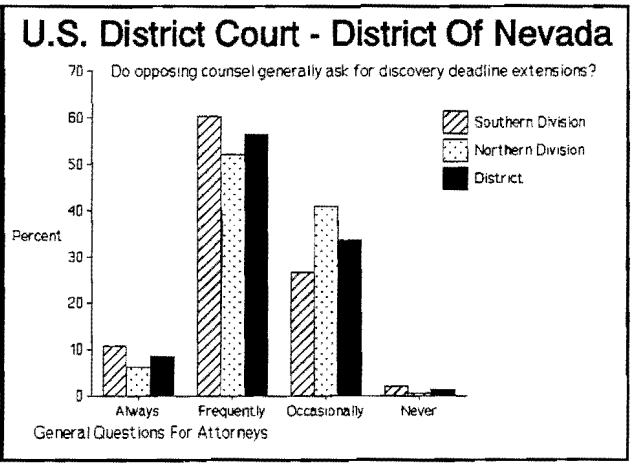

Figure 56

(ii) Discovery.

Certainly one of the most pressing issues associated with delay concerns the (ab-)use of discovery. **Many of the attorneys admitted they "always" or "frequently" asked for discovery deadline extensions** (Figure 55). When attorneys selected answers describing their own behavior, over half (50.8%) responded that they

[57] These data can be misleading because only 3-5% of the civil cases filed in the District of Nevada go to trial. The data indicate that the master trial and stacked calendars have not resulted in frequent postponements of trial dates in this district.

"occasionally" ask for discovery extensions. An additional 34.7% said they "frequently" ask for these extensions, and 7.7% indicated they "always" ask for discovery extensions. The latter two categories total a substantial 42.4%. Attorneys in the southern division were more likely to answer in the higher categories ("always" or "frequently").

Opposing counsel are likely to ask for discovery extensions. When the attorneys described opposing counsel, they (opposing counsel) were characterized as even more likely to ask for discovery extensions (Figure 56). Over half (56.4%) were said to "frequently" ask for discovery extensions. An additional 8.5% "always" ask for such extensions. Only 33.7% "occasionally" ask for them and a minuscule 1.4% were portrayed as "never" asking for these extensions.

Most of the attorneys on the CJRA Advisory Group indicated that they and their opposing attorneys "frequently" or at least "occasionally" asked for extensions of time for discovery issues, a pattern very similar to the general sample. In spite of this, 90.9% of the Advisory Group attorneys said that they did not believe too much time was provided for the discovery of facts.

The Advisory Group made special efforts to probe the issues and problems associated with discovery in a section of the specific case questionnaire. The attorneys were queried about the impact of discovery on the timeliness of litigation. **It was clear that the attorneys were of the opinion that discovery-related extensions had little impact in terms of delay** (Figure 57). Over three-fourths (75.1%) of those

who responded checked that extensions had "no impact" in terms of time in "this specific case." However, the most frequently written comments associated with these questions demonstrated that incomplete discovery forced attorneys into taking action to postpone a trial date, and this was followed by complaints of attorneys taking unnecessary discovery.

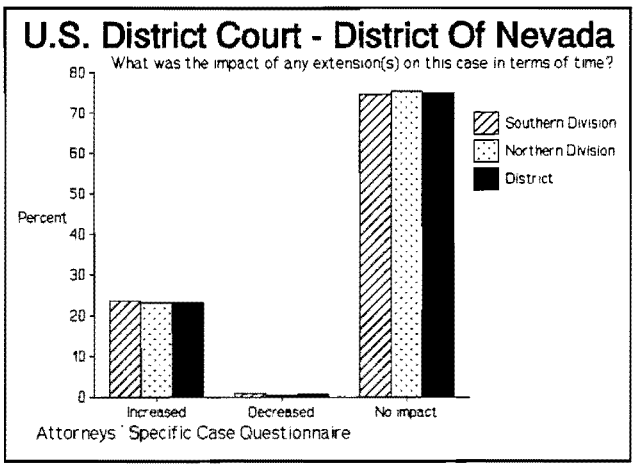

Figure 57

The Advisory Group continued to probe this area with subsequent questionnaire items; one such item attempted to determine how long the extension(s) ultimately delayed the resolution of the case. Less than 20% of the attorneys in the sample answered that question, so the Advisory Group offers this brief analysis with caution. Extensions ranged from only a day to five years. **The average (mean) delay per case (of the less than 20% who responded to this item) due to extensions was 9.4 months.** Median delay was six months. There were no significant differences in the amount of delay between the cases in the northern and southern divisions.

Only 12.6% of the attorneys' specific case answers indicated that discovery

practices other than depositions were responsible for delay in the disposition of the case. "Failure of counsel to respond in a timely manner to discovery requests" was checked on 8.9% of the specific case questionnaires. Each of the following was checked on 3.4% of the questionnaires: "counsel using unnecessary interrogatories," "requests for production of documents," and "requests for admission." And 4.6% indicated there were "unnecessary requests for extension of time by counsel."

The *pro se* litigants' answers were slightly different than the attorneys' concerning the amount of time provided for discovery of facts. Exactly 20% of the *pro se* litigants felt there was not enough time for discovery. In fact, one of the leading complaints was that no discovery was taken in their case. Only 8.1% of the *pro se* litigants said that "too much time was provided for the discovery of facts." A diminutive 2.4% responded that they engaged in "too much unnecessary discovery" while 81.9% indicated that they had "no unnecessary discovery."

The *pro se* litigants were somewhat more critical of their opposing attorneys. The litigants checked that 13.6% of the attorneys engaged in "too much unnecessary" discovery, and a total of 48.1% answered that the attorneys engaged in some degree of this.

Less than one-third (32.1%) of the *pro se* litigants responded that extensions increased the length of their case, 3.8% said they actually decreased the length, another 23.1% chose "no change," and 41% said they did not know if there was any impact. Twenty-one of the litigants gave a quantifiable response as to the increased

length of time, and their average answer was only a 15.8% increase.

The litigants felt "sufficient time was provided for the discovery of facts" (69%). Only 1.4% thought there was insufficient time, while 29.7% did not know. The related question asking about too much time for discovery found only 11.4% agreed with this, while 47.9% said "no," and 40.7% "did not know."

The litigants also had very positive comments concerning their attorneys and discovery. The vast majority (86.4%) did not feel their attorneys had engaged in any unnecessary discovery (Figure 58). The litigants were not as generous in their evaluation of their opponent's attorney(s); 51.5% of these lawyers were said to have engaged in at least some unnecessary discovery (Figure 59).

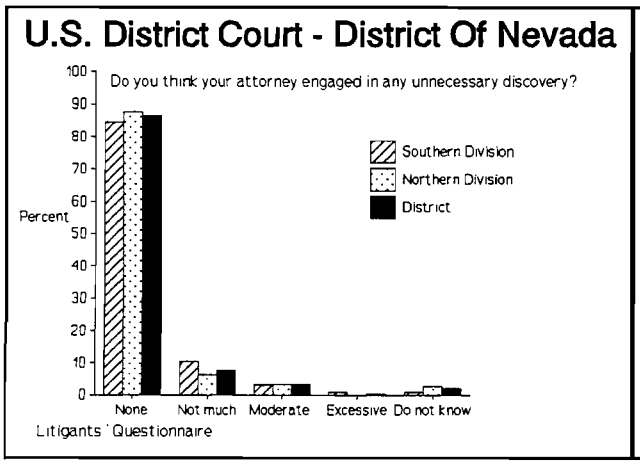

Figure 58

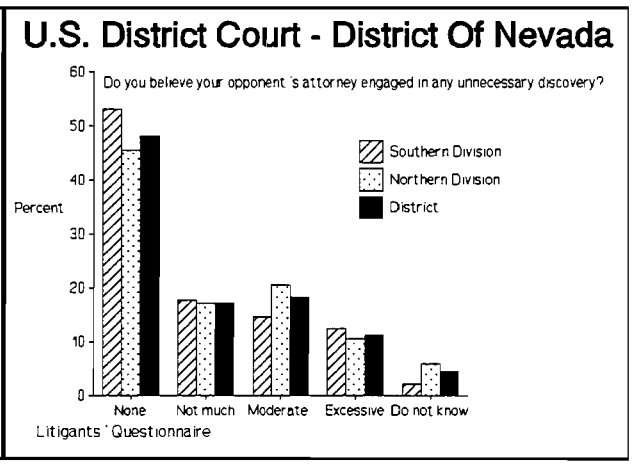

Figure 59

The judges indicated they "frequently" or at least "occasionally" grant discovery deadline extensions. Most said that counsel "frequently" ask for discovery deadline extensions, although one judge responded that counsel "always" ask for discovery extensions.

When the attorneys were asked how discovery might be better controlled, they were definitely divided. Local Rule 190 (pretrial procedure--civil cases) was thought to be sufficient to control discovery motions by 47.4% of the attorneys, but another 42.1% were undecided on this issue, and 10.5% felt it was insufficient.[58] The judges felt Local Rule 190 was sufficient, although one judge wrote that it could be more strictly enforced.

When the attorneys were asked if there should be stricter enforcement of Local Rule 190 only 14.3% said yes, 36.3% indicated no, and 49.4% were undecided. And to make things even more uncertain, only 5.3% of the attorneys said they would like stricter limitations on filing discovery motions. Over half (51.9%) did not want this, and 42.8% responded they were undecided. There was a slight preference for requiring more informal discovery (54.4% vs. 44.7%). There were almost no differences in the percentages between the attorneys in the northern and southern divisions on these items. The majority of judges did not support requiring more informal discovery, but a minority did.

The Advisory Group asked if the use of a joint discovery plan would have facilitated the processing of the specific cases, and only 21.9% of the attorneys checked "yes," while 77.7% selected "no."

A sizable minority of the attorneys (41.4%) said they believed it would be "just

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[58] The CJRA Advisory Group attorneys were much more positive about LR 190. Over seventy percent (72.7%) indicated it was sufficient to control discovery. The same percent felt this rule did not need to be more strictly enforced.

and reasonable" if the courts limited pretrial discovery and motions practice in order to reduce delay, attorneys' fees and costs involved in litigating cases in the federal courts. However, a larger proportion, 58.3%, said they did not agree with this. All of the responding judges indicated they agreed with limitations in at least some cases.

The questions about discovery masters generally received positive answers. Over two-thirds (68.1%) checked that the use of discovery masters would help "alleviate some of the problems associated with discovery," although a substantial number, 30.1%, did not think this would help. On the other hand, when asked if the use of discovery masters would have helped alleviate some of the problems associated with discovery in the specific cases included in the sample, the vast majority of attorneys (84.5%) responded "no."

The written comments to this question (concerning discovery masters) were overwhelmingly favorable (and there were more written comments to this question than any other). Attorneys wrote that discovery masters could save time and money, especially if the masters were readily available on a full-time basis and easily accessible, such as by telephone, to help solve informal disputes. Some attorneys expressed the opinion that the number of discovery motions would be significantly reduced by using discovery masters and cited the successful use of masters in the Nevada state court system.

These comments were positive for both the northern and the southern divisions. Several of the attorneys in the southern division indicated that the magistrate judges

are currently filling a somewhat similar role, and they suggested that the use of discovery masters could free the magistrate judges to conduct more trials.

There were a few negative comments concerning the use of discovery masters. **Some attorneys suggested that a district judge or magistrate judge always commands more respect and would, therefore, achieve a fairer outcome.** Another indicated that a discovery master makes his/her living by working with discovery problems and, therefore, has a vested interest in not resolving such disputes too quickly.

Support for a joint discovery plan or discovery masters was given by only about one-third of the *pro se* litigants (39.3% and 31.3%, respectively). Over half (50.6%) answered "do not know" to the discovery master question, and 45.2% selected "do not know" for the joint discovery plan.

The judges were split on the issue of discovery masters. Their general response was that they would help at least some of the time, such as with complex cases. However, the judges thought that what is really needed is more judges. The magistrate judge in the northern division does not have time to handle all discovery issues.

(iii) Substantive (non-discovery) extensions.

The attorneys were reluctant to admit they asked for extensions regarding substantive (non-discovery) motions (Figure 60). Only 1.9% said they "always" asked for such extensions. A little more than twenty percent (20.7%) answered they "frequently" did so. The majority (59.9%) said they did this "occasionally," and 17.4% said they "never" asked for these extensions.

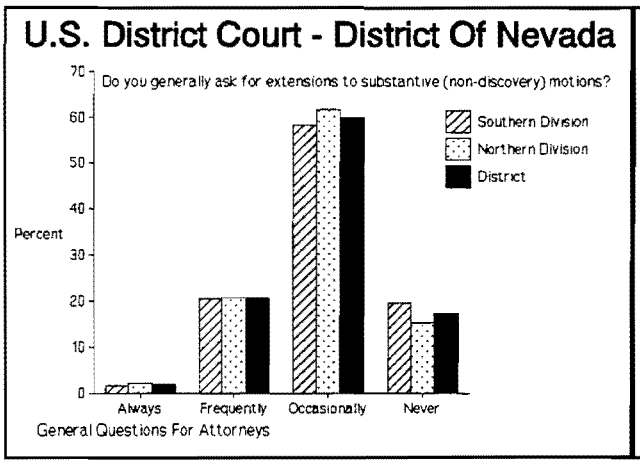

Figure 60

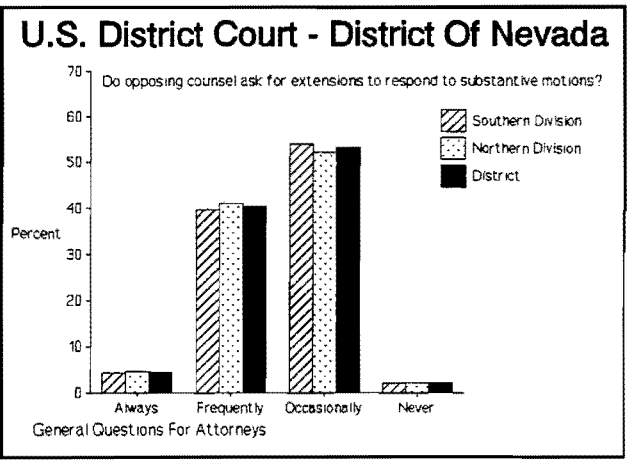

Figure 61

The attorneys felt opposing counsel were more likely to ask for substantive (non-discovery) deadline extensions (Figure 61). Almost half (44.7%) replied that their opponents "always" or "frequently" asked for substantive deadline extensions. Over half (53.2%) answered that opposing counsel "occasionally" asked for these extensions.

A comparison of the data in Figures 60 and 61 with the data in Figures 55 and 56 (page 83) revealed that attorneys were not as likely to ask for extensions of time to respond to substantive (non-discovery) motions as they were for discovery extensions. However, the attorneys' answers to the surveys indicate almost all of them at least "occasionally" asked for extensions concerning substantive motions.

The judges answered they either "frequently" or "occasionally" grant extensions to respond to substantive (non-discovery) motions. They felt counsel "frequently" asked for extensions to these motions, although one judge responded this only happened "occasionally."

(iv) Attorney and litigant-based delay.

One of the ways attorneys can delay a case is by filing **frivolous dispositive motions. When asked if the majority of attorneys consistently file such motions, the respondents clearly disagreed (Figure 62). The judges also disagreed. However, the judges indicated it was much more common in prisoner cases.**

While the attorneys clearly took the position that most of their colleagues did not file frivolous motions, written comments suggest that a small number consistently did so. The judges' answers supported these findings.

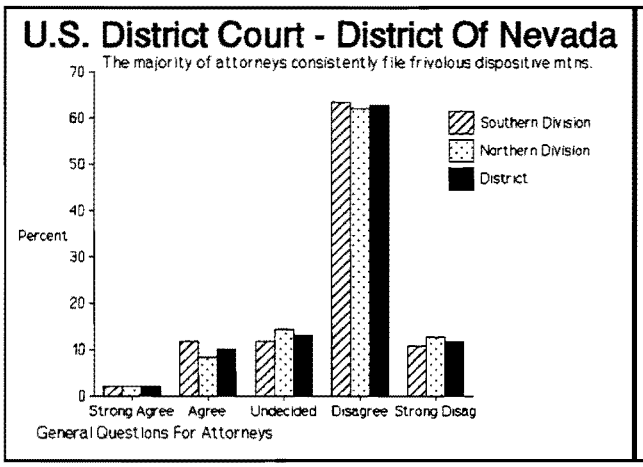

Figure 62

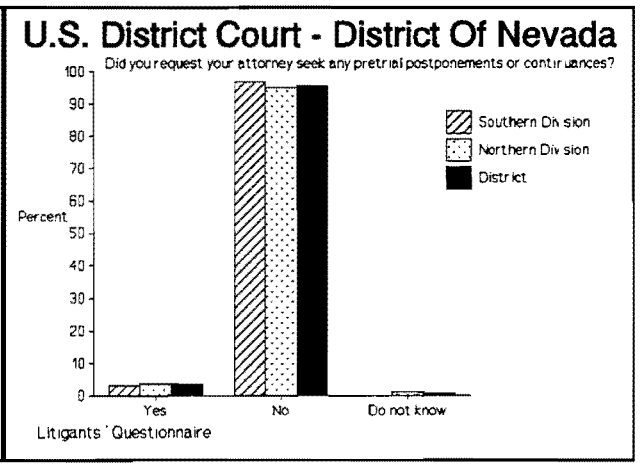

Figure 63

The litigants' responses to the questionnaires revealed that the litigants believed they contributed very little to the delay of their cases. Only 3.5% responded that they had requested their attorney to seek a <u>pretrial</u> postponement or continuance (Figure 63). The litigants were also extremely unlikely to ask their attorney to seek a <u>trial</u> postponement or continuance (97.2% said they did not do this), (Figure 64).

It would also appear from the litigants' answers that their attorneys did not

advise them it was necessary to seek a postponement or continuance (Figure 65). A mere 6.3% of the litigants said their attorneys advised them to seek a postponement or continuance. Only 2.7% of the litigants felt their attorneys caused "substantial delay" in the resolution of their dispute; 76.5% said their attorneys did not cause any substantial delay (although 20.8% replied that they did not know), (Figure 66).

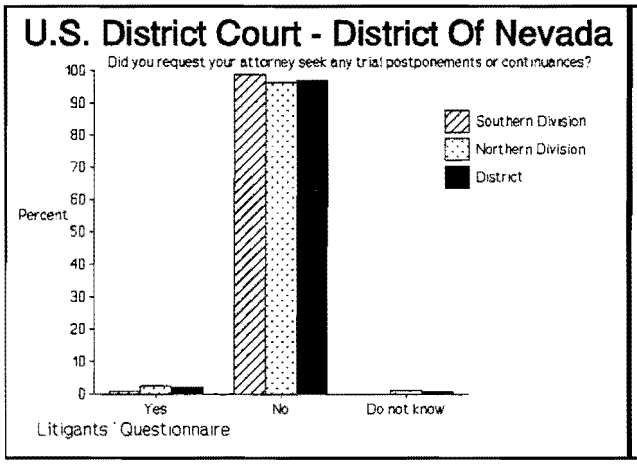

Figure 64

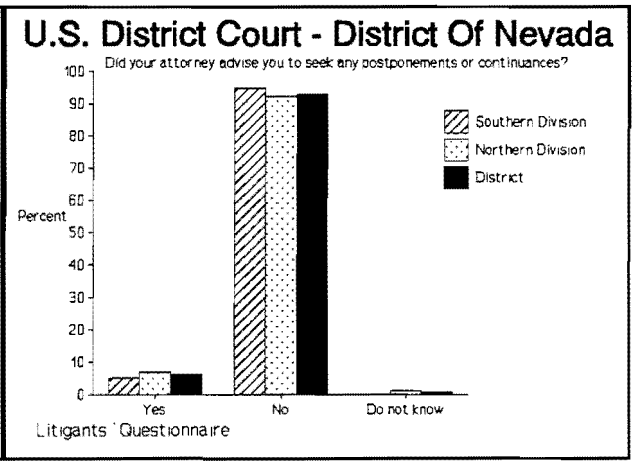

Figure 65

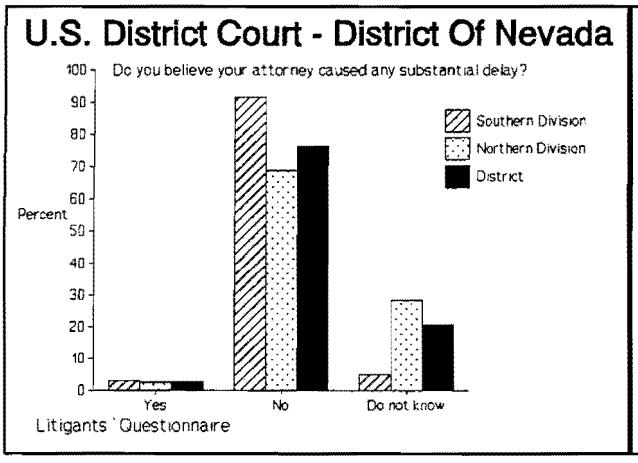

Figure 66

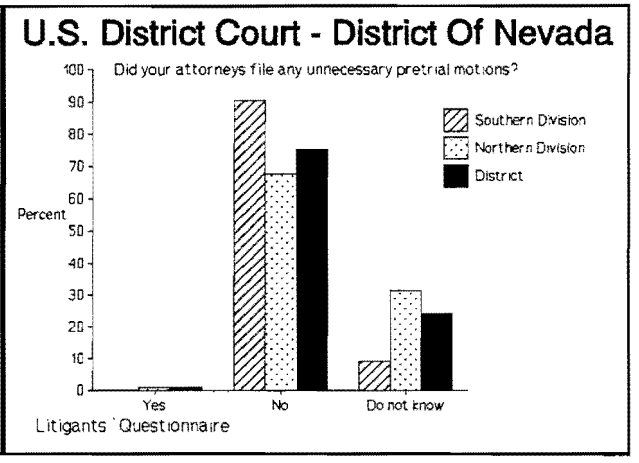

Figure 67

Almost none of the litigants (0.7%) indicated that they believed their own attorney filed any unnecessary pretrial motions, but almost one-fourth (24.1%) said

they did not know (Figure 67). On the other hand, almost one-fourth (24.5%) said that they believed their opponent filed unnecessary pretrial motions, but an even larger proportion said they did not know (Figure 68).

The *pro se* litigants answered that they rarely asked for trial postponements or continuances; only 5.8% had done so. *Pro se* litigants were more likely to ask for pretrial postponements or continuances, but only 11.6% had done so. These percentages are slightly less than those litigants who had attorneys.

Exactly one half of the *pro se* litigants who responded said their opponent had filed unnecessary pretrial motions. An additional 23.9% indicated that they did not know if this had occurred. Only 1.1% of these litigants said that they had filed unnecessary pretrial motions. And a identical 1.1% answered that they had caused any long delay in the resolution of their case.

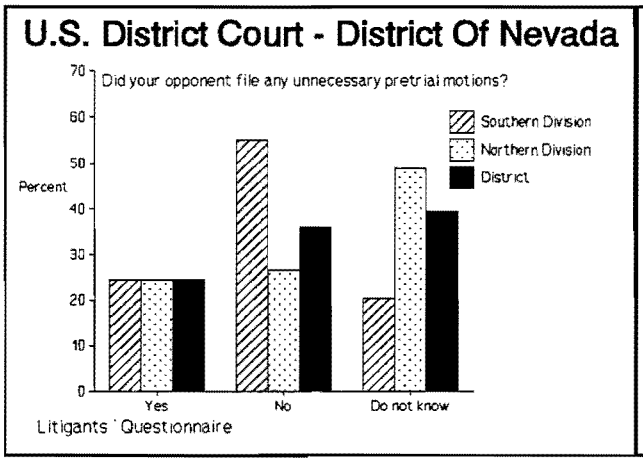

Figure 68

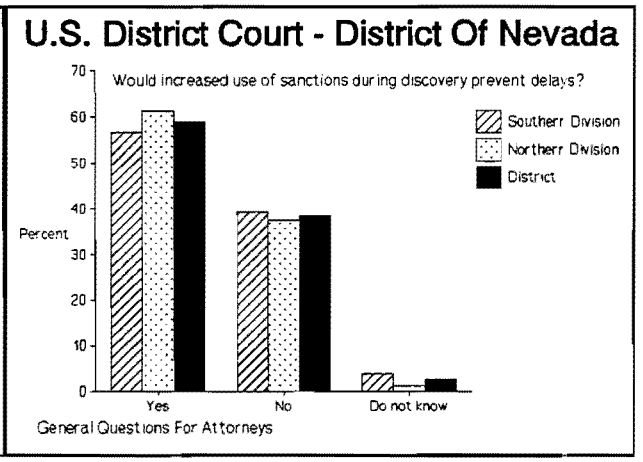

Figure 69

The judges were unanimous in saying that counsel's lack of preparation contributed to delay in the disposition of civil cases. The judges were equally divided

in saying this "occasionally" or "frequently" happened.

The judges wrote that most of the government attorneys "occasionally" contributed to litigation delays in the U.S. District Court. The judges said this was "occasionally" the case for local U.S. attorneys in criminal actions, nonlocal Department of Justice attorneys in civil actions, nonlocal Department of Justice attorneys in criminal actions, the Federal Public Defenders (although one judge indicated this was "frequently" the case for the FPD), other federal agency attorneys, and other local attorneys in civil actions. **The judges' answers singled out the state Attorney General lawyers as "almost always" contributing to delay in civil actions.**[59]

Lack of U.S. District Court litigation experience "occasionally" contributed to the delay of civil cases according to the judges. Some attorneys, especially from out of state, were cited as being unfamiliar with local rules and procedures which caused additional problems in terms of both cost and delay. The judges indicated they always attempt to enforce the rules, but some wrote that this could be more strictly done, especially concerning extensions of time and continuances.

(v) Sanctions.

One of the techniques which judges can utilize to prevent delays is sanctions. **A majority (58.9%) of the attorneys in the district suggested that sanctions should be used more often to prevent problems of delay during discovery** (Figure 69). There

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[59] The Advisory Group recognizes that the state Attorney General lawyers are working under severe budgetary and staffing limitations and an extremely heavy caseload.

was a slightly larger percent of attorneys in the north than in the south who took this position, but the majority clearly favored the use of sanctions.

The use of sanctions received support in the written comments to several of the questions. One attorney practicing in the southern division not only called for sanctions, but "terminative sanctions" in response to question 18 on the general questionnaire which asked about ways to reduce delay in disposing of civil cases in this district. Another attorney practicing in the northern division wrote "more frequent use of available sanctions to curb discovery abuses is the only way and is seldom used." Requests for the use of sanctions was a common theme in the responses to this question.

The judges believed sanctions should be used conservatively and with caution. Some indicated they did not believe there should be an increased use of sanctions. Other judges concurred and went on to say that the court should be cautious using sanctions, but they should use them. The judges expressed their opinion that requests for sanctions should not be a routine part of motions because it just creates more paperwork and takes time. One judge wrote that magistrate judges and district judges should use sanctions more often, especially pursuant to Fed. R. Civ. P. 37. However, s/he urged that the judges be cautious concerning the use of sanctions under Fed. R. Civ. P. 11.

(vi) Court-caused delay.

The attorneys believed the judges delayed rendering decisions on dispositive

motions. Question 35 (general questions for attorneys) asked if the court caused delay in rendering decisions on dispositive motions. The attorneys' answers suggested there was a problem in this area for the whole district. Over half (57.4%) indicated this happened "sometimes," and an additional 17.3% said it "almost always" happened (Figure 70). These answers showed some differences in the attorneys' perceptions of the court's action in the northern and southern divisions. The attorneys thought the judges more frequently delayed reaching decisions on dispositive motions in the southern division.

Not surprisingly, the judges disagreed. All but one checked they "rarely" delayed their decisions, and that one checked "never," unless asked to by the parties pending settlement. To quote one judge, "We do not have the judicial person-power to give curb service. We try to stay on a cycle of no more than 60 days."

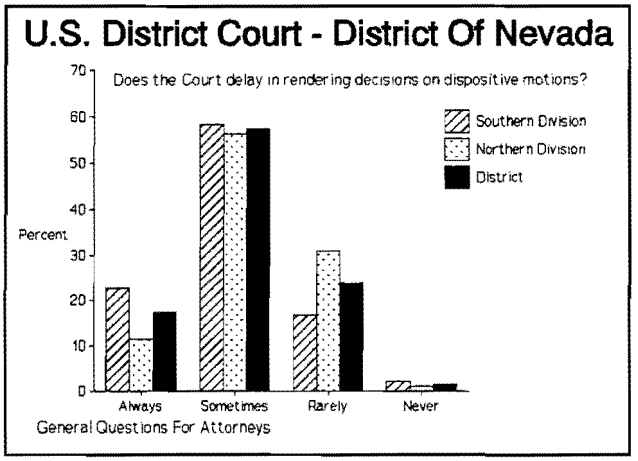

Figure 70

The lack of numerous responses to items asking about court-caused delay can be interpreted as indicating there were few significant court-caused delays. The

specific case questionnaire contained two lists of items that attorneys could rank as reasons which contributed to their case taking longer than it should have (if it did take longer than they thought was reasonable).[60] These items could be ranked from one to thirteen. The items on these lists of possible causes of delay received only a few responses. Most of the items were not statistically significant because well over 85% of the attorneys did not answer that any of these were causes of delay.

Some of the items which were chosen by at least 5% of the attorneys and which were statistically significant included the following: 12% said the court had failed "to rule promptly on motions." Just over ten percent (10.6%) indicated delay was caused by a "backlog of civil cases on the court's calendar." Almost ten percent (9.6%) chose an answer saying there were "not enough judges." "Inadequate case management" by the district court judge was selected by 8.9% of the attorneys. The "backlog of criminal cases on the court's calendar" was cited by 7.1%. **It is especially noteworthy that <u>none</u> of the items for the magistrate judges had more than a 1.6% response rate and, therefore, were not statistically significant.**

Almost a majority of litigants (48.1%) answered, "no," when they were asked if the court's schedule led to the postponement or continuance of their trial. Another 44.3% said they did not know. Only 7.7% responded that the trial had been continued or postponed.

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[60] See a copy of the specific case questionnaire which is included in Appendix B for a complete listing of the items included on these questions.

A majority of litigants (51.2%) said the judicial process did not cause any delay in resolving their dispute. Over one-third (33.8%) did not know, and only 15% indicated that the judicial process had contributed to substantial delay.

Unquestionably, it is even more noteworthy to consider the positive responses because they outweighed the negative ones. As one attorney wrote, "I have no criticism of the federal judges in Nevada." Another wrote, "Judge (xxxx) did an excellent job of presiding over trial." Still another wrote, ". . . (the) magistrate judge conducted (an) excellent settlement conference in (a) complex consolidated case and handled two telephone discovery conferences very well." "This case was 75% settled by magistrate at settlement conference requested by plaintiffs. Magistrate did an excellent job. The balance was settled the morning of the trial. Like many cases it could not be settled until the trial was eminent (sic)." "The most helpful aspect was the settlement conference with Magistrate (xxxx). That settled the case. He was well-informed in specifics of the case and clear with parties as to his views of the case." Yet another wrote, "I was pleased (with the judge)." And another wrote that s/he was "generally pleased with the federal court system in Nevada." "Well-written opinion by Judge (xxxx)." "The case settled largely because of the positive involvement of Judge (xxxx) at pretrial conference. He was familiar with the case, clear and firm in his evaluation of each party position and even did some effective arm twisting." "Judge (xxxx) was great in this case . . ." "(B)oth federal district court judges (xxxx and xxxx) and their clerks were exceptionally qualified, courteous and

fair. My normal practice is in (a district in a neighboring state) and the positive difference in treatment in Nevada was very obvious and a pleasant welcome." "Judge (xxxx) is an excellent and fair judge."

There were a small number of written complaints that the court had taken too severe a position in limiting discovery. These included refusing to grant discovery extensions and keeping discovery time limits too short. There were also some criticisms concerning the amount of time the court took to rule on discovery motions.

These findings can be contrasted with 17.9% of the specific case questionnaires which indicated there were dilatory actions by counsel and 14.8% which said dilatory actions by litigants. These answers were for items contained in the same two lists of potential causes of delay discussed above. **The items concerning dilatory actions by counsel and litigants had higher percentages of responses than any of the court-related answers on the same lists.** It is obvious that the attorneys in these specific cases believed counsel and litigants were greater sources of delay.

Several of the written comments pointed specifically to delay caused by dilatory actions of litigants, most notably *pro per* and inmate litigants. Such complaints were common in the northern division. Four attorneys asked the judges to make the *pro per* litigants and prisoners follow the federal court rules "just like everyone else."

A word of caution is advisable concerning *pro per* and prisoner cases. One attorney wrote that his/her case was a prisoner medical case. "I believe the prison authorities intentionally delayed this case, I do not believe the state AG was

responsible for much of the delay; I believe that Judge (xxxx) did all he could to move the case along; once I got into the case it proceeded to a speedy resolution all things considered; part of the problem is the inability of prisoners to obtain lawyers to help them with these types of cases."

Overall, the number one reason cited in the attorneys' written comments concerning court-related delay was the insufficient number of district and magistrate judges.

One should be cautious in assessing the impact of "delay." It is not always negative concerning the disposition of a case. A number of attorneys wrote that in some cases more discovery, depositions, continuances, and/or settlement conferences may lead to the final disposition of a case in a more timely and cost effective manner than limiting these aspects of the litigation process.

One litigant did not actually attribute delay to the court, but suggested that the court was part of the problem by the ". . . unwillingness of the court to require litigants to meet deadlines and the willingness of the courts to accept run-of-the-mill excuses for discovery abuses."

Some of the *pro se* litigants were critical of the court. They accused the judges of not ruling on motions quickly enough, yet other *pro se* litigants complained that the judges ruled too quickly on motions. There were several complaints that the judges allowed the state Attorney General's lawyers to file late motions and pleadings, and that the court was biased in the state's favor and against the prisoners. They were

also critical that the court would not appoint counsel to represent them. Prisoners made the argument that attorneys could have more quickly resolved the case. There were numerous written responses that the judges did not allow discovery or there were other discovery-related problems.

(A) Differentiated case management.

There seemed to be a widespread consensus among the attorneys favoring differentiated case management (Figure 71). Almost eighty percent (79.8%) indicated a preference for this. The CJRA Advisory Group also provided strong support for differentiated case management with 72.7% answering that the court should consider implementing this type of program.

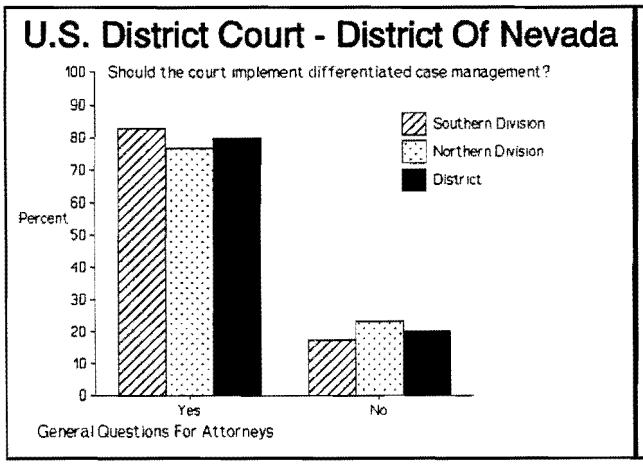

Figure 71

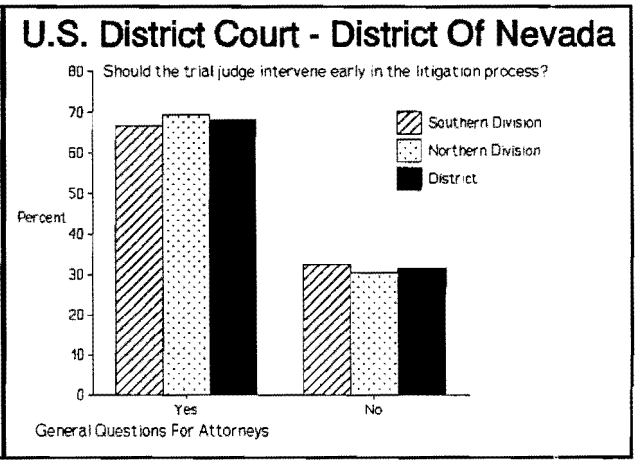

Figure 72

Nevertheless, the majority of the attorneys' answers did not call for more case management than currently takes place. The item in the specific case questionnaire produced 34.6% of the cases managed at a moderate level, while none of the other categories, ranging from "intensive" to "none," had as high a response rate. Only

14.8% of the cases sampled by the specific case questionnaires had a judicially hosted settlement conference. Nonetheless, 72.4% did not believe more effort should have been used early in the process to narrow issues. And 68% demonstrated a preference for the district's normal practice of issuing a standard scheduling order for these specific cases instead of conducting a scheduling conference.

The attorneys generally favored having the trial judge intervene early in the litigation process (Figure 72). They also believed the trial judge should conduct an initial pretrial/scheduling conference (Figure 73). These findings came from questions on the general questionnaire and contradicted the findings from the specific case questionnaires discussed in the immediately preceding paragraph.

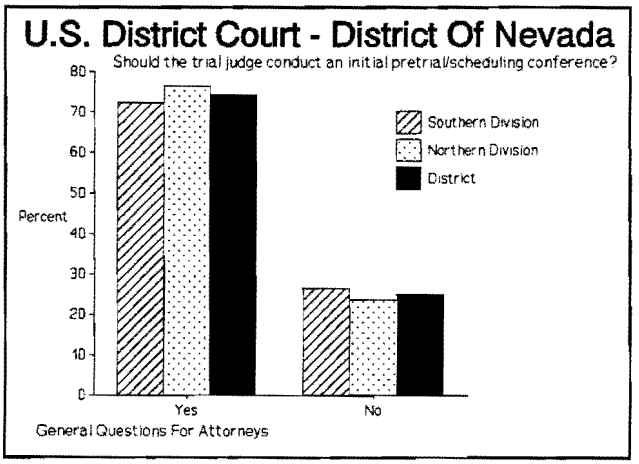

Figure 73

The vast majority (81.8%) of the attorneys in the CJRA Advisory Group indicated that the court could help avoid delay by narrowing issues early in the litigation process.

The judges opposed the implementation of a mandatory program of differential

case management at the time they completed their questionnaires. Their responses indicated that they believed differential case management is a good idea on a theoretical level, and they do it now on an individual (case-by-case) basis, but it would not be possible to fully implement a system for the district because of the shortage of judgeships. Additional judgeships would permit the court to use additional case management techniques more frequently and to set early, firm (and realistic) trial dates. The judges indicated that the current lack of judgeships made it difficult to control discovery, to set and maintain deadlines for filings, and to dispose of motions.

The judges said they agreed that complex cases deserve special treatment. Such cases should be considered for judicially-hosted settlement conferences. There should be staged resolution or bifurcation of issues, and a discovery schedule should be prepared (although not necessarily a complete discovery plan).

The judges answered that they agree that counsel should be required to present a joint discovery-case management plan, but mainly for complex cases, not all cases. The majority of judges favored the continuation of the court's present policy of not having a district judge conduct an initial pretrial/scheduling conference. The judges base their opposition on the insufficient number of judges allocated to the district.

They also agreed that each party should be represented at each pretrial conference by someone with authority to bind the party in all matters identified by the

court for discussion at the conference and all reasonably related matters.[61] The judges are currently doing this, although some require parties to be physically present and do not conduct these conferences by telephone.

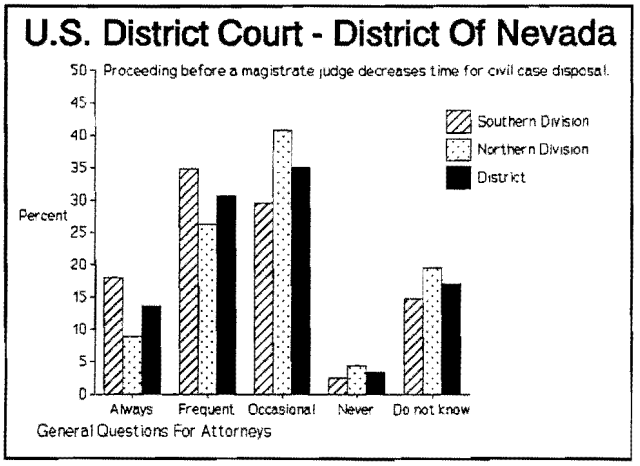

Figure 74

(vii) Proceeding Before a Magistrate Judge.

One of the currently available ways to speed up the litigation process for civil cases is consenting to proceed before a magistrate judge. A substantial majority (79.3%) of the attorneys in the sample answered that this would decrease the amount of time required to dispose of a civil case (Figure 74). Nearly half (44.3%) answered this would "almost always" or "frequently" decrease the amount of time to dispose of the case. Over thirty-five percent checked that proceeding before a magistrate

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[61] The Advisory Group recognizes that attorneys representing a governmental party may not have the authority to bind the party in all matters. It also acknowledges the provisions of 28 U.S.C. § 473(c) as being applicable to pretrial conferences, but urges relevant government entities assure that its counsel are vested with as much binding authority as is feasible at all pretrial conferences.

judge would "occasionally" decrease the amount of time, and perhaps just as significantly, less than four percent answered that this would "never" decrease time for civil case disposal.

The CJRA Advisory Group answered in a somewhat similar pattern. Over thirty-six percent (36.4%) said consenting to proceed before a magistrate judge "almost always" or "frequently" saved time. The remainder indicated that this "occasionally" saved time.

The judges responded that proceeding before a magistrate judge would either "frequently" or "occasionally" decrease the amount of time required to dispose of a case. Some qualified their answers indicating that if a high percentage of parties began consenting to proceed, then the magistrate judges would develop their own trial backlog. The problem is complicated in Reno because the northern division has only one magistrate judge. If she were required to conduct more trials, she would have diminished time to devote to the other assigned duties which would increase delays in those areas.

There was support among all of the responding judges for referring some dispositive motions to magistrate judges. **Using the magistrate judges for non-dispositive motions saves time in the southern division.** Following a similar vein of questioning, the Advisory Group asked if the current practice in the southern division of automatically referring all nondispositive motions to a magistrate judge helps save time. Well over half (54.4%) of the attorneys in the southern division said that this

practice did save time and only 14.4% answered that it did not. It was telling that 31.1% checked they did not know if this practice saved time. Perhaps this was an indication that a substantial number of attorneys have limited experience with the magistrate judges and were unfamiliar with the potential benefits of proceeding before them. (Because this is a technique employed only in the southern division, it is not surprising that almost three-fourths, 73.4%, of the attorneys in the northern division indicated they did not know if this practice saved time.)

The CJRA Advisory Group attorney members were even more supportive of automatically referring nondispositive motions to a magistrate judge (72.7%). The responding judges unanimously supported this as well. They generally would be willing to refer all pretrial nondispositive matters to magistrate judges, and some judges indicated they would refer selected dispositive matters as well.

The judges wrote that a magistrate judge generally should not conduct an initial pretrial/scheduling conference, and the explanation given was that the district lacks sufficient judgeships to do so. The judges prefer to rely upon scheduling orders at the present time.

(viii) Visiting Judges.

The extensive use of visiting judges is yet another way delay has been reduced in the district. **Attorneys' answers to the open-ended questions consistently demonstrated that visiting judges ". . . help relieve an overburdened system . . ."** and help ". . . our judges who are overloaded, but doing an outstanding job even with a

heavy case load." Visiting judges facilitate clearing the calendar, and many civil cases would be delayed substantially longer than they currently are without the assistance of "excellent visiting judges."

The Advisory Group found many positive, if not outright glowing comments, about the abilities of visiting judges. For example, "Judge (xxxx) performed admirably in view of a tough case with tough legal issues. He was excellent and I recommend we use him more often, if he is willing to do so."

Many of the CJRA Advisory Group members supported these positive comments. One attorney wrote that visiting judges were "vital" in Las Vegas for handling the excessive caseload. Visiting judges were said to provide increased motivation for settlement.

The negative side of using visiting judges was expressed by only a small minority of attorneys. They opined that visiting judges may not have sufficient familiarity with the matters they are hearing because of Nevada's relatively unique characteristics, most notably, gaming.

Some of the CJRA Advisory Group members wrote that visiting judges were not as capable as the judges in the District of Nevada. At least one member of the group believed visiting judges "have been uncivil, unpredictable, and too expensive."

The judges wrote that visiting judges were absolutely essential: "(W)e could not have survived as a court without them."

(ix) Criminal Caseload.

The judges clearly identified the heavy criminal caseload as a contributing factor to delay in the disposition of civil cases. Three-fourths of the judges answered that this was "almost always" a contributing factor, and the remaining one-fourth said that this was "frequently" the case.

The district judges said they spend 70-80% of their trial time on criminal cases. The judges wrote that the "Speedy Trial Act" had made it necessary for them to give priority to criminal trials, and the consequence has been a negative impact on efficiently processing civil cases.

The "Sentencing Reform Act" has made it necessary for the judges to spend more time out of court preparing for criminal cases. The judges indicated it had doubled the necessary preparation time for sentencing hearings. There are more contested sentencings, more written objections and responses filed which have to be reviewed. The law in this area is developing rapidly, with new cases being decided almost daily. The judges felt they need to devote time to remain knowledgeable with the applicable opinions.

The judges were of the unanimous opinion that the "Sentencing Reform Act" had reduced the number of guilty pleas and caused more defendants to go to trial. This is especially true for the "mandatory minimum" sentencing provisions which are a particular set of incentives for defendants to choose to go to trial.

The "Bail Reform Act" was generally felt not to have increased the judicial

workload. Only one of the district judges answered that this Act had increased their workload. Pretrial Services was mentioned as helping the district judges save considerable time in this area. The magistrate judges indicated that this Act had caused them more work and, therefore, created some delay in processing civil cases.

(x) Prisoner Cases.

Because of the extraordinary volume of prisoner cases in the district, the judges were specifically asked about them. Their responses were varied and included the following ideas. There is a need for more judges and a prisoner alternative dispute resolution program. Congress needs to take meaningful action to limit meritless *habeas corpus* petitions. A significant problem is the number of meritless 42 U.S.C. § 1983 actions. **Meritless prisoner civil rights cases are the biggest problem as far as wastefully consuming the court's time.** The judges suggested the need for a special master to exclusively hear these cases. There should be a status conference at least every six months concerning death penalty cases stayed for exhaustion of administrative and state remedies. "Prisoner civil rights cases are a much bigger problem than *habeas corpus* cases so far as consuming the time of the court."

(c) Cost and Delay.

The following subsections under this heading discuss findings from the questionnaires which could not be easily analyzed in the separate categories of cost or delay. These materials include the attorneys', litigants', and judges' suggestions for alleviating associated problems.

(i) The need for more judges.

The attorneys' written comments demonstrated that they believed the most important reason contributing to costs and the delay of trial dates for civil cases was the shortage of Article III judges in the district and the large number of criminal cases which, because of the Speedy Trial Act, take precedence over civil cases.

Overwhelmingly, the most common written response to question two on the general questions for attorneys was that the district desperately needs more judges (both district and magistrate judges). Attorneys from both unofficial divisions felt their division needed additional judges. With the death of Judge Thompson in the northern division, a number of attorneys expressed the opinion that at least two additional full-time district judges were needed there. Others called for as many as three full-time district judges in the north, plus more magistrate judges and their increased use in both divisions.

Attorneys in the southern division were at least as adamant. They trumpeted the call for more district judges in the south and more magistrate judges throughout the district, and some expressed the opinion that it is presently necessary to bring Judge McKibben down to the south on a permanent basis.

There is no question the attorneys strongly believed that <u>both</u> the northern and southern divisions are woefully understaffed in terms of district judgeships, magistrate judgeships, and courtroom facilities.

The attorneys on the CJRA Advisory Group also felt the District of Nevada

needs more judges. The majority of the Advisory Group indicated the next two judges should be headquartered in the southern division, but there is a definite need for a third permanent judge in the northern division.

The inadequate number of judges in the District of Nevada was the most often cited reason for delay by the litigants on their questionnaire. Likewise, the number one problem from the judges' perspective was the inadequate number of district and magistrate judges and support staff.

(ii) Frivolous cases.

Many litigants (including some of the prisoners) felt that the majority of prisoner civil rights cases were frivolous and have suggested specific remedies. It is not surprising that because of their inordinately large number, especially in the northern division, prisoner cases generated many comments. There was a substantial amount of complaints from litigants in northern division cases concerning what they perceived to be frivolous inmate civil rights cases.

These cases led one attorney to suggest Congressional action concerning civil rights actions filed by inmates. S/he believed that if the court finds the action is frivolous, **the court should have the power to increase the inmate's sentence an additional 6 months to 2 years for each frivolous action filed.** Many of the litigants' answers echoed this frustration, if not the draconian solution. Some called for the **formation of a panel to review inmate cases and dismiss those perceived as frivolous. Other litigants wanted inmates to pay the same fees as anyone else. And still others**

bluntly stated that inmates should not have any civil rights until they are released from prison.

In a related discussion, a litigant noted that many ***pro se*** **plaintiffs ought to be prohibited from filing claims without prior court approval.** S/he suggested a screening panel to review claims and to make sure they will survive a motion to dismiss.

One litigant asked that the court hold more case management activities and trials at the prisons. Should this be done, it would add to costs for the judges and support staff to go to the prisons, and it would take time away from their regular court activities. However, in the overall picture, it might prove to be more efficient by enabling the court to conduct a greater number of hearings for prisoners in an overall shorter amount of time. It is also possible that this would significantly reduce costs for prisoner transportation (including associated U.S. Marshal costs) and reduce potential danger to the public.

Without a doubt, one of the most frequently reoccurring themes addressed in both the attorneys' and litigants' written comments concerned frivolous cases. Both groups expressed their opinion that the court should better be able to stop frivolous litigation. One attorney wrote,

> ". . . under the present procedures parties must go to the expense of discovery before they can bring a motion for summary judgment which is also expensive. Most judges are reluctant to grant a motion for summary judgment even though eminently justified. Frivolous claims and defenses are filed for reasons other than resolution of legitimate differences of opinion. A preliminary review procedure could discourage such tactics, especially when coupled with sanctions . . . ."

(iii) Review of cases.

The Advisory Group made a special effort to ask questions to determine if delays caused attorneys to repeatedly review case materials at an otherwise unnecessary additional cost to their client. **In responses to specific case questionnaires, the vast majority of attorneys (87.5%) said that delays did not cause reviews which significantly added to the costs of the case** (Figure 75). Furthermore, 93.8% answered that continuances did not necessitate repeated reviews of the case and did not significantly increase the costs (Figure 76).[62]

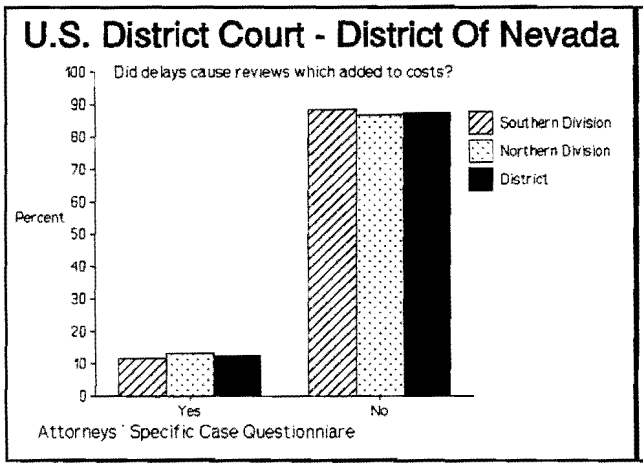

Figure 75

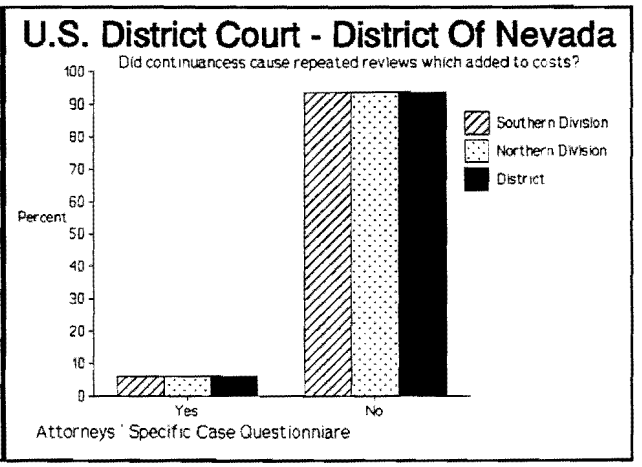

Figure 76

It is certainly significant that a number of attorneys and litigants wrote they did not believe that delay was a problem in this district and that a number of sections of the questionnaire were, therefore, irrelevant. To offer some quotes, "very prompt and proper handling." One attorney who normally practices outside of Nevada wrote, "I

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[62] In contrast, the CJRA Advisory Group attorneys (63.6%) felt that continuances usually necessitate repeated reviews of a case, and this contributes significantly to the increased cost of a case.

thought the district was very efficient compared to (several other districts)."

(iv) Master trial and stacked calendars.

Answers to both the fixed-response and open-end questions revealed the attorneys recognized that (following the district's lack of judgeships) a substantial part of the problems associated with delay comes from the backlog of criminal and civil cases on the court's calendar.

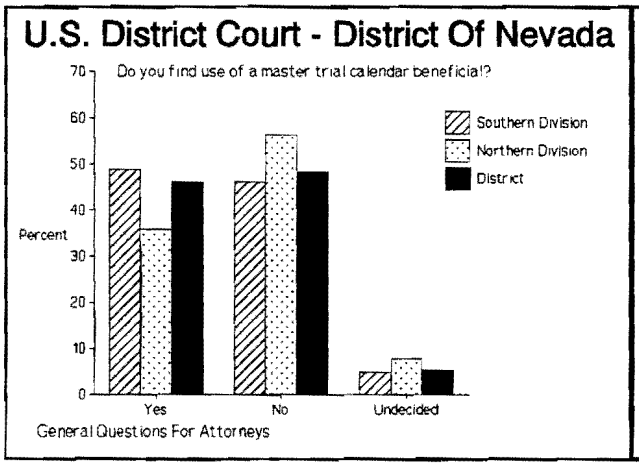

Figure 77

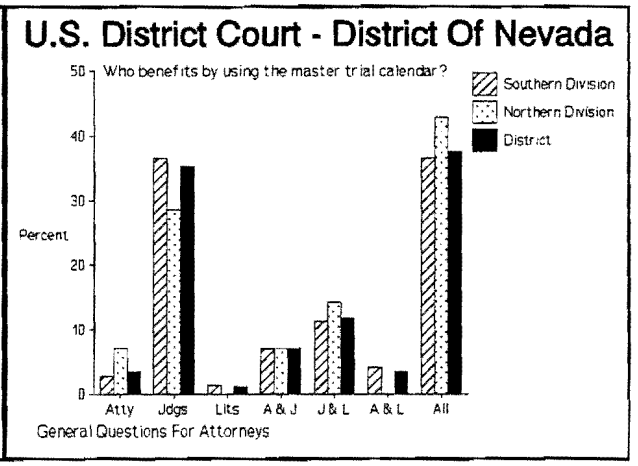

Figure 78

Probably the most controversial technique used in the district is the master trial calendar[63] utilized in the southern division. **Less than half of the responding attorneys (46.2%) felt that the master trial calendar was "beneficial"** (Figure 77).[64]

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[63] The master trial calendar (Las Vegas) contains a stack of criminal and civil cases (the latter "trail" the criminal cases). The first available judge takes the next case on the master trial calendar. This permits the district judges to have virtually no "down" time and cases to move more quickly through the district court.

[64] A brief explanation of the statistics shown for Figure 77 is necessary. The statistics for both divisions rely upon an unusually small number of answers. The data for the northern division came from only 14 cases. This can be explained because so few attorneys in the northern division practice in the southern division.

Of the minority of attorneys who indicated the master trial calendar was beneficial, only a little more than one-third (37.6%) said it benefitted everyone (attorneys, judges, and litigants). Another 35.3% said that only the judges benefitted from the master trial calendar (Figure 78).

The attorneys' written comments confirmed they were cognizant that the master trial and stacked calendars resulted in getting more cases to trial in a shorter timeframe. They also stated that it benefitted the judges, but there were virtually no comments stating they believed it was beneficial to themselves or their clients.

The attorneys on the CJRA Advisory Group provided a set of responses which differed somewhat from the sample of attorneys. A majority of those who practiced in the southern division indicated that the master trial calendar was beneficial, but like many of the attorneys in the sample, the only ones they selected as benefitting were the judges.

The next question asked if the attorneys believed that the use of a stacked calendar has helped the Court settle more cases. **A majority (61.1%) indicated that this type of calendar has helped the court settle cases** (Figure 79). It was interesting to find that attorneys practicing in the southern division were less favorably disposed

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Even the statistics for the southern division are based on the relatively small number of 71 cases. It is not immediately apparent why so few attorneys who had cases in the southern division answered these questions. It is possible that many attorneys, particularly those from out of state, do not regularly practice in the District of Nevada so that they have not gained sufficient experience to evaluate the calendaring systems in question.

to this type of calendar (56.5% vs. 66.9%) than their colleagues practicing in the northern division.

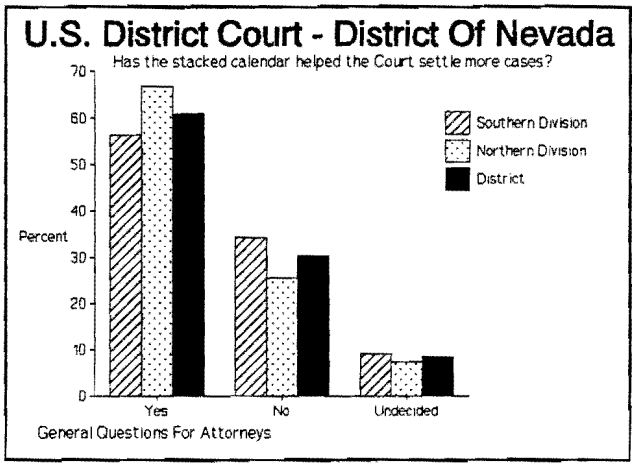

Figure 79

Many attorneys strongly oppose the master trial calendar used in the southern division. Written comments repeatedly voiced the sentiment that arranging the trial of civil cases using this technique does not provide the attorneys, clients or their witnesses certainty as to when their case will be heard.

One attorney expressed his/her displeasure as follows, "It is a total waste of time for me to appear before a master calendar judge, since if you are in the civil stack, you simply are not going to go to trial. Therefore, I am instructed to appear at the pretrial conference, subpoena all my witnesses, yet in the past year, not one of my cases has gone to trial." Another lawyer wrote, "the schedule for out-of-state parties and witnesses is intolerable." Still another penned, "It's a nightmare if you can't settle your case, especially if you have out-of-state witnesses. It can cause extreme prejudice in some cases through no fault of a party." One attorney was

especially vehement in his/her answer, "(The) stacked calendar is an abomination which severely impedes witness presence and preparation."

The attorneys voiced numerous complaints, but some cut right to the heart of the two main foci of the Civil Justice Reform Act, cost and delay. First, in terms of cost, the lawyers argue that because there is no certain, fixed trial date for their civil cases, they must attempt to maintain a more or less ready state to go to trial. They wrote that lawyers are sometimes given only one or two days notice that their case will actually be going to trial and "is no longer in a holding pattern." This has forced them to repeatedly review their cases at additional costs.[65]

The lack of certainty concerning the trial date has resulted in some attorneys being unable to advise their witnesses when they will need to appear. A few attorneys said this has resulted in some witnesses being unavailable.

The uncertain trial date has been an inconvenient and costly factor according to at least some of the attorneys practicing in the U.S. District Court, District of Nevada. They have noted that as their potential trial date approaches (as their case moves further up the stack), they must restrict their other activities. They know that their case could go to trial at any time as many of the cases ahead of them in the stack settle, therefore rapidly advancing the trial date. Lawyers have complained that

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[65] This point is not fully supported as one can see in their responses to item 19 on the specific case questionnaires and discussed earlier in this report (p. 114, Figure 75), where over 80% of those responding indicated such reviews did not significantly increase the costs of that case.

such uncertainty has necessitated they remain close at hand rather than having the greater freedom associated with a fixed date. As an example, one lawyer noted that these restraints virtually prohibit them from going out of town or out of state to take depositions because they might have to inappropriately end a deposition or have to make arrangements for returning at considerable expense (additional plane fare, hotel costs, etc.) to their client to finish conducting other depositions.

The lawyers answered that the master trial and stacked calendars help the court handle more cases and thus reduce delay. The second issue of central importance to the Civil Justice Reform Act concerns delay. Only a handful of the attorneys' comments addressed this issue in terms of the master trial and stacked calendars. Of those few who did mention this point, all of them indicated these calendars permitted more cases to be tried in any one period. Therefore, it is logical to assume delay is reduced.

However, there were many more comments that pointed to problems of increased time (and cost, as mentioned earlier) needed to educate another judge about the case if the assigned judge does not hear the case. A third issue that the attorneys raised in their written responses concerned the lack of judicial continuity in civil cases. Lawyers wrote that having one judge to manage and hear the case from beginning to end can save both time and money. They suggested these savings are accomplished in several ways. Having one judge means that both sides do not have to spend additional time and, therefore, more of their clients' money to re-educate another

judge about the intricacies of their case. As one counselor communicated, "It is absurd when parties have to spend great amounts of money educating a judge on a particular case and another judge ends up hearing it." This point was repeatedly made, and it was especially emphasized when it comes to complex cases. The lawyers suggested a judge who has heard all of the motions is in a better position to try the case than one who did not hear them.

A related point was made by some attorneys who said that having the same judge for the whole case permitted them to provide their clients with better information about how the judge is likely to rule on motions, issues and the case as a whole. The lawyers are able to form a coherent strategy for managing and presenting their case to the court rather than spending more time and money if they are confronted with different judges at different stages in the progression of the case.

A fourth issue (related to the master trial and stacked calendars), which is not one of the two main themes of the Civil Justice Reform Act, but is an integral component of our justice system, is fairness. This theme was mentioned not only by attorneys in the southern division, but those in the north as well, as can be seen in the quotes which follow. "The system is unfair to attorneys and litigants by placing them on a fence and waiting months for a possible trial." "It is an extreme imposition on the lawyers, parties, and especially the witnesses; it results in aberrant trials, where careful preparation can be undone by exigencies of this system." "No, I hate the trailing stacked calendar more than any other single feature of federal practice.

It is an incredible imposition on the parties and witness scheduling, especially in complex cases and it is an extra burden on the plaintiff who has to go first and therefore be prepared to gather recalcitrant experts and doctors from hither and yon at very short notice."

A number of attorneys, notably those from out of state, felt the stacked, master trial calendar was potentially unfair to them because of the relative unpredictability of the trial date, which has resulted in witnesses being unable to attend a trial that is scheduled on short notice.

Related to the fairness issue, attorneys were concerned about the lack of certainty and potential conflicts concerning trial dates when attorneys have cases before the state court and the federal court at the same time.

The attorneys' written answers to question 14 (General Questions for Attorneys), which asked if the court's use of the stacked calendar has helped the court settle more cases, were not much more positive. "Yes, but with damage to the system because parties end up feeling it is better to settle because they are at the mercy of the stacked calendar or can never get commitments from crucial experts to appear at some unknown time when the 'stack' beckons." One attorney wrote that the stacked calendar probably leads to more settlements, ". . . but only due to frustration . . ." Another concurred and said settlements were reached for the wrong reasons. "It forces a settlement offer unfairly." Still another wrote, "I know I am not going to trial, so why should I be concerned about attempting to settle the case."

However, other lawyers stated that fixed trial dates exert more settlement pressure; " . . . without fixed trial dates there is no incentive to settle . . . " said another. One reason for this is that "(O)ften attorneys refuse to discuss settlement in a reasonable manner until the eve of a trial."

Providing somewhat similar findings, a majority (54.5%) of the CJRA Advisory Group attorney-members felt that the stacked calendar has helped the court settle more cases, although a large minority did not agree (45.5%). A somewhat larger majority (72.7%) said that the stacked calendar enabled the judges to try more cases.

Judges believe the master trial calendar is necessary at this time. It was interesting to see that the judges' responses to these questions were quite varied. Their answers ranged from those who thought the master trial calendar benefited everyone to the calendar not being beneficial. Their overall responses indicated that it helps the district judges hear more cases and reduces the amount of "down time" they would have otherwise. If there were sufficient judicial resources the judges would prefer to have individual calendars, but given the present situation, as one judge said, "(W)e can't live without it."

(v) Alternative Dispute Resolution.

During the 1980s and 1990s, ADR has increasingly received attention as a set of possible solutions to a plethora of problems, including those associated with cost and delay. The CJRA Advisory Group asked questions of the attorneys, litigants, and judges concerning their attitudes about ADR.

The attorneys showed mixed responses in their answers concerning ADR. In terms of the specific case questionnaires, only 26.1% said that arbitration could have been helpful with their specific case, while 60.4% said it would not.[66] Mediation was slightly more favorably perceived, with 29% saying it would have been helpful in the resolution of the specific cases, but 58.9% did not feel it would have been helpful. Least positively perceived was the summary jury trial. Only 21.4% checked that this would be helpful and 58.1% did not think it would help. There was very little difference in the divisional responses to these items (Figures 80, 81, and 82).

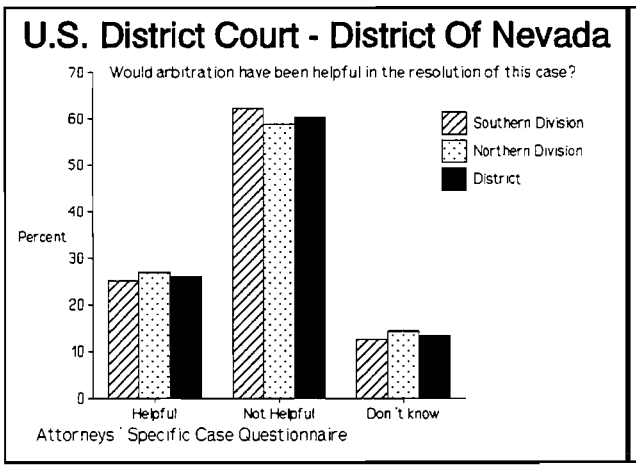

Figure 80

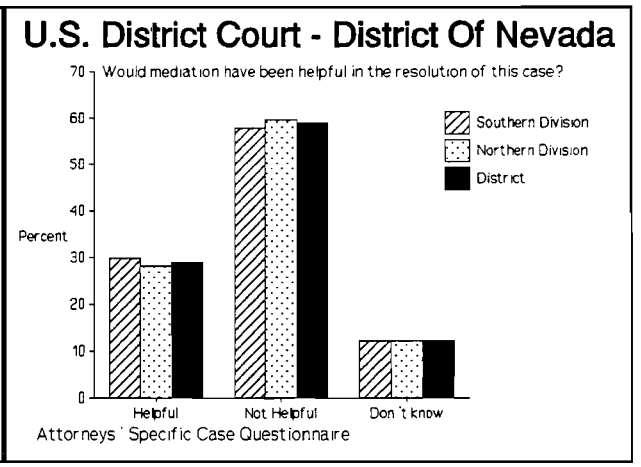

Figure 81

The attorneys' answers to the ADR questions on the general questionnaire were more positive (Figures 83, 84, and 85). The majority of attorneys felt that both arbitration (61.7%) and mediation (61.5%) would be helpful if available in this district. Only 42.8% felt summary jury trials would be helpful.

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[66] Attorneys selecting a "don't know" answer was a significant proportion for all forms of ADR, including 13% for arbitration, 12.2% for mediation, and 20.4% for summary jury trial.

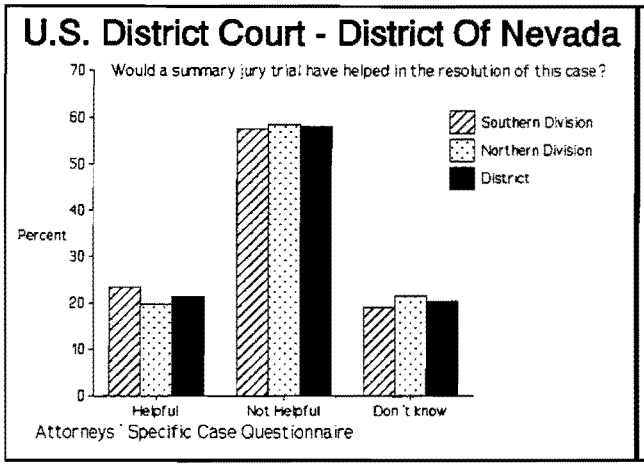

Figure 82

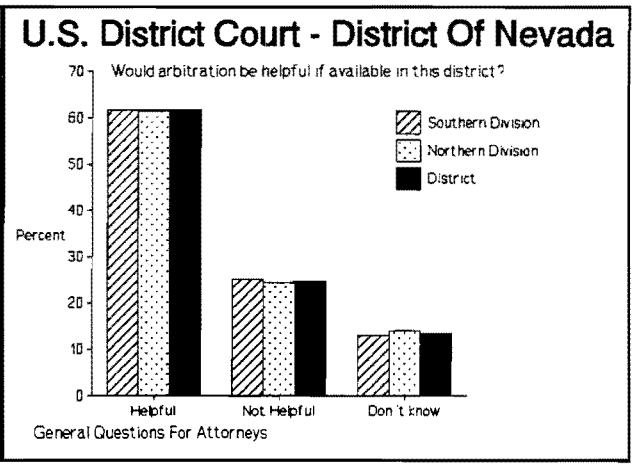

Figure 83

The CJRA Advisory Group attorneys were much more positive about ADR. Arbitration was thought to be potentially helpful by 72.7%. Mediation was even more positively viewed; 81.8% felt it could be helpful. Summary jury trials were thought to hold the promise of being helpful by 63.6% of the Advisory Group.

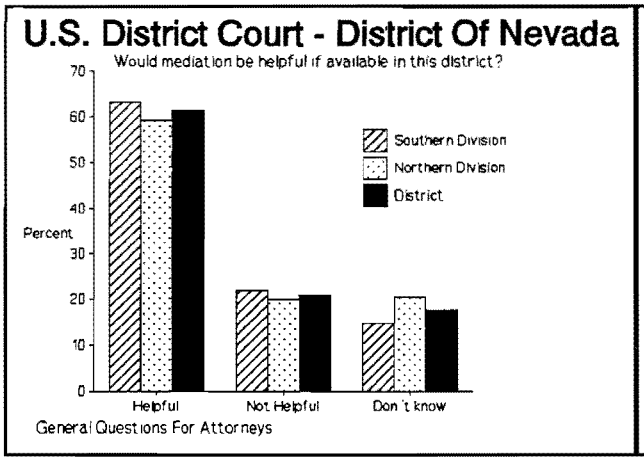

Figure 84

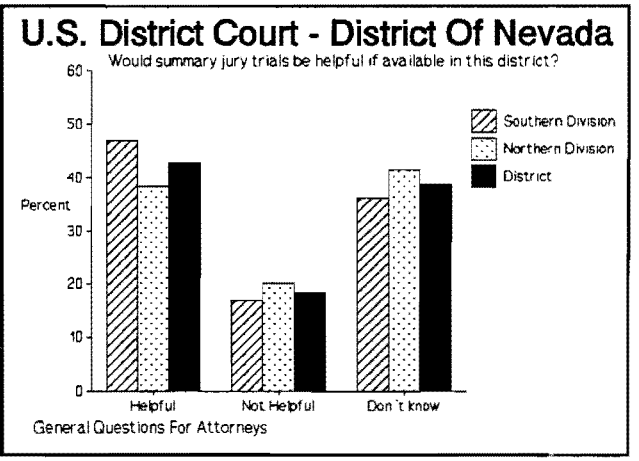

Figure 85

It was also significant that for the small minority of the Advisory Group members who did not think each of these three forms of ADR could be helpful, as many or more of the Advisory Group indicated they did not know if ADR would be

helpful. In other words, those selecting "don't know" were equal to or a larger number than those who felt ADR would not be helpful.

Three-fourths of the responding judges wrote that all three forms of ADR could be helpful. The majority of judges supported the concept of using a nonbinding, neutral conference early in the litigation process, such as early neutral evaluation. They also said that the use of settlement conferences would help, as would proceeding before a magistrate judge. They suggested the court develop an association with the state ADR system.

In spite of the sample attorneys' somewhat low positive responses to the three different forms of ADR, most notably when they were asked about its usefulness for specific cases, it should be pointed out that the actual percentages for those who felt ADR would not be helpful were low. Furthermore, the percentages of attorneys who answered that they did not know about the different types of ADR, especially summary jury trials, were significant.

When asked if the court should consider the expanded use of ADR, the attorneys answered a resounding "yes" (77.2%). Only 21.4% said "no." These opinions were equally shared by the attorneys in the northern and southern divisions. The CJRA Advisory Group attorneys were even more supportive of expanding the use of ADR (81.8%).

The question asking when is the appropriate time to use ADR demonstrated the attorneys preferred either early in the discovery process or after discovery is com-

pleted. Only 30.4% felt ADR should be used prior to filing an action. A majority (62.8%) believed ADR should be used early in the discovery process. An even larger majority (67.9%) felt ADR should be used after the discovery process. Looking at the answers from a positive perspective, 77.6% of those responding to this question chose this later stage as the time when ADR should begin, (Figures 86, 87, and 88).

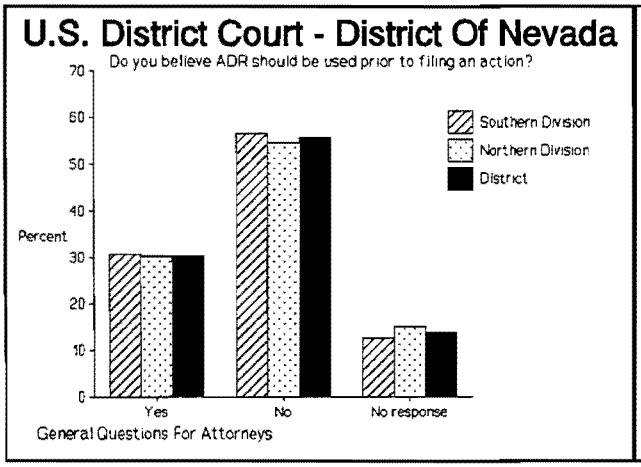

Figure 86

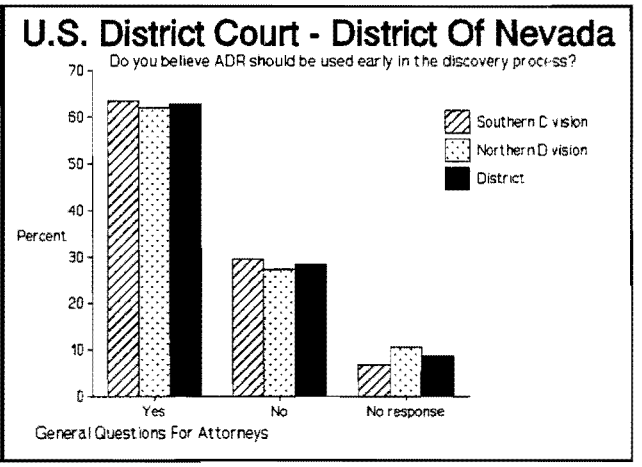

Figure 87

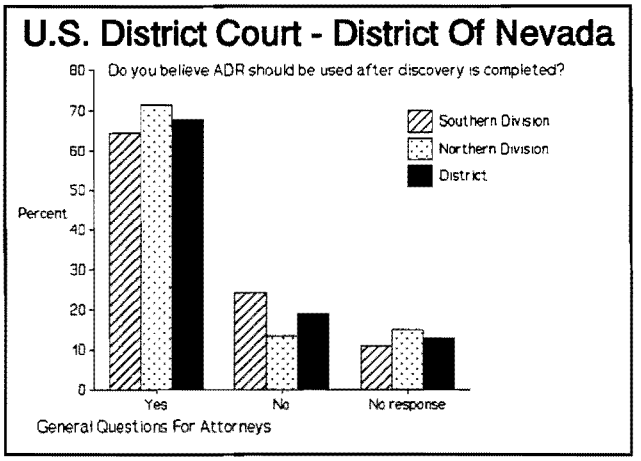

Figure 88

The attorneys' answers in the CJRA Advisory Group were extremely supportive for ADR taking place "early in the discovery process" (90.9%). Fully 100% of the

responding CJRA Advisory Group attorney-members said that "after discovery was completed" was a good time for ADR.

The judges' answers reflected a somewhat similar pattern. Only one felt ADR should be "used prior to filing an action." Three-fourths felt it should be used "early in the discovery process," and all but one felt it was appropriate "after discovery was completed." The latter judge was opposed to ADR and would prefer cases be referred to the magistrate judges.

The judges indicated the court should have the authorization to refer cases to ADR, including mediation, minitrial, and summary jury trial.

The sample attorneys said they believed ADR should be participated in on a voluntary basis (65.7%) and not a mandatory (34.0%) one. Of those who said it should be mandatory, 46.2% said it should be mandatory for all cases.

The judges expressed the opinion that participation in ADR should be voluntary except for prisoners, where it should be mandatory. Some of the judges also felt it could be mandatory for cases where the claim was less than $100,000.

The litigants expressed a reluctance to use the various forms of ADR. Only 31.1% indicated they would have been willing to use arbitration. A slightly higher 32.9% demonstrated a willingness to use mediation (Figures 89 and 90). There was a substantially greater percentage of litigants open to the use of ADR in the southern division than the northern one. Perhaps what is just as noteworthy is the large percentage of litigants who chose the answer, "do not know." Education about these

programs might be beneficial and open the litigants' receptivity to ADR.

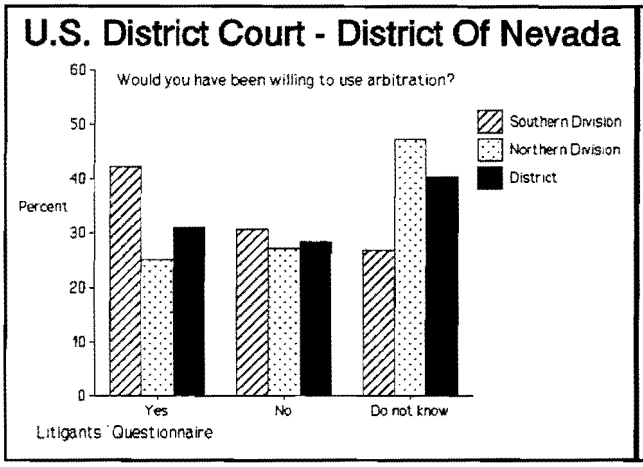

Figure 89

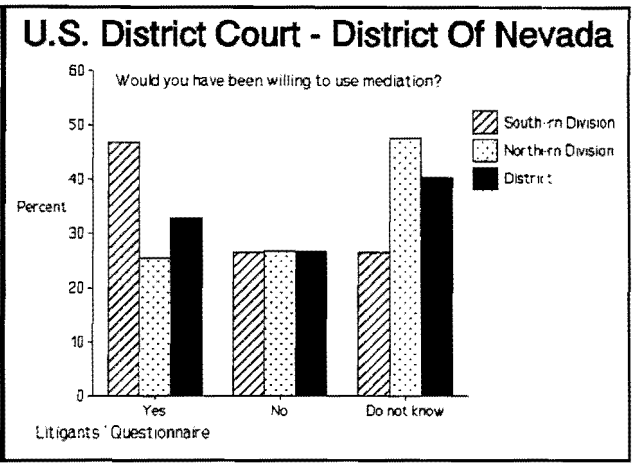

Figure 90

***Pro se* litigants were willing to use ADR.** None of the *pro se* litigants used ADR in their cases. However, when asked if they would be willing to use arbitration, 73.7% of those responding said "yes" and only 13.2% said "no." An even higher proportion (78.7%) indicated they would have been willing to use mediation. The potential use of a summary jury trial was not as well received with only 33.3% saying it could have been used in their case, 17.9% said it could not have been used, and 48.8% did not know.

A. Administrative Grievance Procedure.

The Administrative Grievance Procedure used for prisoners in the state prisons received exceptionally negative comments. One prisoner wrote, ". . . the inmate grievance procedure cannot work in its present form. The person who committed the tortious acts are the same person who are assigned to answer the grievance procedure (sic)." Another prisoner wrote that the majority of prisoner complaints

were "nonsense." On the other hand, s/he noted that some are truly meritorious and efforts should be made to resolve the problem rather than taking up the court's time. Still another prisoner wrote:

> "In the past year, NSP has adopted a federal administrative grievance procedure. It must be used for a year before they can apply for certification. I have used this and seen others. The procedure is quite ineffective. Prison administrators avoid the substance of the grievance and dismiss them without just reason and/or a reasonable explanation. Many inmates feel it is waste of time and effort to submit a grievance.
>
> I understand an individual is monitoring this for certification. Why hasn't this individual questioned any inmates? An effective grievance procedure would eliminate many unnecessary lawsuits by prisoners.
>
> I think an arbitration or mediation committee should be established in an effort to settle disputes prior to them going to court. One that is unbiased, fair and just."

The questionnaires consistently produced answers that the grievance procedure does not work. There are too many to quote all of them, but here is an additional small sample. "Grievance/appeal denied." "Administration denied relief sought in grievance in this case." "I got no results at all, except transfer to another prison." "Refusal to acknowledge grievances by prison officials are repetitive no merit decisions . . . prison officials disregarded the process." "I still have my copies of the grievance but I haven't heard from the administration." "Prison refuses to adhere to grievance procedure and answer them timely . . . ." "Prison officials just denied grievance without responding to issues." "The Nevada Department of Prisons Administrators systematically deny all grievances with untruths." "Denied like always." "Useless." And they wrote many other similar comments. The Administra-

tive Grievance Procedure utilized by NDOP clearly is a failure.[67]

(vi) Settlement Negotiations.

Settlement conferences with the magistrate judges (used primarily in the southern division because of the insufficient number of magistrate judges in the northern division) were very favorably perceived by the attorneys. Several attorneys called for using them more often; some suggested these conferences be mandatory. Two attorneys suggested that settlement conferences before a magistrate judge not only be mandatory, but that if a party refused the recommendation and did not do better at trial, that the party should be assessed attorney fees and costs.

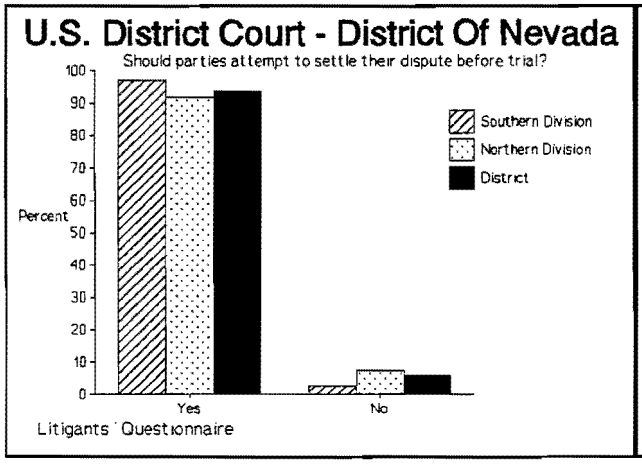

Figure 91

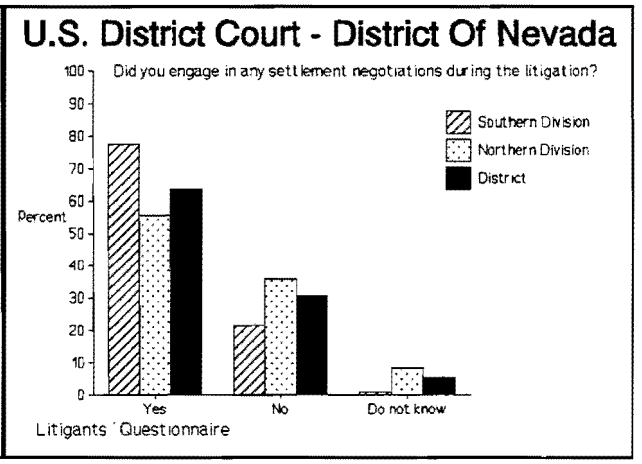

Figure 92

The litigants believed parties should attempt to settle before trial. Over 90% of the litigants chose a response category that they believed parties should attempt

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[67] The Advisory Group recognizes that contributing to the failure of the inmate grievance procedure were the approximately 7,000 grievances brought in the first 16 months of the program. The Attorney General and the NDOP did not have sufficient staff to respond to this high number of grievances. The substantial number of frivolous cases further contributes to this failure.

to settle their dispute in advance of a trial (Figures 91 and 92). In fact, the litigants indicated that settlement negotiations were used in the majority of cases and that they were largely successful (Figure 93). There was a somewhat greater degree of success in the southern division than the northern division. This may be attributed to the greater use of magistrate judges for settlement conferences in the southern division. However, with the large proportion of litigants unsure who conducted the conference, this cannot be definitively ascertained (Figures 94 and 95).

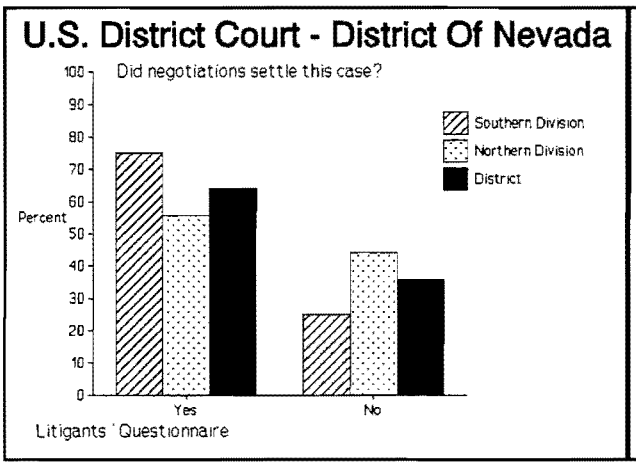

Figure 93

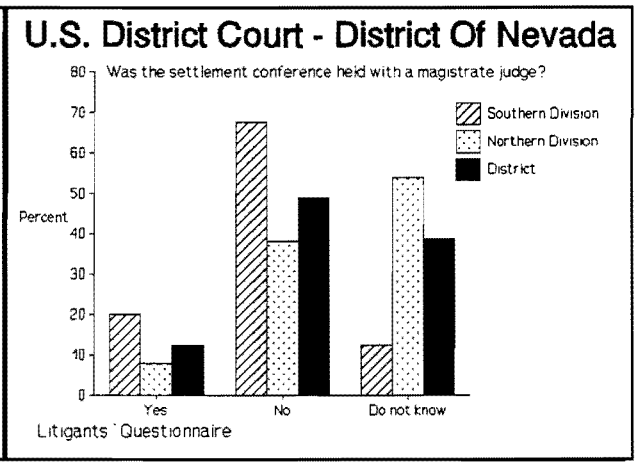

Figure 94

Concerning the litigants who settled before going to trial, there was a significant difference between the northern and southern divisions with substantially more cases settling in the southern division (Figure 96). A comparison of the answers by the litigants with attorneys and the *pro se* litigants yielded some interesting findings. **The *pro se* litigants' answers revealed that they favored settlement negotiations although only a minority (24.7%) had actually engaged in them.** *Pro se* litigants were overwhelmingly in favor of attempting to settle their disputes in advance of trial

(88.5% vs 11.5% opposed). The litigants who had attorneys representing them were even more supportive of attempting to settle prior to trial (93.8% vs. 5.9% opposed, Figure 91, page 130).

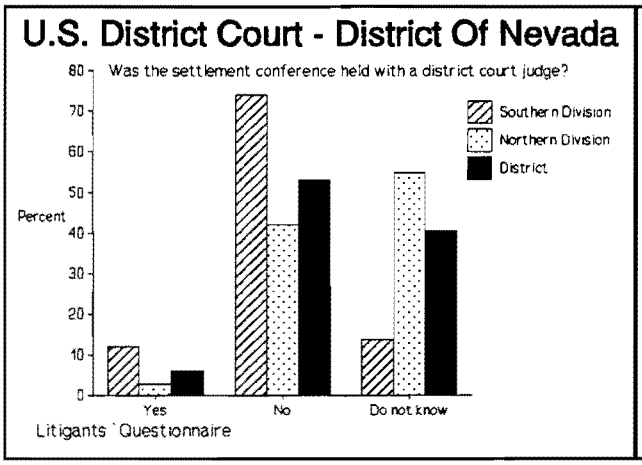

Figure 95

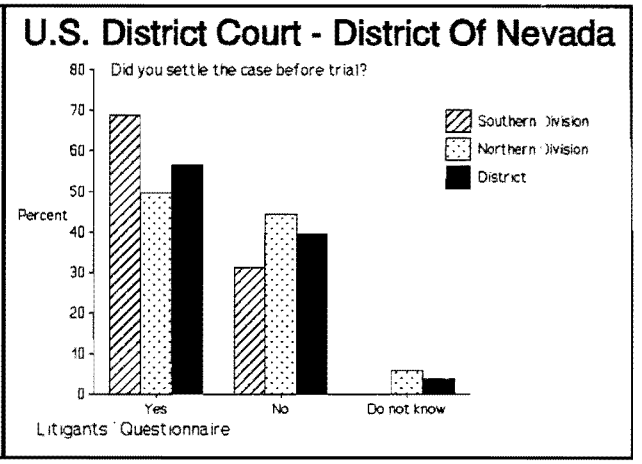

Figure 96

Only 24.7% of the *pro se* litigants engaged in at least one settlement meeting during the course of their litigation, while 63.7% of the litigants with attorneys did so (Figure 92, page 131). Almost eighty percent (78.8%) of the *pro se* litigants who answered the questionnaire indicated that a conference between themselves, their opposing parties, and either a district court judge or magistrate judge would have helped their case proceed more quickly and would have lessened the cost.

(vii) Attorneys.

As discussed earlier, most of the litigants' answers were fairly positive about their attorneys. However, a minority of the litigants who returned the questionnaires had some severe criticisms of the attorneys relating to cost and delay. One litigant wrote that s/he felt the attorney was not well prepared and would not use him again.

Another complained that,

> ". . . attorneys have too much authority and power in these cases without conferring with their clients . . . attorney settled out of court for 7.5% of original suit because he was unsure of Nevada's medical mal-practice settlement procedures. A large and powerful hospital and doctor of great authority and connections in Nevada government made a **farce** of this miscarriage of justice and it does not prevent these doctors from repeating these mistakes on a daily basis to other people who are in need of medical care. Our attorney did not even obtain cost of medical expenditures in this suit and he didn't even provide for my future medical expenses which I will have to bear for the rest of my life because I will be 100% disabled for the rest of my life."

Still another litigant wrote that his/her attorney did not wish to pursue the case through the completion of a trial so the attorney pushed to settle out of court. The litigant wrote, "I was very disappointed."

Yet a different litigant wrote that ". . . the area of concern is the extent to which the (court) allows opposing attorneys to engage in the 'game' of law-writing briefs, making motions, asking for delays. I believed the attorneys need to be controlled by the judge to prevent unnecessary time and expense (sic)."

(viii) Associated causes of cost and delay.

Table 3 contains a list of items the litigants could choose which they thought might facilitate the processing of cases in the federal district court in Nevada. No one item was selected by a majority of litigants; in fact, none was checked by as many as one-fifth of the litigants for the district as a whole.

The most frequently selected category was firm trial dates, followed by a request for stricter enforcement of procedural rules (including the use of sanctions for

attorneys who violate them), court orders to limit discovery time, and the allocation of more judges for the district.

Table 3

Litigants' Questionnaire Item 31	South	North	District
More frequent court involvement in discussing settlement of the case	9.3%	8.5%	8.7%
Court orders limiting amount of time parties may seek discovery	13.9%	18.9%	17.2%
Court cooperation in setting earlier trial dates	8.3%	16.9%	13.9%
Better communication between attorneys and clients to avoid unnecessary discovery or motions	7.4%	5.0%	5.8%
Court-ordered limits on number of witnesses that may testify	3.7%	10.4%	8.1%
Court-ordered limits on number of depositions which may be taken	5.6%	10.0%	8.4%
Better communication between attorneys to avoid unnecessary discovery or motions	6.5%	6.0%	6.2%
Better preparation by attorneys to avoid costly delays in pretrial or trial proceedings	6.5%	5.0%	5.5%
Stricter enforcement of procedural rules and use of sanctions	11.1%	20.9%	17.5%
Court should set firm trial date	12.0%	21.4%	18.1%
Allocation of more judges to the District of Nevada	11.1%	14.4%	13.3%

Table 3

(ix) Prevent simultaneous filings in state and federal court.

One suggestion came from a written comment by an attorney who asked that Congress pass additional legislation which would prevent simultaneous filings in state

and federal courts.

(x) Sanctions.

People from virtually every part of the court system (except the judges) said they felt the judges should use sanctions much more frequently. This included attorneys, litigants, and the CJRA Advisory Group. They said that attorneys and/or their clients should be sanctioned for filing frivolous cases, for filing frivolous motions, for showing up late to calendar call or other meetings with the judges, for disrespectful behavior toward the court, for discourteous actions in the courtroom, for failure to adequately prepare for trial, and for failure to bring needed motions during the pretrial period. They also wrote that costs (for juries, etc.) should be more frequently assessed if the case settles close to the trial date.

(xi) Responses to open-ended questions.

Question 49 (General Questions for Attorneys) asked what suggestions or comments the attorneys might have for reducing costs. Over half (57.3%) proposed the use of ADR (the percentages were almost exactly the same for the northern and southern divisions). Fifty-six percent advocated the use of "pre-discovery settlement conferences." And just over half (52.2%) favored the use of "court-ordered mediation (or early neutral evaluation)."

The Advisory Group's answers supported ADR (63.6%) as a measure to reduce costs. One hundred percent were in favor of "pre-discovery settlement conferences," and 54.5% proposed "court-ordered mediation (early neutral evaluation)."

The open-ended responses to question 49 reflect the attorneys' earlier answers.[68] **It was interesting to find that several attorneys stated that costs were not too high.** Nevertheless, attorneys requested discovery limitations (although a few asked for less judicial involvement and fewer restrictions because these only create the necessity of extensions), the use of sanctions if attorneys were not prepared, lower filing fees, no trailing calendar, elimination of the stacked calendar, limiting witnesses and depositions (the most common answer), fewer continuances, pretrial settlement conferences, discovery masters, early and strong involvement by the judges, firm trial dates, increased use of the magistrate judges, increased use of summary jury trials, more use of telephone conferences, award attorney fees to the winning party of frivolous lawsuits, increased funding to the courts, require higher professional standards, and legalize drug/political problems (apparently, to reduce the number of criminal cases appearing before the court).

Question 50 (General Questions for Attorneys) asked for suggestions to reduce delay. It is noteworthy that a number of attorneys indicated there was no problem with delay in this district (this was the third most common answer). Suggestions included: acquire more judges (this was the most common answer), increase the use of sanctions (second most common suggestion), use ADR more often, make ADR mandatory, enforce discovery deadlines, implement early pretrial settlement

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[68] Other than the specific rankings of the answers discussed for questions 49 and 50, the answers presented are not in any order. The answers are presented to give the reader a general sense of the variety of responses to these questions.

conferences/pre-discovery settlement conferences, hear motions in a more timely manner, make more rapid decisions on dispositive motions, increase the use of the magistrate judges, separate civil and criminal trial calendars, utilize telephone conferences, enforce the local rules, assess fees against losing party, create fast tracks, require all state prosecutions for drug and gun violations to be filed in state court, and repeal sentencing guidelines (there is no incentive for defendant to plead instead of going to trial).

The majority of attorneys (70.1%) did not believe the district should promulgate or delete any local rules to reduce cost and/or delay. Likewise, the CJRA Advisory Group did not have many suggestions concerning new local rules, although one member proposed setting two weeks a month solely for civil cases (even on a stacked calendar), and s/he suggested that 85-90% would settle. Another suggestion was to reduce the number of interrogatories generally permitted from 40 to 25. One person said the court has enough rules.

The judges made several suggestions. **One recommendation was for some form of liaison with government agencies when there are problems with agency attorneys causing delay. A second suggestion was for congressional changes in the "Speedy Trial Act."** One change would be for noncustodial cases. In cases where a suspect is not in custody, civil cases over two years old should have priority. A related change would permit excludable time in criminal cases due to a civil trial backlog. This would apply only to criminal cases when the defendants are not in custody.

The judges recommended fewer legislative restrictions on court scheduling. They would like to see the magistrate judges try more civil cases. They would also like the magistrate judges to have contempt power, although they believed this would rarely have to be used.

The judges provided a number of suggestions concerning how they could manage litigation to avoid delays in discovery. Tied for the number one choice was narrowing issues early in the litigation process and limits on the number of requests for production. Several tied for second place, including more frequent use of sanctions, more frequent status checks, and additional court involvement in scheduling discovery. The judges would like to see greater use of ADR, especially (and some suggested mandatorily) for prisoner cases. They would like to see more control of discovery, greater control over the use of experts, and dates certain for trial.

Half of the judges wrote they would like to see supervised release of criminal defendants under a Parole Commission. Sentencing Guidelines eliminated parole, and the judges responded that supervised release was just another name for parole. However, they felt that the district court should not be required to conduct revocation proceedings. A Parole Commission-type tribunal needs to be re-established to oversee what will become a major component of the caseload of every district and circuit judge in the near future.

The judges made only a few comments on staffing. The judges suggested that each district judge be allocated three law clerks instead of two. They also recom-

mended each magistrate judge be allocated two law clerks rather than one. The judges' only criticism of the clerk's office is that it is understaffed and overworked; the judges wrote that the understaffing is especially notable in Reno. Some of the judges also said they would like to see a daily check on the status of submissions.

(d) Review of Judicial In-Court Time.

The Advisory Group originally wanted to examine how all judicial time was allocated in the district (how did the judges spend their time on in-court and out-of-court activities including such things as court-related travel). Unfortunately, due to a shortage in judicial personnel and the high number of cases filed in the district, the judges were unable to participate in tracking their out-of-court time. However, courtroom deputy clerks did track the judges' in-court time and activities.

The data collected on in-court time can be misleading if used improperly. There can be substantial variation among judges on what proportion of their out-of-court versus in-court time they devote to preparing for and deciding matters. Additionally, district judges and magistrate judges have different types of cases assigned to them because of their position (Article III judge or magistrate judge) and as a consequence of the random draw of cases. Therefore, the Advisory Group urges the reader to be careful when drawing inferences from the data presented in this section.

Data were collected for the period of January 2, 1992, through June 30, 1992, for all active, senior, and visiting district judges and magistrate judges holding court in the district. The data presented in this Report account for only a small part of the

judicial officers' in-court time, and the Advisory Group's intentions are solely to illustrate several basic differences between the northern and southern divisions.

Las Vegas had almost three times more sentencings than Reno, but time spent on each sentencing averaged 31% longer in Reno (Figure 97). There were a total of 196 sentencings under the "Sentencing Reform Act" in Las Vegas; they took 107.95 hours and averaged 0.55 hours per sentencing. There were 68 sentencings totaling 48.8 hours, averaging 0.72 hours per sentencing in Reno.

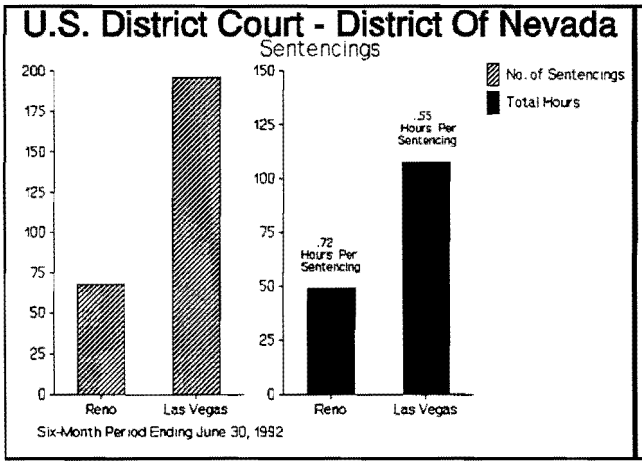

Figure 97

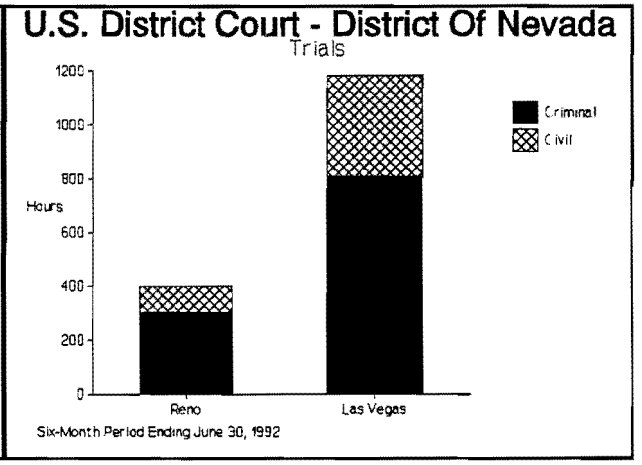

Figure 98

Total time for bench and jury trials was greater in Las Vegas than in Reno (Figure 98).[69] There were 172 criminal trial days in the southern division,[70] averaging 4.71 criminal trial hours per day, for a total of 809.72 hours. There were

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[69] These data include all trials except petty offenses.

[70] Please note that it is incorrect to state that criminal trials were held on 172 of 182 days (January 2, 1992 through June 30, 1992) because there were more than one active, senior, or visiting district judge hearing cases in the southern division, i.e, total possible trial days for two judges would be 182 days times two or 364 days.

78 civil trial days in Las Vegas, averaging 4.78 civil trial hours per day, for a total of 372.75 hours. There were 52 criminal trial days in the northern division, totaling 301.25 hours and averaging 5.79 criminal trial hours per day. There were also 26 civil trial days in Reno, averaging 3.82 civil trial hours per day, for a total of 99.3 hours.

In-court time utilized by judicial officers adjudicating petty offenses was almost nonexistent in Reno, but quite substantial in Las Vegas (Figure 99). (This is largely the result of activities on federal land at Lake Mead.) Judges in the southern division spent 101.25 hours adjudicating petty offenses, i.e., initial appearances (separate from the initial appearances previously discussed), trials, sentencings, and status conferences for petty offenders. Las Vegas judges held 27 trials for petty offenses averaging 1.44 hours each. During the period, Reno had only one sentencing of a petty offense, which took 0.50 hours.

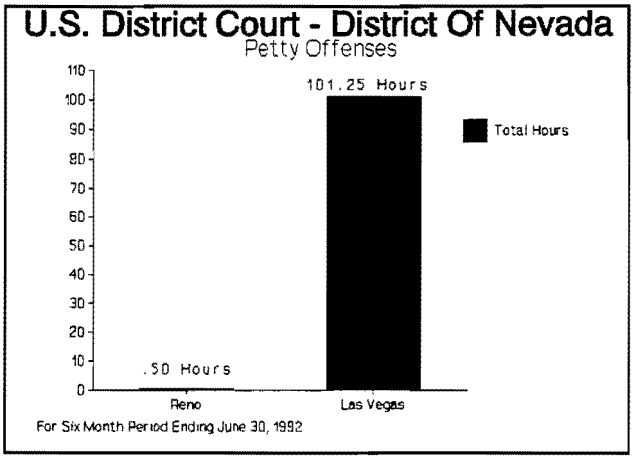

Figure 99

(e) Examination of 400 Pending Cases.

The Advisory Group examined 200 randomly selected pending cases in each of the two unofficial divisions of the District of Nevada (Figure 100).[71] The proportions for the sampled cases were based on the ratio of civil to criminal cases pending in each division. In Reno, 180 civil cases were selected, 90% of 200 pending cases. An additional 20 criminal cases were also sampled for Reno, 10% of 200 pending cases. The Las Vegas sample included 163 pending civil cases (81.5%) and 37 pending criminal cases (18.5%).

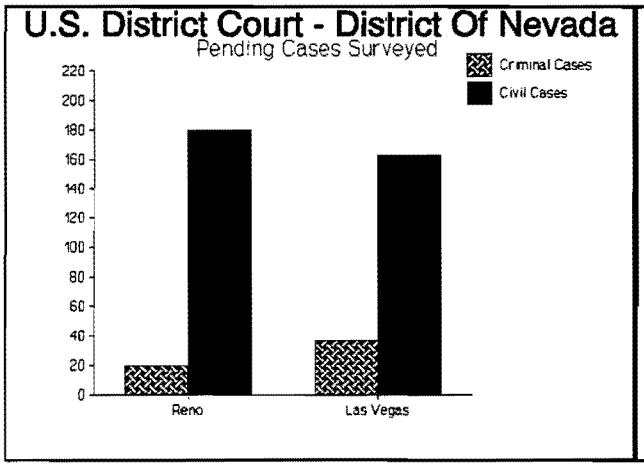

Figure 100

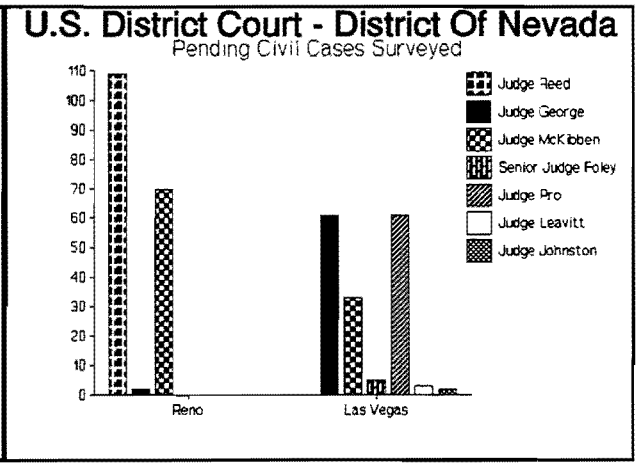

Figure 101

The randomly sampled pending civil cases were diverse and allowed the Advisory Group to review cases assigned to all active and senior district judges, and all but one of the magistrate judges in the District of Nevada (Figure 101). Of the pending civil cases sampled in the northern division, 109 were Judge Reed's (60.6%), 1 was Judge George's (0.6%), and 70 were Judge McKibben's (38.8%). In the

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[71] Cases pending on July 13, 1992.

southern division, Senior Judge Foley had 5 (3%), Judge George had 61 (37.5%), Judge McKibben had 33 (20.2%), Judge Pro had 61 (37.5%), Magistrate Judge Leavitt had 2 (1.2%), and Magistrate Judge Johnston had 1 (0.6%) of the pending civil cases sampled.

The largest category of pending civil cases reviewed in the north was prisoner petitions which comprised 44.4% or 80 of the 180 randomly selected pending civil cases reviewed (Table 4). Additionally, 79% (63 of 80 prisoner petitions) were civil rights petitions filed by inmates. Of the 63 prisoner civil rights petitions, 40 (63%) were filed by inmates housed in the Ely State Prison.

Table 4	Pending Civil Cases		Motions filed in Pending Civil Cases	
Nature of Suit	**Las Vegas**	**Reno**	**Las Vegas**	**Reno**
Bankruptcy	3	3	0	2
Civil Rights	**29**	**26**	**181**	**28**
Contract	**40**	**22**	**144**	**47**
Federal Tax Suits	1	0	1	0
Forfeiture/Penalty	6	5	11	4
Labor	13	5	19	13
Other Statutes	18	7	73	10
Prisoner Petitions	**27**	**80**	**142**	**143**
Property Rights	4	4	12	8
Real Property	4	2	11	3
Social Security	1	1	1	2
Torts	**17**	**25**	**97**	**54**

Table 4

Prisoner petitions were the third highest category of pending civil cases randomly sampled for review in the south; 27 of 163 (16.6%) cases selected (Table 4). The largest category of pending cases surveyed in Las Vegas was contract

cases. Contract cases comprised 24.5% (40 of 163) of the pending cases reviewed. Las Vegas had 29 nonprisoner civil rights cases while Reno had 26 nonprisoner civil rights cases selected. Additionally, 25 tort cases were reviewed in the north and 17 in the south.

The length of pending civil cases varied greatly in the northern and southern divisions (Figure 102). Reno cases ranged from a low of 6 days from filing to a high of 1,144 days. Las Vegas cases went from a low of 12 days to 1,606 days. The mean length of the pending civil cases in the north was 224 days. Las Vegas pending civil cases had a mean length of 372 days.

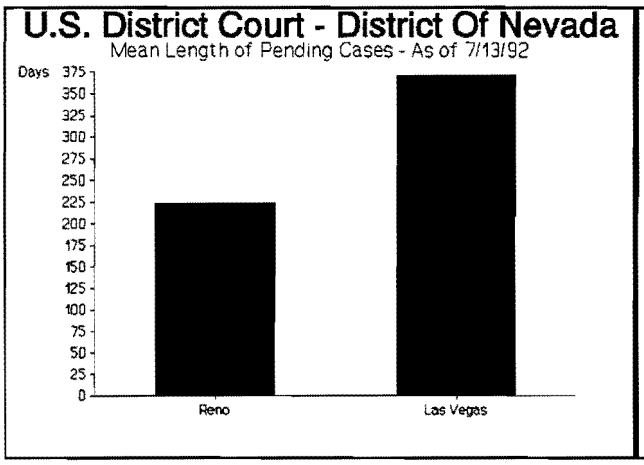

Figure 102

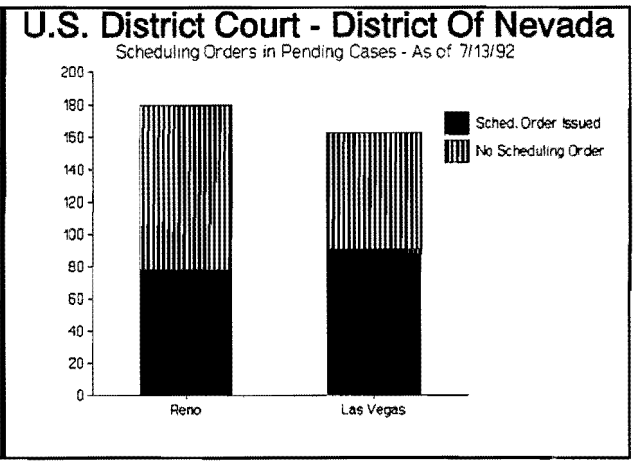

Figure 103

Scheduling orders were issued for almost half of the pending cases sampled in the District of Nevada (Figure 103). Scheduling orders were issued in 78 of 180 pending civil cases (43%) in the northern division and in 91 of 163 cases in Las Vegas (56%). Cases may not have been issued a scheduling order for primarily two reasons: the case was too new and/or the case was exempt pursuant to Local Rule 190.

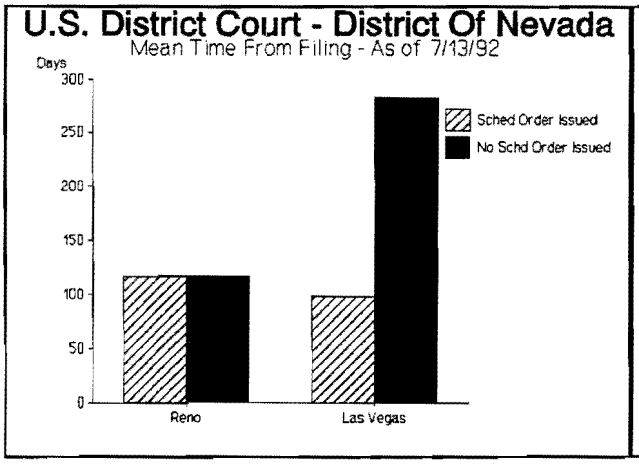

Figure 104

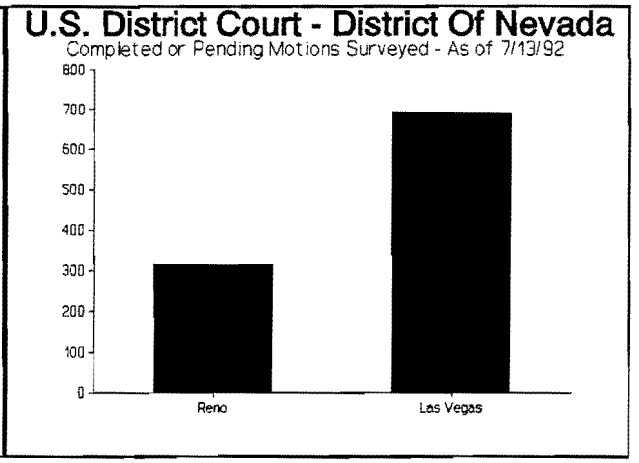

Figure 105

The average (mean) time from filing a civil case to the issuance of a scheduling order differed greatly between the northern and southern divisions (Figure 104). The time allowed from the date of filing a case to the issuance of a scheduling order is 120 days as mandated under Fed. R. Civ. P. 16(b) and LR 190. Reno's pending cases had an average (mean) time from filing the case to issuing a scheduling order of 116 days. Las Vegas cases had a average (mean) time of 98 days. Of those cases not having a scheduling order issued, the mean time from filing a case to the July 13, 1992, cut-off date was 117 days in Reno and 283 days in Las Vegas.[72]

Pending cases surveyed in Las Vegas had more than twice as many completed

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[72] The average age of cases not issued scheduling orders in Las Vegas is greater than the age of cases with scheduling orders for several reasons: (1) some cases are exempt from scheduling orders per LR 190; (2) cases may have their proceedings stayed, delaying the issuance of a scheduling order; (3) scheduling orders were systematically not issued under the 1986 version of LR 190 for prisoner civil rights cases filed by prisoners not represented by counsel. The February 1992 version of LR 190 does not exclude prisoner cases from the mandatory issuance of a scheduling order except in *habeas corpus* cases.

or pending motions as did the pending cases in Reno (Figure 105). In the pending civil cases examined for Las Vegas, 692 motions were resolved or pending as of July 13, 1992. Only 314 motions were resolved or pending in Reno on the same date. The disparity in the number of motions in Reno versus Las Vegas is primarily due to the younger age of the pending cases examined in the northern division. The older average age of the pending cases sampled in the southern division meant there had been time for parties to file more motions.

Prisoner petitions accounted for the largest category of the cases surveyed in the district, and these civil petitions created the largest number of motions (Table 4, page 143). While 44.4% of the cases in the north and 16.6% of the cases in the south were prisoner petitions, such cases contained 45.5% of the pending or resolved civil motions in the northern division and 20.5% of the pending or resolved civil motions in the southern division.

Contract cases and nonprisoner civil rights cases also made up significant portions of the samples. Contract cases were 12.2% of the pending cases surveyed in Reno and 24.5% of those surveyed in Las Vegas. Motions in contract cases accounted for 15% of the resolved or pending motions examined in Reno and 21% of those examined in Las Vegas. Nonprisoner civil rights cases made up 14.4% and 17.8% of the pending cases examined in Reno and Las Vegas, respectively. Motions filed in pending nonprisoner civil rights cases in the north were 8.9% and 26.2% in the south.

The types of civil motions varied greatly in both Reno and Las Vegas (Table 5).[73] However, the two predominant types of motions filed both in the northern and southern divisions were either fully or partially dispositive in nature. Motions to amend the complaint or petition and motions to stay were also filed in substantial numbers.

Table 5

Civil Motions	Las Vegas	% of LV	Reno	% of Reno
Amend Complaint/Petition	**32**	**4.6**	**26**	**8.3**
Appoint/Withdraw as Counsel	27	3.9	13	4.1
Compel	38	5.5	20	6.4
Discovery	16	2.3	11	3.5
Dismiss (Partial or Full)	**89**	**12.9**	**59**	**18.8**
Other	337	48.7	95	30.3
Protective Order	23	3.3	14	4.5
Stay	**24**	**3.5**	**24**	**7.6**
Strike	39	5.6	9	2.9
Summary Judgment (Partial or Full)	**67**	**9.7**	**43**	**13.7**
Total	**692**	**100**	**314**	**100**

Table 5

Motions to dismiss (either partially or fully dispositive) accounted for 18.8% of the total civil motions pending or resolved in Reno and 12.9% of the civil motions resolved or pending in Las Vegas. Motions for summary judgment were 13.7% of all motions sampled in Reno and 9.7% of those sampled in Las Vegas. Motions to amend a complaint or petition were 8.3% in the north and 4.6% in the south.

[73] Table 5 consolidates the motions completed or pending for the 400 pending cases examined in the District of Nevada and, thus, allows the reader to examine the principal categories of motions filed in large numbers in the district.

Motions to stay made up 7.6% of motions in Reno and 3.5% of those in Las Vegas.

The percentage of fully dispositive motions sampled was similar in Las Vegas and Reno (Figure 106). Reno's 200 pending cases had 83 fully dispositive and 231 nondispositive civil motions, and Las Vegas had 148 fully dispositive and 544 non-dispositive civil motions in the 200 pending cases sampled in the south. Twenty-six percent (26.4%) of all motions examined in the north and 21.4% of those examined in the south were fully dispositive.

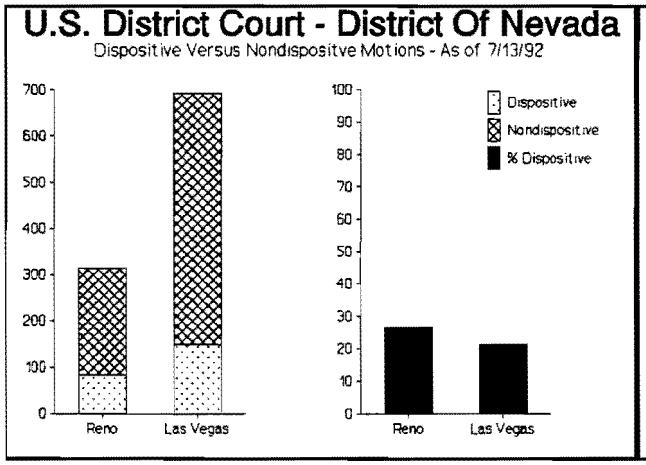

Figure 106

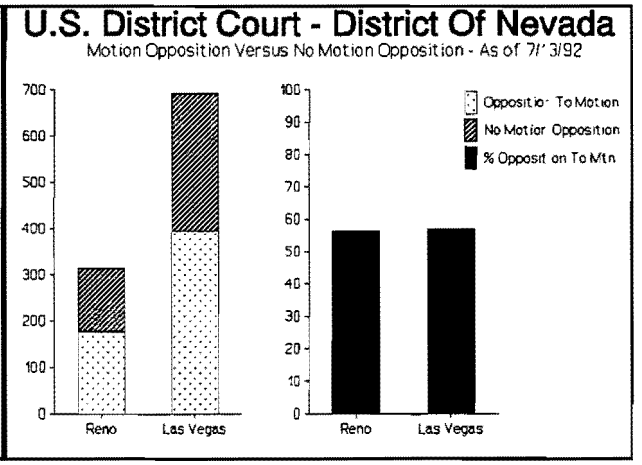

Figure 107

The southern division had substantially more dispositive civil motions granted than the northern division (Table 6). Of the 83 fully dispositive civil motions filed in Reno, 3 were granted (3.6%), 22 were denied (26.5%), 8 were partially granted (9.6%), 6 had some other action taken (7.2%), and 44 had not yet been decided (53%). In Las Vegas, 49 fully dispositive motions were granted (33.1%), 51 were denied (34.4%), 12 were partially granted (8.1%), 19 had some other action taken (12.8%), and 17 (11.5%) were still pending. **The Advisory Group recognizes that the**

failure to grant meritorious dispositive motions contributes to cost and delay.

Table 6 Civil Dispositive Motions

Action Taken	Las Vegas	Reno
Granted	49	3
Denied	51	22
Partially Granted	12	8
Some Other Action	19	6
Pending	17	44

Table 6

There were more oppositions to motions filed in the pending civil cases sampled in Las Vegas than in Reno, but the percentages for motions having oppositions filed were approximately the same in both divisions (Figure 107). Under LR 140-4, the party opposing a motion is given 15 days from service to file an opposition, and the moving party has 10 days to reply from service of the opposition. Oppositions to motions were submitted for only 56.4% of the motions filed in the northern division (177 of 314) and for 57.1% of the motions sampled in the southern division (395 of 692).[74] Replies in support of motions were filed for 107 of 314 motions in Reno or 34.1% and for 211 of 692 motions or 30.5% of motions in Las Vegas.

The average (mean) length of time taken to file an opposition to a motion and its reply was similar in both the northern and southern divisions (Figure 108). The mean length of time for filing an opposition (when one was filed) was 26 days in Reno and 22 days in Las Vegas. The average period for filing a reply to the opposition

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[74] Responsive memoranda were not supplied for 40.6% of the motions filed in the southern division and for 39.6% in the northern division. Please also note that the percentages do not add to 100% since those motions less than 16 days old were excluded from the analysis.

(when filed) was 16 days in Reno and 18 days in Las Vegas.

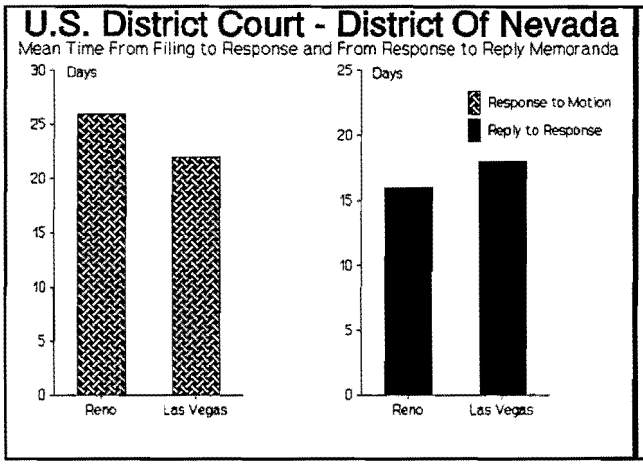

Figure 108

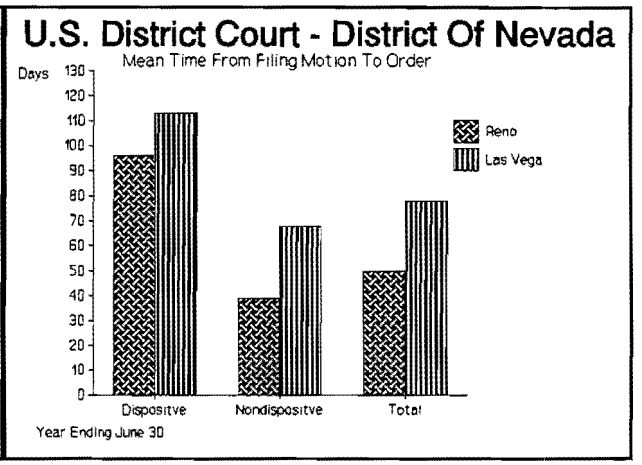

Figure 109

The mean time for disposition of civil motions by the district court was 28 days longer in Las Vegas than Reno (Figure 109). The total length of time from filing a civil motion until an order was issued averaged 50 days in Reno and 78 days in Las Vegas. Dispositive motions averaged 96 days in Reno and 113 days in Las Vegas. Nondispositive motions averaged 39 days in the north and 68 days in the south (Figure 109).

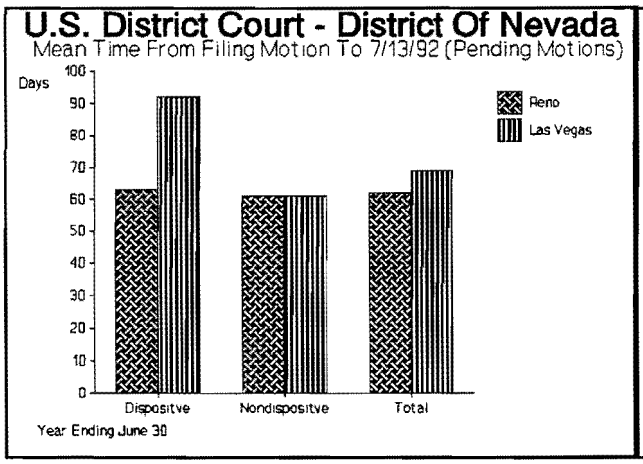

Figure 110

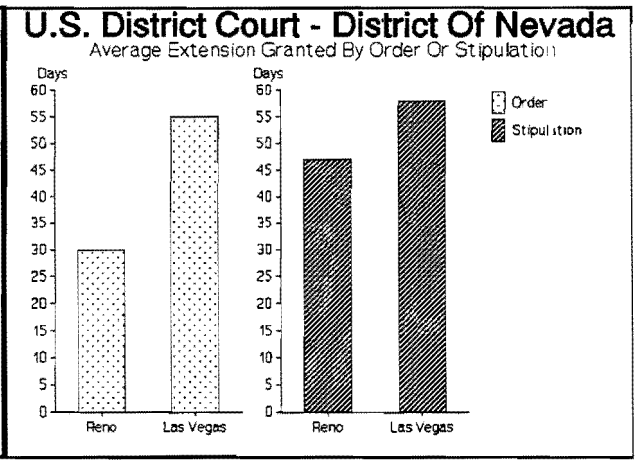

Figure 111

The average age of pending motions examined in the cases pending on July 13, 1992, was 62 days in Reno and 69 days in Las Vegas (Figure 110). Pending dispositive motions were 63 days old in the north and 92 days old in the south. Nondispositive motions pending were 61 days old in both Reno and Las Vegas.

Orders granting extensions averaged longer in the southern division than the northern division (Figure 111). The average extension granted by an order in the pending cases sampled was 30 days in Reno and 55 days in Las Vegas. Stipulations averaged 47 days in the north and 58 days in the south.[75]

Table 7	Pending Civil Cases		Orders Causing Delay in Pending Civil Cases	
Nature of Suit	**Las Vegas**	**Reno**	**Las Vegas**	**Reno**
Bankruptcy	3	3	0	1
Civil Rights	29	26	40	26
Contract	**40**	**22**	**50**	**30**
Federal Tax Suits	1	0	1	0
Forfeiture/Penalty	6	5	3	1
Labor	13	5	12	6
Other Statutes	18	7	19	6
Prisoner Petitions	**27**	**80**	**13**	**174**
Property Rights	4	4	2	0
Real Property	4	2	2	3
Social Security	1	1	0	0
Torts	17	25	22	39

Table 7

[75] The definitions developed by the Advisory Group for the terms "order" and "stipulation" are the following: orders are either made *sua sponte* by the court or when one or more but not all of the parties in the case move for an extension; stipulations reported are orders in which all the parties and the court have agreed upon an extension of time.

Prisoner cases accounted for 44.4% of the civil filings in Reno and 61% of the orders issued causing delay[76] (Table 7). Las Vegas prisoner cases comprised 16.6% of the cases examined, but only 7.9% of the orders causing delay. Contract cases were 24.5% of the pending civil cases sampled in Las Vegas and generated 30.5% of the orders causing delay. Reno contract cases were 12.2% of its pending cases and generated 10.5% of the orders causing delay.

Tort cases were 13.9% of the pending civil cases sampled in Reno, but produced 28.8% of the stipulations and the subsequent orders causing delay in the northern division (Table 8). In Las Vegas, tort cases were 10.4% of the cases examined, but spawned 19.2% of the stipulations producing delay. Pending prisoner cases were 44.4% of the cases sampled in Reno, but only produced 1.4% of the stipulations reviewed. Prisoner cases were 16.6% of the cases examined in Las Vegas and they produced only 5.9% of the stipulations made.

Table 8

	Pending Civil Cases		Stipulations Causing Delay in Pending Civil Cases	
Nature of Suit	**Las Vegas**	**Reno**	**Las Vegas**	**Reno**
Bankruptcy	3	3	0	0
Civil Rights	29	26	18	14
Contract	40	22	17	11
Federal Tax Suits	1	0	0	0
Forfeiture/Penalty	6	5	2	7

[76] The issuance of a standard order providing prisoners 20 days to give the United States Marshal a "Form USM 285" so that the Marshal would execute service caused delay in 21.3% of orders in prisoners cases. Orders implementing stipulations are not included in this section.

Labor	13	5	4	13
Other Statutes	18	7	9	2
Prisoner Petitions	**27**	**80**	**4**	**1**
Property Rights	4	4	0	4
Real Property	4	2	1	0
Social Security	1	1	0	0
Torts	**17**	**25**	**13**	**21**

Table 8

Although there were 37 criminal cases sampled in the southern division and 20 cases in the north, many cases had multiple defendants (Figure 112). In Las Vegas, 37 cases produced 62 defendants for an average of 1.7 defendants per case; Reno had 20 cases and 26 defendants for 1.3 defendants per case.

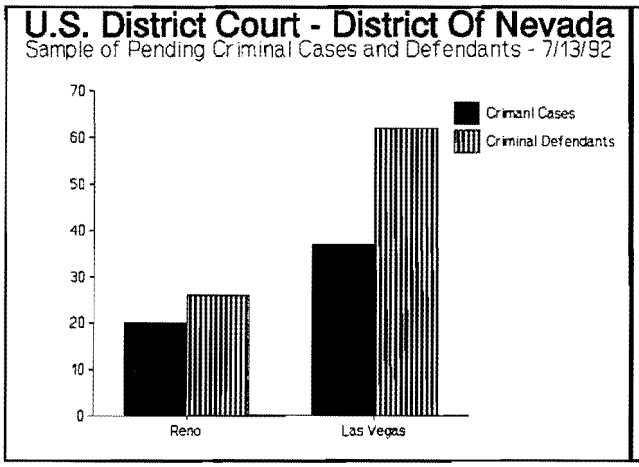

Figure 112

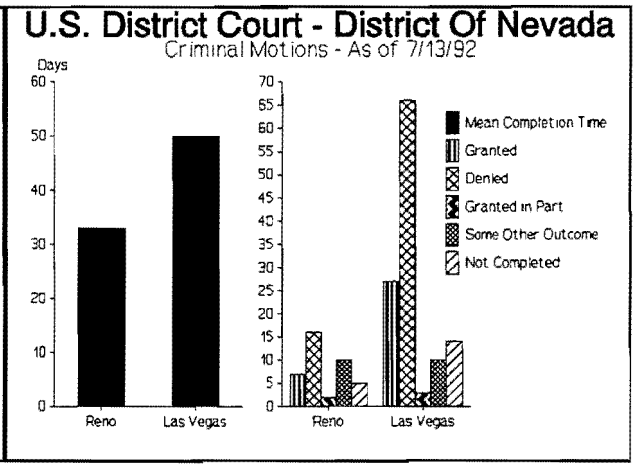

Figure 113

There were 120 criminal motions sampled in Las Vegas and 40 in Reno (see Table 9). Motions to dismiss (both full and partial) accounted for 10 of the 40 (25%) criminal motions analyzed in the northern division. In Las Vegas, 12 of 120 (10%) criminal motions were motions to dismiss. Five motions to disclose and five to suppress were filed in Reno, at 12.5% each. In Las Vegas, 15 motions to disclose

(12.5%) and 10 motions to suppress (8.33%) were filed.

Table 9

Criminal Motions	Las Vegas	% of LV	Reno	% of Reno
Disclosure	15	12.5	5	12.5
Dismiss (Partial or Full)	12	10.0	10	25.0
Other	71	59.2	20	50.0
Production	12	10.0	0	0.0
Suppress	10	8.3	5	12.5
Total	**120**	**100**	**40**	**100**

Table 9

The mean time from filing a criminal motion to a resulting decision was 33 days in Reno and 50 days in Las Vegas (Figure 113). Seven (7) of the motions filed in the north were granted, 16 were denied, 2 were granted in part, 10 had some other outcome, and 5 were still pending. Twenty-seven (27) motions were granted in Las Vegas, 66 were denied, 3 were partially granted, 10 had some other outcome, and 14 were still pending.

There were few dispositive motions found in the sample of criminal motions for either Las Vegas or Reno (Table 10). Of the 40 criminal motions filed in Reno, 2 were fully dispositive. Las Vegas had 10 fully dispositive criminal motions out of the 120 criminal motions filed. Neither dispositive motion was granted in Reno, but Las Vegas had 1 motion granted, 7 motions denied, and 2 had some other outcome.

Table 10 Criminal Dispositive Motions

Action Taken	Las Vegas	Reno
Granted	1	0
Denied	7	2
Some Other Action	2	0

Table 10

There were 14 stipulations filed to continue a trial date in the criminal cases surveyed in Reno and 71 stipulations to vacate and set a new trial date in Las Vegas (Figure 114). The great majority of stipulations in Las Vegas (86%) were to vacate a trial date and set a new trial date.

It is the consensus of the Advisory Group that one reason for the disparity in the number of continuances between Las Vegas and Reno may be the method of setting the trial date at the initial arraignment in the southern division. The effect of scheduling trials at an unrealistically early date can lead to filing stipulations for continuances. Late provision of discovery in criminal cases may also lead to stipulations to continue.

The average length of continuances granted by stipulations in criminal cases was 44 days in Reno and 77 days in Las Vegas (Figure 115).

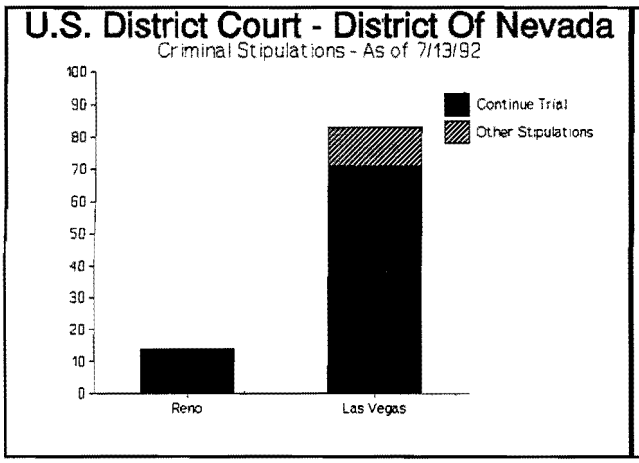

Figure 114

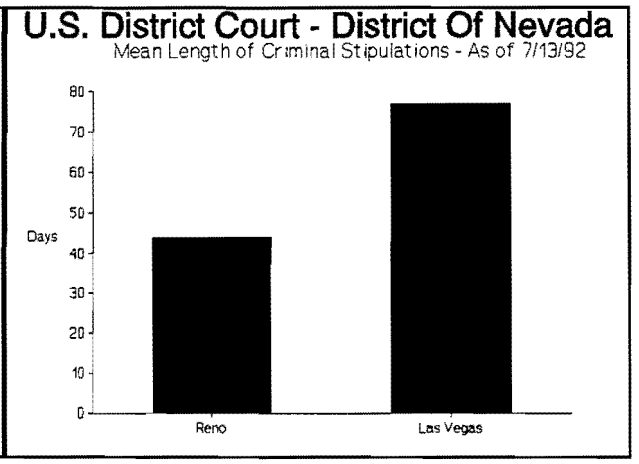

Figure 115

(f) Examination of Court Procedures.

The Advisory Group has made an extensive effort to examine the court

procedures used in both the northern and southern divisions of the District of Nevada. In addition to reviewing pending cases for such things as motions and case scheduling practices, personal interviews were conducted with the Clerk's Office staff in both Reno and Las Vegas.

Although the District of Nevada makes extensive use of modern computer technology, the optimum use of such technology has not been implemented in all court procedures. Currently, the docketing of matters is manually performed on electronic typewriters. Much of the same information is then reentered into the Case Management System (CMS) used in the district. This duplication of effort and obsolete data entry is an area of concern to the Clerk and was examined by the Advisory Group.

This system has necessitated that the understaffed Clerk's Office work substantial uncompensated overtime to insure timely processing of case-related materials. The present system does not optimize the use of Clerk's Office personnel. The District of Nevada has already recognized this problem and is developing a comprehensive integrated electronic docketing/case management system for the entire district.[77]

A problem also exists in the district with inadequate computer communication between the two divisional offices in Las Vegas and Reno. The two cities are 443

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[77] Ms. Cynthia Cohn, Operations Manager, and Mr. Herb Dunson, Systems Administrator, have developed a comprehensive plan to substantially advance computer utilization in the District of Nevada. It includes the anticipated installation of an integrated electronic docketing/case management program by the end of 1993.

miles apart, and it is imperative that judicial officers and court staff be able to instantaneously utilize the CMS from either of the two cities. Judicial officers, their staff, and the Clerk's Office staff in Las Vegas cannot readily and speedily access information about a matter in Reno (and vice versa) with the current level of telecommunication equipment authorized for the district.

The Clerk's Office staff identified the very substantial need for additional staffing in that office. Current staffing levels are inadequate to meet the mission of the Clerk's Office. A new work measurement formula has replaced the 10 year-old formula used until February 1993. The September 1992 work measurement formula indicates that the Clerk's Office needs 57 people to adequately process a caseload equivalent to the 1992 caseload. However, because of the fiscal crisis of the U.S. Government, the Judicial Conference has imposed a hiring freeze and authorized only 41 of the positions determined necessary by the new work measurement formula. This authorization of only 72% of the positions justified by the new formula severely handicaps the Clerk's Office and in all likelihood will lead to delay in many of this office's activities in assisting the court.

Other areas of concern addressed by the Clerk's staff included the unfamiliarity of attorneys and their support staff with the Local Rules and the individual judges' procedures. The legal, secretarial, and paralegal staff for law firms practicing in the District of Nevada could help reduce cost and delay in civil ligation by becoming more knowledgeable with the *Federal Rules of Civil Procedure*, *Local Rules of Practice*, and

procedures of the individual judges. Examples of cost and delay include filing improper documents that are later stricken by the court and insufficient attention paid to compliance with Local Rule 135-5 (Certificate as to Interested Parties). The nonstandard filing of documents and/or noncompliance with the Local Rules increases the burden on the Clerk's staff by necessitating more docketing and processing of orders to correct the deficiencies mentioned above. This causes more cost and delay in the litigation process.

(2) Principal Causes of Cost and Delay.

There are five concomitant "principal" causes for cost and delay identified in the District of Nevada:

(1) the inadequate number of judicial officers and other court personnel;

(2) the ever-burgeoning growth of prisoner filings and the insufficient means to manage them;

(3) inadequate attention by the Legislative and Executive Branches to the staffing and financial requirements of the court and by these branches not fully evaluating the impact of new legislation on the court;

(4) the disregard shown by some attorneys in abiding by the *Federal Rules of Civil Procedure* and the *Local Rules of Practice* of the District of Nevada coupled with the perceived selective or nonexistent enforcement of the rules and the need to modify the local counsel rule used in the district; and

(5) the use of the master trial calendar (Las Vegas) and stacked calendar (Reno).

(1) The "principal" cause for cost and delay in the District of Nevada is the lack of adequate judicial and court support personnel. The District of Nevada urgently

needs Congress to fill the vacancy created when Judge Reed entered senior status.

Additionally, caseload statistics indicated the district deserves a fifth district judge (there were 582 weighted cases per judge, for the year ending June 31, 1992, and the District of Nevada ranked fourth in the nation and second in the circuit for weighted cases per judge). Projections indicated a permanent sixth judge will soon be necessary; a strong case can be made for the immediate appointment of a sixth judge so that the court workload will not continue at crisis proportions.[78]

The active and senior district judges, and magistrate judges reported a mean (arithmetical average) work week of over 64 hours for each judge in the District of Nevada. (The judges' answers to their questionnaires revealed the three active and one senior district judges average working approximately 258 hours per week.) Assuming a full-time 40 hour work week, only 240 hours would be needed to support six full-time district judgeships. In other words, the District of Nevada's district judges are working substantially more hours per week than 6 people would in a normal 40 hour work week. Without the additional judgeships, there is an imminent danger that cost and delay will greatly increase in the District of Nevada.

Directly related to meeting the demands of an ever-increasing caseload is the Clerk's Office need for more staff. The revised work measurement formula became

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[78] The December 31, 1992, data provided by the Administrative Office revealed that the District of Nevada judges' weighted case filings had increased to 601 per judge. These data justify two additional district judgeships. Even with two new judgeships, the district's weighted caseload per judge would exceed 400. Please see Appendix E for more detailed statistics.

effective in 1993, but authorized positions have been harshly cut by the Judicial Conference because of budget constraints. Authorization of current positions is substantially below the previous work measurement formula which was over ten years old. The most recent cut in authorized positions goes in exactly the opposite direction of the increasing staff requirements of the U.S. District Court. The District of Nevada should be staffed at 100% of the new work measurement formula.

(2) Currently 32% of the civil cases filed in the District of Nevada are prisoner petitions (Figure 116).[79] Prisoner filings made up 444 of the 843 civil filings in the northern division (52.7% of the total Reno civil filings) and 169 of 1070 civil filings (15.8% of the total Las Vegas civil filings) in the southern division for the year ending September 30, 1992. Prisoner civil rights petitions are responsible for 23.8% of the total district civil filings and much of the growth in the district's caseload.

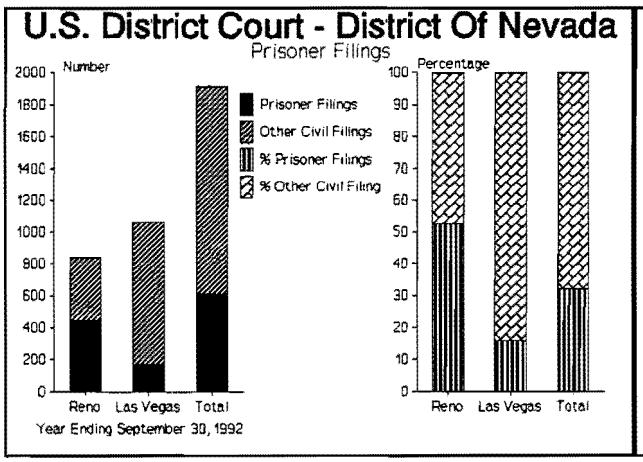

Figure 116

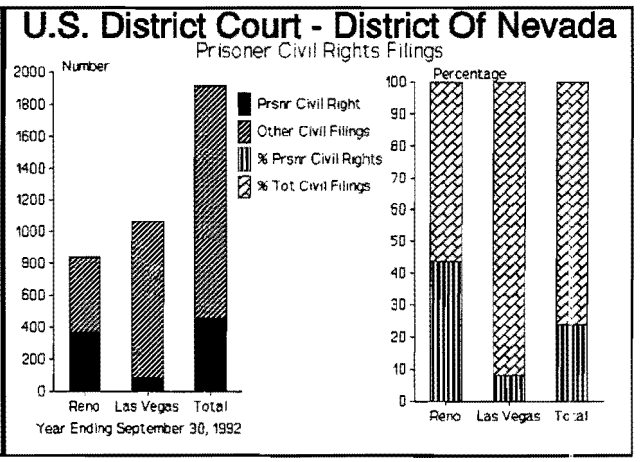

Figure 117

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[79] Total civil and prisoner filings for the period October 1, 1991, through September 30, 1992.

The majority of prisoner filings in the northern division are civil rights petitions (Figure 117). There were 368 prisoner civil rights petitions filed in Reno (43.7% of the total civil filings in the northern division) and 87 filed in Las Vegas (8.1% of the total civil filings in the southern division) for the year ending September 30, 1992, (a district-wide total of 455 prisoner civil rights filings and 23.8% of total civil filings). In other words, one type of civil case (prisoner civil rights) comprises almost 44% of the total civil cases filed in the northern division. Additionally, in the northern division all other prisoner civil cases (primarily *habeas corpus*) total 9%.

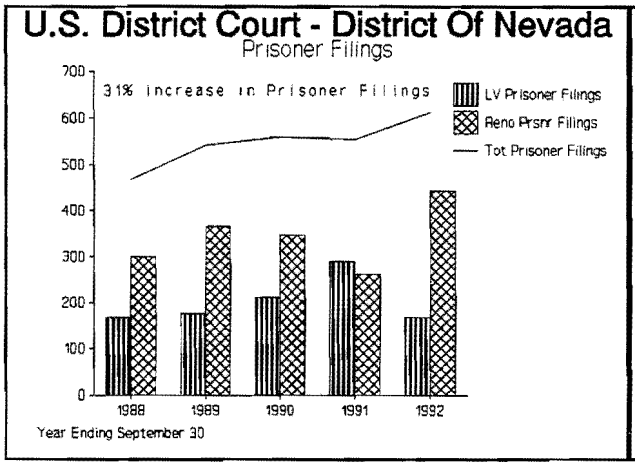

Figure 118

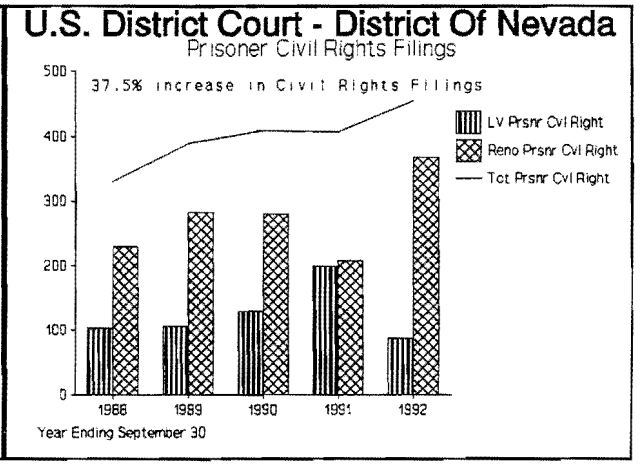

Figure 119

Prisoner petitions in the district grew 31% during the last five statistical years, September 30, 1988 to September 30, 1992 (Figure 118). In the northern division, prisoner civil rights petitions increased 61% over these statistical years and decreased 15% in Las Vegas for the same period (the decrease was due to the closure of the prison facility at Jean, Nevada, and the transfer of its inmates to prisons in the

northern division).[80]

Total prisoner civil rights filings increased 37.5% for the entire district during this period (Figure 119). This rapid and continuing increase places a tremendous burden on the District of Nevada and is a "principal" reason for cost and delay in the district because so much judicial time is wasted adjudicating frivolous lawsuits.

The theoretical capacity for increasing prisoner litigation in Nevada is extremely high. The current number of prisoner filings per total inmate population is one prisoner filing per year for every ten prisoners held by the Nevada Department of Prisons. In other words, no more than 10% of the total number of prisoners have filed a petition or complaint in the District of Nevada in 1992.[81]

Prisoner filings are likely to increase not only because of the high growth rate in prisoner population, but also because of the changing prison culture. For example, if no more than 10% of the current prison population in the State of Nevada can generate 613 prisoner filings in one year, 20% could easily double the number of filings. Recent indications of prisoner behavior lend credence to the assumption that a greater percentage of prisoners will file civil cases in the U.S. District Court, District

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[80] Further examination of Figure 118 reveals that prisoner filings in the southern division increased each year for the period 1988-1991 and decreased only in 1992 because of the closing of the prison facility. It should also be noted that the significantly increased number of filings in the northern division for 1992 can be only partially explained by the closing of the southern prison facility.

[81] The true percentage of prisoners filing petitions is actually lower than 10% because there is a group of prisoners who are "frequent filers."

of Nevada, in the coming years.[82]

(3) Congress and the Executive Branch have not done an adequate job allocating new judicial officers (the Judicial Conference has authorized a temporary judgeship for the district since 1986 and a permanent one since 1988), financial resources, and Clerk's Office staff to rapidly growing districts. Although the Advisory Group recognizes that resources are scarce in the face of a great many demands on government, the Judicial Branch is completely beholden to the Legislative and Executive Branches for its jurisdiction and financial resources. Thus, actions or inactions by the Legislative and Executive branches have profound effects on the district court's ability to perform its mission. The consequences of these actions and inactions frequently runs directly counter to Congress' stated purpose in enacting the "Civil Justice Reform Act," i.e., ". . . speedy, and inexpensive resolutions of civil disputes."

The reports of the CJRA Advisory Groups in many other districts have also observed that the policy decisions which are made by Congress and the Executive Branch have many and often adverse effects on the dockets of the districts. This Advisory Group agrees with those observations.

For example, Congress passed the Speedy Trial Act, 35 U.S.C. § 3161-3174. This Act basically requires that any information or indictment be filed within 30 days

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[82] A further indication of potential cases can be found in the approximately 7,000 grievances brought to the Prison Administrative Grievance Procedure in the first 16 months it has been in place. If this program is terminated (which is a distinct possibility), it would appear logical that some of these grievances would find their way into the federal court system.

of an alleged offender's arrest and that the criminal trial of the accused must begin within 70 days of the filing of the indictment or information. All of the districts have implemented plans in compliance with this Act. It is not generally possible to conduct civil trials in a timely fashion because of the priority which must be afforded criminal cases. In the southern division 40-80 civil cases are regularly "stacked" and "trailing" the 40-80 criminal cases on the master trial calendar.

Another example can be seen in the "Comprehensive Crime Control Act," P.L. 98-473, 98 Stat. 1837, which Congress passed in 1984. This Act revised federal criminal law in a number of important respects. Certain activities, such as terrorism, were added to the scope of federal criminal law. More significantly for present purposes, the Act also included bail reform legislation, which made it more difficult to obtain bail and required the court to hold a detention hearing within strict time limitations. Meaningful data are not available to establish the precise number of hours spent on detention hearings per defendant. However, it is the consensus of the Advisory Group that the Bail Reform Act has impacted the availability of the magistrate judges to handle civil matters due to the significant time spent on bail matters.

Another important aspect of the "Comprehensive Crime Control Act" was its enormous change in sentencing through the "Sentencing Reform Act." This legislation abolished parole and substituted court-supervised release, authorized the creation of sentencing guidelines in order to create a narrow range of punishments for each offense and changed the content and presentation of probation presentence

reports. Since becoming effective November 1, 1987, sentencing reform has required increased judicial time.[83] The guidelines require the courts to resolve factual disputes because of their potential effect on the sentence imposed. Because parole has been replaced with court-supervised release, the court itself must now handle post-custody violations.[84]

The Justice Department's Organized Crime Strike Force operates from an office in Las Vegas. Strike Force cases have made it necessary on occasion to conduct multiple trials for the case (either grouping defendants and/or counts). The Strike Force has the potential to envelop the court in highly complex, long-running criminal trials which might be brought under statutes such as RICO.[85]

In addition, the district has a Drug Task Force and a new Gang Task Force. The

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[83] According to the judicial questionnaire, almost all the judges believed the "Sentencing Reform Act" increased the time judicial officers invest in criminal cases. In fact, for some of the Act's sections, half of judges who responded indicated the time they spent has doubled.

[84] The Advisory Group has no data on the judges' out-of-court time devoted to these activities, but the six-month study of in-court time revealed that southern division judges conducted a total of 196 sentencing guideline hearings which totaled 107.95 hours. This produces an average of 0.55 hours per hearing. The northern division judges conducted 68 sentencing hearings which totaled 48.8 hours and produced an average of 0.72 hours per hearing.

The in-court time study further revealed that the southern division had 31 motions for modification of release which took 14.23 hours and 23 revocations of release at 13.58 hours during these six months. The northern division had 5 motions for modification of release which took 3.75 hours over the same period.

[85] The Strike Force does not routinely utilize the procedures regarding "open file" discovery contained in the standard criminal pretrial order. This necessitates discovery motions.

district has had many drug-related property seizure cases, both within the criminal cases and as separate civil cases.

Thus, congressional legislation affecting criminal law and Justice Department policies have increased the amount of time that all district courts, and especially this district court, must devote to their criminal dockets. Because criminal cases have priority, it will be difficult to significantly improve the quality and efficiency of processing cases on the civil docket unless the courts are given appropriate resources to meet the increased demands placed upon them by the criminal docket.

Executive and Legislative Branch decisions also have an impact directly on the civil side of the docket. New legislation, which may well be extremely wise in terms of social policy, certainly creates an incremental burden on the dockets of the district courts. The Advisory Group thinks that Congress should evaluate that impact when considering new legislation. The Advisory Group endorses the recommendation of the Federal Courts Study Committee that an Office of Judicial Impact Assessment advise Congress on the probable effects of proposed legislation on the judiciary.

The Advisory Group also believes that Congress can avoid unnecessary litigation by striving to avoid accidental ambiguity through poor drafting or inadvertent silence on important legal issues. If implemented, the Office of Judicial Impact Assessment can also help ensure that legislation will clearly specify a number of important details such as whether it grants a private right of action, which prior legislation is intended to be modified or repealed, and whether the new legislation is

intended to be retroactive. The Advisory Group hopes that such an Office of Judicial Impact Assessment would also assist Congress in writing legislation in plain English; this "radical" step would assist the courts by both simplifying litigation and preventing it in the first instance by allowing parties to understand the exact parameters of their own rights and responsibilities.

(4) The District of Nevada has spent much time and effort in developing its *Local Rules of Practice*. The vast majority of the Local Rules have been of immense help to the court, attorneys, and litigants in facilitating the quick and inexpensive disposition of civil cases filed in the district. However, the requirement that local counsel be prepared for and attend all court proceedings of the out-of-state attorneys with whom they associate (Local Rule 120-5(d)) should be examined for possible modification.

It has also come to the attention of the Advisory Group, through the use of questionnaires discussed in a previous section and from examining pending cases, that some attorneys repeatedly violate the rules of the court. Other attorneys practicing before the court complain of a haphazard or nonexistent use of sanctions aimed at those lawyers or litigants violating the *Federal Rules of Civil Procedure* or Local Rules. In this time of shrinking resources, the court can ill afford the additional delay imposed by attorneys or litigants wantonly flaunting the rules. Additionally, unwarranted delays in cases add additional costs throughout the entire litigation process.

(5) Attorneys practicing before the court in the District of Nevada have given

strong indications (through the general questions for attorneys and case specific questionnaires) of their belief that the master trial calendar (Las Vegas) and stacked trial calendar (Reno) cause unnecessary cost and delay in civil litigation. For example, attorneys, their clients, and witnesses for their case cannot be told with certainty when their case will be tried. It is common for civil cases to "trail" for 2-3 months and sometimes cases "trail" for one year before going to trial, requiring attorneys, litigants, and witnesses to be ready to go to trial for weeks or even months at a time.

Additionally, in Las Vegas, cases are assigned to the next available judge. Attorneys indicated they believed this causes added expense and some delay by requiring them to "educate" a judge who will try their case because s/he has had no previous knowledge of the case history.

III. Recommendations and Their Bases.

A. Recommended Measures, Rules, and Programs.[86]

The following recommendations are made in order to attempt to alleviate the principal sources of cost and delay that the Advisory Group has identified in its study of the District of Nevada.

1. Court Staffing.

(a) Judgeships.

After careful examination of the procedures of the court, the Advisory Group has concluded that the primary source of excessive cost and delay is the inadequate level of judicial positions authorized and filled in both the northern and southern divisions of the district.

The court is severely hampered by its inadequate judicial resources as the data previously reported on in Sections I and II indicate. At the present time, the court has four congressionally authorized district judgeships, but one has been left unfilled for nearly one year as a result of actions and inactions by members of the Executive and Legislative Branches of government. The Advisory Group trusts that the President of the United States will promptly nominate someone well-qualified to fill this vacancy and that the Senate will act promptly and favorably 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

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[86] Pursuant to 28 U.S.C. § 472(b)(3).

additional permanent district judge positions (a 50% increase in judicial strength) to meet the demands of its current caseload. The court also requires three additional magistrate judges. New judgeships are imperative because the court can predict with some 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, and the projected increase in the state prison population.

The Advisory Group thus 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 three new magistrate judgeships for the District of Nevada and that any new positions be filled as soon as possible after they are authorized. **The Advisory Group recommends that the determination of the location of the headquarters of the district judges should be based upon the apportionment of the caseload in the district.** Therefore, the Advisory Group hopes that in filling the present vacancy or any future vacancies, the President, in conjunction with Nevada's senior senator, will make a sufficiently thorough search for well-qualified judicial candidates of diverse backgrounds and experience so that a "short list" of potential nominees is also available to act upon as soon as additional judgeships are authorized or judicial vacancies are created.

(b) Clerk's Office Staffing.

A related principal cause of cost and delay is the insufficient staffing of the Clerk's Office. Therefore, the Advisory Group supports the court's efforts to obtain additional Clerk's Office staff. The Advisory Group recommends that Congress and the Judicial Conference of the United States allocate funds to staff the Clerk's Office for the district at 100% of the positions calculated as necessary using the work measurement formula revised for 1993 rather than the present authorized level of 72%. The level of staffing authorized for the court should take into account the two factors that make the work of the Clerk's Office especially difficult: the large distance separating the two divisions of the court and the special needs required in processing the high volume of prisoner litigation experienced in this court.

An issue related to staffing of the Clerk's Office and one which the court should act 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 Advisory Group 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 finished electronic docketing system being developed, the Advisory Group 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. Prisoner Filings.

The Advisory Group recognizes that the court must strive to reduce the time and costs required to process prisoner civil rights cases while simultaneously assuring that the due process rights of the prisoners are scrupulously maintained. More efficient processing of prisoner cases will also enable the court to allocate more judicial and support staff resources to other cases on the docket. In order to meet these goals, the Advisory Group makes several recommendations with respect to prisoner litigation.

(a) Alternative Dispute Resolution.

The Advisory Group recommends that part of the court's continuing work under the mandate of the CJRA include the exploration of meaningful alternatives for prisoner litigation. The Advisory Group believes that the grievance system in the state prison is not successfully functioning as an alternative to litigating in the federal court system. 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, 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 Advisory Group is confident that a program can be developed which can be effective in affording a just, speedy, and inexpensive mechanism to reduce the large volume of prisoner litigation. In view of the significant impact of prisoner litigation on the court's docket and the need for the court to show the depth of its concern for this problem, the Advisory Group recommends that the court appoint a judge[87] to head a Special Study Committee on Prisoner Litigation (hereinafter Special Study Committee) to develop a coordinated solution to the problem of prisoner litigation in the district. 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 a representative from each of the following: the Office of the United States Attorney, the state of Nevada, including the Office of the Attorney General, and NDOP staff from prisons which generate the most litigation. The Special Study Committee should also find ways to obtain prisoner input into this process.

(b) Staffing.

As indicated previously in this Report, the high volume of prisoner litigation creates a particularly significant impact on the workloads of the judicial officers and the Clerk's Office. The Advisory Group recommends the levels of staffing authorized for these categories be augmented by Congress, the Executive Branch, and the

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[87] The Advisory Group believes that such an appointment would fit the CJRA mandate that all "actors" in the system, including the court, make significant contributions to reducing cost and delay.

Judicial Conference of the United States in light of the special needs of prisoner litigation. The Advisory Group also recommends that the court regularly assess whether the existing and any augmented staff positions are being utilized efficiently.

(c) Filing Fees.

At the present time, the court has a modest filing fee schedule for prisoners filing *in forma pauperis* complaints. A majority of the Advisory Group believes that the court should consider revising the filing fee schedule to create a better balance between the goals of using filing fees both as a deterrent to frivolous or harassing litigation and as a symbolic measure of the litigation's cost to the court. This action should not block the prisoners' legitimate rights of access to the justice system through fees that, on a relative basis, are prohibitively steep. To facilitate the accomplishment of these goals and to prevent the latter problem, the staff of the Advisory Group has developed a proposed revised fee schedule (Appendix F), which the Advisory Group recommends be referred to the Special Study Committee for consideration as part of a more comprehensive examination of prisoner litigation in the district.

(d) Sanctions.

Another way of deterring prisoner litigation that is frivolous or otherwise violates the standards of Fed. R. Civ. P. 11 is to use appropriate sanctions.[88]

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[88] As it reads currently, Fed. R. Civ. R. 11 would seem to allow for (if not mandate) such experimentation:

Sanctions need not be exclusively monetary penalties.[89] Other sanctions may be more meaningful to prisoners. It might be possible to generate standards for nontraditional sanctions through an appropriate test case. However, the Advisory Group recommends the development of appropriate nonmonetary sanctions be a task for the Special Study Committee.

(e) *Pro se* Handbook.

The court may be able to save time and money by assisting prisoners (and other *pro se* litigants) in separating out what is potentially meritorious litigation from litigation that is facially nonmeritorious. One promising method would be for the Special Study Committee, in conjunction with the federal bar, to develop a *pro se* handbook. The handbook could include such topics as: the importance of obtaining legal counsel, 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

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> If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

[89] Sometimes monetary penalties might be appropriate. For example, the court might require the full filing fee as a sanction if it determined that a prisoner had refiled an action that had already been dismissed with prejudice for failure to state a claim for which relief could be granted.

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 judges less reluctant to sanction a *pro se* litigant who has violated a rule that is clearly covered in the handbook. The Advisory Group recommends that the Special Study Committee consider the development of a *pro se* handbook and consider the previous points raised on this subject.

(f) Standardized Discovery.

The court could probably save some time and effort for all concerned if it developed mandatory standardized discovery that would apply in all prisoner or *pro se* cases. The Advisory Group recommends that this matter be referred to the Special Study Committee.

3. Legislative and Executive Branch Responsibilities.

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

First, the Advisory Group recommends that Congress and the President review the requirements that current legislative initiatives and Executive Branch policies may have on the court's ability to meet its mission. This analysis should include a review

of the jurisdiction of the U.S. District Court, 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.[90]

Second, the Advisory Group urges any proposed legislation be required to have a "judicial impact statement" attached to the bill. The statement would be prepared by a proposed Office of Judicial Impact Assessment. The impact statement should estimate the number of supplemental judicial officers and other resources required to meet the additional burden posed by the proposed legislation and revisit existing legislation with regard to the further allocation of resources. The President and Congress should veto or vote against any legislation not allocating adequate resources to meet the burdens proposed by any new piece of legislation.

Third, Congress could reduce cost and delay in civil litigation by improving the bill drafting process. The Advisory Group recommends that Congress authorize and utilize the proposed Office of Judicial Impact Assessment to help ensure that each new piece of legislation will clearly explain Congress' intent. For example, does a proposed bill grant a private right of action, is prior legislation intended to be modified or repealed (and if so, which legislation), and is the new legislation intended to be retroactive or preemptive of state legislation? In addition, language should be in "plain

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[90] In contrast to the views expressed in other reports, such as *The History of Federal Judgeships Including Procedures and Standards Used in Conducting Judgeship Surveys*, Washington, D.C.: The Administrative Office of the United States Courts, February, 1991, that have dealt with these issues, a majority of the Advisory Group believes that Congress should not further reduce or eliminate diversity jurisdiction.

English." These simple requirements will greatly improve a party's understanding of a particular statute's requirements and should decrease the number of civil cases brought because of ambiguity or other rectifiable uncertainty in new legislation.

4. Enforcement of Federal and Local Rules.

In order to reduce cost and delay in the District of Nevada and recognizing the need to strengthen enforcement of the *Federal Rules of Civil Procedure* and the *Local Rules of Practice* for the District of Nevada, the Advisory Group recommends the court review and consider more strictly enforcing all rules that may affect cost and delay in the district.

(a) Continuances.

The Advisory Group considered the concept of requiring counsel to obtain the written consent of the parties for extensions of time for filing motions, responses, etc., and rejected the policy because it is believed such a requirement would result in additional cost and delay. With regard to trial continuances, the Advisory Group recommends a policy be adopted requiring counsel to certify that they have conferred with and obtained agreement from their clients for the continuances.[91]

(b) Delay Reduction in Motions Practice.

The Advisory Group recommends that any motion not having a responsive memorandum filed within the requisite time (as required by Local Rule 140-4) should

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[91] However, the Advisory Group recommends the exclusion of any attorney representing a governmental or political entity or its subdivisions, agencies, or officers.

be promptly submitted to the appropriate judicial officer for consideration. The Advisory Group also recommends that the court notify the state bar before enacting this recommendation. By following this policy, the court can reduce delay by up to an average of ten days per motion.

(c) Sanctions.

According to the survey data, there is a belief among a substantial segment of the attorneys with experience in the district that the judges do not wield their powers to sanction as effectively as they might, especially in the context of discovery proceedings. Some well-placed sanctions should serve as both general and specific deterrents to poor practice and should translate into less delay and cost in civil litigation. Therefore, the Advisory Group recommends the court impose sanctions where appropriate.

(d) Local Counsel Requirement.

The Advisory Group recognizes that the local counsel requirement is costly to litigants; however, it believes the benefits of this requirement outweigh the costs in most cases. Therefore, the Advisory Group recommends that the court revise Local Rule 120-5(d) and modify the requirement compelling local counsel to attend and be prepared for all proceedings. Attendance at all proceedings should be excluded from Local Rule 120-5(d) except when ordered by the court. This recommendation will not significantly reduce the benefits of Local Rule 120-5(d), but will reduce the cost to litigants represented by out-of-state attorneys who associate with local counsel.

(e) Continuing Legal Education.

In order to help reduce the confusion caused by changing court procedures, Federal Rules and Local Rules, and other issues important to the court and the bar of the court, such as encouraging the use of ADR, the Advisory Group recommends regular Continuing Legal Education (CLE) classes be established in conjunction with the State Bar of Nevada.

(f) Pretrial Handbook.

To lessen confusion concerning the specific practices of the judicial officers in the district, the Advisory Group recommends the court develop and periodically update a *Pretrial Procedure Handbook* such as the one given to the Advisory Group when developing this Report. The handbook should be made available for purchase in a manner similar to the *Local Rules of Practice*, and the Advisory Group recommends attorneys and *pro se* litigants purchase the handbook.

5. Stacked and Master Calendar Systems.

As noted earlier in this Report, the Advisory Group has found that the stacked and master calendar systems which are used in the district contribute to cost and delay.[92] Although additional judicial personnel should help alleviate the problems

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[92] The Advisory Group fully understands that 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 Advisory Group also recognizes that while they are less than ideal solutions, under the difficult circumstances in the district, the two systems are better than the alternative of using a purely individual calendar system.

attendant to the stacked and master systems, the court cannot rely on obtaining new judges. Under the best of circumstances, due to the inevitable delays in authorizing, nominating and confirming them, any new judges will not be ready to assume a full caseload of their own for quite some time. Therefore, the Advisory Group recommends that the court attempt to improve the stacked and master calendar system now.

When a case is currently ready for trial, the attorneys and the parties do not know exactly when the case will be tried nor do they know which judge will try the case. The former problem increases the cost of preparation for trial and can lead to prejudice if the parties are not able to make witnesses or busy experts (especially those from out of state) available for trial dates subject to change or when there is very short notice. The latter problem deters settlement because it is more difficult to settle a case when the parties cannot add the identity of the judge into the calculus. In other words, the advantages of the principle of early and firm trial dates are lost under this system.

The Advisory Group believes that the parties will be helped by a significant modification of the existing systems. At an appropriate point early in the life of the case, certainly no later than at the time of the issuance of the scheduling order (Local Rule 190-1) or through the pretrial notice order (Local Rule 190-3), the parties should be given one of three options for trial of the case. One option would be to leave the case in the present system, with the uncertainties attendant to the master

and stacked systems. A second option would be to consent to trial before a specific magistrate judge who could offer a date certain for trial.[93] The third option would be to agree to submit to nonbinding arbitration[94] with selected members of the bar serving as neutral arbitrators.[95]

Making these options available would enhance the probability that those parties who want to go to trial on a date certain before a known trial judge can do so. Any parties taking one of the latter two options would also alleviate the pressure on the cases remaining on the stacked/master calendar. This system should not impose additional work on the district judges and should get the bar more accustomed to

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[93] The Advisory Group envisions that the Clerk's Office would randomly assign to each case one district judge, one magistrate judge for purposes of settlement, and other informal negotiations, and one magistrate judge for purposes of trial, if the parties consent to proceed before a magistrate judge. The court would have to decide whether such a system could include the northern division, where only one magistrate judge is in residence, or whether to assign southern division magistrates for trial. The Advisory Group prefers the latter option, at least on an experimental basis.

[94] If a party were dissatisfied with the results in the nonbinding arbitration, they would be permitted to return to the queue for assignment in the master/stacked calendar for a trial *de novo*. The court might wish to create a deterrent for doing so, such as paying costs or a portion of the other party's attorney's fees, if the requesting party failed to achieve a better result at trial than in the arbitration. The general experience across the country is that whether or not a disincentive is imposed, what frequently happens is that a fairly substantial number of losing parties seek trial *de novo*, but almost all of those cases end up settling well before trial. The arbitrator's award becomes the starting point for serious settlement negotiations.

[95] The court would have to develop a list of qualified arbitrators. Two possible sources for names and assistance in developing a program would be the arbitration program that is operating in Nevada's state courts and the offices of the American Arbitration Association (AAA) which provides arbitration services for commercial cases in the state.

going to trial before magistrate judges.

Another possible method to lessen the impact of the master and stacked trial calendar systems is to implement a differentiated case management system. Most responses to questions about differentiated case management were very positive; both the attorneys and the Advisory Group members would like to eventually see a system implemented in the District of Nevada. Despite the current shortage of judicial personnel, early and on-going control of the pretrial process is a goal that is at least worthy of some experimentation in the district. Other CJRA Advisory Groups have developed some interesting ways of achieving this goal without excessive judicial involvement. In particular, the Northern District of California has developed a promising case management plan that depends at least as much on the efforts of lead counsel for the parties as on the court itself. However, the experience in Nevada's state courts with a similar program under Rule 16.1 of the Nevada Rules of Civil Procedure has been less than ideal, and the Board of Governors of the State Bar has recommended that it be abolished. Therefore, the Advisory Group recommends that the court and Advisory Group continue to study the experience of the case management plans put forward by other districts and in the state of Nevada. If, at such time, enough evidence is gathered to support the implementation of a case management plan in the District of Nevada, the Advisory Group and the court should confer on implementing such a plan.

6. Additional Recommendations.

The following recommendations 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 Advisory Group believes may allow the court to reduce cost and delay in civil litigation.

The Advisory Group notes the concern raised by a substantial number of attorneys (in their answers to the questionnaires) that the court at least sometimes caused delay by not ruling promptly on dispositive motions. The Advisory Group believes that the scheduling of more oral arguments and issuance of bench rulings may speed the resolution of dispositive motions and recommends that more oral arguments be scheduled and bench rulings issued in the district.

The Advisory Group also recommends experimentation with allowing argument of motions by telephone. Local Rule 140-9 could be revised to permit this option if deemed necessary. It might prove to be a time and cost saving device, especially for attorneys who would otherwise have to travel to Reno or Las Vegas.

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

The Advisory Group took into account the ". . . particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys"[96] by utilizing extensive questionnaires targeted to learn the beliefs and

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[96] 28 U.S.C. § 472(c)(2).

perceptions of the active and senior district judges, magistrate judges, the Advisory Group's attorney-members, and a scientifically representative sampling of attorneys, litigants, and *pro se* litigants. Additionally, an examination of court procedures, 200 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).

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

If the recommendations made by the CJRA Advisory Group are implemented, the court, litigants, litigants' attorneys, and the Executive and Legislative Branches of government should make the following "significant contributions" [28 U.S.C. § 472(c)(3)]:

1. **Court.** The Advisory Group recommends the court

(1) form a Special Study Committee on Prisoner Litigation and appoint a judge, Clerk's Office staff, and representatives from the CJRA Advisory Group, the state Attorney General's staff and the Nevada Department of Prisons' staff to sit on the committee;

(2) consider more strictly enforcing all rules that affect cost and delay in the district and imposing sanctions where appropriate;

(3) develop a policy requiring counsel requesting trial continuances to certify that their clients have agreed to the continuances;

(4) modify its current policy and have promptly submitted all motions in which the opposing party has not filed a timely response as required by Local Rule 140-4; the Advisory Group also recommends the court notify the bar before enacting this change;

(5) modify Local Rule 120-5(d) to remove the automatic requirement that local counsel be prepared for and attend the trials of the out-of-state attorneys with whom they associate;

(6) use more oral arguments for dispositive motions, issue bench rulings and experiment with telephonic hearings for oral arguments;

(7) develop and implement suggestions to lessen the cost and delay inherent in the use of the stacked and master trial calendars, e.g., the establishment of a nonbinding arbitration program and the assignment of a second 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) direct the Clerk's Office to continue developing an electronic case management system; and

(9) regularly update the *Pretrial Procedure Handbook* given to the Advisory Group and make the revised handbook available for purchase by the bar and *pro se* litigants in manner similar to the *Local Rules of Practice*.

2. Litigants. The Advisory Group recommends

(1) litigants must be consulted and agree to any trial continuances before their attorney may request a trial continuance; consultation between litigants and their counsel could be difficult to achieve, in terms of time and cost, given the possible remoteness or unavailability of some litigants and their counsel;

(2) litigants be required to choose between three possible methods for adjudicating their cases: consent to proceed before a magistrate judge, consent to participate in nonbinding arbitration, and choosing to remain on the master or stacked trial calendars; each of the three alternatives require significant contributions by the litigant;

(3) the Special Study Committee attempt to include input from prisoner litigants in the development of alternatives to proceeding in federal court; and

(4) Local Rule 120-5(d) be modified so that local attorneys are no longer required to prepare for and attend all court proceedings of the out-of-state counsel with whom they associate; this modification necessitates that litigants with out-of-state attorneys make significant financial contributions to reduce delay for the court, litigants, and attorneys; this rule reduces the number of delays caused by attorneys unfamiliar with the Local Rules and other court

procedures used in the District of Nevada.

3. Litigants' Attorneys. The Advisory Group recommends

(1) at least one attorney from the Nevada Attorney General's Office and at least two attorneys from the Civil Justice Reform Act Advisory Group participate in the activities of the Special Study Committee;

(2) attorneys be required to certify that they have obtained their client's agreement before pursuing trial continuances;

(3) the establishment of CLE classes for attorneys concentrating on ADR, court procedures, *Federal Rules of Civil Procedure* and Local Rules;

(4) attorneys will need to adhere more closely to the requirements of the *Federal Rules of Civil Procedure* and the *Local Rules of Practice* since the Advisory Group has also recommended that the court more strictly enforce the rules; and

(5) attorneys purchase the *Pretrial Procedure Handbook* and the *Local Rules of Practice*.

4. Congress and the Executive Branch. The Advisory Group recommends

(1) the President and Congress promptly fill existing vacancies;

(2) the President and Congress promptly authorize two additional district judgeships, supplement these with three new magistrate judge positions, and augment the Clerk's Office staff for the District of Nevada to 100% of the positions justified by the current work measurement formula;

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

(4) the President and Congress create an Office of Judicial Impact Assessment; the office would estimate the number of additional judicial officers and other resources required for existing law and proposed legislation, and the office would help ensure that each new piece of legislation clearly explains Congress' intent.

D. Explanation of Compliance With 28 U.S.C. § 473(a).[97]

The Advisory Group 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 . . . ."[98] The Advisory Group has considered the "principles and guidelines" of systematic "differential treatment of civil cases" in making its recommendations and concludes that the recommendations developed do include such "principles and guidelines."

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

[98] 28 U.S.C. § 473(a)(1).

§ 473(a)(2) early and ongoing control of the pretrial process through involvement of a judicial officer in-

(A) assessing and planning the progress of a case;

(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-

(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 Advisory Group acknowledges the need for judicial officers to provide ". . . early and ongoing control of the pretrial process . . . ."[99] Judicial officers in the District of Nevada provide such "ongoing control" by "assessing and planning the progress"[100] 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 Advisory Group cannot realistically recommend that all judicial officers spend even more time evaluating and planning the progress of their cases as a general matter. If and when more judges are added to the court, the Advisory Group believes that the time would then be ripe to consider revising Local Rule 190-2 which provides that the court will

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[99] 28 U.S.C. § 473(a)(2).

[100] 28 U.S.C. § 473(a)(2)(A).

generally not conduct pretrial conferences.

(2) Setting Early, Firm Trial Dates.

The current procedures of using a stacked trial calendar (Reno) and master trial calendar (Las Vegas) virtually 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 . . . ."[101] The Advisory Group recognizes that setting early and firm trial dates would probably settle cases earlier and at less cost. However, given the increasing and staggering criminal caseload, the large number of civil cases in the district, and the scarcity of judicial resources allocated to the district, it is inconceivable that "firm" trial dates can be meaningfully implemented on a consistent and general basis at this time in the District of Nevada.[102] However, this is another matter which should be revisited soon after augmentation of the judicial personnel authorized for the district.

Despite the inability to set "early, firm trial dates" as a general matter, the Advisory Group believes that the court can take some steps, at least on a temporary

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[101] 28 U.S.C. § 473(a)(2)(B).

[102] For a judicial officer 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)) are meaningless under the current trial scheduling calendar system used in the district. To an extent, the judicial officers make such determinations on a daily basis as they perform their case management and allow trial continuances; certification would do nothing, but increase judicial and clerical workload in an already understaffed district.

basis. For example, the recommendation made by the Advisory Group giving all parties the option of an early, firm trial date with a magistrate judge or nonbinding arbitration, rather than the more indefinite date with the stacked/master calendar, would help 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 . . . ."[103] The Advisory Group agrees that controlling unnecessary discovery is important, but based on the data it collected, believes it has been demonstrated that Local Rule 190 is basically sufficient to control discovery. Therefore, the Advisory Group has recommended the continuation of current discovery practices.[104] However, the court needs to be cognizant of the Advisory Group's conclusion, which is derived from the responses to the questionnaires, that although the written rules regarding discovery are adequate, they need to be enforced more strictly in practice.

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[103] 28 U.S.C. § 473(a)(2)(C).

[104] 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 should monitor the success of the hot line program and consider appropriate adjustments as it 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 . . . ."[105] pursuant to Local Rule 140 (motions) and Local Rule 190. The Advisory Group agrees that judicial control of motions practice is desirable; it generally recommends 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.[106] Therefore, the Advisory Group has recommended that the court 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 L.R. 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).

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[105] 28 U.S.C. § 473(a)(2)(D).

[106] It appears that the reason for this is that for convenient administration, the Clerk's Office calendars when motions should be presented to the appropriate judicial officer for disposition on the basis of a "41-day cycle." This cycle is designed to give the parties the maximum time allowed for a response to the motion and a subsequent reply. The 41-days motions cycle includes all days, i.e. weekends and holidays, and not just regular business days.

§ 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-

(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 Advisory Group 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 . . . ."[107] 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 . . . ",[108] ". . . prepares a discovery schedule and plan

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[107] 28 U.S.C. § 473(a)(3)(A).

[108] 28 U.S.C. § 473(a)(3)(B).

. . .",[109] or ". . . sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition . . ."[110] also may be valuable. However, such conferences are already used in the district when the court or the parties determine it is appropriate. The Advisory Group does not believe that the court 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 Advisory Group agrees that ". . . encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices . . ."[111] is beneficial to the litigants, the litigants' attorneys, and the court. The Advisory Group has considered and rejected several proposals calling for the "voluntary exchange of information" or the use of "cooperative discovery devices." However, the Advisory Group has recommended that the court establish a Special Study Committee which would consider a system for disclosure of information without the necessity of formal requests.

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[109] 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 Advisory Group does not believe that evidence uncovered in the District of Nevada warrants development of any such procedures.

[110] 28 U.S.C. § 473(a)(3)(D).

[111] 28 U.S.C. § 473(a)(4).

§ 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 Advisory Group believes that the court 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 . . ."[112] through its utilization of Local Rule 190-1(f)(2). The data collected by the Advisory Group do not indicate there is a significant problem with the operation of 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 Advisory Group agrees that ". . . authorization to refer appropriate cases to alternative dispute resolution programs . . ."[113] is valuable. Under Local Rule 185 the District of Nevada 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 Advisory Group has recommended arbitration and trial by magistrate judge as alternatives to the stacked and master calendar systems.

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[112] 28 U.S.C. § 473(a)(5).

[113] 28 U.S.C. § 473(a)(6).

E. Explanation of Compliance With 28 U.S.C. § 473(b).[114]

Pursuant to 28 U.S.C. § 472(b)(4) the Advisory Group 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 Advisory Group 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 Advisory Group 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 . . . ."[115] 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. Only in special cases will a judicial officer require a joint discovery-case management plan. Until the number of judges in the district is increased, the Advisory Group is concerned that any requirement that would mandate joint discovery-case management conferences would increase delay and cost in civil litigation.

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

[115] 28 U.S.C. § 473(b)(1).

§ 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 require 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 bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters . . . ."[116] If the court revises its policy regarding pretrial conferences, it should certainly consider implementing this requirement. However, the Advisory Group does not believe that any further recommendation on this matter is appropriate at the present 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 its review of the practices in the court, the Advisory Group 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

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[116] 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.

the party making the request . . ."[117] 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. However, the Advisory Group has recommended that the court implement a requirement that attorneys certify that their client agrees with any trial continuances. Of course, a judge would be free to implement the other aspects of this requirement in a specific case if the situation warranted such action.

§ 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 . . . ."[118] The Advisory Group has considered the possibility of developing a neutral evaluation program for prisoner civil rights litigation and is unable to currently recommend such a program. In addition, the Advisory Group has considered and rejected such a program for other types of civil litigation.

§ 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 Advisory Group agrees that ". . . upon notice by the court, representatives

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[117] 28 U.S.C. § 473(b)(3).

[118] 28 U.S.C. § 473(b)(4).

of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference . . . ."[119] Currently, the judicial officers in the District of Nevada informally require someone able to bind the parties be present during settlement discussions. The Advisory Group sees no reason to formalize the practice at this time and recommends continuation of 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.

This section is directed towards the court, not the Advisory Group. The court will be required to address this section in its CJRA Plan.

F. Recommend Model Plan or Develop a Plan.[120]

1. Examination of the Model Plan.

The CJRA directs the Advisory Group and the court to consider the *Model Civil Justice Expense and Delay Reduction Plan*[121] developed by the Judicial Conference of the United States. After consideration of the options provided in the model plan, the Advisory Group concluded that the model plan did not have solutions for all the "principal causes of cost and delay"[122] identified in the district and, therefore, a

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[119] 28 U.S.C. § 473(b)(5).

[120] This section has been included pursuant to 28 U.S.C. § 472(b)(2).

[121] The model plan was promulgated in October 1992.

[122] 28 U.S.C. § 472(c)(1)(C).

proposed custom plan was developed. The Advisory Group has incorporated parts of the model plan into its recommendations for a custom plan for the District of Nevada (please see Appendix C). Accordingly, the Advisory Group has recommended the following parts of the model plan:

(1) consideration of the development of a *pro se* handbook by a Special Study Committee; the development of a *pro se* handbook was recommended by the District of Idaho and the Western District of Tennessee;

(2) consideration of standardized discovery for prisoner cases by a Special Study Committee as recommended by the Southern District of New York;[123]

(3) encourage allowing attorneys to argue motions by telephone, as suggested by the Western District of Michigan and the Eastern District of Arkansas; and

(4) evaluation of the Northern District of California's differentiated case management plan.

2. Additional Recommendations.

The Advisory Group recommends the court annually assess the condition of the docket, as required by 28 U.S.C. § 475, starting with data collected during the 1993 statistical year. The court should assess the condition of the docket in consultation with the Advisory Group through a series of joint annual meetings held sometime during the first quarter of each year beginning in 1994. In each year following the submission of this Report, the Advisory Group, in consultation with the court, should examine any "appropriate additional actions" necessary to reduce cost and delay in civil litigation. In particular, as indicated in the Report, the Advisory Group believes

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[123] The Advisory Group has not recommended standardized discovery, only the examination of such discovery by the Special Study Committee.

that it would be desirable for the court to revise 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.

G. Discussion of the Recommended Guidelines for Preparing CJRA Expense and Delay Reduction Plans.[124]

1. Contingency Fee Limits.

The Advisory Group recognizes the need to reduce the cost of litigating in the District of Nevada and has made recommendations to reduce such cost. Unfortunately, it is not possible for the Advisory Group to directly limit costs to all litigants in all types of cases. Many of the cost reduction recommendations made by the Advisory Group impact directly on the unnecessary expenses incurred by litigants in noncontingency-based fee arrangements, i.e. the removal of the requirement that local attorneys be prepared for and attend all court proceedings of the out-of-state counsel with whom they associate, as required by Local Rule 120-5(d). However, any savings realized by an attorney may not be passed on to the attorney's client in those cases where a contract for a contingency fee arrangement is made. It is this possible inequity that prompted the Judicial Conference of the United States to recommend contingency fee limits of 33 1/3% in the *Model Civil Justice Expense and Delay Reduction Plan* as is currently the policy of the Eastern District of Texas. The Advisory Group

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[124] This section has been included to respond to recommendations made in Section V (IX) and Attachment D of the *Model Civil Justice Expense and Delay Reduction Plan*, Washington D.C.: Judicial Conference of the United States, October 1992.

does not believe that limiting contingency fee arrangements for the District of Nevada would be beneficial to those persons litigating in the district.

After analyzing the survey of closed civil cases conducted for this Report, the Advisory Group found that only 15.5% of the sampled case questionnaires returned in the northern division and 13.0% of questionnaires returned in the southern division had a contingency fee arrangement. (The district-wide rate was 14.4%.) The Advisory Group did not find evidence that litigants believed that their contingency fees were excessively high. It appears that regulating the percentage which attorneys can charge their litigants for contingency fees would only benefit a small number of litigants in this district, and such regulation would attempt to correct problems which do not appear to exist in this district. Additionally, such a requirement might discourage attorneys from making contingency fee arrangements with their clients and force those clients who can pay to make some other fee arrangement, most likely an hourly arrangement, with their attorney. Clients who could not afford an hourly rate may not be able to find an attorney to handle their case on a contingency fee basis. Therefore, the Advisory Group does not believe that a limit on contingency fees in the District of Nevada would ". . . ensure just . . . resolutions of civil disputes"[125] as mandated by the CJRA.

2. Discovery Practices.

While the Advisory Group recognizes that discovery can be extremely costly to the parties litigating in district court, there is little evidence that the District of Nevada

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[125] 28 U.S.C. § 471.

should enact a more stringent or an alternative discovery process than is currently being used in most cases. However, the Advisory Group has recommended that the Special Study Committee examine the idea that all prisoner *pro se* cases be required to perform standardized discovery. Any additional recommendations that the Advisory Group chose to make would likely increase the cost of litigating in the District of Nevada, not reduce the cost. Therefore, the Advisory Group has recommended the continuation of the discovery practices currently in place in the district.

3. Annual Assessment of the Docket.

The Advisory Group has recommended annual assessments of the docket as required under 28 U.S.C. § 475. However, the Advisory Group rejects 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 CJRA plan. The Advisory Group believes that the court and the Advisory Group should determine the procedures necessary to comply with 28 U.S.C. § 475 on a periodic basis and such procedures should not be included in the plan.

Appendices

Appendix A

Operating Procedures

I. Questionnaires--Assessing District Court Participants' Perceptions and Behaviors.

A. Sampling of Closed Cases.

The Civil Justice Reform Act Advisory Group reached a decision at its June 19, 1991, meeting in Reno, Nevada, that it would send questionnaires to all attorneys and litigants (including *pro se* litigants) whose cases terminated between the dates of January 1, 1990, and June 30, 1991. After the Clerk's Office staff conducted an initial review of the number of cases closed during this period, it was apparent that these dates would produce a total of approximately 3,000 cases. Discussions led to the conclusion that if all cases were surveyed a minimum of 6,000 questionnaires would need to be mailed to include all of the attorneys (based on only two attorneys per case, one per side), and another 6,000 (minimum) questionnaires would need to be mailed to the litigants (these calculations also assume only one plaintiff and one defendant). More realistic estimates would place the total number of questionnaires to be administered at three or four times these conservative figures, in other words, up to 50,000 questionnaires.

This would have been a daunting task, making considerable and unnecessary monetary, labor, and time demands. Literally tens of thousands of dollars would need to be spent for questionnaire reproduction, postage, and envelopes. The concomitant

data processing: coding, entry into computer programs, cleaning, and analysis would have taken thousands of hours to complete.

To help limit some of the problems associated with such a mammoth project the Advisory Group elected to utilize a scientifically generated, modified, multi-staged, stratified random sample of the cases closed during the chosen 18-month period. The basic sampling technique is one that has been used for decades in the natural and social sciences. Researchers implement this design when they have sufficient knowledge to divide the total population into discrete, non-overlapping strata.[126]

Some of the reasons for using this sampling technique include the following ideas. First, random sampling techniques are a scientifically sound, professionally accepted, and expected methodology for conducting many types of research. Second, sampling facilitates a timely and economically efficient process of data gathering and analysis; this is especially true when it is compared to distributing questionnaires to the complete population. Third, without random sampling techniques, one has an impaired scientific ability to estimate possible errors.

The sampling was accomplished in a series of stages with the first stage using printouts generated from SARD for the civil cases closed for the years 1990 and 1991. The printouts for 1991 were examined and all cases closed after June 30, 1991, were eliminated from possible sampling. The remaining cases were

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[126] The use of the term strata refers to aggregating cases based on their nature of suit code and should not be taken to imply any form of layering or a hierarchical order.

then divided into two sampling frames, one for the northern division (Reno) and one for the southern division (Las Vegas). Each division's sampling frame was used to generate separate samples of closed civil cases. The remaining stages in the construction of the samples were performed separately for each division.

The second stage utilized for the sampling was the stratification of civil cases into their nature of suit codes (for example, contract). A further substratification of the closed civil cases was made. Once again, using contracts as an example, contract cases were divided into "110" (insurance), "120" (marine), etc. The closed civil cases within each sub-stratum of the nature of suit codes were then sequentially numbered. This numbering provided each case with a unique identification number to be used in the final stage of the sampling. The numbering of cases within each sub-stratum of the nature of suit categories provided information on the total number of cases in that nature of suit code and also was used to determine what proportion of the total number of closed cases was represented by the cases in a particular nature of suit category.

In the final stage of the sampling process, the Advisory Group staff used tables of random numbers to randomly sample within each sub-stratum (nature of suit category). Each sub-stratum had cases randomly drawn until a sufficient number had been sampled to represent the proportion of cases in that sub-stratum compared to the overall number of cases closed during the 18-month timeframe.

The Advisory Group staff constructed different strata to reflect the complete

range of cases closed within each division of the district during the 18-month timeframe. By using the nature of suit codes for the development of the different sub-strata the Advisory Group staff insured that cases which were a numerical minority of the total number of cases would be included in the survey. If there were only a small number of such cases ($n < 5$), then the Advisory Group staff included all the cases in that sub-stratum; this is the modification of the multi-stage, stratified random sample.

Contract cases can be used as an example of a typical nature of suit category. There were a total of 409 contract cases closed in the southern division during the 18-month period. This represented 26.85% of all the closed cases in the southern division for this timeframe. Within the nature of suit category for contracts there were 91 cases which were in the "110," insurance, nature of suit division of contract cases. In other words, insurance cases were 22.25% (91/409) of the contract cases closed during this time and 5.98% (91/1,523) of all cases closed in the southern division during this period.

Nature of suit category "245," real property, tort product liability, can be used as another example. In the southern division there were no "245" cases closed in 1990, and only one in 1991. This one case was included in the sample even though a purely random sample would probably not have selected it.

The end result of this sampling technique (modified, multi-staged, stratified random sample) is a scientific sampling of all cases closed during the 18-month

period. The data reported are statistically representative of all cases closed, within a 4% probability of sampling error.[127] There is the possibility of a slight over-representation of cases that occurred relatively infrequently during the 18 months selected to define the sampling frame, but these were a small minority of the total number of cases included in the sample.[128]

A process which occurred immediately after the initial creation of the sampling frames (but before the actual drawing of the cases to be included in the sample) was an estimation of the probable response rates. These estimations were then used to calculate the final sample sizes needed to produce scientifically acceptable results.

The scientific literature reveals that response rates for mailed questionnaires are

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[127] The Advisory Group has not presented a detailed statistical explanation of sampling error, type I error, or type II error, in this report. What the term sampling error can mean for the reader is that the "error" should be no more than plus or minus 4% of the actual statistics discussed in this report concerning the answers provided by the attorneys and litigants on the questionnaires. In other words, if the 39% of the attorneys said they "agree" with a particular statement in a questionnaire, then the true percent for all attorneys who practiced in the district court during these 18 months and who would say they "agree" should be somewhere between 35% and 43%, (that is, 39% +/- 4%). In real world terms, the Advisory Group has even more confidence in the statistical validity of the data. The consistency of the findings between the divisions was remarkable. Analysis found the proportion of the attorneys' and litigants' responses (between the northern and southern divisions) were almost identical for the majority of their answers, and all the way to one-tenth of a percent for answers in some of the response categories. In none of the questions were there widely disparate answer patterns between the responses for the northern and southern divisions, although in a few cases the differences were statistically significant because of the large number of respondents.

[128] These cases constituted approximately 4% of the sample in the southern division and a little over 5% in the northern division.

ideally over 50%, but realistically are much lower. This can be illustrated with the real world research conducted during the late 1980s, and early 1990, by the Center for Business and Economic Research at the University of Nevada, Las Vegas. Researchers at the Center regularly sent out 25,000 questionnaires to get back 2,000 usable ones, less than a 10% response rate.

The problem of low response rates is compounded by Nevada's relatively unique demographic characteristics. Nevada has an extremely mobile population, and this is especially true for the Las Vegas metropolitan area. A partial indication of this rapid change is that Las Vegas is one of the very few cities in the U.S. which has its telephone book printed twice a year to accommodate the rapidly growing population. Other indicators reveal that Las Vegas has the lowest ratio of people born in and still living in the same community compared to those who have migrated into the city for any municipality in the U.S. with a population over 100,000. Las Vegas also has the lowest proportion of its population having lived in the city five years or longer compared to any other U.S. city of 100,000 or more.

In spite of these handicaps, it was anticipated that a 20% response rate could be achieved with the limited budget provided by the CJRA, a well-constructed instrument, a compelling cover-letter, but no follow-ups.[129] Therefore, calculations

[129] Because of the limited amount of funding available for this CJRA project, and the substantial costs in both time and money that would be necessary for the mass mailing needed for a follow-up, it was decided that resources would be better allocated to a larger initial sample size to insure an acceptable number of returns.

were made to achieve a representative sampling of the cases, attorneys, and litigants. The results provide a data set statistically representative of the whole population of closed cases for January 1, 1990, to June 30, 1991. The calculations produced estimates that the southern division would need to draw a sample of 646 cases and the northern division would need 653 cases.[130]

Once the sample was drawn, an attorney mailing list was compiled from information on the docket sheets and directories of the Nevada State Bar members. Letterhead stationery indicating the members of the Civil Justice Reform Act Advisory Group and its co-reporters was used to mail a letter to each attorney listed on the docket sheets and for whom an address could be determined. The letter explained the reason behind the formation of the CJRA Advisory Group, how the attorneys receiving the letter were chosen to be included in the sample, that the survey answers would be entirely confidential, and that they would soon be receiving a letter from (then) Chief Judge Reed and George Dickerson, Chair of the CJRA Advisory Group, along with a set of questionnaires to be completed by the attorneys and their litigants.

The letter served several important functions. First, it made the attorneys aware that the CJRA questionnaires were coming. Second, it provided institutional and scientific legitimacy for the project. Third, it explained how the attorneys were

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[130] The slight disparity in sample sizes between the divisions was the result of the number of nature of suit categories where there were fewer than 5 cases. In such instances, all the cases in those nature of suit categories were included as was previously discussed.

chosen and it contained the Advisory Group's promise to maintain the confidentiality of their personal identity and their answers. And fourth, it was an instrument to check for invalid addresses. If letters were returned with no forwarding address, then the attorneys could be deleted from the sample, and when necessary, new cases were selected for inclusion in the sample.[131]

Mailing the questionnaires to the *pro se* litigants was particularly problematic because these litigants were often prisoners. Prisoners are frequently moved from one prison to another for a variety of reasons. This was especially true during the time of the survey because of Nevada's fiscal crisis which necessitated the closing of some prison facilities and the transfer of many inmates.

This problem of locating prisoners was partially solved with the assistance of the state of Nevada when NDOP officials provided CJRA staff access to information on inmates' locations. Nevertheless, some prisoners had been released after the closing of their cases and others had been transferred to out-of-state facilities.

B. Questionnaire construction.

The initial construction of the questionnaires which were ultimately used in the District of Nevada began with reviewing copies of questionnaires distributed by the Civil Justice Advisory Group for the Southern District of Florida and the Federal

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[131] The selection of new cases followed sampling techniques similar to those discussed above. A provision was made for sampling within the same nature of suit category that the deleted case had come from thus maintaining the representativeness of the sample.

Judicial Center at a nationwide seminar held in Naples, Florida in 1991. The Advisory Group substantially revised these questionnaires, supplemented them, and created new ones (specific case questionnaire for the attorneys, *pro se* litigants' questionnaire, and a judges' questionnaire). Some questions were refined and reformatted, with many new, additional questionnaire items coming about as a result of communication with other districts, examinations of questionnaires they used, reports from other districts, and most importantly, discussions with people working for the federal district court in Nevada.

Drafts of the two attorneys' and litigants' questionnaires were presented to the CJRA Advisory Group in November 1991, by the management analysts. The Advisory Group carefully critiqued each item on all questionnaires which led to re-visions. The edited questionnaires were then pretested by the management analysts.

The pretesting took place in both the northern and southern divisions. It began with the administration of the questionnaires to a small number of attorneys and their clients who had cases closed during the designated 18 months. Immediately upon completion of the questionnaires the attorneys and their clients were interviewed and debriefed. This included an item by item evaluation of the questionnaires. The questionnaires were reviewed for wording difficulties, the need for additional answer categories on the fixed-response questions, for topics not included, and any other problems encountered.

Further refinements were made to the questionnaires which were then

submitted to the Executive Subcommittee of the CJRA Advisory Group for final approval before mailing to the attorneys in the sample. There were a total of five different questionnaires used to gather data for this Report: "General Questions for Attorneys," "Specific Case Questions," "Pro Se Questionnaire," "Questions for Litigants," and "General Questions for District Judges and Magistrate Judges,"[132] (which were hand-delivered to the judges).

C. Mailing the Questionnaires.

The questionnaires were mailed to the attorneys along with a cover letter on Chief Judge Reed's letterhead stationery and signed by Chief Judge Reed and George Dickerson, CJRA Advisory Group Chair.[133] The letter emphasized the importance of the attorneys' cooperation and reaffirmed the confidentiality of their answers. Included with the cover letter was a "General Questions for Attorneys" questionnaire, one or more copies of the "Specific Case Questions" (depending on how many cases in the sample the attorney had served as counsel), and one or more copies of the "Questions for Litigants" questionnaire. On the cover of each questionnaire was a sheet providing information on completing the questionnaire and the name of one of the management analysts along with his telephone number. The attorneys and

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[132] The judges' questionnaire was developed during the summer of 1992. The questionnaire was reviewed by the Advisory Group at their August 1992 meeting in Reno, Nevada. Copies of the questionnaire were given to the judges in the fall of 1992.

[133] The questionnaires were put in the mail to the attorneys during the latter part of February through the first few days in March 1992.

litigants were encouraged to call the management analysts if any difficulties were encountered while completing the questionnaires. Accompanying each questionnaire was a postage-paid, self-addressed envelope to be used for returning the questionnaire(s) to the CJRA Advisory Group.[134] Also enclosed was one unmarked envelope for each copy of a questionnaire. The questionnaires were to be placed inside the unmarked envelope. Then the unmarked envelope was to be placed inside the self-addressed envelope.

The management analysts were the only people with keys to the post office boxes and were the only ones allowed to open the returned mail. The outer envelope (self-addressed) was discarded before the inner, unmarked envelope was opened. The questionnaires contained no identification markings to further insure confidentiality.

D. Response Rate.

A total of 1,403 attorneys was included in the sample because they had cases closed during the 18-month period.[135] All of these attorneys were mailed general questionnaires; 801 had cases in the southern division and 602 participated in the northern division. A total of 368 general questionnaires was returned, 189 in the

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[134] The address used to return the questionnaires to the CJRA Advisory Group was a post office box. This was done to lend further credence to the confidentiality of the attorneys' and litigants' responses.

[135] The reasons for the disparity between the number of cases drawn for the samples and the number of questionnaires is that some of the cases had more than one attorney and/or litigant per side, some had only one attorney because of *pro se* litigants, and the General Questionnaire for Attorneys was only sent once for each attorney sampled, although attorneys may have been involved in multiple cases.

southern division, for a 23.6% response rate and 179 in the northern division, for a 29.7% response rate. The overall response rate for the district was 26.2%.[136]

There were 2,655 specific case questionnaires mailed to the attorneys who had practiced before the court, (some of the attorneys had more than one case included in the sample). The southern division had 231 of 1,427 questionnaires returned, for a 16.2% response rate. The northern division received 277 out of 1,228, for a 22.6% response rate. The response rate for the district was 19.1% (508/2,655).

As one might anticipate, the litigants had the largest number of questionnaires distributed with 3,786 mailed. However, these questionnaires were mailed to the attorneys who were then asked to forward them to their clients. This was necessary because the docket sheets frequently did not have the litigants' addresses, and even if they contained this information, it might be out-of-date in a substantial number of cases. The CJRA Advisory Group did not believe it was appropriate to ask the attorneys to send their clients' addresses to the Advisory Group.

This technique of using the attorneys as a conduit for the litigants' questionnaires undoubtedly lowered the response rate as some attorneys may have chosen not to forward any questionnaires. Other attorneys may have selectively forwarded questionnaires to only those litigants who the attorneys believed would respond in a way they desired.

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[136] These response rates exceeded what was necessary for the results to be a statistically acceptable representation of the attorneys who practice in the U.S. District Court, District of Nevada.

As a result of these limitations, the district received 309 litigant questionnaires of the 3,786 mailed to the attorneys which yielded an 8.2% response rate. The southern division received 108 of 1,699 questionnaires, for a 6.4% response rate. The northern division received 201 of 2,087, for a 9.6% response rate.

There was a relatively small number of *pro se* litigants in the district when compared to the number of litigants with attorneys. Nevertheless, 426 were identified and they returned 96 questionnaires, for a 22.5% response rate (which was substantially higher than the rate for litigants with attorneys). The southern division received 31 of 133 questionnaires mailed, for a 23.3% response rate. The northern division received 65 of 293, for a 22.2% response rate.

On the whole, the response rates can be said to be good, especially given the fact that no follow-ups could be attempted and the demographic problems associated with Nevada. The general questionnaire for attorneys and the questionnaire for the *pro se* litigants exceeded the targeted 20% figure. The response rate for the specific case questionnaires was almost that high, exceeding 19%, but more importantly, over five hundred (508) questionnaires were returned. In terms of standard sampling error calculations, this number of returns far exceeds the amount necessary to provide confidence that no more than a 4% sampling error occurred. And as anticipated, the litigants' response rate was low because of the technique implemented to deliver their questionnaires, but over three hundred (309) questionnaires were returned which provides the Advisory Group with a very large sample of clients served by the court.

It can easily be argued that the number of litigants who responded lends substantial statistical validity to the findings presented in this Report.

II. Sampling the Pending Cases.

Two hundred pending cases in both the northern and southern divisions were analyzed as part of the assessment of the condition of the criminal and civil dockets. The sampling frame for selecting the pending cases was created from sets of printout generated by the Clerk's Office staff. The sampling frame included all cases pending on July 13, 1992. Four sets of printout were generated. The northern division had two sets of printout, one which listed all of the pending civil cases and another set which contained all the pending criminal cases. The southern division also had two sets of printouts generated for its pending cases.

The pending cases in each division were sequentially numbered, with one set of numberings for the criminal cases and a second set for the civil cases.[137] The proportion of pending criminal and civil cases was determined from this list and was used as parameters for the sample proportions. A random draw of cases was made using tables of random numbers.

A. Motions.

Motions in the pending cases were analyzed for a number of different factors which might affect cost and delay. Data on motions were gathered including the

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[137] See pages 142-143 in the Report for the number and percent of criminal and civil cases by division and the number of cases sampled for each judge.

number of motions filed, the date each motion was filed and length of time from filing to the filing of an opposition, a reply, and/or the filing of an order (if an opposition, reply and/or order had been filed or issued by the cut-off date for gathering the data). This permitted an analysis of the time spent for each stage of the motion cycle and what percentage of motions had oppositions, replies and/or orders. Data were also gathered on the types of motions and if the motions were granted, partially granted, denied, moot, stayed, or still pending.

B. Scheduling Orders.

The pending cases were also analyzed for scheduling orders. The analysis included an examination of the proportion of cases in each division of the district that had scheduling orders. The primary explanations offered concerning why cases did not have scheduling orders were that some of the cases were too new to have scheduling orders issued or the cases were exempt because of Local Rule 190. Further analysis concentrated on the period from filing the case to the issuance of the scheduling order.

III. In-Court Data.

The judges' time in court was tracked by the courtroom deputy clerks for six months, from January 2, 1992, to June 30, 1992. The courtroom deputy clerks used forms developed by the management analysts which provided numerous categories for tracking all in-court activities in civil and criminal cases. Data were gathered on such activities as time devoted to bench and jury trials, sentencings, motions, initial

appearances, arraignment and pleas, status conferences, calendar calls, etc. The data were subsequently entered on computers and statistical analyses were conducted.[138]

IV. Review of the Clerk's Office.

The staff of the Clerk's Office in both the northern and southern division were interviewed. The interviews were conducted by the management analysts with the individual staff members. The interviews were voluntary and confidential. Topics covered included staffing levels, work expectations/work load, technology and equipment needs, and specific topics related to the position in which the individual was working. Problems were identified and possible solutions were discussed.

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[138] Please see the text of the Report (pages 139-141) for a more detailed account of the findings produced during the analysis of the in-court data.

Appendix B

Questionnaires

GENERAL QUESTIONS FOR ATTORNEYS

CONFIDENTIAL

A. TIMELINESS OF LITIGATION

1. Do you believe consenting to proceed to trial before a magistrate judge would decrease the amount of time required to dispose of a civil case?
   - ☐ 1. Almost always
   - ☐ 2. Frequently
   - ☐ 3. Occasionally
   - ☐ 4. Never
   - ☐ 5. Do not know

   a. If you think this would save time, in general, what percent of the time spent on a case could be saved? _____%

2. Do you believe that judicial resources are equitably distributed between the Northern and Southern Divisions?
   - ☐ 1. Yes
   - ☐ 2. Do not know
   - ☐ 3. No, if no, what changes would you recommend?_____

     _____

3. Have visiting judges played a beneficial role in the district?
   - ☐ a. Yes, please explain_____

     _____
   - ☐ b. No, if no, why not_____

     _____
   - ☐ c. Do not know

B. CASE MANAGEMENT

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

4. Differentiated case management generally involves the categorization of cases (e.g., expedited, complex, standard, or simple cases) and assigning a case to a particular discovery track for that category. Should the Court consider implementing differentiated case management?
   - ☐ 1. Yes
   - ☐ 2. No

5. Should the Court more strictly enforce local court rules and Federal Rules of Civil Procedure?
   - ☐ 1. Yes, please explain_____
   - ☐ 2. No

6. If you practice in the Southern Division (Las Vegas), do you find the current practice of automatically referring all non-dispositive motions to a magistrate judge helps save time?
   - ☐ 1. Yes
   - ☐ 2. No
   - ☐ 3. Do not know

7. Do you find the current practice of referring some dispositive motions to a magistrate judge beneficial?
   - ☐ 1. Yes
   - ☐ 2. No
   - ☐ 3. Do not know

8. Do you believe the trial judge should intervene in litigation early in the process?
   - ☐ 1. Yes
   - ☐ 2. No

9. Do you believe the trial judge should conduct an initial pretrial/scheduling conference?
   - ☐ 1. Yes
   - ☐ 2. No

10. Should cases automatically be referred to the magistrate judges?
    - ☐ 1. Yes, if yes, which matters?
      - ☐ a. All pretrial non-dispositive matters
      - ☐ b. All pretrial non-dispositive and dispositive matters
      - ☐ c. Other, please specify_____
    - ☐ 2. No

11. Should a magistrate judge generally conduct an initial pretrial/scheduling conference?
    - ☐ 1. Yes
    - ☐ 2. No

12. Do you believe that it would be generally beneficial if the Court required counsel to submit pre-discovery issue memoranda?
    - ☐ 1. Yes
    - ☐ 2. No

C. STACKED CALENDAR

Both the Northern Division (Reno) and the Southern Division (Las Vegas) use a stacked calendar, i.e., cases are placed in a queue for a two or three week period. Las Vegas assigns the queued cases to the next available Judge (Master Trial Calendar with trailing cases) while in Reno each case is heard by the Judge to whom the case is assigned.

13. For those of you who practice in the Southern Division (Las Vegas), do you find use of a master trial calendar beneficial?
    - ☐ 1. Yes, if yes, to whom is it beneficial (please indicate all of the ones who have benefited)?
      - ☐ a. Attorneys
      - ☐ b. Judges
      - ☐ c. Litigants
    - ☐ 2. No, if not, why not?_____

14. Do you believe the use of a "stacked calendar" has helped the Court settle more cases?
    - ☐ 1. Yes
    - ☐ 2. No, if no, why not?_____

15. Do you believe the use of a "stacked calendar" has enabled the judges to try more cases?
    - ☐ 1. Yes
    - ☐ 2. No

D. DISCOVERY

16. We are assessing the impact of the discovery process on the timeliness of litigation.
    a. Do you generally ask for discovery deadline extensions?
       - ☐ 1. Always
       - ☐ 2. Frequently
       - ☐ 3. Occasionally
       - ☐ 4. Never

    b. Do you find that opposing counsel generally asks for discovery deadline extensions?
       - ☐ 1. Always
       - ☐ 2. Frequently
       - ☐ 3. Occasionally
       - ☐ 4. Never

    c. Do you generally ask for extensions of time to respond to substantive (non-discovery) motions?
       - ☐ 1. Always
       - ☐ 2. Frequently
       - ☐ 3. Occasionally
       - ☐ 4. Never

d. Do you find that opposing counsel generally ask for extensions of time to respond to substantive (non-discovery) motions?
   - ☐ 1. Always
   - ☐ 2. Frequently
   - ☐ 3. Occasionally
   - ☐ 4. Never

e. In what ways should the court manage litigation to avoid delays attributable to abuse of the discovery process? (Please check all that you would like to see implemented.)
   - ☐ 1. More frequent use of available sanctions to curb discovery abuses
   - ☐ 2. More frequent status checks with litigants and attorneys to monitor the discovery process
   - ☐ 3. Greater Court involvement in the scheduling of discovery
   - ☐ 4. Less Court involvement in the discovery process and greater control vested with the attorneys
   - ☐ 5. Narrowing issues early in the litigation process
   - ☐ 6. Other (please explain)_____

17. Would the increased use of sanctions during discovery prevent delays in this district?
   - ☐ 1. Yes
   - ☐ 2. No

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

_____

_____

19. In general, are the costs of discovery
   - ☐ 1. Always too high
   - ☐ 2. Generally too high
   - ☐ 3. Sometimes too high
   - ☐ 4. Normally about right
   - ☐ 5. Sometimes too low
   - ☐ 6. Generally too low
   - ☐ 7. Always too low

20. Would a stricter limitation on interrogatories/requests for production properly reduce the costs of discovery?
   - ☐ 1. Almost always
   - ☐ 2. Sometimes
   - ☐ 3. Rarely
   - ☐ 4. Never

21. Do you agree or disagree with the statement that attorneys generally abuse the discovery process?
- ☐ 1. Strongly agree
- ☐ 2. Agree
- ☐ 3. Undecided
- ☐ 4. Disagree
- ☐ 5. Strongly disagree

22. As a generalization, do you agree or disagree that attorneys over-discover cases?
- ☐ 1. Strongly agree
- ☐ 2. Agree
- ☐ 3. Undecided
- ☐ 4. Disagree
- ☐ 5. Strongly disagree

23. In general, do you believe too much time is provided for the discovery of facts?
- ☐ 1. Yes
- ☐ 2. No

24. Do attorneys take an excessive number of depositions?
- ☐ 1. Never
- ☐ 2. Rarely
- ☐ 3. Sometimes
- ☐ 4. Almost always

25. Should the number of discovery depositions be limited?
- ☐ 1. Yes, if yes, how should they be limited?_____
_____
- ☐ 2. No

26. Should the Court require more use of telephone depositions to save time?
- ☐ 1. Yes
- ☐ 2. No

27. Should the Court require more use of videotape depositions to save time?
- ☐ 1. Yes
- ☐ 2. No

28. Are the costs of taking depositions so high that litigants are unable to pursue the desired course of legal action?
- ☐ 1. Yes
- ☐ 2. No

29. Are the costs for copies of depositions too high?
    - ☐ 1. Yes
    - ☐ 2. No

30. Concerning Local Rule 190 (pretrial procedure--civil cases),
    a. As it is currently written is it sufficient to control discovery motions?
        - ☐ 1. Yes
        - ☐ 2. No
        - ☐ 3. Undecided

    b. Should there be a stricter enforcement of L.R. 190?
        - ☐ 1. Yes, if yes, what sections should be more strictly enforced?_____
          _____
        - ☐ 2. No
        - ☐ 3. Undecided

    c. Should there be a stricter limitation on filing discovery motions than Local Rule 190?
        - ☐ 1. Yes, if yes, in what ways should it be more strict?
          _____
          _____
        - ☐ 2. No
        - ☐ 3. Undecided

31. Should the Court require more informal discovery?
    - ☐ 1. Yes
    - ☐ 2. No

    Please explain _____
    _____

32. Do you believe it would be just and reasonable if the courts limited pre-trial discovery and motion practice, in order to reduce delay, attorneys' fees and costs involved in litigating cases in the federal courts?
    - ☐ 1. Yes
    - ☐ 2. No

    Please explain _____
    _____

33. Would the use of discovery masters help alleviate some of the problems associated with discovery?
    - ☐ 1. Yes, please explain when and how they would help. _____
      _____
    - ☐ 2. No

E. DISPOSITIVE MOTIONS

34. Do you agree or disagree that the majority of attorneys consistently file frivolous dispositive motions?
    - ☐ 1. Strongly agree
    - ☐ 2. Agree
    - ☐ 3. Undecided
    - ☐ 4. Disagree
    - ☐ 5. Strongly disagree

35. Does the Court delay rendering decisions on dispositive motions?
    - ☐ 1. Almost always
    - ☐ 2. Sometimes
    - ☐ 3. Rarely
    - ☐ 4. Never

36. Would you favor bench rulings on dispositive motions?
    - ☐ 1. Almost always
    - ☐ 2. Sometimes
    - ☐ 3. Rarely
    - ☐ 4. Never

F. COSTS OF LITIGATION

37. In general, do continuances necessitate repeated reviews of the case so that the cost is significantly increased?
    - ☐ 1. Yes, if yes, in what percent of cases does this happen? _____%
      Generally speaking, how much does this increase the cost of a case? _____%
    - ☐ 2. No

38. Do you believe expert witnesses generally charge excessive fees?
    - ☐ 1. Almost always
    - ☐ 2. Sometimes
    - ☐ 3. Rarely
    - ☐ 4. Never

39. Do you believe the Court should limit the <u>number</u> of expert depositions?
    - ☐ 1. Yes, if yes, what should the number be limited to? _____
    - ☐ 2. No

40. Do you believe the Court should limit the <u>length</u> of expert depositions?
    - ☐ 1. Yes, if yes, what length do you suggest? _____
    - ☐ 2. No

41. Do you believe the Court should generally deny parties the opportunity to depose experts, and require the parties to rely upon full and complete written designations of opinions and the basis of opinions?
    - ☐ 1. Yes
    - ☐ 2. No

42. Do you think the Court should limit the number of witnesses used for the trial of a case?
    - ☐ 1. Yes, if yes, what should that limit be? _____
    - ☐ 2. No

43. Do you think the Court should limit the number of experts used for the trial of a case?
    - ☐ 1. Yes, if yes, what should that limit be? _____
    - ☐ 2. No

44. Do you believe the Court should more carefully challenge the qualifications of expert witnesses testifying at trial?
    - ☐ 1. Yes
    - ☐ 2. No

G. ALTERNATIVE DISPUTE RESOLUTION

45. If available in this district, would arbitration, mediation, or other forms of alternative dispute resolution be helpful?

	Helpful	Not Helpful	Don't Know
a. Arbitration	_____	_____	_____
b. Mediation	_____	_____	_____
c. Summary jury trial	_____	_____	_____

d. Other, please specify_____

46. Should the Court consider the expanded use of Alternative Dispute Resolution (ADR)?
    - ☐ 1. Yes
    - ☐ 2. No

47. Do you believe alternative dispute resolution should be
    - ☐ a. Voluntary
    - ☐ b. Mandatory (non-binding), if mandatory, for
        - ☐ 1. All cases
        - ☐ 2. Some cases, which ones? _____

48. Do you believe that some form of alternative dispute resolution technique should be used
    a. Prior to filing an action ☐ 1. Yes ☐ 2. No
    b. Early in the discovery process ☐ 1. Yes ☐ 2. No
    c. After discovery is completed ☐ 1. Yes ☐ 2. No

H. GENERAL QUESTIONS

49. If costs associated with civil litigation in this district are too high, what suggestions or comments do you have for reducing the costs? (Please check all that should be used.)
    ☐ 1. Alternative Dispute Resolution
    ☐ 2. Pre-discovery settlement conference
    ☐ 3. Court ordered mediation (early neutral evaluation)
    ☐ 4. Other, please specify_____
    _____

50. What suggestions do you have to reduce delay in litigation in the District of Nevada?
    Please specify_____
    _____
    _____

51. Should the District of Nevada promulgate or delete any local rules to reduce costs and/or delay of litigation?
    ☐ 1. Yes
    ☐ 2. No
    If yes, please explain _____
    _____

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

I. FEDERAL COURT PRACTICE

53. Overall, how many years have you practiced in the federal court system?_____

54. How many years have you practiced in the federal District Court system in Nevada? _____

55. How many cases (approximately) have you appeared in the federal District Court system in Nevada?____
    a. How many of these cases have gone to trial?_____

THANK YOU FOR YOUR TIME AND COMMENTS

SPECIFIC CASE QUESTIONS
QUESTIONS FOR ATTORNEYS
CONFIDENTIAL

A. TIMELINESS OF LITIGATION IN THIS CASE

1. Our records indicate this case took about _____ months from filing date to disposition date. Please check the one answer below that reflects the duration of the case for your client.

   ☐ a. The duration given above is correct for my client.

   ☐ b. The duration given above is not correct for my client. My client was in this case for approximately _____ months.

   ☐ c. I don't recall the duration of this case for my client.

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

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

   District Court Judge (if applicable):

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

Magistrate Judge (if applicable):

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

4. Was the original trial date postponed?
☐ 1. Yes, if yes and if you know, what was the reason?_____
_____
☐ 2. No

5. Did you seek any pretrial or trial continuances?
☐ 1. Yes, if yes, how many? ____

What was the total number of days, weeks or months these added to the case?
_____

☐ 2. No

B. MANAGEMENT OF THIS LITIGATION

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

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

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

7. How would you characterize the level of case management by the court in this case?
   - ☐ 1. Intensive
   - ☐ 2. High
   - ☐ 3. Moderate
   - ☐ 4. Low
   - ☐ 5. Minimal
   - ☐ 6. None
   - ☐ 7. I'm not sure

8. Was a judicially hosted settlement conference used in this case?
   - ☐ a. Yes
   - ☐ b. No, if not, could a judicially hosted settlement conference have been beneficially used in this case?
     - ☐ 1. Yes
     - ☐ 2. No, if no, why would such a conference not have been beneficial?_____
       _____
     - ☐ 3. Do not know

9. Do you believe more effort should have been used early in the process to narrow the issues involved in this case?
   - ☐ 1. Yes
   - ☐ 2. No

10. For this specific case, do you believe a scheduling conference would have been preferable to standard scheduling orders?
    - ☐ 1. Yes
    - ☐ 2. No

C. DISCOVERY

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

    a. What was the impact of any extension(s) on this case in terms of costs? (Please check one)
    - ☐ 1. Increased costs, by what percent _____
    - ☐ 2. Decreased costs, by what percent _____
    - ☐ 3. No impact

    b. What was the impact of any extension(s) on this case in terms of time?
    - ☐ 1. Increased the length by _____
    - ☐ 2. Decreased the length by _____ please go to 11d
    - ☐ 3. No impact, please go to 11d

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

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

    e. Were unnecessary depositions taken by counsel for either party? (Please check one)
    - ☐ 1. Yes, if yes, please indicate how many depositions were unnecessary._____
    - ☐ 2. No

    f. Did taking depositions excessively increase the costs of this specific case?
    - ☐ 1. Yes, if yes, please explain_____
    - ☐ 2. No

    g. Did obtaining copies of depositions excessively increase the costs of this specific case?
    - ☐ 1. Yes, if yes, please explain_____
    - ☐ 2. No

    h. Were discovery practices other than depositions responsible for delay in disposition of this case? (Please check one)
    - ☐ 1. No, if no, please go to question 12
    - ☐ 2. Yes, if yes please check all of the discovery practices which caused delays.
        - ☐ a. Failure of counsel to respond in timely manner to discovery requests.
        - ☐ b. Failure of the Judge to rule on discovery matters in a timely manner.
        - ☐ c. Failure of the Magistrate Judge to rule on discovery matters in a timely manner.

☐ d. Unavailability of the Judge to resolve discovery disputes.
☐ e. Unavailability of the Magistrate Judge to resolve discovery disputes.
☐ f. Use by counsel of unnecessary Interrogatories, Requests for Production of Documents or Requests for Admissions.
☐ g. Unnecessary requests for extension of time by counsel.
☐ h. Other, please explain_____
_____

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

☐ 1. More frequent use of available sanctions to curb discovery abuses.
☐ 2. More frequent status checks to monitor the discovery process.
☐ 3. Greater Court involvement in the scheduling of discovery.
☐ 4. Other, please explain_____

12. Would the use of a joint discovery plan have facilitated the processing of this case?
☐ 1. Yes
☐ 2. No

13. For this specific case were the costs of discovery?
☐ 1. High
☐ 2. Slightly high
☐ 3. About right
☐ 4. Slightly low
☐ 5. Low

14. Would the use of discovery masters have helped alleviate some of the problems associated with discovery in this case?
☐ 1. Yes, please explain when and how they would help._____
_____
☐ 2. No

D. COSTS OF LITIGATION IN THIS CASE

15. Please estimate the amount of money that was realistically at stake in this case. $_____

16. What type of fee arrangement did you have in this case?
    - ☐ 1. Hourly rate
    - ☐ 2. Hourly rate plus expenses
    - ☐ 3. Hourly rate with a maximum
    - ☐ 4. Set fee
    - ☐ 5. Contingency
    - ☐ 6. Other, please describe _____

17. Given the amount at stake in this case, were the fees and costs incurred in this case by your client
    - ☐ 1. Much too low
    - ☐ 2. Slightly too low
    - ☐ 3. About right
    - ☐ 4. Slightly too high
    - ☐ 5. Much too high

18. Please indicate the total costs your client spent on this case for each of the categories listed below. If you are unable to categorize your client's costs, please indicate the <u>total</u> cost.
    - a. Attorneys' fees ..... _____
    - b. Attorneys' expenses (photo-copying, postage, travel expenses, etc.) _____
    - c. Consultants ..... _____
    - d. Expert witnesses ..... _____
    - e. Depositions ..... _____
    - f. Other, please describe ..... _____
    - g. <u>TOTAL</u> cost of litigation ..... _____

19. For this case, were there sufficient delays so that you had to review the case materials at an added cost to your client?
    - ☐ 1. Yes, if yes, what percent did this increase the cost of litigating this case? _____%
    - ☐ 2. No

20. Did continuances necessitate repeated reviews of this case so that the cost was significantly increased?
    - ☐ 1. Yes, if yes, how much did this increase the cost of this case? _____%
    - ☐ 2. No

E. ALTERNATIVE DISPUTE RESOLUTION

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

	Helpful	Not Helpful	Don't Know
a. Arbitration	_____	_____	_____
b. Mediation	_____	_____	_____
c. Summary jury trial	_____	_____	_____

d. Other, please specify_____

22. Were you the attorney for
    - ☐ 1. Plaintiff
    - ☐ 2. Defendant

23. Did your client
    - ☐ 1. Settle
    - ☐ 2. Win
    - ☐ 3. Lose
    - ☐ 4. Other, please specify _____

General Comments _____

_____

_____

_____

_____

_____

THANK YOU FOR YOUR TIME AND COMMENTS

PRO SE QUESTIONNAIRE

CONFIDENTIAL

1. What was your status in the case noted on the cover letter?
   - ☐ a. Plaintiff
   - ☐ b. Defendant
   - ☐ c. Other _____

2. Did you
   - ☐ 1. Settle
   - ☐ 2. Win
   - ☐ 3. Lose
   - ☐ 4. Other, please specify _____

3. At any time during this case did you seek the appointment of an attorney?
   - ☐ 1. Yes
   - ☐ 2. No

A. TIMELINESS OF LITIGATION IN THIS CASE

4. Our records indicate this case took about _____ months from filing date to disposition date. (Disposition is when the U.S. District Court made a final ruling on your case. This does not include any time in state courts, nor appeals.) Please check the one answer below that reflects the length of the case.
   - ☐ a. The time given above is correct.
   - ☐ b. The time given above is not correct. I was in this case for approximately _____ months.
   - ☐ c. I don't recall the length of this case.

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

6. If the case took longer than you believed reasonable, please indicate what factors led to the delay. Please rank the factors first for the District Court Judge and then for the Magistrate Judge. Begin with a (1) showing the main cause of the delay, a (2) showing the second leading cause, continuing with (3), (4), (5) and so on. (You do not need to rank all of the items, only those which you believe led to the delay.)

District Court Judge (if applicable):

- ☐ a. Too much case management by the court.
- ☐ b. Too little case management by the court.
- ☐ c. Irresponsible actions by the lawyer(s).
- ☐ d. Irresponsible actions by the litigants (plaintiff or defendant).
- ☐ e. Court's failure to rule promptly on motions.
- ☐ f. Backlog of criminal cases on court's calendar.
- ☐ g. Backlog of civil cases on court's calendar.
- ☐ h. The judge not making quick decisions.
- ☐ i. Court's failure to enforce the rules.
- ☐ j. Difficult to contact the judge.
- ☐ k. Not enough judges.
- ☐ l. Do not know.
- ☐ m. Other, please specify _____

Magistrate Judge (if applicable):

- ☐ a. Too much case management by the court.
- ☐ b. Too little case management by the court.
- ☐ c. Irresponsible actions by the lawyer(s).
- ☐ d. Irresponsible actions by the litigants (plaintiff or defendant).
- ☐ e. Court's failure to rule promptly on motions.
- ☐ f. Backlog of criminal cases on court's calendar.
- ☐ g. Backlog of civil cases on court's calendar.
- ☐ h. The judge not making quick decisions.
- ☐ i. Court's failure to enforce the rules.
- ☐ j. Difficult to contact the judge.
- ☐ k. Not enough judges.
- ☐ l. Do not know.
- ☐ m. Other, please specify _____

7. In your opinion, should parties (plaintiff and defendant) involved in a court case attempt to settle their disputes in advance of trial?
   - ☐ 1. Yes
   - ☐ 2. No

8. Did you engage in any settlement meeting during the course of the litigation for this specific case?

☐ 1. Yes, if yes, did this settle the case? ☐ 1. Yes
☐ 2. No

☐ 2. No, if no, why not? _____

_____

If you engaged in a settlement meeting, was it held with a

a. Magistrate Judge ☐ 1. Yes
☐ 2. No
☐ 3. Do not know

b. District Court Judge ☐ 1. Yes
☐ 2. No
☐ 3. Do not know

9. Was the original trial date postponed?

☐ a. Yes
☐ b. No
☐ c. Do not know

If you answered yes, and if you know, please explain why it was postponed. _____

_____

10. To your knowledge, was your trial postponed or continued due to the Court's schedule?

☐ a. Yes, if yes, how long was it postponed or continued?_____

If you know, what was the specific reason, concerning the Court's schedule, responsible for the postponement or continuance?_____

☐ b. No
☐ c. Do not know

11. Do you believe the Court provided you enough time to prepare your case for trial?

a. Yes
b. No, if no, how much more time do you believe you needed to prepare your case for trial?_____
c. Do not know

12. Did you settle the case before trial?

☐ a. Yes
☐ b. No, if the case went to trial, was case decided in your favor?
☐ 1. Yes
☐ 2. No

Was the trial by ☐ 1. Jury
☐ 2. Non jury

13. Did you seek any trial postponements or continuances?
    - ☐ 1. Yes, if yes, how many? _____
    - ☐ 2. No

    a. What was the total time, number of months, weeks, or days which the trial postponements or continuances added to your case? months_____ weeks_____ days_____

14. Do you believe the judicial process in the U.S. District Court for the District of Nevada caused any substantial delay in the resolution of your dispute?
    - ☐ a. Yes, if yes, please explain_____
    - _____
    - ☐ b. No
    - ☐ c. Do not know

15. Did you request any pretrial postponements or continuances?
    - ☐ 1. Yes, if yes, how many? _____
    - ☐ 2. No

    a. What was the total number of months, weeks, or days, which the pretrial postponements or continuances added to your case? months_____ weeks_____ days_____

16. Do you believe your opponent filed any unnecessary pretrial motions?
    - ☐ a. Yes
    - ☐ b. No
    - ☐ c. Do not know

17. Do you believe you filed any unnecessary pretrial motions?
    - ☐ a. Yes
    - ☐ b. No
    - ☐ c. Do not know

18. Do you believe you caused any long delay in the resolution of your dispute?
    - ☐ a. Yes
    - ☐ b. No
    - ☐ c. Do not know

B. PRETRIAL DISCOVERY OF FACTS

19. Do you believe enough time was provided for the discovery of facts?
    - ☐ a. Yes
    - ☐ b. No, if no, how much longer do you think was needed? _____
    - ☐ c. Do not know

20. Do you believe too much time was provided for the discovery of facts?
- ☐ a. Yes, if yes, how much extra time was provided? _____
- ☐ b. No
- ☐ c. Do not know

21. Do you think you engaged in any unnecessary discovery?
- ☐ a. None
- ☐ b. Not very much
- ☐ c. Some
- ☐ d. Too much

22. Do you believe your opponent's attorney(s) engaged in any unnecessary discovery?
- ☐ a. None
- ☐ b. Not very much
- ☐ c. Some
- ☐ d. Too much

23. We are studying the impact of the discovery process on the cost and length of civil law suits.

a. What changes did any extension(s) have on this case in terms of costs? (Please check one)
- ☐ 1. Increased costs, by what percent _____
- ☐ 2. Decreased costs, by what percent _____
- ☐ 3. No change
- ☐ 4. Do not know

b. What changes did any extension(s) have on this case in terms of time?
- ☐ 1. Increased the length by _____
- ☐ 2. Decreased the length by _____
- ☐ 3. No change
- ☐ 4. Do not know

c. How many depositions (lawyers preparing for a case by holding formal interviews with potential witnesses) were taken in this case? _____

d. Were unnecessary depositions taken by either party?
- ☐ 1. Yes, if yes, please indicate how many depositions were unnecessary. _____
- ☐ 2. No
- ☐ 3. Do not know

e. Did taking depositions increase the costs of this specific case more than was necessary?
- ☐ 1. Yes, if yes, please explain and provide the approximate cost of the depositions._____
- ☐ 2. No

f. Did obtaining copies of depositions increase the costs of this specific case more than was necessary?

☐ 1. Yes, if yes, please explain and provide the approximate cost of the copies._____

_____

☐ 2. No

g. Did you have to answer interrogatories (written questions) in your case?

☐ 1. Yes, if yes, how long did it take to answer the interrogatories?_____

If you answered any interrogatories, how much did they cost?_____

☐ 2. No

h. Did you have to produce documents in your case?

☐ 1. Yes, if yes, how long did it take to produce the documents? _____

If you produced any documents, how much did they cost? _____

☐ 2. No

i. Did you have to answer request for admissions in your case?

☐ 1. Yes, if yes, how long did it take to answer the requests?_____

If you answered any requests, how much did they cost?_____

☐ 2. No

j. Did any of the following cause delays in your case?(Please check all that apply)

☐ 1. There were no delays.
☐ 2. Failure of lawyers to respond within a reasonable time to discovery requests.
☐ 3. Failure of the District Judge to rule on discovery matters within a reasonable time.
☐ 4. Failure of the Magistrate Judge to rule on discovery matters within a reasonable time.
☐ 5. Unavailability of the District Judge to resolve discovery disputes.
☐ 6. Unavailability of the Magistrate Judge to resolve discovery disputes.
☐ 7. Use by counsel of unnecessary Interrogatories (written statements), Requests for Production of Documents or Requests for Admissions.
☐ 8. Unnecessary requests for more time by lawyers.
☐ 9. Other, please explain_____

k. In what ways could the court have managed your case to avoid the delays caused by misusing the discovery process? (Please check all that apply.)

☐ 1. There were no delays.
☐ 2. More frequent use of available penalties to curb discovery abuses.
☐ 3. More frequent status checks to watch the discovery process.
☐ 4. Greater Court involvement in the scheduling of discovery.
☐ 5. Other, please explain_____

24. A joint discovery plan is an informal blueprint developed by you and your opponent to both increase the effectiveness and shorten the discovery process. Would the use of a joint discovery plan have helped the processing of this case?
- ☐ 1. Yes
- ☐ 2. No
- ☐ 3. Do not know

25. For this specific case were the costs of discovery?
- ☐ 1. High
- ☐ 2. Slightly high
- ☐ 3. About right
- ☐ 4. Slightly low
- ☐ 5. Low

26. Discovery masters are court appointed professionals whose jobs are to control discovery and settle discovery disputes. Would the use of discovery masters have helped alleviate some of the problems associated with discovery in this case?
- ☐ 1. Yes, please explain when and how they would help._____
  _____
- ☐ 2. No
- ☐ 3. Do not know

27. Was the time from the filing to the closing of the case
- ☐ a. Much too long
- ☐ b. Slightly too long
- ☐ c. About right, please go to question 29
- ☐ d. Slightly too short, please go to question 29
- ☐ e. Much too short, please go to question 29

28. If you believe that it took too long to resolve your case, what actions should you or the court have taken to resolve your case more quickly? (Please check all that apply.)
- ☐ a. More frequent court involvement in discussing settlement of the case.
- ☐ b. Court orders limiting the amount of time that parties may seek discovery.
- ☐ c. Court cooperation in setting earlier trial dates.
- ☐ d. Better communication between yourself and the opposing attorney(s) to avoid unnecessary discovery or motions.
- ☐ e. Court ordered limits on the number of witnesses that may testify.
- ☐ f. Court ordered limits on the number of depositions which may be taken.
- ☐ g. Better preparation by the attorneys to avoid costly delays in pretrial or trial proceedings.
- ☐ h. Better preparation by yourself to avoid costly delays in pretrial or trial proceedings.

(continued on next page)

☐ i. Stricter enforcement of procedural rules and the use of penalties on parties that violate them.
☐ j. The court should set a "firm" trial date that would not be rescheduled or modified.
☐ k. Providing more judges to the District of Nevada so that more cases can be heard in a timely fashion.
☐ l. Other, please explain_____

_____

C. COSTS OF LITIGATION

29. Please estimate the amount of money, if any, which was realistically at stake in this case.
$_____

30. Did you pay for any part of this law suit?
☐ 1. Yes
☐ 2. No, please go to question 32

If you paid for all or part of the costs, please indicate the total costs you spent on this case for each of the categories listed below. If you are unable to break down your costs, please indicate the <u>total</u> amount spent.

a. Expenses (photocopying, postage, travel expenses, etc.) .....
b. Consultants.....
c. Expert witnesses.....
d. Depositions.....
e. Other, please describe .....
f. <u>TOTAL</u> cost of litigation ....

31. Do you believe your expenses for telephone, copying, travel, and depositions in preparing for trial were
☐ 1. Reasonable
☐ 2. Excessive

32. Did you have a budget for this litigation?
☐ 1. Yes, if yes, did you stay within your budget?
☐ a. Yes
☐ b. No, if no, how much did you exceed your budget?

_____

☐ 2. No

33. Do you believe you had any unnecessary court costs?
- ☐ 1. Yes
- ☐ 2. No

Please explain your answer_____

_____

34. Do you have any suggestions how the courts, the attorneys, or the litigants could encourage lower attorneys' fees?

- ☐ 1. Yes, please explain_____

  _____
- ☐ 2. No

35. Did the cost of this case (expert witnesses, travel, etc.) prevent you from taking the legal actions you desired? In other words, were the costs so high that you were forced into a settlement, prevented from going to trial, or accepted a disposition that was unsatisfactory?
- ☐ 1. Yes
- ☐ 2. No

36. Given the amount at stake in this case, were the costs incurred by you on this matter (for this case)
- ☐ a. Much too high
- ☐ b. Slightly too high
- ☐ c. About right, please go to question 38
- ☐ d. Slightly too low, please go to question 38
- ☐ e. Much too low, please go to question 38

37. If you believe the cost of litigation was too high, what actions should you or the court have taken to reduce the cost of this matter? (Please check all that apply.)

- ☐ a. More frequent court involvement in discussing settlement of the case.
- ☐ b. Court orders limiting the amount of time during which parties may seek discovery.
- ☐ c. Court cooperation in setting earlier trial dates.
- ☐ d. Court ordered limits on the number of witnesses that may testify.
- ☐ e. Court ordered limits on the number of depositions which may be taken.
- ☐ f. Better communication between yourself and the opposing attorney(s) to avoid unnecessary discovery or motions.
- ☐ g. Better preparation by yourself and the opposing attorney(s) to avoid costly delays in pretrial or trial proceedings.
- ☐ h. Stricter enforcement of procedural rules and the use of penalties on attorneys that violate them.
- ☐ i. Stricter enforcement of procedural rules and the use of penalties on parties that violate them.
- ☐ j. Other, please explain _____

  _____

38. Do you believe it would be just and reasonable if the courts limited pre-trial discovery and motion practice in order to reduce attorneys' fees, expenses and the time involved in litigating cases in the federal courts?
☐ 1. Yes
☐ 2. No

39. Do you believe you had any unnecessary financial expenses?
☐ 1. Yes, please explain _____
_____
☐ 2. No
☐ 3. Do not know

D. MANAGEMENT OF THIS LITIGATION

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

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

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

41. How would you describe the level of case management by the court in this case?
- ☐ 1. Very high
- ☐ 2. High
- ☐ 3. Moderate
- ☐ 4. Low
- ☐ 5. Minimal
- ☐ 6. None
- ☐ 7. I'm not sure

42. Do you believe more effort should have been used early in the process to narrow the issues involved in this case?
- ☐ 1. Yes
- ☐ 2. No
- ☐ 3. Do not know

43. For this specific case, do you believe that your case would have proceeded more quickly and been less costly if, shortly after the case was filed, a conference was held between you, the opposing party and a district court judge or magistrate judge?
- ☐ 1. Yes
- ☐ 2. No
- ☐ 3. Do not know

E. USE OF EXPERTS AND EXPERT FEES

44. Did you employ an expert(s) during the litigation process?
- ☐ 1. Yes
- ☐ 2. No (If not, please go to question 47.)

☐ a. If yes, do you believe the use of an expert(s) greatly influenced the outcome of your particular case?

- ☐ 1. Yes, if yes, was this influence
  - ☐ 1. Positive
  - ☐ 2. Negative
- ☐ 2. No
- ☐ 3. Do not know

☐ b. Was the expert(s) used as a witness?
- ☐ 1. Yes
- ☐ 2. No

45. In your opinion, could you have been adequately represented without employing an expert?
- ☐ 1. Yes
- ☐ 2. No
- ☐ 3. Do not know

46. Do you believe the expert fees were reasonable?

☐ 1. Yes

☐ 2. No, if not, were they..... ☐ a. Much too low

☐ 3. Do not know ☐ b. Slightly low

☐ c. Slightly high

☐ d. Much too high

F. ALTERNATIVE DISPUTE RESOLUTION (NON-TRIAL)

47. Was arbitration [meeting(s) held in front of a court appointed person who recommends how a case should be settled] used in your case?

☐ a. Yes, if arbitration was used, please describe the results._____

_____

☐ b. No, if no, would you have been willing to use arbitration?

☐ 1. Yes

☐ 2. No

☐ 3. Do not know

48. Was mediation [meeting(s) before a court appointed person who tries to help both sides compromise and reach an agreement] used in your case?

☐ a. Yes, if mediation was used, please describe the results. _____

_____

☐ b. No, if no, would you have been willing to use mediation?

☐ 1. Yes

☐ 2. No

☐ 3. Do not know

49. Could some other form of alternative dispute resolution have been used in your case?

☐ a. Yes

☐ b. No

☐ c. Do not know

If yes, please explain _____

50. In a summary jury trial, both sides agree on the evidence prior to its presentation to a jury, thus greatly reducing the length of the trial. Could a summary jury trial have been used in your case?

☐ a. Yes

☐ b. No

☐ c. Do not know

If yes, please explain _____

_____

51. (For prisoners,) was an Administrative Grievance Procedure used in your case?

☐ a. Do not know, if you do not know, please go to question 52.

☐ b. Yes, if an Administration Grievance Procedure was used, please describe the results.

_____

_____

☐ c. No, if no, would you have been willing to use the Administrative Grievance Procedure?

☐ 1. Yes

☐ 2. No

☐ 3. Do not know

52. Please add any comments or suggestions regarding ways to save time and/or cut the cost of litigation in federal courts. (These may be general comments and not specifically related to this case.)_____

_____

_____

_____

THANK YOU FOR YOUR TIME AND COMMENTS

QUESTIONS FOR LITIGANTS

CONFIDENTIAL

1. What was your status in the case noted on the cover letter? (Please check all that apply.)
   - ☐ 1. Plaintiff/Petitioner
   - ☐ 2. Defendant/Respondent
   - ☐ 3. Insurance company providing a defense
   - ☐ 4. Cross claimant
   - ☐ 5. Cross claim defendant
   - ☐ 6. Counter claimant
   - ☐ 7. Counterclaim defendant
   - ☐ 8. Third party plaintiff
   - ☐ 9. Third party defendant
   - ☐ 10. Other _____

A. SETTLEMENT NEGOTIATIONS

2. In your opinion, should parties involved in a court case attempt to settle their disputes in advance of trial?
   - ☐ 1. Yes
   - ☐ 2. No

3. Did you and your attorney(s) engage in any settlement negotiations during the course of the litigation for this specific case?
   - ☐ 1. Yes, if yes, did this settle the case? ☐ 1. Yes ☐ 2. No
   - ☐ 2. No, if no, why not? _____

   _____

   3. If you engaged in a settlement conference, was it held with a
      - a. Magistrate Judge ☐ 1. Yes ☐ 2. No ☐ 3. Do not know
      - b. District Court Judge ☐ 1. Yes ☐ 2. No ☐ 3. Do not know

4. Did you settle the case before trial?
   - ☐ a. Yes, if yes, please go to question 6.
   - ☐ b. No, if the case went to trial, was judgment entered in your favor?
     - ☐ 1. Yes
     - ☐ 2. No
   - c. Was the trial by ☐ 1. Jury ☐ 2. Non jury

B. TIMELINESS OF LITIGATION IN THIS CASE

5. Was the original trial date postponed?
   - ☐ a. Yes
   - ☐ b. No
   - ☐ c. Do not know

   If you answered yes, and if you know, please explain why it was postponed. _____

   _____

   _____

6. Did you request your attorney to seek any pretrial postponements or continuances?
   - ☐ 1. Yes, if yes, how many? _____
   - ☐ 2. No

   a. What was the total number of days, weeks, or months which the pretrial postponements or continuances added to your case?_____

7. Did you request your attorney to seek any trial postponements or continuances?
   - ☐ 1. Yes, if yes, how many? _____
   - ☐ 2. No

   a. What was the total number of days, weeks, or months which the trial postponements or continuances added to your case?_____

8. Did your attorney advise you it was necessary to seek a postponement or continuance?
   - ☐ a. Yes
   - ☐ b. No

9. To your knowledge, was your trial postponed or continued due to the Court's schedule?
   - ☐ a. Yes, if yes, how long was it postponed or continued?_____
     If you know, what was the reason for the postponement or continuance?

     _____
   - ☐ b. No
   - ☐ c. Do not know

10. Do you believe the Court provided your attorney adequate time to prepare your case for trial?
    - ☐ a. Yes
    - ☐ b. No, if no, how much more time do you believe your attorney needed to prepare your case for trial? _____
    - ☐ c. Do not know

11. Do you believe the judicial process in the Nevada Federal District Court caused any substantial delay in the resolution of your dispute?
    - ☐ a. Yes, if yes, please explain_____
      _____
    - ☐ b. No
    - ☐ c. Do not know

12. Do you believe your attorney caused any substantial delay in the resolution of your dispute?
    - ☐ a. Yes
    - ☐ b. No
    - ☐ c. Do not know

13. Do you believe sufficient time was provided for the discovery of facts?
    - ☐ a. Yes
    - ☐ b. No, if no, how much longer do you think was needed? _____
    - ☐ c. Do not know

14. Do you believe too much time was provided for the discovery of facts?
    - ☐ a. Yes, if yes, how much extra time was provided? _____
    - ☐ b. No
    - ☐ c. Do not know

15. Do you believe <u>your</u> attorneys filed any unnecessary pretrial motions?
    - ☐ a. Yes
    - ☐ b. No
    - ☐ c. Do not know

16. Do you believe your <u>opponent</u> filed any unnecessary pretrial motions?
    - ☐ a. Yes
    - ☐ b. No
    - ☐ c. Do not know

C. PRETRIAL DISCOVERY OF FACTS

17. Do you think your attorney(s) engaged in any unnecessary discovery?
- ☐ a. None
- ☐ b. Not very much
- ☐ c. A moderate amount
- ☐ d. An excessive amount

18. Do you believe your opponent's attorney(s) engaged in any unnecessary discovery?
- ☐ a. None
- ☐ b. Not very much
- ☐ c. A moderate amount
- ☐ d. An excessive amount

D. COSTS OF LITIGATION

19. Please estimate the amount of money which was realistically at stake in this case.

$_____

20. If you paid for the costs of the litigation, please indicate the total costs you spent on this case for each of the categories listed below. If you are unable to categorize your costs, please indicate the total amount spent.

- a. Attorneys' fees.....
- b. Attorneys' expenses (photo-copying, postage, travel expenses, etc.) .....
- c. Consultants.....
- d. Expert witnesses.....
- e. Depositions .....
- f. Other, please describe ...
- g. TOTAL cost of litigation

21. Do you believe the expenses for telephone, copying, travel, and depositions incurred by your attorney(s) in preparation for trial were
- ☐ 1. Reasonable
- ☐ 2. Excessive

22. What type of fee arrangement did you have with your attorney?
- ☐ a. Hourly rate
- ☐ b. Hourly rate plus expenses
- ☐ c. Hourly rate with a maximum
- ☐ d. Set fee
- ☐ e. Contingency
- ☐ f. Other, please describe _____

23. In your opinion, did this arrangement result in reasonable fees being paid to your attorney?
- ☐ 1. Yes
- ☐ 2. No, if no, please explain _____
  _____

24. Did you have a budget for this litigation?
- ☐ 1. Yes, if yes, did you meet your budget?
  - ☐ a. Yes
  - ☐ b. No, if no, how much did you exceed your budget?
    _____
- ☐ 2. No

25. Do you believe you incurred any unnecessary attorney's fees?
- ☐ 1. Yes
- ☐ 2. No
- ☐ 3. Do not know

a. If yes, did this occur as a result of unnecessary discovery disputes?
- ☐ 1. Yes
- ☐ 2. No

b. Do you have any suggestions how the courts, the attorneys, or the litigants could encourage the reduction of attorneys' fees?
- ☐ 1. Yes, please explain _____
  _____
- ☐ 2. No

26. Did the cost of this litigation (attorneys fees, expert witnesses, travel, etc.) prevent you from pursuing the legal actions you desired? In other words, were the costs so high that you were forced into a settlement, prevented from going to trial, or accepted a disposition that was unsatisfactory?
- ☐ 1. Yes
- ☐ 2. No

27. Given the amount at stake in this case, were the costs incurred by you on this matter (for this case)
- ☐ a. Much too high
- ☐ b. Slightly too high
- ☐ c. About right
- ☐ d. Slightly too low
- ☐ e. Much too low

28. If you believe the cost of litigation was too high, what actions should your attorney or the court have taken to reduce the cost of this matter? (Please check all that apply.)

- ☐ a. More frequent court involvement in discussing settlement of the case.
- ☐ b. Court orders limiting the amount of time during which parties may seek discovery.
- ☐ c. Court cooperation in setting earlier trial dates.
- ☐ d. Better communication by attorneys with their clients to avoid unnecessary discovery or motions.
- ☐ e. Court ordered limits on the number of witnesses that may testify.
- ☐ f. Court ordered limits on the number of depositions which may be taken.
- ☐ g. Better communication between the attorneys for each party to avoid unnecessary discovery or motions.
- ☐ h. Better preparation by the attorneys to avoid costly delays in pretrial or trial proceedings.
- ☐ i. Stricter enforcement of procedural rules and the imposition of sanctions on attorneys that violate them.
- ☐ j. Stricter enforcement of procedural rules and the imposition of sanctions on parties that violate them.
- ☐ k. Other, please explain _____

_____

29. If you were the plaintiff, was the time from when you first contacted an attorney to filing the case
- ☐ a. Much too long
- ☐ b. Slightly too long
- ☐ c. About right
- ☐ d. Slightly too short
- ☐ e. Much too short
- ☐ f. Do not know

30. Was the time from the filing to the closing of the case
- ☐ a. Much too long
- ☐ b. Slightly too long
- ☐ c. About right, please go to question 32
- ☐ d. Slightly too short, please question 32
- ☐ e. Much too short, please question 32

31. If you believe that it took too long to resolve your case, what actions should your attorney or the court have taken to resolve your case more quickly? (Please check all that apply.)

- ☐ a. More frequent court involvement in discussing settlement of the case.
- ☐ b. Court orders limiting the amount of time that parties may seek discovery.
- ☐ c. Court cooperation in setting earlier trial dates.
- ☐ d. Better communication by attorneys with their clients to avoid unnecessary discovery or motions.
- ☐ e. Court ordered limits on the number of witnesses that may testify.
- ☐ f. Court ordered limits on the number of depositions which may be taken.
- ☐ g. Better communication between the attorneys for each party to avoid unnecessary discovery or motions.
- ☐ h. Better preparation by the attorneys to avoid costly delays in pretrial or trial proceedings
- ☐ i. Stricter enforcement of procedural rules and the imposition of sanctions on attorneys that violate them.
- ☐ j. The court should set a "firm" trial date that would not be rescheduled or modified.
- ☐ k. The allocation of more Judges to the District of Nevada so that more cases can be heard in a timely fashion.
- ☐ l. Other, please explain _____

_____

32. Do you believe it would be just and reasonable if the courts limited pre-trial discovery and motion practice in order to reduce attorneys' fees, expenses and the time involved in litigating cases in the federal courts?

- ☐ 1. Yes
- ☐ 2. No

E. USE OF EXPERTS AND EXPERT FEES

33. Did your attorney employ an expert(s) during the litigation process?

- ☐ 1. Yes
- ☐ 2. No (If not, please go to question 36.)

☐ a. If yes, do you believe the use of an expert(s) significantly influenced the outcome of your particular case?

- ☐ 1. Yes, if yes, was this influence
  - ☐ 1. Positive
  - ☐ 2. Negative
- ☐ 2. No
- ☐ 3. Do not know

☐ b. Was the expert(s) used as a witness?

- ☐ 1. Yes
- ☐ 2. No

34. In your opinion, could your attorney have adequately represented you without employing an expert?
- ☐ 1. Yes
- ☐ 2. No
- ☐ 3. Do not know

35. Do you believe the expert fees were reasonable?
- ☐ 1. Yes
- ☐ 2. No, if not, were they....
  - ☐ a. Much too low
  - ☐ b. Slightly low
  - ☐ c. Slightly high
  - ☐ d. Much too high
- ☐ 3. Do not know

36. Do you believe you incurred any unnecessary financial expenses?
- ☐ 1. Yes, please explain _____
  _____
- ☐ 2. No
- ☐ 3. Do not know

F. ALTERNATIVE DISPUTE RESOLUTION

37. Was arbitration used in your case?
- ☐ a. Yes, if arbitration was used, please describe the results.
  _____
  _____
- ☐ b No, if no, would you have been willing to use arbitration?
  - ☐ 1. Yes
  - ☐ 2. No
  - ☐ 3. Do not know

38. Was mediation used in your case?
- ☐ a. Yes, if mediation was used, please describe the results.
  _____
  _____
- ☐ b. No, if no, would you have been willing to use mediation?
  - ☐ 1. Yes
  - ☐ 2. No
  - ☐ 3. Do not know

39. Could some other form of alternative dispute resolution have been used in your case?

☐ a. Yes
☐ b. No
☐ c. Do not know

If yes, please explain_____
_____

40. Please add any comments or suggestions regarding ways to save time and/or cut the cost of litigation in federal courts. (These may be general comments and not specifically related to this case.)

_____
_____
_____

Thank you for your time and comments.

GENERAL QUESTIONS FOR DISTRICT JUDGES AND MAGISTRATE JUDGES

CONFIDENTIAL

A. TIMELINESS OF LITIGATION

1. Do you believe that parties consenting to proceed to trial before a magistrate judge would decrease the amount of time required to dispose of their civil case?
   - ☐ 1. Almost always
   - ☐ 2. Frequently
   - ☐ 3. Occasionally
   - ☐ 4. Never
   - ☐ 5. Do not know

   a. If you think this would save time, in general, what percent of the time spent on a case could be saved? _____%

2. Is there a lack of preparation on the part of counsel when presenting a case?
   - ☐ 1. No
   - ☐ 2. Do not know
   - ☐ 3. Yes, if yes does the lack of preparation by litigation counsel contribute to the delay in disposition of civil cases?
     - ☐ 1. Almost always
     - ☐ 2. Frequently
     - ☐ 3. Occasionally
     - ☐ 4. Never
     - ☐ 5. Do not know

3. Have government attorneys contributed to delays in litigation in the U.S. District Court?

   a. Local U.S. attorneys in civil actions
   - ☐ 1. Almost always
   - ☐ 2. Frequently
   - ☐ 3. Occasionally
   - ☐ 4. Never
   - ☐ 5. Do not know

b. Local U.S. attorneys in criminal actions
☐ 1. Almost always
☐ 2. Frequently
☐ 3. Occasionally
☐ 4. Never
☐ 5. Do not know

c. Non-local Department of Justice attorneys in civil actions
☐ 1. Almost always
☐ 2. Frequently
☐ 3. Occasionally
☐ 4. Never
☐ 5. Do not know

d. Non-local Department of Justice attorneys in criminal actions
☐ 1. Almost always
☐ 2. Frequently
☐ 3. Occasionally
☐ 4. Never
☐ 5. Do not know

e. Federal Public Defenders
☐ 1. Almost always
☐ 2. Frequently
☐ 3. Occasionally
☐ 4. Never
☐ 5. Do not know

f. Other federal agency attorneys
☐ 1. Almost always
☐ 2. Frequently
☐ 3. Occasionally
☐ 4. Never
☐ 5. Do not know

g. State Attorney General lawyers in civil actions
☐ 1. Almost always
☐ 2. Frequently
☐ 3. Occasionally
☐ 4. Never
☐ 5. Do not know

h. Other local government attorneys in civil actions

- ☐ 1. Almost always
- ☐ 2. Frequently
- ☐ 3. Occasionally
- ☐ 4. Never
- ☐ 5. Do not know

3.a.1. If government attorneys contribute to delays what do you recommend to correct this problem?_____

_____

_____

_____

_____

4. Does the lack of U.S. District Court litigation experience by counsel contribute to the delay in disposition of civil cases?
   - ☐ 1. Almost always
   - ☐ 2. Frequently
   - ☐ 3. Occasionally
   - ☐ 4. Never
   - ☐ 5. Do not know

5. Does the heavy criminal caseload in the District of Nevada contribute to the delay in disposition of civil cases?
   - ☐ 1. Almost always
   - ☐ 2. Frequently
   - ☐ 3. Occasionally
   - ☐ 4. Never
   - ☐ 5. Do not know

6. What percentage of your time is spent considering and deciding civil motions or matters, as opposed to criminal motions or matters?

Civil motions or matters_____	%
Criminal motions or matters_____	%
TOTAL	100%

7. What percentage of your time is given to habeas cases? _____%

a. What suggestions would you make, if any, to help the court more efficiently expedite the management of habeas cases? _____

_____

_____

8. What percentage of your time in trial is spent on presiding over civil trials, as opposed to criminal trials?

Civil trials_____%

Criminal trials_____%

9. In terms of efficiently processing civil cases, have the impacts of the "Speedy Trial Act" been

☐ 1. Positive

☐ 2. Do not know

☐ 3. Negative, if negative, what changes, if any, would you recommend?_____

_____

_____

_____

10. Has the "Speedy Trial Act" made it necessary for you to spend more out of court time preparing for cases?

☐ 1. Yes, please explain_____

_____

☐ 2. No

☐ 3. Do not know

11. Has the "Sentencing Reform Act" made it necessary for you to spend more out of court time preparing for cases?

☐ 1. Yes, please explain_____

_____

☐ 2. No

☐ 3. Do not know

a. Do you believe that the "Sentencing Reform Act" has reduced the number of guilty pleas and has caused more defendants to go to trial?

☐ 1. Yes, please explain_____

☐ 2. No

☐ 3. Do not know

12. Has the "Bail Reform Act" increased your judicial workload?

☐ 1. Yes, please explain_____

_____

☐ 2. No

☐ 3. Do not know

a. What percent of your weekly work is devoted to "Bail Reform Act" issues?
_____%

b. Do you have any suggestions concerning how the "Bail Reform Act" might be modified to increase the court's efficiency of processing cases or to reduce the court's workload?

☐ 1. Yes, please explain_____

_____

☐ 2. No

13. Concerning your out of court time, what would you estimate is the average amount of time per action that you spend preparing for sentencing proceedings?

_____

14. How have the following changes in federal policies affected the court?

a. Overseeing pretrial releases _____

_____

_____

_____

14.a.1. What would you estimate is the amount of time you average overseeing each pretrial release?

_____

b. Supervising release hearings _____

_____

_____

_____

14.b.1. What would you estimate is the amount of time you average supervising each release hearing?

_____

15. Do you believe that judicial resources are equitably distributed between the Northern and Southern Divisions?
    - ☐ 1. Yes
    - ☐ 2. Do not know
    - ☐ 3. No, if no, what changes, if any, would you recommend?_____

16. Have visiting judges played a beneficial role in the district?
    - ☐ a. Yes, please explain_____
    - ☐ b. No, if no, why not_____
    - ☐ c. Do not know

B. CASE MANAGEMENT

17. Should the court consider implementing a differentiated case management system by "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 preparation and disposition of the case" [28 U.S.C. § 473(a)(1)]?
    - ☐ 1. Yes, please explain_____
    - ☐ 2. No

18. Do you believe a judicial officer should provide "early and ongoing control of the pretrial process" [28 U.S.C. § 473 (a)(2)]:

    a. by "assessing and planning the progress of a case" [28 U.S.C. § 473 (a)(2)(A)]?
       - ☐ 1. Yes, please explain_____
       - ☐ 2. No

    b. by "setting early, firm trial dates, such that the trial is scheduled to occur within 18 months after filing the complaint"? The 18 month time frame may be waived because of the number the complexity, or the demands of the criminal cases in question [28 U.S.C. § 473 (a)(2)(B)].
       - ☐ 1. Yes, please explain_____
       - ☐ 2. No

c. by "controlling the extent of discovery and time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion" [28 U.S.C. § 473 (a)(2)(C)]?
   ☐ 1. Yes, please explain_____
   ☐ 2. No

d. by setting, "at the earliest practicable time, deadlines for filing motions and a time framework for their disposition" [28 U.S.C. § 473 (a)(2)(D)]?
   ☐ 1. Yes, please explain_____
   ☐ 2. No

19. "For all cases that the court or an individual judicial officer determines are complex and any other appropriate cases", do you believe a judicial officer should hold "a discovery-case management conference or a series of conferences" [28 U.S.C. § 473 (a)(3)]:

a. where a judge "explores the parties' receptivity to, and the propriety of settlement or proceeding with the litigation" [28 U.S.C. § 473 (a)(3)(A)]?
   ☐ 1. Yes, please explain_____
   ☐ 2. No

b. where a judge "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" [28 U.S.C. § 473 (a)(3)(B)]?
   ☐ 1. Yes, please explain_____
   ☐ 2. No

c. where a judge "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 may develop" such as limiting the "volume of discovery available" and to "phase discovery into two or more stages" [28 U.S.C. § 473 (a)(3)(C)]?
   ☐ 1. Yes, please explain_____
   ☐ 2. No

d. by "setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition" [28 U.S.C. § 473 (a)(3)(D)]?
   ☐ 1. Yes, please explain_____
   ☐ 2. No

20. Should the court impose 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" [28 U.S.C. § 473 (b)(1)]?
    - ☐ 1. Yes
    - ☐ 2. No

21. Should the court impose a "requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind the party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters" [28 U.S.C. § 473 (b)(2)]?
    - ☐ 1. Yes
    - ☐ 2. No

22. Should the court impose a "requirement that 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" be held [28 U.S.C. § 473 (b)(4)]?
    - ☐ 1. Yes
    - ☐ 2. No

23. Should the court impose 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" [28 U.S.C. § 473 (b)(5)]?
    - ☐ 1. Yes
    - ☐ 2. No

24. Should the court more strictly enforce local court rules and Federal Rules of Civil Procedure?
    - ☐ 1. Yes, please explain _____
    - ☐ 2. No

25. If you hear cases in the Southern Division (Las Vegas), do you find the current practice of automatically referring all <u>non-dispositive</u> motions to a magistrate judge helps save time in processing the case?
    - ☐ 1. Yes
    - ☐ 2. No
    - ☐ 3. Do not know

26. Do you find the current practice of referring some dispositive motions to a magistrate judge beneficial?
    - ☐ 1. Yes
    - ☐ 2. No
    - ☐ 3. Do not know

27. Do you believe the district judge should conduct an initial pretrial/scheduling conference?
    - ☐ 1. Yes
    - ☐ 2. No

28. Should cases automatically be referred to the magistrate judges?
    - ☐ 1. Yes, if yes, which matters?
        - ☐ a. All pretrial non-dispositive matters
        - ☐ b. All pretrial non-dispositive and dispositive matters
        - ☐ c. Other, please specify _____
    - ☐ 2. No

29. Should a magistrate judge generally conduct an initial pretrial/scheduling conference?
    - ☐ 1. Yes
    - ☐ 2. No

30. Do you believe that it would be generally beneficial if the court required counsel to submit pre-discovery issue memoranda?
    - ☐ 1. Yes
    - ☐ 2. No

31. Do you believe that the district judges and/or magistrate judges have adequate judicial power?
    - ☐ 1. Yes
    - ☐ 2. No, if not, what additional judicial power do the judges need?

_____

_____

_____

C. STACKED CALENDAR

32. For those of you who hold court in the Southern Division (Las Vegas), do you find use of a master trial calendar beneficial?

    ☐ 1. Yes, if yes, to whom is it beneficial (please indicate all of the ones who have benefited)?
        ☐ a. Attorneys
        ☐ b. Judges
        ☐ c. Litigants
    ☐ 2. No, if not, why not?_____

33. Do you believe the use of a "stacked calendar" has helped the court settle more cases?
    ☐ 1. Yes
    ☐ 2. No, if no, why not?_____

34. Do you believe the use of a "stacked calendar" has enabled you to try more cases?
    ☐ 1. Yes
    ☐ 2. No

D. DISCOVERY

35. Should the court impose 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" [28 U.S.C. § 473 (b)(3)]?
    ☐ 1. Yes
    ☐ 2. No

36. Do you believe the court should encourage "cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices" [28 U.S.C. § 473(a)(4)]?
    ☐ 1. Yes, please explain _____
    ☐ 2. No

37. Do you believe the court should conserve 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" [28 U.S.C. § 473(a)(5)]?
    - ☐ 1. Yes, please explain _____
    - ☐ 2. No

38. We are assessing the impact of the discovery process on the timeliness of civil litigation.
    a. Do you grant discovery deadline extensions?
        - ☐ 1. Always
        - ☐ 2. Frequently
        - ☐ 3. Occasionally
        - ☐ 4. Never

    b. Do you find that counsel ask for discovery deadline extensions?
        - ☐ 1. Always
        - ☐ 2. Frequently
        - ☐ 3. Occasionally
        - ☐ 4. Never

    c. Do you grant extensions of time to respond to substantive (non-discovery) motions?
        - ☐ 1. Always
        - ☐ 2. Frequently
        - ☐ 3. Occasionally
        - ☐ 4. Never

    d. Do you find that counsel ask for extensions of time to respond to substantive (non-discovery) motions?
        - ☐ 1. Always
        - ☐ 2. Frequently
        - ☐ 3. Occasionally
        - ☐ 4. Never

e. In what ways should the court manage litigation to avoid delays attributable to abuse of the discovery process? (Please check all that you would like to see implemented.)
   - ☐ 1. More frequent use of available sanctions to curb discovery abuses
   - ☐ 2. More frequent status checks with litigants and attorneys to monitor the discovery process
   - ☐ 3. Greater court involvement in the scheduling of discovery
   - ☐ 4. Less court involvement in the discovery process and greater control vested with the attorneys
   - ☐ 5. Narrowing issues early in the litigation process
   - ☐ 6. Other (please explain)_____

39. Approximately 55% of the attorneys who have presented cases in the district and who have returned our questionnaires indicated they believe that the increased use of sanctions during discovery would prevent delays in this district. Do you agree?
   - ☐ 1. Yes
   - ☐ 2. No

40. In general, are the costs of discovery
   - ☐ 1. Always too high
   - ☐ 2. Generally too high
   - ☐ 3. Sometimes too high
   - ☐ 4. Normally about right
   - ☐ 5. Sometimes too low
   - ☐ 6. Generally too low
   - ☐ 7. Always too low

41. Would a stricter limitation on interrogatories/requests for production properly reduce the costs of discovery?
   - ☐ 1. Almost always
   - ☐ 2. Sometimes
   - ☐ 3. Rarely
   - ☐ 4. Never

42. Do you agree or disagree with the statement that attorneys generally abuse the discovery process?
   - ☐ 1. Strongly agree
   - ☐ 2. Agree
   - ☐ 3. Undecided
   - ☐ 4. Disagree
   - ☐ 5. Strongly disagree

43. As a generalization, do you agree or disagree that attorneys over-discover cases?
    - ☐ 1. Strongly agree
    - ☐ 2. Agree
    - ☐ 3. Undecided
    - ☐ 4. Disagree
    - ☐ 5. Strongly disagree

44. In general, do you believe too much time is provided for the discovery of facts?
    - ☐ 1. Yes
    - ☐ 2. No

45. Do attorneys take an excessive number of depositions?
    - ☐ 1. Never
    - ☐ 2. Rarely
    - ☐ 3. Sometimes
    - ☐ 4. Almost always

46. Should the number of discovery depositions be limited?
    - ☐ 1. Yes, if yes, how should they be limited?_____
      _____
    - ☐ 2. No

47. Should the court require more use of telephone depositions to save time?
    - ☐ 1. Yes
    - ☐ 2. No

48. Should the court require more use of videotape depositions to save time?
    - ☐ 1. Yes
    - ☐ 2. No

49. Are the costs of taking depositions so high that litigants are unable to pursue the desired course of legal action?
    - ☐ 1. Yes
    - ☐ 2. No
    - ☐ 3. Do not know

    Are the costs for copies of depositions too high?
    - ☐ 1. Yes
    - ☐ 2. No
    - ☐ 3. Do not know

51. Concerning Local Rule 190 (pretrial procedure--civil cases),

a. As it is currently written is it sufficient to control discovery motions?
- ☐ 1. Yes
- ☐ 2. No
- ☐ 3. Undecided

b. Should there be a stricter enforcement of L.R. 190?
- ☐ 1. Yes, if yes, what sections should be more strictly enforced?_____
_____
- ☐ 2. No
- ☐ 3. Undecided

c. Should there be a stricter limitation on filing discovery motions than Local Rule 190?
- ☐ 1. Yes, if yes, in what ways should it be more strict?_____
_____
_____
- ☐ 2. No
- ☐ 3. Undecided

52. Should the court require more informal discovery?
- ☐ 1. Yes
- ☐ 2. No

Please explain _____
_____

53. Do you believe it would be just and reasonable if the courts limited pre-trial discovery and motion practice, in order to reduce delay, attorneys' fees and costs involved in litigating cases in the federal courts?
- ☐ 1. Yes
- ☐ 2. No

Please explain _____
_____

54. Approximately 65% of the attorneys who have presented cases in the district and who returned our questionnaires indicated they believe the use of discovery masters would help alleviate some of the problems associated with discovery. Do you agree?
    - ☐ 1. Yes, please explain when and how they would help._____
    - ☐ 2. No

E. DISPOSITIVE MOTIONS

55. Do you agree or disagree that the majority of attorneys consistently file frivolous dispositive motions?
    - ☐ 1. Strongly agree
    - ☐ 2. Agree
    - ☐ 3. Undecided
    - ☐ 4. Disagree
    - ☐ 5. Strongly disagree

56. Does the court delay rendering decisions on dispositive motions?
    - ☐ 1. Almost always
    - ☐ 2. Sometimes
    - ☐ 3. Rarely
    - ☐ 4. Never

57. Would you favor bench rulings on dispositive motions?
    - ☐ 1. Almost always
    - ☐ 2. Sometimes
    - ☐ 3. Rarely
    - ☐ 4. Never

58. In general, what percent of dispositive motions are frivolous?
    _____%

F. COSTS OF LITIGATION

59. In general, do continuances necessitate repeated reviews of the case so that the cost is significantly increased?
    - ☐ 1. Yes, if yes, in what percent of cases does this happen? _____%
      Generally speaking, how much does this increase the cost of a case? _____%
    - ☐ 2. No
    - ☐ 3. Do not know

60. Do you believe expert witnesses generally charge excessive fees?
    - ☐ 1. Almost always
    - ☐ 2. Sometimes
    - ☐ 3. Rarely
    - ☐ 4. Never
    - ☐ 5. Do not know

61. Do you believe the court should limit the number of expert depositions?
    - ☐ 1. Yes, if yes, what should the number be limited to? _____
    - ☐ 2. No

62. Do you believe the court should limit the length of expert depositions?
    - ☐ 1. Yes, if yes, what length do you suggest? _____
    - ☐ 2. No

63. Do you believe the court should generally deny parties the opportunity to depose experts, and require the parties to rely upon full and complete written designations of opinions and the basis of opinions?
    - ☐ 1. Yes
    - ☐ 2. No

64. Do you think the court should limit the number of witnesses used for the trial of a case?
    - ☐ 1. Yes, if yes, what should that limit be? _____
    - ☐ 2. No

65. Do you think the court should limit the number of experts used for the trial of a case?
    - ☐ 1. Yes, if yes, what should that limit be? _____
    - ☐ 2. No

66. Do you believe the court should more carefully challenge the qualifications of expert witnesses testifying at trial?
    - ☐ 1. Yes
    - ☐ 2. No

G. ALTERNATIVE DISPUTE RESOLUTION

67. If available in this district, would arbitration, mediation, or other forms of alternative dispute resolution be helpful?

	Helpful	Not Helpful	Don't Know
☐ a. Arbitration	_____	_____	_____
☐ b. Mediation	_____	_____	_____
☐ c. Summary jury trial	_____	_____	_____

☐ d. Other, please specify_____

68. Should the court consider the expanded use of alternative dispute resolution (ADR)?
    - ☐ 1. Yes
    - ☐ 2. No

69. Do you believe alternative dispute resolution should be
    - ☐ a. Voluntary
    - ☐ b. Mandatory (non-binding), if mandatory, for
        - ☐ 1. All cases
        - ☐ 2. Some cases, which ones? _____
          _____

70. Do you believe that some form of alternative dispute resolution technique should be used

☐ a. Prior to filing an action	☐ 1. Yes	☐ 2. No
☐ b. Early in the discovery process	☐ 1. Yes	☐ 2. No
☐ c. After discovery is completed	☐ 1. Yes	☐ 2. No

71. Do you believe the court should have "authorization to refer appropriate cases to alternative dispute resolution programs" [28 U.S.C. § 473(a)(6)]

a. which "have been designated for use in a district court" [28 U.S.C. § 473 (a)(6)(A)]?
☐ 1. Yes, please explain_____
☐ 2. No

b. which "the court may make available, including mediation, minitrial, and summary jury trial" [28 U.S.C. § 473 (a)(6)(B)]?
☐ 1. Yes, please explain_____
☐ 2. No

H. CLERK'S OFFICE AND SUPPORT STAFF

72. Overall, how would you evaluate the quality of your support staff?

a. Secretarial
☐ 1. Excellent
☐ 2. Good
☐ 3. Average
☐ 4. Fair
☐ 5. Poor

i) What recommendations, if any, would you make for improvement? _____
_____
_____

b. Law clerks
☐ 1. Excellent
☐ 2. Good
☐ 3. Average
☐ 4. Fair
☐ 5. Poor

i) What recommendations, if any, would you make for improvement? _____
_____
_____

c. Clerk's office
- ☐ 1. Excellent
- ☐ 2. Good
- ☐ 3. Average
- ☐ 4. Fair
- ☐ 5. Poor

i) What recommendations, if any, would you make for improvement? _____

_____

_____

73. Have you experienced any significant problems with the submission of materials?
- ☐ 1. Yes, if yes, what recommendations would you make to improve this process? _____

  _____

  _____
- ☐ 2. No

I. GENERAL QUESTIONS

74. If costs associated with civil litigation in this district are too high, what suggestions or comments do you have for reducing the costs? (Please check all that should be used.)
- ☐ 1. Alternative dispute resolution
- ☐ 2. Pre-discovery settlement conference
- ☐ 3. Court ordered mediation (early neutral evaluation)
- ☐ 4. Other, please specify_____

  _____

75. What suggestions do you have to reduce delay in litigation in the District of Nevada?

Please specify_____

_____

_____

_____

76. Should the District of Nevada promulgate or delete any local rules to reduce costs and/or delay of litigation?
    - ☐ 1. Yes
    - ☐ 2. No

    If yes, please explain _____

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

78. Approximately how many hours do you devote to court activities in an average week? Please estimate <u>all</u> of your time including travel to the other division and to meetings both in and outside the district.

    _____

79. Are you a
    - ☐ 1. District Judge
    - ☐ 2. Magistrate Judge

THANK YOU FOR YOUR TIME AND COMMENTS

Appendix C

Draft of Proposed Civil Justice Expense and Delay Reduction Plan

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"[139] identified in the district and, therefore, a custom plan is necessary. Accordingly, the court has included in its Plan the following components which were developed from the model plan:

(1) consideration of the development of a *pro se* handbook by a Special Study Committee on Prisoner Litigation (hereinafter Special Study Committee);

(2) consideration of standardized discovery for prisoner cases by a Special Study Committee;[140]

(3) allow and encourage attorneys to argue motions by telephone; and

(4) evaluation of the Northern District of California's differentiated case management plan.

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[139] 28 U.S.C. § 472(c)(1)(C).

[140] The court has not recommended standardized discovery, only the examination of such discovery by a Special Study Committee.

As previously indicated, the court agrees with the Advisory Group's recommendation that measures other than those proposed in the model plan are needed to reduce the cost of litigating in the District of Nevada, and the court has made numerous recommendations to reduce such cost in this Plan. Unfortunately, it is not possible for the court to directly limit costs to all litigants in all types of cases. Many cost reduction components in the court's Plan impact directly on the unnecessary expenses incurred by litigants in noncontingency-based fee arrangements, i.e., the removal of the requirement that local attorneys who associate with out-of-state attorneys attend all proceedings pursuant to Local Rule 120-5(d). However, any savings realized by an attorney may not be passed on to the attorney's client in those cases where a contract for a contingency fee arrangement is made. It is this possible inequity that prompted the Judicial Conference of the United States to recommend contingency fee limits of 33 1/3% in the *Model Civil Justice Expense and Delay Reduction Plan* as is currently being done in the Eastern District of Texas.

The Advisory Group found that only 15.5% of the specific case questionnaires returned in the northern division and 13.0% of the same questionnaires returned in the southern division had a contingency fee arrangement, for a district-wide rate of 14.4%. Also, the Advisory Group did not find evidence that litigants believed that their contingency fees were excessively high. Therefore, the court believes that regulation of contingency fee arrangements made by attorneys and litigants would only benefit a small number of litigants in the district. Additionally, such a requirement might discourage attorneys from making contingency fee arrangements with their clients and force those clients who can pay to make some other fee arrangement, most likely an hourly arrangement, with their attorney. Clients who could not afford an hourly rate may not be able to find an attorney to handle their case on a contingency fee basis. Therefore, the court does not believe that a limit on contingency fees in the District of Nevada would ". . . ensure just . . . resolutions of civil disputes"[141] as mandated by the CJRA.

While the court recognizes that discovery can be extremely costly to the parties litigating in district court, there is little evidence that the District of Nevada should enact a more stringent or an alternative discovery process than is currently being used in most cases. However, the court agrees with the Advisory Group and has directed that a Special Study Committee be established to examine the idea that standardized discovery be required in all prisoner *pro se* cases. Any additional recommendations that the court chooses to make would likely increase the cost of litigating in the District of Nevada, not reduce the cost. Therefore, the court concurs with the Advisory Group's recommendation that the court continue the discovery practices

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[141] 28 U.S.C. § 471.

currently in place in the district.

C. Plan Components.

The court has considered and accepted all the recommendations made by the CJRA Advisory Group. Further, the court affirms 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 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 the primary source of excessive cost and delay in the district is the inadequate level of judicial positions authorized and filled in both the northern and southern divisions of the district.

The court is severely hampered by its inadequate judicial resources. At the present time, the court has four congressionally authorized district judgeships, but one has been left unfilled for nearly one year as a result of actions and inaction by members of the Executive and Legislative Branches of government. **The court trusts that the President of the United States will promptly nominate someone well-qualified to fill this vacancy and that the Senate will act promptly and favorably 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. The court also needs authorization for three more magistrate judges. New judgeships are imperative because the court can predict with some 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, and the projected increase in the state prison population.

The court thus 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 three new magistrate judgeships for the District of Nevada and that any new positions be filled as soon as possible after they are authorized. The court agrees with the Advisory Group that the determination of the location of the headquarters of the district judges should be based upon the apportionment of the caseload in the district. Therefore, the court hopes that in filling the present vacancy or any future vacancies, the President, in conjunction with Nevada's senior senator, will make a sufficiently thorough search for well-qualified judicial candidates of diverse backgrounds and experience so that a "short list" of potential nominees is also available to act upon as soon as additional judgeships are authorized or judicial vacancies are created.

(b) Clerk's Office Staffing.

A related principal cause of cost and delay is the 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 Congress and the Judicial Conference of the United States allocate 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 level of staffing authorized for the court should take into account the two factors that make the work of the Clerk's Office especially difficult: the large distance separating the two divisions of the court[142] and the special needs required in processing the high volume of 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 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.

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[142] 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.

2. Prisoner Filings.

The court must strive to reduce the time and costs required to process prisoner civil rights cases while simultaneously assuring that the due process rights of the prisoners are scrupulously maintained. More efficient processing of prisoner cases will also enable the court to allocate more judicial and support staff resources to other cases on the docket. **The court will establish a Special Study Committee, headed by a judge,[143] in order to develop a coordinated solution to the problem of prisoner litigation in the district.** 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 of the office of the United States Attorney, the state of Nevada, including the Office of the Attorney General and NDOP staff from prisons which generate the most litigation. The Special Study Committee should also find ways to include prisoner input 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 prisoner litigation. The court agrees with the Advisory Group's belief that the grievance system in the state prison is not successfully functioning as an alternative to litigating in the federal court system. 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, 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 be developed which can be effective in affording a just, speedy, and inexpensive mechanism to reduce the large volume of prisoner litigation. In view of the significant impact of prisoner litigation on the court's docket and the need for the court to show the depth of its concern for this problem, **the court charges the Special Study Committee to examine meaningful alternatives for prisoner litigation in the District of Nevada.**

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[143] The court believes that the appointment fits the CJRA mandate that all "actors" in the system, including the court, make significant contributions to reducing cost and delay.

(b) Staffing.

As indicated previously in this Plan, the high volume of 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 prisoner litigation. The court will regularly assess whether the existing and any augmented staff positions are being utilized efficiently.**

(c) Filing Fees.

At the present time, the court has a modest filing fee schedule for prisoners filing *in forma pauperis* complaints. A majority of the Advisory Group believes that the court should consider revising the filing fee schedule to create a better balance between the goals of using filing fees both as a deterrent to frivolous or harassing litigation and as a symbolic measure of the litigation's cost to the court. This action should not block the prisoners' legitimate rights of access to the justice system through fees that, on a relative basis, are prohibitively steep. To facilitate the accomplishment of these goals and to prevent the latter problem, the staff of 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 prisoner litigation in the district.**

(d) Sanctions.

Another way of deterring prisoner litigation that is frivolous or otherwise violates the standards of Fed. R. Civ. P. 11 is to use appropriate sanctions.[144] Sanctions need not be exclusively monetary penalties.[145] Other sanctions may be

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[144] As it reads currently, Fed. R. Civ. P. 11 would seem to allow (if not mandate) such experimentation:

> If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

[145] Sometimes monetary penalties might be appropriate. For example, the court might require the full filing fee as a sanction if it determined that a prisoner had refiled

more meaningful with prisoners. It might be possible to generate standards for non-traditional sanctions through an appropriate test case. **However, the court directs that the development of appropriate nonmonetary sanctions be a task for the Special Study Committee.**

(e) *Pro se* Handbook.

The court may be able to save time and money by assisting prisoners (and other *pro se* litigants) in separating out what is potentially meritorious litigation from litigation that is facially nonmeritorious. One promising method would be for the Special Study Committee, in conjunction with the federal bar, to develop a *pro se* handbook. The handbook could include such topics as: the importance of obtaining legal counsel, 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. **The court directs the Special Study Committee proceed to develop a *pro se* handbook and consider the previous points raised on this subject.**

(f) Standardized Discovery.

The court could probably save some time and effort for all concerned if it developed mandatory standardized discovery that would apply in all prisoner or *pro se* cases. **The court directs that this matter be referred to the Special Study Committee for further consideration.**

3. Legislative and Executive Branch Responsibilities.

It is apparent to the 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

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an action that had already been dismissed with prejudice for failure to state a claim for which relief could be granted.

the Executive and Legislative Branches of government.

First, **the court recommends that Congress and the President review the requirements that current legislative initiatives and Executive Branch policies may have on the court's ability to meet its mission.** This analysis should include a review of the jurisdiction of the U.S. District Court, 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.[146]

Second, **the court urges any proposed legislation be required to have a "judicial impact statement" attached to the bill. The statement would be prepared by a proposed Office of Judicial Impact Assessment.** The impact statement should estimate the number of supplemental judicial officers and other resources required to meet the additional burden posed by the proposed legislation and revisit existing legislation with regard to the reallocation of resources. The President and Congress should veto or vote against any legislation not allocating adequate resources to meet the burdens proposed by any new piece of legislation.

Third, Congress could reduce cost and delay in civil litigation by improving the bill drafting process. **The court recommends that Congress authorize and utilize the proposed Office of Judicial Impact Assessment to help ensure that each new piece of legislation will clearly explain Congress' intent.** For example, does a proposed bill grant a private right of action, is prior legislation intended to be modified or repealed (and if so, which legislation), and is the new legislation intended to be retroactive or preemptive of state legislation? In addition, language should be in "plain English." These simple requirements will greatly improve a party's understanding of a particular statute's requirements and should decrease the number of civil cases brought because of ambiguity or other rectifiable uncertainty in new legislation.

4. Enforcement of Federal and Local Rules.

In order to reduce cost and delay in the District of Nevada and recognizing the need to strengthen enforcement of the *Federal Rules of Civil Procedure* and the *Local Rules of Practice* for the District of Nevada, **the court will review and more strictly enforce all rules that may affect cost and delay in the district.**

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[146] In contrast to the views expressed in other reports, such as *The History of Federal Judgeships Including Procedures and Standards Used in Conducting Judgeship Surveys*, Washington, D.C.: The Administrative Office of the United States Courts, February 1991, that have dealt with these issues, the court believes that Congress should not further reduce or eliminate diversity jurisdiction.

(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 cost and delay. With regard to trial continuances, the court adopts a policy which requires counsel to certify that they have conferred with and obtained agreement from their clients for the continuances.[147] **Therefore, the court directs the Standing Committee on the Local Rules for the District of Nevada to make the necessary modification to the Local Rules.**

(b) Delay Reduction in Motions Practice.

The court directs the Clerk's Office to promptly submit to the appropriate judicial officer for consideration any motion not having a responsive memorandum filed within the requisite time (as required by Local Rule 140-4). 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 wield their powers to sanction as effectively as they might, especially in the context of discovery proceedings. Some well-placed sanctions should serve as both general and specific deterrents to poor practice and should translate into less delay and cost in civil litigation. **Therefore, the court will impose sanctions where appropriate.**

(d) Local Counsel Requirement.

The court recognizes that the local counsel requirement is costly to litigants; however, it believes the benefits of this requirement outweigh the costs in most cases. **Therefore, the court directs the Standing Committee on the Local Rules for the District of Nevada to revise Local Rule 120-5(d) and modify the requirement compelling local counsel to attend and be prepared for all proceedings; required attendance at all proceedings shall be excluded from Local Rule 120-5(d) except when ordered by the court.** This change will not significantly reduce the benefits of Local Rule 120-5(d), but will reduce the cost of the rule to litigants represented by out-of-state

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[147] This policy shall not apply to government attorneys.

attorneys who associate with local counsel.

(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 the bar of the court, such as encouraging the use of ADR, **the court will convey a recommendation to the State Bar of Nevada 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 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.**

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 cost and delay.[148] Although additional judicial personnel should help alleviate the problems attendant to the stacked and master systems, the court cannot rely on obtaining new judges. Under the best of circumstances, due to the inevitable delays in authorizing, nominating and confirming them, any new judges will not be ready to assume a full caseload of their own for quite some time. Therefore, the court will attempt to improve the stacked and master calendar systems.

When a case is currently ready for trial, the attorneys and the parties do not know exactly when the case will be tried nor do they know which judge will try the case. The former problem increases the cost of preparation for trial and can lead to

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[148] 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.

prejudice if the parties are not able to make witnesses or busy experts (especially those from out of state) available for trial dates subject to change or when there is very short notice. The latter problem deters settlement because it is more difficult to settle a case when the parties cannot add the identity of the judge into the calculus. In other words, the advantages of the principle of early, firm trial dates and a known trial judge are lost under these systems.

The court believes that the parties will be helped by a significant modification of the existing systems. At an appropriate point early in the life of the case, certainly no later than at the time of the issuance of the scheduling order (Local Rule 190-1) or through the pretrial notice order (Local Rule 190-3), the parties should be given one of three options for trial of the case. One option would be to leave the case in the present system, with the uncertainties attendant to the master and stacked systems. A second option would be to consent to trial before a specific magistrate judge who could offer a date certain for trial.[149] The third option would be to agree to submit to nonbinding arbitration[150] with selected members of the bar serving as neutral arbitrators.[151]

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[149] The court envisions that the Clerk's Office would randomly assign to each case one district judge, one magistrate judge for purposes of settlement and other informal negotiations, and one magistrate judge for purposes of trial, if the parties consent to proceed before a magistrate judge. The court will have to decide whether such a system could include the northern division where only one magistrate judge is in residence, or whether to assign southern division magistrates for trial. The court prefers the latter option, at least on an experimental basis.

[150] If a party were dissatisfied with the results in the nonbinding arbitration, they would be permitted to return to the queue for assignment in the master/stacked calendar for a trial *de novo*. The court will create deterrents for doing so, such as paying costs and a portion of the other party's attorney's fees, if the requesting party fails to achieve a better result at trial than in the arbitration. The general experience across the country is that whether or not a disincentive is imposed, as a practical matter what actually happens is that a fairly substantial number of losing parties seek trial *de novo* but almost all of those cases end up settling well before trial. The arbitrator's award becomes the starting point for serious settlement negotiations.

[151] The court will develop a list of qualified arbitrators. Two possible sources for names and assistance in developing a program are the arbitration program that is operating in Nevada's state courts and the offices of the American Arbitration Association (AAA), which provide arbitration services for commercial cases in the state.

Making these options available will enhance the probability that those parties who want to go to trial on a date certain before a known trial judge can do so. Any parties taking one of the latter two options will also alleviate the pressure on the cases remaining on the stacked/master calendar. This system should not impose additional work on the district judges and should get the bar more accustomed to going to trial before magistrate judges. **Therefore, the court will develop a system of alternative dispute resolution based on the preceding description.**

Another possible method to lessen the impact of the master and stacked trial calendar systems is to implement a differentiated case management system. The Report states that most responses to questions about differentiated case management were very positive; both the attorneys and the Advisory Group members would like to eventually see a system implemented in the District of Nevada. Despite the current shortage of judicial personnel, early and on-going control of the pretrial process is a goal that is at least worthy of some experimentation in the district. Other CJRA Advisory Groups have developed some interesting ways of achieving this goal without excessive judicial involvement. In particular, the Northern District of California has developed a promising case management plan that depends at least as much on the efforts of lead counsel for the parties as on the court itself. However, the experience in Nevada's state courts with a similar program under Rule 16.1 of the Nevada Rules of Civil Procedure has been less than ideal and the Board of Governors of the State Bar has recommended that it be abolished. **Therefore, the court and Advisory Group will continue to study the experience of the differentiated case management plans put forward by other districts and in the state of Nevada. If at such time enough evidence is gathered to support the implementation of a differentiated case management plan in the District of Nevada, the Advisory Group and the court will confer on implementing such a plan.**

6. Additional Actions by the Court.

The following actions which the court will take are <u>not</u> 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 <u>may</u> allow the court to reduce cost and delay 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 endeavor to schedule more oral arguments and issue bench rulings.**

The court will expand its practice of allowing argument of motions by telephone.

D. Schedule of Implementation.

The court will implement each element of this Plan prior to 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).[152]

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 . . . ."[153] The court has considered the "principles and guidelines" of systematic "differential treatment of civil cases" in making this Plan and concludes that the components of the developed Plan include these "principles and guidelines."

> **§ 473(a)(2) early and ongoing control of the pretrial process through involvement of a judicial officer in-**
>
> **(A) assessing and planning the progress of a case;**
>
> **(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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[152] This section has been included pursuant to 28 U.S.C § 472(b)(4).

[153] 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 . . . ."[154] Judicial officers in the District of Nevada provide such "ongoing control" by "assessing and planning the progress"[155] 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 current procedures of using a stacked trial calendar (Reno) and master trial calendar (Las Vegas) virtually 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 . . . ."[156] The court recognizes that setting early and firm trial dates would probably settle cases earlier and at less cost. 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 inconceivable that "firm" trial dates can be meaningfully implemented on a consistent and general basis at this

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[154] 28 U.S.C. § 473(a)(2).

[155] 28 U.S.C. § 473(a)(2)(A).

[156] 28 U.S.C. § 473(a)(2)(B).

time in the District of Nevada.[157] However, this is another matter which should be revisited soon after augmentation of the judicial personnel authorized for the district.

Despite the inability to set "early, firm trial dates" as a general matter, the court can take some steps, 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 or nonbinding arbitration, rather than the more indefinite date with the stacked/master calendar, would help 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 . . . ."[158] The court agrees that controlling unnecessary discovery is important, but based on the data it collected, believes it has been demonstrated that Local Rule 190 is basically sufficient to control discovery. Therefore, the court has reaffirmed the continuation of current discovery practices.[159] However, the court is cognizant of the Advisory Group's conclusion, which is derived from the responses to the questionnaires, that although the written rules regarding discovery are adequate, they need to be enforced more strictly in practice.

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[157] 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. The district does not currently have fixed trial dates under its stacked and master trial calendar systems.

[158] 28 U.S.C. § 473(a)(2)(C).

[159] 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 . . ."[160] 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.[161] 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 L.R. 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**

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[160] 28 U.S.C. § 473(a)(2)(D).

[161] It appears that the reason for this is that for convenient administration, the Clerk's Office calendars when motions should be presented to the appropriate judicial officer for disposition on the basis of a "41-day cycle." This cycle is designed to give the parties the maximum time allowed for a response to the motion and a subsequent reply. The 41-day motion cycle includes all days, i.e. weekends and holidays, and not just regular business days.

may develop to-

(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 . . ."[162] 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 . . . ,"[163] ". . . prepares a discovery schedule and plan . . . ,"[164] or ". . . sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition . . ."[165] 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 . . ."[166] is beneficial to the litigants, the

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[162] 28 U.S.C. § 473(a)(3)(A).

[163] 28 U.S.C. § 473(a)(3)(B).

[164] 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.

[165] 28 U.S.C. § 473(a)(3)(D).

[166] 28 U.S.C. § 473(a)(4).

litigants' attorneys, and the court. The court has considered and rejected several proposals calling for the "voluntary exchange of information" or the use of "cooperative discovery devices." However, the court will establish a 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 . . . ."[167] 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 . . ."[168] 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 will implement arbitration and trial by magistrate judge as alternatives to the stacked/master calendar systems.

F. Explanation on Compliance With 28 U.S.C. § 473(b).[169]

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

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[167] 28 U.S.C. § 473(a)(5).

[168] 28 U.S.C. § 473(a)(6).

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

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 ". . . counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference . . . ."[170] 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. Only in special cases will a judicial officer require a joint discovery-case management plan. 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 bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters . . . ."[171] 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.

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[170] 28 U.S.C. § 473(b)(1).

[171] 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.

§ 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 . . ."[172] 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 . . . ."[173] 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.

§ 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 . . . ."[174] 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

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[172] 28 U.S.C. § 473(b)(3).

[173] 28 U.S.C. § 473(b)(4).

[174] 28 U.S.C. § 473(b)(5).

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"[175] it wishes to include in this Plan.

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 . . ."[176] 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). The court has considered the Report and has also taken into account the needs and circumstances of those listed above 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 will

(1) form a Special Study Committee and appoint a judge, Clerk's Office staff, and representatives from the CJRA Advisory Group, the state Attorney General's staff and the Nevada Department of Prison's staff to sit on the committee;

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[175] 28 U.S.C. § 473(b)(6).

[176] 28 U.S.C. § 472(c)(2).

(2) consider more strictly enforcing all rules that affect cost and delay in the district and impose sanctions where appropriate;

(3) implement a policy requiring counsel requesting trial continuances to certify that their clients have agreed to the continuances;

(4) modify its current policy and have promptly submitted all motions in which the opposing party has not filed a timely response, as required by Local Rule 140-4; the court will notify the bar before enacting this change;

(5) modify Local Rule 120-5(d), through the Standing Committee on Local Rules, and remove the requirement that local counsel attend all proceedings of the out-of-state attorneys with whom they associate;

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

(7) develop and implement suggestions to lessen the cost and delay inherent in the use of the stacked and master trial calendars, e.g., the establishment of a nonbinding arbitration program and the assignment of a second 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) direct the Clerk's Office to continue developing an electronic case management system; and

(9) 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.

(1) Litigants must be consulted and agree to any trial continuances before their attorney may request such a continuance; consultations between litigants and their counsel may be difficult to achieve, in terms of time and cost, given the possible remoteness or unavailability of some litigants and their counsel;

(2) litigants must choose between three possible methods for adjudicating their cases: consent to proceed before a magistrate judge, consent to go through nonbinding arbitration, and choosing to remain on the master or stacked trial calendar; each alternative requires significant contributions by the litigant;

(3) the Special Study Committee must attempt to include input from prisoner litigants in the development of alternatives to proceeding in federal court; and

(4) the court will modify Local Rule 120-5(d), eliminating the requirement that local attorneys must be prepared for and attend all court proceedings of the out-of-state counsel with whom they associate; even with this modification, litigants with out-of-state attorneys must make significant financial contributions to reduce delay for the court, litigants, and attorneys; this rule reduces delays caused by attorneys unfamiliar with the Local Rules and other court procedures used in the District of Nevada.

3. Litigants' Attorneys.

(1) The court will appoint at least one attorney from the Nevada Attorney General's Office and at least two attorneys from the Civil Justice Reform Act Advisory Group to participate in the activities of the Special Study Committee;

(2) the court will require attorneys to certify that they have obtained their client's agreement before requesting trial continuances;

(3) attorneys should attend CLE classes concentrating on ADR, court procedures, *Federal Rules of Civil Procedure* and Local Rules;

(4) attorneys must adhere more closely to the requirements of the *Federal Rules of Civil Procedure* and the *Local Rules of Practice* of the District of Nevada since the court will more strictly enforce the rules; and

(5) the court recommends that attorneys purchase the *Pretrial Procedure Handbook* and the *Local Rules of Practice* of the District of Nevada.

4. Congress and the Executive Branch.

(1) The court recommends that the President and Congress promptly fill existing judicial vacancies;

(2) the court recommends that the President and Congress promptly authorize two additional district judgeships, supplement these with three new magistrate judge positions and augment the Clerk's Office staff for the District of Nevada to 100% of the positions justified by the current work measurement formula;

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

mission; and

(4) the court recommends that the President and Congress create an Office of Judicial Impact Assessment; the office would estimate the number of additional judicial officers and other resources required for existing law and proposed legislation, and the office would help ensure that each new piece of legislation clearly explains Congress' intent.

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 during the first quarter of each year beginning in 1994. The court, in consultation with the Advisory Group, will examine any "appropriate additional actions" necessary to reduce cost and delay 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 _____.

_____
LLOYD D. GEORGE
CHIEF UNITED STATES DISTRICT JUDGE

_____
HOWARD D. McKIBBEN
UNITED STATES DISTRICT JUDGE

_____
PHILIP M. PRO
UNITED STATES DISTRICT JUDGE

Appendix D

Applicable *Local Rules of Practice*

RULE 105

DIVISIONS OF THE DISTRICT OF NEVADA

The State of Nevada constitutes one judicial district. For convenience the district is divided into 2 unofficial divisions as follows:

Southern Division:	Clark, Esmeralda, Lincoln and Nye Counties.
Northern Division:	Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, Washoe and White Pine Counties.

RULE 120

ATTORNEYS - ADMISSION TO PRACTICE - STANDARDS OF CONDUCT - LAW STUDENTS

120-1. BAR OF THE COURT.

The bar of this court shall consist of those persons admitted to practice before the court.

120-2. ELIGIBILITY FOR ADMISSION.

Any attorney who has been admitted to practice before the Supreme Court of the State of Nevada is eligible for admission to the bar of this court. Should such attorney not reside within the State of Nevada, the court may, in a particular case, at any time, order such attorney to associate a resident Nevada attorney as co-counsel in the case and specify the responsibilities of each attorney to the case.

120-3. PROCEDURE FOR ADMISSION.

An eligible attorney may be admitted to practice before this court upon written motion for admission to practice made in such attorney's behalf and signed by a member of the bar of this court certifying that the applicant for admission is an active member in good standing of the State Bar of Nevada and is of good moral character.

120-4. OATH, FEE, CERTIFICATE OF ADMISSION.

(a) The applicant must take the following oath or affirmation:

> I solemnly swear (or affirm) that I will support the Constitution of the United States; that I will bear true faith and allegiance to the Government of the United States; that I will maintain the respect due to the Courts of Justice and Judicial Officers, and that I will demean myself as an attorney and counselor of this Court uprightly, so help me God.

(b) The applicant shall subscribe the roll of attorneys and pay to the clerk the admission fee fixed by the Judicial Conference of the United States plus such additional amount as shall be fixed by the court from time to time.

(c) The clerk shall issue a certificate of admission to the admitted applicant.

120-5. ATTORNEYS NOT ADMITTED TO THE BAR OF THIS COURT.

(a) All attorneys, not admitted to the bar of this court who are members in good standing of the bar of the highest court of any State, Commonwealth or territory, or of the District of Columbia in which they regularly practice law and who have been retained to appear in a particular case in this court, shall submit to the clerk for receipt on a form to be furnished by the clerk, a verified petition for permission to practice before this court in the particular case. Such attorneys shall certify in the petition that they are members in good standing of the highest court of the State, Commonwealth or territory, or of the District of Columbia in which they regularly practice law. In addition, such attorneys shall furnish further information as the form of petition shall require. Upon approval by the court as provided for in Rule 120-5(d) of these Rules, such attorneys may be permitted to practice before this court in the particular case.

(b) Such permission to practice before this court is a limited one and no certificate shall be issued by the clerk. Any such attorneys may be required to pay an admission fee in such amount as shall be fixed by the court from time to time.

(c) Until permission to practice before this court in a particular case has been granted such attorneys shall take no action in the case except for filing such attorneys' first pleading or motion submitted in lieu of a pleading. Until permission is granted the clerk shall not issue summons or other writ.

(d) Unless otherwise ordered by the court, any such attorney who is granted permission to practice pursuant to this Rule shall be required to associate a resident attorney admitted to the bar of this court as co-counsel in the case. The court shall require the filing of a form which shall provide for designation by such attorney of such resident attorney as co-counsel, the resident attorney's written acceptance of such designation and the approval of the parties represented. Such resident attorney shall be authorized to sign binding stipulations. The time for performing any act under these Rules and the Federal Rules of Civil and Criminal Procedure shall run from the date of service on the resident attorney. Unless otherwise ordered by the court, such resident attorney shall personally attend and be fully prepared for all proceedings in court.

(1) With regard to noncriminal cases, such attorneys shall have 45 days after their first appearance in the case within which to comply with all of the provisions of this Rule.

(2) With regard to criminal cases, such attorneys shall have 10 days after their first appearance in the case within which to comply with all of the provisions of this Rule. In addition, the defendant(s) shall execute designation(s) of retained counsel, which shall also bear the signature of both the attorney appearing *pro hac vice* and the associated resident attorney, and shall be filed and served within the same 10 day period.

(e) Upon compliance with all of the provisions of this Rule, the court may enter an order approving the verified petition of such attorneys and granting permission to practice in this court in the particular case. Failure to comply timely with the provisions of this Rule may result in the striking of any and all documents previously filed by such attorneys or in the imposition of such other sanctions as the court may deem appropriate.

120-6. GOVERNMENT ATTORNEYS.

Unless otherwise ordered by the court, any nonresident attorney, a member in good standing of the highest court of any State, Commonwealth or territory or of the District of Columbia, who is employed by the United States as an attorney and, while being so employed, has occasion to appear in this court on behalf of the United States, shall, upon motion of the United States Attorney or the Federal Public Defender for the District of Nevada or one of the assistants, be permitted to practice before this court during the period of such employment.

120-7. LIMITED PRACTICE FOR CERTAIN ATTORNEYS.

(a) Notwithstanding the provisions of Rule 120-5 of these Rules, an attorney in good standing with the highest court of any State, Commonwealth or territory or of the District of Columbia, and who becomes employed by or associated with an organized legal services program funded from state, federal or recognized charitable sources and providing legal assistance to indigents in civil matters, may be admitted to practice before the court upon taking the oath prescribed by Rule 120-4(a) of these Rules and subject to the conditions of this Rule and to such further conditions as the court may hereafter direct.

(b) Application for admission to practice law in this court under the provisions of this Rule shall be filed with the clerk and accompanied by:

(1) A certificate of the highest court of another state certifying that the attorney is a member in good standing of the bar of that court.

(2) A statement signed by the executive director of the organized legal services program that the attorney is currently associated with such program.

(c) Admission to practice under this Rule shall terminate whenever the attorney ceases to be employed by or associated with such program. When an attorney admitted under this Rule ceases to be so employed or associated, a statement to that effect shall be filed immediately with the clerk by the executive director of the particular legal services program with which said attorney was associated.

(d) An attorney admitted to practice pursuant to this Rule shall represent in this court only those clients who are aided under the auspices of the organized legal services program which employs or associates with said attorney. The only compensation the attorney may receive for representation rendered by said attorney is the salary or other remuneration paid by the legal services program.

(e) Such permission to practice before this court is a limited one and no certificate shall be issued by the clerk, nor admission fee required.

120-8. APPEARANCES, SUBSTITUTIONS AND WITHDRAWALS.

(a) Whenever a party has appeared by attorney the party cannot while so represented appear or act in the case. The attorney who has appeared for any party shall represent such party in the case and shall be recognized by the court and by all the parties as having control of the client's case. The court in its discretion may hear a party in open court even though the party is represented by an attorney.

(b) No attorney shall withdraw from the appearance in any case except by leave of court after notice served on the affected client and opposing counsel.

(c) Any stipulation to substitute attorneys shall be by leave of court and shall bear the signatures of the attorneys and of the client represented. Except where accompanied by a request for relief under subparagraph (e) of this Rule, the signature of an attorney to a stipulation to substitute such attorney into a case constitutes an express acceptance of all dates then set for trial or hearing, or in any court order.

(d) Discharge, withdrawal or substitution of an attorney shall not alone be reason for delay of the trial or the hearing of any other matter in the case.

(e) Except for good cause shown, no withdrawal or substitution shall be approved if delay of the trial or the hearing of any other matter in the case would result. Where a delay would result the attorney seeking withdrawal or substitution must seek specific relief from the scheduled trial or hearing in the same papers seeking leave of court for the withdrawal or substitution. Where a trial setting has been made, an additional copy of the moving papers shall be provided to the clerk for immediate delivery to the assigned magistrate judge or district judge.

120-9. ETHICAL STANDARDS, DISBARMENT, SUSPENSION AND DISCIPLINE.

(a) The standards of conduct of any attorney admitted to practice pursuant to any subsection of Rule 120 of these Rules shall be those prescribed by the Code of Professional Responsibility and the Model Rules of Professional Conduct as such may be adopted from time to time by the Supreme Court of Nevada except as such may be modified by this court. Any member of the bar of this court who violates the aforementioned standards of conduct may be disbarred, suspended from practice for a definite time, reprimanded or subjected to such other discipline as the court may deem proper. This subsection is not a restriction on the court's contempt power.

(b) Reciprocal discipline.

(1) Whenever any member of the bar of this court or any other attorney admitted to practice before this court has been disbarred or suspended from practice by any court of the United States, the Supreme Court of the State of Nevada or the highest court of the State, Commonwealth or territory or of the District of Columbia or has been convicted of a felony in any court, an order shall be entered forthwith suspending such attorney from practice before this court.

(2) Whenever any member of the bar of this court or any other attorney admitted to practice before this court has been transferred to disability inactive status on the grounds of incompetency or disability by any court of the United States, the Supreme Court of the State of Nevada or the highest court of the State, Commonwealth or territory or of the District of Columbia, an order shall be entered forthwith placing such attorney on disability inactive status.

(3) An attorney who is the subject of such an order of disbarment, suspension or transfer to disability inactive status may petition for reinstatement to practice before this court or for any modification of the provisions or terms of such order as may be supported by good cause and the interests of justice.

(c) Upon receipt by the clerk of a certified copy of an order or judgment of suspension, disbarment, transfer to disability inactive status for incompetency or commitment, or of a judicial declaration of incompetency or conviction of a felony or a crime of moral turpitude concerning a member of the bar of this court, or any other attorney admitted to practice before this court, the clerk shall bring such order to the attention of the court which shall enter the order provided for in paragraph (b)(1) or (2) of this Rule.

(d) Distribution of any order of suspension, disbarment, transfer to disability inactive status or other disciplinary order entered under the provisions of this Rule 120-9 shall be made by the clerk to the attorney affected, to all the judges in this district, to the clerk of the Nevada Supreme Court, to the Nevada State Bar Counsel and to the National Disciplinary Data Bank maintained by the American Bar Association.

(e) Upon being subjected to professional disciplinary action or convicted of a felony or a crime of moral turpitude in the State of Nevada or in another jurisdiction, an attorney who is a member of the bar of this court or has been admitted to practice before this court shall inform the clerk of the action.

(f) Any attorney who before admission to practice before this court or during any period of disbarment or suspension or transfer to disability inactive status from such practice, exercises in this district in any action or proceeding pending in this court any of the privileges of an attorney admitted to practice before this court or who pretends to be entitled to do so, is guilty of contempt of court and may be subject to appropriate punishment.

120-10. LAW STUDENTS.

(a) Upon leave of court, an eligible law student acting under the supervision of a member of the bar of this court may appear before a United States District Judge, a United States Magistrate Judge, a United States Bankruptcy Judge or in a meeting in the United States Bankruptcy Court pursuant to 11 U.S.C. § 341 on behalf of any client, including federal, state or local government bodies, if the client has filed written consent with the court.

(b) An eligible student must:

(1) be enrolled and in good standing in a law school approved by the court and have completed one-half of the legal studies required for graduation or be a recent graduate of such school awaiting the results of a state bar examination;

(2) have knowledge of and be familiar with the Federal Rules of Civil and Criminal Procedure and Evidence, the Code of Professional Responsibility and the Model Rules of Professional Conduct as specifically set forth in Rule 120-9(a) of these Rules and all other Rules of this court;

(3) be certified by the dean of the law school as being adequately trained to fulfill all responsibilities as a law student intern to the court;

(4) not accept compensation for any legal services directly from a client; and

(5) file with the clerk all documents required to comply with this Rule.

(c) The supervising attorney shall:

(1) be admitted to practice before the highest court of any state for 2 years or longer and have been admitted to practice before this court;

(2) agree in writing to be the supervising attorney;

(3) appear with the student in all oral presentations before the court;

(4) sign all documents filed with the court;

(5) assume professional responsibility for the student's work in matters before the court;

(6) assist and counsel the student in the preparation of the student's work in matters before the court;

(7) be responsible to supplement oral or written work of the student as necessary to ensure proper representation of the client; and

(8) certify in writing that the student has knowledge of and is familiar with the Federal Rules of Civil and Criminal Procedure and Evidence, the Code of Professional Responsibility and the Model Rules of Professional Conduct as specifically set forth in Rule 120-9(a) of these Rules and all other Rules of this court.

(d) The dean's certification of the student:

(1) shall be filed with the clerk and unless sooner withdrawn shall remain in effect until publication of the results of the first bar examination following graduation;

(2) may be withdrawn by the court at any time at the discretion of the court and without cause shown; and

(3) may be withdrawn by the dean with notice to the court.

(e) Upon fulfilling the requirements of this Rule, the student may:

(1) assist in the preparation of briefs, motions and other documents pertaining to a case before the court; and

(2) appear and make oral presentations before the court when accompanied by the supervising attorney.

(f) A student's eligibility to participate in activities under the Rule terminates automatically:

(1) if a student does not apply to take the first Nevada bar examination to be administered after such student has satisfied the educational requirements therefor;

(2) if a student does not take that examination;

(3) upon announcement of the results of that examination if the student has failed to pass it; or

(4) 50 days after announcement of the results of that general bar examination if the student has passed that examination.

RULE 135

PLEADINGS

135-1. CIVIL COVER SHEET.

Every civil action tendered for filing in this court shall be accompanied by a properly completed civil cover sheet. An action received for filing by the clerk which is not accompanied by the appropriate civil cover sheet may be returned by the clerk without being filed.

135-2. AMENDED PLEADINGS.

The original proposed amended pleading shall be signed and attached to any motion to amend a pleading. If said motion is granted the clerk shall forthwith detach and file the original amended pleading. Unless otherwise permitted by the court, every pleading to which an amendment is permitted as a matter of right or has been allowed by order of the court must be retyped or reprinted and filed so that it will be complete in itself including exhibits, without reference to the superseded pleading. No pleading will be deemed to be amended until this section of this Rule has been complied with. All amended pleadings shall contain copies of all exhibits referred to in such amended pleadings. Upon order of the court, the clerk shall remove any exhibits attached to prior pleadings in order that the same may be attached to the amended pleading. The time under Fed.R.Civ.P. 15(a) for an entity already a party to answer or reply to an amended pleading shall run from the date of filing of the order allowing said pleading to be amended.

135-3. PLEADING JURISDICTION AND VENUE.

The first allegation of any complaint, counterclaim, cross-claim, third party complaint or any petition for affirmative relief shall state the statutory or other basis of claimed federal jurisdiction and the facts in support thereof; and shall state the unofficial division of this court in which venue lies, if known. If appropriate venue is not known there shall be included a statement as to why it is not known.

135-4. JURY DEMAND.

Where jury trial is demanded in or by endorsement upon a pleading as permitted by the Federal Rules of Civil Procedure, the words "JURY DEMAND" shall be typed or printed in capital letters on the first page immediately below the name of the pleading.

135-5. CERTIFICATE AS TO INTERESTED PARTIES.

In all cases except criminal and *habeas corpus* cases, counsel for private (nongovernmental) parties shall upon entering the case file counsel's certificate listing all persons, associations of persons, firms, partnerships or corporations known to have an interest in the outcome of the case, as follows:

"Number and Caption of Case
Certificate Required by Local Rule 135-5

The undersigned, counsel of record for _____ certifies that the following have an interest in the outcome of this case: (here list the names of all such parties and identify their interests.)

These representations are made to enable judges of the court to evaluate possible recusal.

Attorney of Record for _____"

If there are no known interested parties other than those participating in the case, a statement to that effect will constitute compliance with this Rule.

RULE 140

MOTIONS

140-1. MOTIONS SHALL BE IN WRITING.

All motions, unless made during a hearing or trial, shall be in writing and shall be served on all other parties who have appeared.

140-2. LIMITATION ON LENGTH OF BRIEFS AND POINTS AND AUTHORITIES, AND REQUIREMENT FOR INDEX AND TABLE OF AUTHORITIES.

Unless otherwise ordered by the court, pretrial and posttrial briefs and points and authorities in support of or in opposition to motions shall be limited to 30 pages including the motion exclusive of exhibits. Reply briefs and points and authorities shall be limited to 20 pages including the reply exclusive of exhibits. Where the filing of the same is allowed by order of the court, briefs and points and authorities of more than 30 pages shall contain an index and table of authorities.

140-3. MEMORANDUM BY MOVING PARTY.

With any motion the moving party shall file and serve a memorandum setting forth the points and authorities relied upon in support of the motion.

140-4. RESPONSIVE MEMORANDUM.

Unless otherwise ordered by the court, an opposing party shall have 15 days after service of the moving party's points and authorities within which to file and serve a memorandum of points and authorities in opposition to the motion.

140-5. REPLY MEMORANDUM.

Unless otherwise ordered by the court, the moving party shall have 10 days after service of the responsive memorandum to file and serve a reply memorandum of points and authorities if it is so desired.

140-6. FAILURE TO FILE POINTS AND AUTHORITIES.

The failure of a moving party to file a memorandum of points and authorities in support of the motion shall constitute a consent to the denial of the motion. The failure of an opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute a consent to the granting of the motion.

140-7. MOTIONS FOR SUMMARY JUDGMENT.

As to motions for summary judgment each party shall file a concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission or other matter upon which the party relies.

140-8. SUBMISSION OF MOTIONS TO THE COURT.

After all motion papers are filed or the time period therefor has expired all motions shall be submitted by the clerk to the court for decision unless the party who made the motion files a written withdrawal of the motion.

140-9. ORAL ARGUMENT.

When requested in writing in the opposing papers by a party opposing a motion for summary judgment, an oral argument must be granted unless the motion is denied. All other motions may, in the court's discretion, be considered and decided with or without a hearing, whether or not oral argument is requested.

RULE 150

REQUESTS FOR EXTENSION OF TIME

Except as provided in Rule 190-1(b) of these Rules, subject to the limitations stated in Federal Rules of Civil and Criminal Procedure the time prescribed for the doing of any act as specified either in these Rules or in the Federal Rules of Civil and Criminal Procedure may be enlarged by the court by order made before the expiration of such time. The court may upon motion permit any such act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect. It shall be the duty of every party, attorney or other person applying to the court for an extension of time under this Rule, whether by motion or stipulation, to disclose in the body of said paper the existence of all extensions to do such act which have previously been granted by the court or by the clerk under the provisions of these Rules. Immediately below the title of such motion or stipulation there shall also be included a statement indicating whether it is the first, second, third, etc., requested extension, i.e.:

STIPULATION FOR EXTENSION OF TIME TO ANSWER
(First Request)

Any extension obtained from the court in contravention of this Rule may be set aside at any time by the court.

RULE 185

SETTLEMENT CONFERENCE AND ALTERNATIVE METHODS OF DISPUTE RESOLUTION

The court may, in its discretion, set any appropriate civil case for settlement conference, summary jury trial or other alternative method of dispute resolution, as it may choose.

RULE 190

PRETRIAL PROCEDURE - CIVIL CASES

190-1. SCHEDULING, CASE MANAGEMENT AND DISCOVERY.

(a) Scheduling Order.

(1) Unless otherwise ordered by the court, a judge shall enter a scheduling order as hereinafter provided. This paragraph shall not apply to the following categories of cases:

(i) Reviews of decisions of administrative agencies (for example, The Social Security Administration, Bureau of Land Management);

(ii) Petitions to compel arbitration or to vacate, enforce or modify arbitration awards;

(iii) Actions filed by the United States to collect debts due it (for example, student loans, F.H.A. or V.A. collection matters);

(iv) *Habeas corpus* petitions;

(v) Actions commenced by or on behalf of prisoners seeking relief under 28 U.S.C. §§ 2254 and 2255; and

(vi) Other categories of actions as ordered from time to time.

(2) The scheduling order shall be filed and served by the clerk upon counsel for all parties [when a case is not exempt pursuant to Rule 190-1(a)(1) of these Rules] at the time the case is at issue or 120 days from the date of filing of the complaint or petition, whichever is earlier. In the event that a defendant or respondent has not yet appeared in the case, then counsel for the plaintiff(s)/petitioner(s) shall serve any such defendant(s)/respondent(s) with a copy of the scheduling order within 20 days from the date of its issuance, or at the time of the service of process. The term "counsel" as used in the scheduling order shall include any and all parties appearing *pro se.* The scheduling order shall provide deadlines for the filing of:

(i) Pleadings under Fed.R.Civ.P. 13 or 14, or which may join additional parties under Fed.R.Civ.P. 19 or 20;

(ii) Amendments to pleadings as provided for under Fed.R.Civ.P. 15;

(iii) Any and all motions, including but not limited to discovery motions, motions to dismiss and motions for summary judgment; and

(iv) Completion of discovery.

(b) Time for Completion of Discovery.

(1) Within 180 days from the date fixed by the court in cases where no scheduling order is entered, and within such time as may be fixed in a scheduling order in those cases where a scheduling order is entered, each party shall complete all discovery authorized by Fed.R.Civ.P. 26 through 36, exclusive of Fed.R.Civ.P. 32, and by 28 U.S.C. §§ 1781 and 1783, including, but not limited to, depositions on oral interrogatories, depositions on written interrogatories, designations of expert witnesses and expert witness depositions, production of documents for inspection and copying, written interrogatories to parties, requests for admissions, examinations for mental or physical conditions, depositions on letters rogatory, or by subpoena. It is the responsibility of counsel to insure that all discovery is initiated so as to be completed by the expiration of the 180-day discovery period. No additional discovery shall be permitted thereafter except as provided in Rule 190-1(b)(2) of these Rules.

(2) Unless otherwise ordered by the court, an extension of the discovery deadline will not be allowed without a showing of good cause as to why all discovery was not completed within the time allotted. All motions or stipulations to extend discovery shall be received by the court at least 20 days prior to the date fixed for completion of discovery or at least 20 days prior to the date of expiration of any extension thereof that may have been approved by the court. Such motion or stipulation and any motion or stipulation to reopen discovery shall include:

(i) A statement specifying the discovery completed by the parties as of the date of the motion or stipulation;

(ii) A specific description of the discovery which remains to be completed;

(iii) The reasons why such remaining discovery was not completed within the time limit of the existing discovery deadline; and

(iv) A proposed schedule for the completion of all remaining discovery.

(3) Whenever a party, in the pleadings filed with the court places any party's present, past or future physical or mental condition in issue, that party may not prevent discovery of information concerning such physical or mental condition or prior history related thereto by asserting any physician-patient privilege provided by state law against discovery or information concerning such physical or mental condition or prior history directly related thereto.

(4) Any abuse of discovery under Rules 190-1(b)(1) through (3) of these Rules may be made the basis of a motion for protective order.

(c) Limitation of Interrogatories.

Unless otherwise ordered by the court, the total number of interrogatories propounded to each party by any other party pursuant to Fed.R.Civ.P. 33 shall be limited to 40 including subparts. The interrogatories shall be tailored to the needs of the particular case. Failure to comply with the provisions of this Rule will justify the imposition of sanctions.

(d) Responses to Discovery Sought.

All responses to discovery sought shall, immediately preceding the response, identify the number or other designation and set forth in full the text of the discovery sought.

(e) Demand for Prior Discovery.

Whenever a party makes a written demand for discovery which took place prior to the time that person or entity became a party to the action, each party who has previously responded to a request for admission or production or answered interrogatories 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 at the expense of the demanding party, a copy of any listed discovery response specified in the demand; or, in the case of requests for production, shall make available for inspection by the demanding party all documents and things previously produced. Further, each party who has taken a deposition shall make a copy of the transcript available to the demanding party at the latter's expense.

(f) Discovery Motions.

(1) All motions to compel discovery shall, in addition to the discovery being sought in the motion, set forth in full the text of the discovery originally sought and the response made thereto, if any.

(2) Discovery motions will not be considered unless a statement of moving counsel is attached thereto certifying that, after personal consultation and sincere effort to do so, counsel have been unable to satisfactorily resolve the matter.

(g) Filing Discovery Papers.

Unless filing is ordered by the court on motion of a party or upon its own motion, depositions, interrogatories, requests for production or inspection, requests for documents, requests for admissions, answers and responses thereto and proof of service thereof shall not be filed with the court. 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 at the time of any pretrial hearing or at trial for use by any party. Likewise, the deposing party shall make the original transcript of a deposition available at the time of any pretrial hearing or at trial for use by any party or filing with the court if so ordered.

190-2. PRETRIAL CONFERENCES.

Unless specifically ordered by the court, the court will not conduct pretrial conferences. Any party may at any time request the court in writing for one or more pretrial conferences in order to expedite disposition of any case, particularly one which is complex or in which there is delay. Pretrial conferences may be called at any time by the court on its own initiative.

190-3. PRETRIAL ORDER AND TRIAL SETTING.

(a) (1) In cases where a scheduling order has not been entered, the court shall issue a pretrial notice order upon close of discovery. The pretrial notice order shall set the date by which a joint pretrial order must be submitted. This order shall provide at least 30 days written notice to all parties.

(2) In cases where a scheduling order has been entered and after the time for filing motions has expired, the court shall issue a pretrial notice order:

(i) immediately if there are no motions pending; or

(ii) as soon as any pending motions have been disposed of, if there are such motions.

The pretrial notice order shall set the date by which a joint pretrial order must be submitted. This order shall provide at least 30 days written notice to all parties.

(b) Upon the initiative of counsel for plaintiff, counsel who will try the case for the parties and who are authorized to make binding stipulations shall personally discuss settlement and prepare and lodge with the court a proposed joint pretrial order containing the following:

(1) A concise statement of the nature of the action and the contentions of the parties.

(2) A statement as to the jurisdiction of the court with specific legal citations.

(3) A statement of all uncontested facts deemed material in the action.

(4) A statement of the contested issues of fact in the case as agreed upon by the parties.

(5) A statement of the contested issues of law in the case as agreed upon by the parties.

(6) Plaintiff's statement of any other issues of fact or law deemed to be material.

(7) Defendant's statement of any other issues of fact or law deemed to be material.

(8) Lists or schedules of all exhibits which will be offered in evidence by the parties at the trial. Such lists or schedules shall:

(i) Describe the exhibits sufficiently for ready identification;

(ii) Indicate those exhibits agreed by the parties to be admissible at trial; and

(iii) With respect to each exhibit on the lists or schedules counsel shall either agree as to admissibility or reach such stipulations regarding the exhibits as is possible. Stipulations as to authenticity and identification of documents shall be made whenever possible. All objections to exhibits and grounds for objections shall be listed.

(9) A statement by counsel for each party indicating any depositions intended to be offered by that counsel at the trial, indicating with respect thereto the portions to be offered and the party or parties against whom they will be offered.

(10) A statement by counsel for the party or parties against whom deposition testimony is to be offered, stating the objections, and the grounds therefor, which counsel will assert at the trial to the deposition testimony.

(11) A list of witnesses, with their addresses, who will be called at the trial. Such list may not include witnesses whose identities and, in the case of expert witnesses, other matters discoverable under Fed.R.Civ.P. 26(b)(4), were not, but should have been, revealed in response to permitted discovery unless the court, for good cause and on such conditions as are just, otherwise orders.

(12) A list of 3 agreed-upon trial dates within such time frame as the court may predetermine.

(13) An estimate of the total number of trial days.

(c) Except when offered for impeachment purposes no exhibit shall be received and no witnesses shall be permitted to testify at the trial unless listed in the pretrial order. However, for good cause shown the court may allow an exception to this provision.

(d) At the time the joint pretrial order is submitted to the court and upon approval of same, the court will set the case for trial and enter such further orders as the status of the case may require. On motion of a party or on its own initiative the court may at any time set a case for trial regardless of the status of the pretrial proceedings.

190-4. FORM OF PRETRIAL ORDER.

Unless otherwise ordered, the following form of Pretrial Order shall be used:

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

_____, Plaintiff,	)	CASE NO. _____
vs.	)	
_____, Defendant.	)	PRETRIAL ORDER

Following pretrial proceedings in this cause pursuant to Local Rule 190-3,

IT IS ORDERED:

I.

This is an action for: (State nature of action, relief sought, identification and contentions of parties).

II.

Statement of jurisdiction: (State the facts and cite the statutes which give this court jurisdiction of the case).

III.

The following facts are admitted by the parties and require no proof:

_____

_____

_____

IV.

The following facts, though not admitted, will not be contested at trial by evidence to the contrary:

_____

_____

_____

V.

The following are the issues of fact to be tried and determined upon trial.[177] (Each issue of fact must be stated separately and in specific terms.)

_____

_____

_____

VI.

The following are the issues of law to be tried and determined upon trial.[177] (Each issue of law must be stated separately and in specific terms.)

_____

_____

_____

VII.

(a) The following exhibits are stipulated into evidence in this case and may be so marked by the clerk:

(1) Plaintiff's exhibits.

---

[177] Should counsel be unable to agree upon the language of the statement of issues of fact or law to be tried and determined upon the trial, then there shall be included separate statements of issues of fact or law to be tried and determined upon trial.

(2) Defendant's exhibits.

(b) As to the following additional exhibits the parties have reached the stipulations stated:

(1) Set forth stipulations as to plaintiff's exhibits.

(2) Set forth stipulations as to defendant's exhibits.

(c) As to the following exhibits, the party against whom the same will be offered objects to their admission upon the grounds stated:

(1) Set forth objections to plaintiff's exhibits.

(2) Set forth objections to defendant's exhibits.

(d) Depositions:

(1) Plaintiff will offer the following depositions: (Indicate name of deponent and identify portions to be offered by pages and lines and the party or parties against whom offered).

(2) Defendant will offer the following depositions: (Indicate name of deponent and identify portions to be offered by pages and lines and the party or parties against whom offered).

(e) Objections to Depositions:

(1) Defendant objects to plaintiff's depositions as follows:

_____

_____

_____

(2) Plaintiff objects to defendant's depositions as follows:

_____

_____

_____

VIII.

The following witnesses may be called by the parties upon trial:

(a) State names and addresses of plaintiff's witnesses.

(b) State names and addresses of defendant's witnesses.

IX.

Counsel have met and herewith submit a list of 3 agreed-upon trial dates:

_____ _____ _____

It is expressly understood by the undersigned that the court will set the trial of this matter on 1 of the agreed-upon dates if possible; if not, the trial will be set at the convenience of the court's calendar.

X.

It is estimated that the trial herein will take a total of _____ days.

APPROVED AS TO FORM AND CONTENT:

_____
Attorney for Plaintiff

_____
Attorney for Defendant

XI.

ACTION BY THE COURT

(a) This case is set down for court/jury trial on the fixed/stacked calendar on _____. Calendar call shall be held on _____.

(b) An original and 2 copies of each trial brief shall be submitted to the clerk on or before _____.

(c) Jury trials:

(1) An original and 2 copies of all instructions requested by either party shall be submitted to the clerk for filing on or before _____.

(2) An original an 2 copies of all suggested questions of the parties to be asked of the jury panel by the court on *voir dire* shall be submitted to the clerk for filing on or before _____.

(d) Court trials:

Proposed findings of fact and conclusions of law shall be filed on or before _____.

The foregoing pretrial order has been approved by the parties to this action as evidenced by the signatures of their counsel hereon, and the order is hereby entered and will govern the trial of this case. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED: _____, 19_____.

_____
UNITED STATES DISTRICT JUDGE

RULE 215

PETITIONS FOR WRITS OF *HABEAS CORPUS* PURSUANT TO 28 U.S.C. §§ 2241 AND 2254, MOTIONS PURSUANT TO 28 U.S.C. § 2255, MOTIONS PURSUANT TO Fed.R.Crim.P. 35 AND CIVIL RIGHTS COMPLAINTS PURSUANT TO 42 U.S.C. § 1983

(a) Petitions for writs of *habeas corpus*, motions to vacate sentence pursuant to 28 U.S.C. § 2255, motions to correct or reduce sentence pursuant to Fed.R.Crim.P. 35 (see also Rule 330 of these Rules) and civil rights complaints under 42 U.S.C. § 1983 shall be in writing and, if filed by persons who are not represented by counsel, shall be on forms approved by this court and upon request supplied without charge by the clerk. The forms shall be completed so that they comply with the "Information and Instructions" provided by the clerk that pertain to the petition, motion or complaint.

(b) Every petition, motion or complaint filed under this Rule shall contain certain required information. The following information shall be supplied by every petitioner seeking post-conviction relief:

(1) petitioner's full name and prison number (if any);

(2) name of the respondent(s);

(3) place of petitioner's detention;

(4) name and location of the court which imposed sentence;

(5) case number and the offense or offenses for which sentence was imposed;

(6) date on which sentence was imposed and the terms of the sentence;

(7) whether a finding of guilty was made after a plea of (i) guilty, (ii) not guilty, or (iii) nolo contendere;

(8) in the case of a petitioner who has been found guilty following a plea of not guilty, whether that finding was made by a jury or a judge;

(9) whether petitioner appealed from the conviction or the imposition of sentence, and if so, the name of each court to which an appeal was made, the results of such appeals and the date of such results;

(10) whether petitioner was represented by an attorney at any time during the course of the arraignment and plea, the trial (if any), the sentencing, the appeal (if any), or during the preparation, presentation or consideration of any petitions, motions or applications which the petitioner filed with respect to this conviction; if so, the name and address of such attorney(s) and the proceedings in which petitioner was so represented;

(11) whether a plea of guilty was entered pursuant to a plea bargain, and if so, what were the terms and conditions of the agreement;

(12) whether petitioner testified at trial (if any); and

(13) whether petitioner has any petition, application, motion or appeal currently pending in any court, and if so, the name of the court and the nature of the proceeding.

(c) The following additional information shall be supplied by a petitioner in challenging a state conviction:

(1) if petitioner did not appeal from the judgment of conviction or imposition of sentence the reasons why such appeal was not made;

(2) in concise form the grounds upon which petitioner bases the allegations that the petitioner is being held in custody unlawfully, the facts which support each of these grounds and whether any such grounds have been previously presented to any court, state or federal, by way of any petition, motion or other application; if so, which grounds have been previously presented and in what proceedings; which grounds, if any, have not been previously presented and the reasons for not presenting them;

(3) whether petitioner has filed in any court, state or federal, previous petitions, applications or motions with respect to this conviction; if so, the name and location of each such court, the specific nature of the proceedings therein, the disposition thereof, the date of each disposition and citations (if known) of any written opinions or orders;

(4) whether petitioner has exhausted the remedies available in the state courts as to each ground on which this federal court is requested to take action. If state remedies have not been exhausted, then the petitioner must explain why not; and

(5) if applicable in capital cases, the date of any scheduled execution.

(d) The following additional information shall be supplied by a petitioner in federal custody seeking a writ of *habeas corpus* or any correction or reduction of a sentence pursuant to Fed.R.Crim.P. 35:

(1) whether petitioner has filed in any court, state or federal, previous petitions for *habeas corpus*, motions to vacate sentence pursuant to 28 U.S.C. § 2255, or any other petitions, motions or applications with respect to this conviction; if so, the name and location of any and all such courts, the specific nature of the proceedings therein, the disposition thereof, the date of each such disposition and citations (if known) of any written opinions or orders entered therein or copies (if available) of such opinions or orders;

(2) in concise form the grounds upon which petitioner bases the allegations that the petitioner is being held in custody unlawfully or that the petitioner's sentence is illegal, imposed in an illegal manner or should be reduced and the facts which support each of these grounds; whether any such grounds have been previously presented to any federal court by way of petition for writ of *habeas corpus*, motion pursuant to 28 U.S.C. § 2255, or any other petition, motion or application; if so, which grounds have been previously presented and in what proceedings; which grounds, if any, have not been previously presented and the reasons for not presenting them; and

(3) if a previous motion pursuant to 28 U.S.C. § 2255 was not filed or if such motion was filed and denied the reasons petitioner's remedy by the way of such motion was inadequate or ineffective to test the legality of the petitioner's detention.

(e) The following additional information shall be supplied by a petitioner in federal custody who is seeking relief by motion pursuant to 28 U.S.C. § 2255:

(1) name of the judge who imposed sentence;

(2) in concise form the grounds on which petitioner bases the allegations that the sentence imposed is invalid and the facts which support each of these grounds; whether any such grounds have been presented to any federal court by way of petition for writ of *habeas corpus*, motion pursuant to 28 U.S.C. § 2255 or any other petition, motion or application; if so, which grounds have been previously presented and in which proceedings; which grounds, if any, have not been previously presented and the reasons for not presenting them; and

(3) whether petitioner has filed in any court, petitions for *habeas corpus*, motions pursuant to 28 U.S.C. § 2255 or any other petitions, motions or applications with respect to this conviction; if so, the name and location of each such court, the specific nature of the proceedings therein, the disposition and citations (if known) of any written opinions or orders entered therein or copies (if available) of such opinions or orders.

(f) (1) Petitions and motions for post-conviction relief submitted pursuant to this Rule shall specify all grounds for relief which are available to the petitioner or movant and of which the petitioner has or, by the exercise of reasonable diligence, should have knowledge.

(2) Unless otherwise ordered by the court, if the petitioner has previously filed a petition for relief or for a stay of enforcement in the same matter in this court, the new petition shall be assigned to the judge who considered the prior matter if said judge is available.

(3) A successive petition or motion may be dismissed if the court finds that it fails to allege new or different grounds for relief or, if new or different grounds are alleged, the court finds that the failure of the petitioner or movant to assert those grounds in a prior petition or motion was not excusable.

(4) If it appears to the court that a petition or motion for post-conviction relief may be subject to dismissal under this section or Rule 9 of the Supreme Court Rules Governing Section 2254 Cases or Section 2255 Proceedings for the United States District Courts, the court may direct the clerk to send appropriate notice of the defect(s) by certified mail to the petitioner or movant. Following such notification, petitioner or movant shall have an opportunity to explain any such defect(s). Failure to do so within the time prescribed by the court shall subject the petition or motion to dismissal.

(5) In its decision on petitions and motions filed pursuant to this Rule the court should make findings of fact specially and state separately its conclusions of law thereon as provided in Fed.R.Civ.P. 52(a).

(6) Other provisions of these Local Rules notwithstanding, any evidentiary hearing on a petition by a state prisoner in a case where the death penalty has been imposed shall be held by a United States District Court Judge.

(7) Where an evidentiary hearing has been conducted in a death penalty case, the court shall order a transcript immediately for purposes of appellate review.

(g) The following information shall be supplied by a plaintiff under this Rule who is seeking relief by a civil rights action pursuant to 42 U.S.C. § 1983:

(1) plaintiff's full name;

(2) place of plaintiff's residence;

(3) **full** name(s) and address(es) of defendant(s) for purposes of service of process;

(4) title and position of (each) defendant;

(5) whether the defendant(s) was (were) acting under color of state law at the time the claim alleged in the complaint arose;

(6) brief statement of the facts;

(7) grounds upon which plaintiff bases the allegations that the plaintiff's constitutional rights, privileges or immunities have been violated, together with the facts which support each of these grounds;

(8) a statement of prior judicial and administrative relief sought; and

(9) a statement of relief requested.

(h) Where a petition, motion or complaint is tendered for filing *in forma pauperis*, a *pro se* petitioner, movant or plaintiff shall complete the motion for leave to proceed *in forma pauperis* and supporting affidavit on the forms supplied by the clerk. It shall set forth information regarding the *pro se* party's ability to prepay the costs and fees of the proceedings or give security therefor. In all cases in which petitioner, movant or plaintiff is an inmate of a penal institution and desires to proceed *in forma pauperis*, in addition to the affidavit of poverty required by 28 U.S.C. § 1915, a certificate executed by an authorized officer of the institution in which the inmate is confined shall be submitted which states the amount of accessible money or securities on deposit to the inmate's credit in any account in the institution. Accessible money or securities shall mean only those funds which are at an inmate's disposal by requesting that a charge for a certain amount be assessed against that inmate's institutional account. The certificate may be considered by the court in acting on the motion for leave to proceed *in forma pauperis*. In all other cases, the court may require the petitioner, movant or plaintiff to provide information in addition to that disclosed on the standard court-approved motion for leave to proceed *in forma pauperis*. In the absence of exceptional

circumstances, leave to proceed *in forma pauperis* in petitions for *habeas corpus* pursuant to 28 U.S.C. §§ 2241 and 2254 and motions pursuant to 28 U.S.C. § 2255 may be denied if the value of the accessible money and securities in petitioner's or movant's accounts exceeds seventy-five dollars ($75.00) or such other amount(s) as shall be determined by the court; leave to proceed *in forma pauperis* on civil rights complaints pursuant to 42 U.S.C. § 1983 may be denied if the value of the accessible money and securities in plaintiff's accounts exceeds two hundred dollars ($200.00) or such other amount(s) as shall be determined by the court. If less than the above amounts are accessible to the petitioner, movant or plaintiff, the court, in its discretion, may nevertheless require the payment of a lower filing fee pursuant to a court-approved fee schedule when ordering that a petitioner, movant or plaintiff may proceed *in forma pauperis*. When a lower fee is required to be paid, payment must be made in full before the court will order service of process in a civil rights action, or before the clerk will serve a copy of the petition or motion for post-conviction relief pursuant to Rule 215(l) of these Rules.

(i) Petitioners or movants seeking post-conviction relief or plaintiffs seeking civil rights relief shall submit to the clerk on forms approved by the court only the original of any petition or motion for post-conviction relief or civil rights complaint and, if applicable, motion for leave to proceed *in forma pauperis*. Upon filing, the clerk shall duplicate such copies of said petition or motion for post-conviction relief or civil rights complaint and, if applicable, motion for leave to proceed *in forma pauperis*, as may be required to provide a file-stamped copy of said documents to petitioner, movant or plaintiff and all respondents or defendants.

(j) A petition, motion or complaint tendered to the clerk for filing which does not comply with this Rule may be returned by the clerk together with a copy of this Rule and a statement of the reason or reasons for its return except in capital cases wherein a stay of execution is sought in which event the moving paper(s) shall be submitted immediately to a United States District Court Judge. The clerk shall retain 1 copy of each noncomplying petition, motion or complaint returned, together with a copy of the statement of reason or reasons for its return.

(k) If the clerk is in doubt as to whether such petition, motion or complaint complies with this Rule it shall be referred to a district judge of this court who shall determine this matter or assign it to a magistrate judge for determination.

(l) Upon filing of a petition or motion for post-conviction relief contemplated by this Rule the clerk shall serve by mail a copy of the petition or motion, together with a notice of its filing, on the Attorney General of the state involved or the United States Attorney for the district in which the judgment under attack was entered. Such petition or motion shall not require an answer or other responsive pleading unless the court orders otherwise.

(m) The petitioner, movant or plaintiff shall immediately file with the clerk written notification of any change of address. Said notification must include proof of service upon the opposing party or the party's attorney. Failure to comply with this Rule may result in dismissal of the action with prejudice.

RULE 220

DISMISSAL FOR WANT OF PROSECUTION

All civil actions which have been pending in this court for more than 1 year without any proceeding of record having been taken may, after notice, be dismissed for want of prosecution on motion of counsel or by the court on its own motion.

CHAPTER III - MAGISTRATE JUDGES RULES

RULE 500

UNITED STATES MAGISTRATE JUDGES

500-1. DUTIES UNDER 28 U.S.C. § 636(a).

Each United States magistrate judge of this court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a) and may:

(a) Exercise all powers and duties conferred or imposed upon United States magistrate judges by 28 U.S.C. § 636(a) and the Federal Rules of Criminal Procedure;

(b) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3141, *et seq.*, and take acknowledgements, affidavits and depositions;

(c) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184; and

(d) With the prior approval of the court establish schedules for the payment of fixed sums to be accepted in lieu of appearance and thereby terminate proceedings in petty offense cases. Such schedules may be modified from time to time with the prior approval of the court.

500-2. DISPOSITION OF MISDEMEANOR CASES - 18 U.S.C. § 3401.

A magistrate judge may:

(a) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401;

(b) Direct the probation service of the court to conduct a presentence investigation in any misdemeanor case; and

(c) Conduct a jury trial in any misdemeanor case where the defendant so consents and is entitled to trial by jury under the Constitution and laws of the United States.

500-3. DETERMINATION OF PRETRIAL MATTERS - 28 U.S.C. § 636(b)(1)(A).

A magistrate judge may hear and finally determine any pretrial matter not specifically enumerated as an exception in 28 U.S.C. § 636(b)(1)(A).

500-4. PROPOSED FINDINGS AND RECOMMENDATIONS - 28 U.S.C. § 636(b)(1)(B).

When a motion, petition or application which a magistrate judge may not finally determine in accordance with 28 U.S.C. § 636(b)(1)(B) is referred to a magistrate judge by a district judge the magistrate judge shall review it, conduct any necessary evidentiary or other hearings and file with the clerk proposed findings and recommendations for disposition by the district judge. Such motions in civil and criminal cases which may be referred to a magistrate judge shall include, but are not limited to, the following:

(a) Motions for injunctive relief including temporary restraining orders and preliminary and permanent injunctions;

(b) Motions for judgment on the pleadings;

(c) Motions for summary judgment;

(d) Motions to dismiss or permit the maintenance of a class action;

(e) Motions to dismiss for failure to state a claim upon which relief may be granted;

(f) Motions to involuntarily dismiss an action;

(g) Motions for review of default judgments;

(h) Motions to dismiss or quash an indictment or information made by a defendant;

(i) Motions to suppress evidence in a criminal case;

(j) Applications for posttrial relief made by individuals convicted of criminal offenses; and

(k) Prisoner petitions challenging conditions of confinement.

500-5. JUDICIAL REVIEW OF ADMINISTRATIVE PROCEEDINGS.

A district judge may refer to a magistrate judge any civil action seeking judicial review of an administrative proceeding. In such actions the court's role is generally to determine:

(a) Whether there are defects in the agency proceedings which rise to the level of a deprivation of due process or a violation of a statute or regulation (the contrary to law test);

(b) Whether there should be a remand to the agency for additional factual determinations to complete the record; and

(c) Whether there is substantial evidence in the administrative record to support the ultimate decision of the agency (the clearly erroneous test).

When so referred, the magistrate judge shall review the matter, conduct any necessary proceedings and file with the clerk proposed findings and recommendations for disposition by the court.

500-6. *HABEAS CORPUS* CASES UNDER 28 U.S.C. §§ 2241, 2254 and 2255. PRISONER CASES UNDER 28 U.S.C. §§ 636(b)(1)(B) and 2255.

A magistrate judge may perform any or all of the duties imposed upon a district judge by the rules governing proceedings in the United States district courts under 28 U.S.C. §§ 636(b)(1)(B), 2241, 2254 and 2255, except in death penalty cases. In so doing a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a report containing proposed findings of fact and recommendations for disposition of the petition by the district judge. Any order disposing of the petition shall only be made by a district judge.

500-7. SPECIAL MASTER REFERENCES.

A magistrate judge may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Fed.R.Civ.P. 53. With the consent of the parties a magistrate judge may be designated by a district judge to serve as a special master in any civil case notwithstanding the limitations of Fed.R.Civ.P. 53(b).

500-8. PROBATION REVOCATION PROCEEDINGS.

A district judge may refer to a magistrate judge any application to revoke probation for preliminary and/or final hearing. Upon such referral the magistrate judge shall review the application, conduct any necessary evidentiary or other hearings and file with the clerk proposed findings and recommendations for disposition by the district judge.

500-9. OTHER DUTIES.

A magistrate judge is also authorized to:

(a) Exercise general supervision of civil and criminal calendars, conduct calendar and status calls and determine motions to expedite or postpone the trial of cases for the district judges;

(b) Conduct pretrial conferences, settlement conferences, omnibus hearings and related pretrial proceedings in civil and criminal cases;

(c) Preside over all initial appearances, preliminary examinations, arraignments before the district court, appoint counsel, accept pleas of not guilty, establish the times within which all pretrial motions will be filed and responded to and fix trial dates. If a plea of guilty or nolo contendere is offered the matter will be forthwith calendared before a district judge;

(d) Preside when the Grand Jury reports and accept for the court any indictments returned, issue warrants and summonses as appropriate, establish the terms of release pending trial, continue the same if previously fixed or modify the terms of release;

(e) Accept waivers of indictment pursuant to Fed.R.Crim.P. 7(b);

(f) Accept petit jury verdicts in civil and criminal cases at the request of a district judge and fix dates for imposition of sentence;

(g) Issue subpoenas, writs of *habeas corpus ad testificandum* or *habeas corpus ad prosequendum* and other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

(h) Order the exoneration or forfeiture of bonds;

(i) Fix the terms of release pending sentencing and appeal to the court of appeals;

(j) Have and exercise the powers of a district judge with respect to the issuance of warrants of removal and in the implementation and execution of the provisions of Fed.R.Crim.P. 40;

(k) Conduct examinations of judgment debtors in accordance with Fed.R.Civ.P 69;

(l) Issue orders authorizing the installation and use of devices to register telephone numbers dialed or pulsed and to issue orders directing communication common carriers as defined in 18 U.S.C. § 2510(10), to furnish law enforcement agencies with information, facilities and technical assistance necessary to accomplish the installation and use of the registering device;

(m) Decide petitions to enforce administrative summonses;

(n) Preside over proceedings to enforce civil judgments;

(o) Issue orders authorizing entries to effect levies;

(p) Issue administrative inspection warrants;

(q) Serve as a Commissioner in land condemnation cases;

(r) Conduct international prisoner transfer hearings;

(s) Conduct hearings to determine mental competency pursuant to 18 U.S.C. § 4242, *et seq.*; and

(t) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

RULE 505

CONDUCT OF CIVIL TRIALS BY MAGISTRATE JUDGES

505-1. CONDUCT OF TRIALS AND DISPOSITION OF CIVIL CASES UPON CONSENT OF THE PARTIES - 28 U.S.C. § 636(c).

The full-time magistrate judges of this district are designated to exercise all jurisdiction in civil jury and non-jury cases pursuant to 28 U.S.C. § 636(c). Upon a reference of a civil case by the district judge to a magistrate judge and the written consent of the parties, a full-time United States magistrate judge may conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment in accordance with 28 U.S.C. § 636(c). In the course of conducting such proceedings a magistrate judge may hear and determine any and all pretrial and posttrial motions which are filed by the parties including case-dispositive motions.

505-2. SPECIAL PROVISIONS FOR THE DISPOSITION OF CIVIL CASES BY A MAGISTRATE JUDGE ON CONSENT OF THE PARTIES 28 U.S.C. § 636(c).

(a) Notice.

Except as otherwise ordered by the court, the clerk shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or the plaintiff's representative at the time an action is filed and plaintiff shall cause a copy of the notice to be served on all opposing parties with the complaint and summons. Additional notices may be furnished to the parties at later stages of the proceedings and may be included with pretrial notices and instructions.

(b) Reference.

After consent forms have been executed and submitted by all parties the clerk shall transmit the case and the consent forms to the district judge to whom the case has been assigned for consideration of referral of the case to a magistrate judge. If a case is assigned to a magistrate judge, a magistrate judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the clerk to enter a final judgment in the same manner as if a district judge had presided.

RULE 980

BANKRUPTCY APPEALS

980-1. BANKRUPTCY APPELLATE PANEL.

(a) Pursuant to 28 U.S.C. § 158(b)(2), this court hereby authorizes a bankruptcy appellate panel to hear and determine appeals from judgments, orders and decrees entered by bankruptcy judges from this district, subject to the limitations set forth in paragraphs (b)-(d) of this Rule.

(b) The bankruptcy appellate panel may hear and determine only those appeals in which all parties to the appeal consent thereto pursuant to paragraph (e) of this Rule.

(c) The bankruptcy appellate panel may hear and determine appeals from final judgments, orders and decrees entered by bankruptcy judges and, with leave of the bankruptcy appellate panel, appeals from interlocutory orders and decrees entered by bankruptcy judges.

(d) The bankruptcy appellate panel may hear and determine appeals from judgments, orders and decrees entered by bankruptcy judges after July 10, 1984, and appeals transferred to the district court from the previous Ninth Circuit bankruptcy appellate panel by Section 115(b) of The Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353. The bankruptcy appellate panel may not hear or determine appeals from judgments, orders and decrees entered by bankruptcy judges between December 25, 1982, and July 10, 1984, under the Emergency Bankruptcy Rule of this district.

(e) When a notice of appeal is filed with the clerk of the bankruptcy court, the appeal shall be referred immediately to the bankruptcy appellate panel. All parties to the appeal shall be notified of the filing and reference within the time and in the manner provided for in paragraph (f) of this Rule. Unless a party to the appeal files a written objection with the clerk of the bankruptcy appellate panel within 21 days from the date of the filing of the notice of appeal the parties will be deemed to have consented to the hearing and the disposition of the appeal by the bankruptcy appellate panel pursuant to 28 U.S.C. § 158(b)(1).

(f) Within 3 days after the filing of a notice of appeal, the clerk of the bankruptcy court shall serve upon all parties to the appeal a copy of the notice of appeal and a copy of the Amended Order Establishing and Continuing the Bankruptcy Appellate Panel of the Ninth Circuit. A copy of the notice of

appeal shall also be transmitted to the clerk of the bankruptcy appellate panel. Upon receipt of the notice of appeal, the clerk of the bankruptcy appellate panel shall, as directed by order of the Ninth Circuit Court of Appeals, notify the parties of the procedures and requirements relating to practice before the bankruptcy appellate panel.

980-2. RULES GOVERNING BANKRUPTCY APPEALS IN THE DISTRICT COURT.

(a) Practice in such bankruptcy appeals as may come before the district court shall be governed by Part VIII of the Bankruptcy Rules, except as provided in this Rule or in Rules subsequently adopted by the district court.

(b) When an appellant fails timely to (1) pay the filing and/or docket fee for the notice of appeal; (2) file a designation of the reporter's transcript, designation of record, statement of issues and/or brief; or (3) otherwise comply with rules and orders governing the processing of bankruptcy appeals by the district court, the court may enter an order dismissing the appeal, impose such sanctions as the court deems appropriate, or both. When an appellee fails timely to (1) file a designation of reporter's transcript, designation of record or brief; or (2) otherwise comply with rules and orders governing the processing of the bankruptcy appeals by the district court, the court may impose such sanctions as it deems appropriate. This Rule may be invoked on motion of a party or by the court *sua sponte* after notice to the parties.

Appendix E

U.S. DISTRICT COURT – JUDICIAL WORKLOAD PROFILE

	NEVADA		TWELVE MONTH PERIOD ENDED JUNE 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		2,264	2,049	1,953	1,967	1,948	2,037		
	Terminations		2,095	2,179	1,929	1,933	1,948	2,093		
	Pending		2,155	2,015	2,214	2,205	2,166	2,169		
	Percent Change In Total Filings Current Year		Over Last Year...	10.5					36	7
			Over Earlier Years...		15.9	15.1	16.2	11.1	22	6
	Number Of Judgeships		4	4	4	4	4	4		
	Vacant Judgeship Months		0.0	0.0	0.0	0.0	0.7	12.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	566	512	488	492	487	509	4	1
		Civil	463	425	406	432	415	430	7	1
		Criminal Felony	103	87	82	60	72	79	9	5
	Pending Cases		539	504	554	551	542	542	8	2
	Weighted Filings**		582	510	480	462	467	490	4	2
	Terminations		524	545	482	483	487	523	14	1
	Trials Completed		43	42	34	26	29	30	17	4
MEDIAN TIMES (MONTHS)	From Filing To Disposition	Criminal Felony	6.7	7.1	6.4	7.8	6.7	5.5	67	12
		Civil	9	10	10	9	11	9	35	6
	From Issue To Trial (Civil Only)		22	18	17	19	21	23	73	10
OTHER	Number (and %) of Civil Cases Over 3 Years Old		59 3.5	121 7.4	164 8.6	184 9.7	179 9.5	171 9.0	18	2
	Average Number of Felony Defendants Filed per Case		1.6	1.6	1.6	1.4	1.7	1.9		
	Jurors	Avg. Present for Jury Selection	40.14	36.92	34.32	36.35	38.20	37.72	70	6
		Percent Not Selected or Challenged	29.2	24.8	23.9	28.6	27.8	25.1	38	7

* 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.

U.S. DISTRICT COURT – JUDICIAL WORKLOAD PROFILE

	NEVADA		TWELVE MONTH PERIOD ENDED SEPT. 30						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			1992	1991	1990	1989	1988	1987		
OVERALL WORKLOAD STATISTICS	Filings*		2,321	2,048	1,891	2,080	1,935	1,979		
	Terminations		2,059	2,217	1,924	1,913	2,007	1,942		
	Pending		2,239	1,979	2,149	2,247	2,098	2,170		
	Percent Change In Total Filings Current Year	Over Last Year...		13.3					25	6
		Over Earlier Years...		22.7	11.6	19.9	17.3		19	4
	Number Of Judgeships		4	4	4	4	4	4		
	Vacant Judgeship Months		2.5	0.0	0.0	0.0	0.7	12.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	580	512	473	520	484	495	4	1
		Civil	478	422	404	444	419	414	8	1
		Criminal Felony	102	90	69	76	65	81	9	5
	Pending Cases		560	495	537	562	525	543	7	2
	Weighted Filings**		589	501	482	489	448	472	4	2
	Terminations		515	554	481	478	502	486	10	1
	Trials Completed		45	40	38	25	28	30	13	4
MEDIAN TIMES (MONTHS)	From Filing To Disposition	Criminal Felony	8.0	6.6	6.4	6.8	7.9	5.7	82	14
		Civil	9	10	10	9	11	10	36	5
	From Issue To Trial (Civil Only)		20	18	17	17	23	23	67	9
OTHER	Number (and %) of Civil Cases Over 3 Years Old		48 2.7	96 5.9	153 8.3	167 8.6	174 9.5	196 8.9	20	3
	Average Number of Felony Defendants Filed per Case		1.7	1.5	1.7	1.4	1.7	1.8		
	Jurors	Avg. Present for Jury Selection	41.47	36.63	35.97	35.81	38.20	37.72	72	7
		Percent Not Selected or Challenged	26.8	28.6	24.8	28.5	27.8	25.1	33	7

* 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.

NINTH CIRCUIT

POTENTIAL NEW DISTRICT JUDGESHIPS BASED ON CURRENT FORMULA

(All filing data based on December 31, 1992 report)

District	Authorized Judgeships (1992)	Weighted Filings as of Dec 31	Weighted Filings per Authorized Judgeship	Weighted Filings with One Add'l Judgeship *	Weighted Filings with Two Add'l Judgeships *
Alaska	3	2,193	731	548	439
Arizona	8	4,496	562	500	450
N. Cal.	14	6,776	484	452	424
E. Cal.	7	3,143	449	393	349
C. Cal.	27	11,799	437	421	407
S. Cal.	8	3,960	495	440	396
Hawaii	4	1,140	285	228	190
Idaho	2	722	361	241	181
Montana	3	975	325	244	195
Nevada	**4**	**2,404**	**601**	**481**	**401**
Oregon	6	2,892	482	413	362
E. Wash.	4	1,024	256	205	171
W. Wash.	7	3,290	470	411	366

* Additional judgeships authorized by U.S. Judicial Conference but not yet approved by Congress: Arizona – 1 temporary, Nevada – 1 permanent, Oregon – 1 temporary.

Source: United States Courts For The Ninth Circuit, Office of the Circuit Executive

Appendix F

Proposed Fee Schedule for Filing *In Forma Pauperis*

Balance[178]	Fee	Percentage
$0 - 4	$0	N/A- N/A
5 - 9	1	20%- 11%
10 - 19	2	20%- 11%
20 - 29	4	20%- 14%
30 - 39	6	20%- 15%
40 - 49	8	20%- 16%
50 - 69	10	20%- 14%
70 - 89	15	21%- 17%
90 -109	20	22%- 18%
110 -129	25	23%- 19%
130 -149	30	23%- 20%
150 -169	35	23%- 21%
170 -189	40	24%- 21%
190 -209	45	24%- 22%
210 -229	50	24%- 22%
230 -249	55	24%- 22%
250 -269	60	24%- 22%
270 -289	65	24%- 22%
290 -309	70	24%- 23%
310 -329	80	26%- 24%
330 -349	90	27%- 26%
350 -369	100	29%- 27%
370 -389	110	30%- 28%
390	120	31%

[178] The balance should be calculated on the total amount of money that came into an account over the six months immediately prior to filing the case and not just the amount of money in an account at the time of filing.

Appendix G

Pretrial Procedure in the District of Nevada

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

IN THE MATTER OF:	)	FIFTH AMENDED
THE DIVISION OF CASE ASSIGNMENTS.	)	SPECIAL ORDER NO. 64
	)	

Case filings having increased in this district it now becomes necessary to adjust the division of case assignments commencing with all new cases filed on or after November 16, 1992. Based upon actual case filing statistical data between October 1, 1991, and September 30, 1992, IT IS HEREBY ORDERED that:

1. The Clerk of Court establish at Las Vegas and Reno a random draw system for civil (excluding death penalty cases) and criminal cases, as set forth in the schedule attached hereto, for all new filings effective November 16, 1992. EXCEPTION: With respect to civil case filings in Las Vegas, actions filed pursuant to 42 U.S.C. Sec. 1983 shall not be assigned to Judge Howard D. McKibben.

2. The Clerk of Court continue to maintain a random draw system which will ensure that death penalty cases will be divided equally among all the active judges and Senior Judge Edward C. Reed notwithstanding the unofficial division in which such cases may arise. In the event a death penalty case is filed which requires immediate action and the judge to whom the case is assigned is

unavailable due to illness, absence from the district or other reason, the Clerk shall submit the action for consideration to the judge next drawn at random who is available.

The date of the Clerk's file mark shall constitute the date of this fifth amended order.

Dated: November 13, 1992 LLOYD D. GEORGE
CHIEF UNITED STATES DISTRICT JUDGE

HOWARD D. McKIBBEN
UNITED STATES DISTRICT JUDGE

PHILIP M. PRO
UNITED STATES DISTRICT JUDGE

EDWARD C. REED, JR.
SENIOR UNITED STATES DISTRICT JUDGE

NEW CASE DIVISION
BASED UPON ACTUAL FILINGS
OCTOBER 1, 1991 - SEPTEMBER 30, 1992

CHIEF JUDGE GEORGE	
40% LV Civil	436
50% LV Crim	160
TOTAL	**596**

JUDGE McKIBBEN	
20% LV Civil	218
37% R Civil	315
50% R Crim	61
TOTAL	**594**

JUDGE PRO	
40% LV Civil	436
50% LV Crim	160
TOTAL	**596**

SENIOR JUDGE REED	
63% R Civil	535
50% R Crim	61
TOTAL	**596**

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

)
)
) CV-N-
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)
) SCHEDULING ORDER
) [Rule 16(b), F.R.C.P.]
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This Scheduling Order shall be filed and served by the Clerk upon counsel for all parties (when a case is not exempt pursuant to Local Rule 190-1(a)(1) of this court) at the time the case is at issue or in no event later than 120 days after the date of filing of the complaint or petition, whichever is earlier. In the event that a defendant or respondent has not yet appeared in the case, then counsel for the plaintiff(s) or petitioner(s) shall serve any such defendant(s) or respondent(s) with a copy of this Scheduling Order within twenty (20) days from the date of this Order or at the time of the service of process.

When the term "counsel" is used in this Scheduling Order, it shall include any and all parties appearing pro se.

This Court enters this Scheduling Order pursuant to Rule 16(b) of the Federal Rules of Civil Procedure. **THEREFORE, IT IS HEREBY ORDERED:**

1. Any and all pleadings that may be brought under Rules 13 and 14 of the Federal Rules of Civil Procedure or joining additional parties under Rules 19 and 20 of the Federal Rules of Civil Procedure shall be filed within **sixty (60) days** from the date of this Order. Any party causing additional parties to be joined or brought into this action shall contemporaneously therewith cause a copy of this Order to be served upon the new party or parties.

2. Amendments to pleadings as provided for under Rule 15 of the Federal Rules of Civil Procedure, if the same are allowed without leave of Court, or motions for leave to amend, shall be filed and served within **sixty (60) days** from the date of this Order.

3. Any and all other motions, including but not limited to discovery motions, motions to dismiss and motions for summary judgment (but excluding motions in limine), shall be filed and served no later than **forty-five (45) days** after the discovery deadline as fixed by this Scheduling Order or as may be extended by subsequent order of the Court.

4. Any motion filed beyond the time limit fixed by this Scheduling Order shall be stricken, unless the Court grants an exception for good cause shown.

5. **DISCOVERY:** Pursuant to Local Rule 190-1(b)(1), discovery in this action shall be completed on or before _____, the day of _____, 19__.

6. **EXTENSIONS OF DISCOVERY:** An extension of the discovery deadline will not be allowed without a showing of good cause as to why all discovery was not completed within the time allotted. All motions or stipulations to extend discovery shall be received by the Court at least **twenty (20) days** prior to the date fixed for completion of discovery by this Scheduling Order or at least **twenty (20) days** prior to the expiration of any extension thereof that may have been approved by the Court. The motion or stipulation shall include:

(a) A statement specifying the discovery completed by the parties as of the date of the motion or stipulation;

(b) A specific description of the discovery which remains to be completed;

(c) The reasons why such remaining discovery was not completed within the time limit of the existing discovery deadline; and

(d) A proposed schedule for the completion of all remaining discovery.

7. In the event that the Federal Rules of Civil Procedure provide for any shorter time periods for the filing of motions or pleadings, said shorter time limits shall apply notwithstanding the time limits set forth in this Scheduling Order. Pursuant to the

authority given to the Court in Rule 16(b) of the Federal Rules of Civil Procedure to establish deadlines for the filing of motions, motions for summary judgment under Rule 56 of said Rules must be filed no later than the time provided in paragraph 3 of this Order.

8. Upon expiration of the date for the filing of motions pursuant to paragraph 3 hereof, if there are no motions pending, the Clerk shall issue a Pretrial Notice Order pursuant to Local Rule 190-3 in a form approved by the Court. Otherwise, the Pretrial Notice Order shall be issued after the pending motions are decided or as otherwise directed by the Court.

9. Any party who desires an amendment to this Scheduling Order shall, **within (60) days** hereof, file and serve a statement of proposed amendments and the reasons therefor. Each other party shall then have **fifteen (15) days** within which to file and serve a response thereto. Any amendment of this Scheduling Order after expiration of the sixty (60) day period shall be granted only upon motion and good cause shown.

10. In all cases where a party or counsel is required to effect service hereunder, a certificate of such service shall be filed forthwith with the clerk of the court.

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THE DATE of the Clerk's file mark shall constitute the date of this Order.

EDWARD C. REED, JR.
CHIEF UNITED STATES DISTRICT JUDGE

LLOYD D. GEORGE
UNITED STATES DISTRICT JUDGE

HOWARD D. McKIBBEN
UNITED STATES DISTRICT JUDGE

PHILIP M. PRO
UNITED STATES DISTRICT JUDGE

Roger D. Foley
SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Plaintiff(s),	)	Case No.
vs.	)	SCHEDULING ORDER
Defendant(s).	)	

Pursuant to Rule 16(b), Federal Rules of Civil Procedure (Fed. R. Civ. P.), this Scheduling Order shall be filed and served by the Clerk upon counsel for all parties [when a case is not exempt pursuant to Local Rule 190-1(a)(1) of this Court] at the time the case is at issue or no later than 120 days after the filing of the complaint, whichever is earlier.

In the event a defendant or respondent has not yet appeared in the case, counsel for the plaintiff(s) or petitioner(s) shall serve any such defendant(s) or respondent(s) with a copy of this Order **within fifteen (15) days** from the date of this Order or at the time of service of process.

When the term "counsel" is used in this Scheduling Order, it shall include any and all parties appearing pro se.

IT IS HEREBY ORDERED:

1. Any and all pleadings that may be brought under Fed. R. Civ. P. 13 & 14, or joining additional parties under Fed. R. Civ. P. 19 & 20, shall be filed within **sixty (60) days** from the date of this Order. Any party causing additional parties to be joined or brought into this action shall contemporaneously therewith cause a copy of this Order to be served upon the new party or parties.

2. Amendments to pleadings as provided for under Fed. R. Civ. P. 15, if the same are allowed without leave of Court, or motions for leave to amend, shall be filed and served within **sixty (60) days** from the date of this Order.

3. Any discovery motions shall be filed and served no later than **eighty (80) days** from the date of this Order.

4. Any and all other motions, including but not limited to motions for summary judgment (but excluding motions in limine), shall be filed and served no later than **one hundred and five (105) days** from the date of this Order.

5. Any motions in limine shall be filed and served no later than **thirty (30) days** prior to the date set for trial. Responses thereto shall be filed and served within **fifteen (15) days** thereafter.

6. Any motion filed beyond the time limit fixed by this Scheduling Order shall be stricken, unless the Court grants an exception for good cause shown.

7. **DISCOVERY:** Pursuant to Local Rule 190-1(b)(1), discovery in this action shall be completed on or before **ninety (90) days** from the date of this Order.

8. **EXTENSIONS OF DISCOVERY:** An extension of the discovery deadline will not be allowed without a showing of good cause. All motions or stipulations to extend discovery shall be received by the Court at least **twenty (20) days** prior to the date fixed for completion of discovery by this Scheduling Order, or at least **twenty (20) days** prior to the expiration of any extension thereof that may have been approved by the Court. The motion or stipulation shall include:

(a) A statement specifying the discovery completed by the parties as of the date of the motion or stipulation;

(b) A specific description of the discovery which remains to be completed;

(c) The reasons why such remaining discovery was not completed within the time limit of the existing discovery deadline; and

(d) A proposed schedule for the completion of all remaining discovery.

9. In the event that the Federal Rules of Civil Procedure provide for any shorter time periods for the filing of motions or pleadings, said shorter time limits shall apply notwithstanding the time limits set forth in this Scheduling Order.

Pursuant to the authority given to the Court in Fed. R. Civ. P. 16(b), motions for summary judgment under Fed. R. Civ. P. 56, must be filed no later than the time provided in paragraph 4 of this Order.

10. **PRETRIAL:** The parties shall prepare and submit a proposed joint Pretrial Order in compliance with Local Rules 190-3(b) and 190-4 at least **forty-five (45) days** prior to the scheduled trial date. The Clerk is directed to issue contemporaneously with this Scheduling Order a Pretrial Notice Order.

11. **TRIAL:** Trial in this action is hereby set to commence on _____, the ____ day of _____ 19__, at 8:30 a.m.

(a) In the event this action is tried by the Court, all proposed findings of fact and conclusions of law shall be filed no later than **five (5) days** prior to the date set for trial.

(b) In the event this action is tried by jury:

(i) All proposed voir dire shall be filed in duplicate no later than **five (5) days** prior to the date set for trial.

(ii) All proposed jury instructions shall be filed in accordance with the standard Order for Preparation of Jury Instructions, which the Clerk is directed to issue forthwith.

12. **EXHIBITS:** No later than **five (5) days** prior to the date set for trial, counsel shall prepare a joint list of all exhibits, marked numerically. Blank exhibit lists and stickers may be obtained from the Office of the Clerk, U.S. District Court.

In any case which involves fifteen or more document exhibits, the exhibits shall be placed in a loose-leaf binder behind a tab noting the number of each exhibit. The binder shall be clearly marked on the front and side with the case caption and number and the sequence of exhibits.

At the commencement of trial counsel shall provide the courtroom deputy clerk with the binder containing the exhibits and a courtesy copy for the Court, and an original and one copy of the Joint Exhibit List, prepared in accordance with Local Rule 190-3(b)(8).

13. Any party who desires an amendment to this Scheduling Order shall, within **sixty (60) days** hereof, file and serve a statement of proposed amendments and the reasons therefor. Each other party shall then have **fifteen (15) days** within which to file and serve a response thereto. After expiration of the sixty-day period, any amendment of this Scheduling Order shall be granted only upon motion and good cause shown.

14. In all cases where a party or counsel is required to effect service hereunder, a certificate of such service shall be filed forthwith with the Clerk of the Court.

THE DATE of the Clerk's file mark shall constitute the date of this Order.

HOWARD D. McKIBBEN
UNITED STATES DISTRICT JUDGE

(Rev. 1-4-93)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Plaintiff,	)	CASE NO._____
	)	
VS.	)	
	)	
	)	CONSENT AND ORDER OF REFERENCE
Defendant,	)	
	)	

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. 636(c) and Local Rule 505-1, all parties waive their right to proceed before a Judge of the United States District Court and consent to have a United States Magistrate Judge conduct any and all further proceedings in the case (including the trial) and order the entry of a final judgment.

Attorney's Signature (Type Name Below Each)	Parties Represented	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

NOTE: Return this form to the Clerk of Court

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-mentioned matter be referred to United States Magistrate Judge _____ for the conduct of all further proceedings and the entry of judgment in accordance with 28 U.S.C. 636(c), Local Rule 505-1 and the foregoing consent of the parties.

Dated this_____day of _____, 19__.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

IN THE MATTER OF THE RESOLUTION OF EMERGENCY DISCOVERY DISPUTES.	)))	SPECIAL ORDER NO. 81

It appearing to the Court that good cause exists to provide a procedure by which emergency discovery disputes can be resolved in an expeditious manner,

IT IS ORDERED that discovery disputes of an emergency nature are hereby referred to the United States Magistrate Judges in the District of Nevada. Any attorney or party appearing pro se may make written application to or, where time does not permit, may contact by telephone a United States Magistrate Judge and request judicial assistance in resolving an emergency discovery dispute. It shall be the responsibility of any attorney or party appearing pro se who is seeking relief under the provisions of this Special Order to endorse on the face of any written application the words:

"REQUEST FOR EMERGENCY RELIEF
PURSUANT TO SPECIAL ORDER NO. 81"

For cases pending in the unofficial northern division of this Court, such requests for judicial assistance shall be made to the Honorable Phyllis Halsey Atkins; for cases pending in the unofficial southern

division of this Court, such requests shall be made to the United States Magistrate Judge to whom the case is assigned.

It shall be within the sole discretion of the United States Magistrate Judge to determine whether or not any such matter is, in fact, an emergency.

Dated: April 23, 1992

EDWARD C. REED, JR.
CHIEF UNITED STATES DISTRICT JUDGE

LLOYD D. GEORGE
UNITED STATES DISTRICT JUDGE

HOWARD D. McKIBBEN
UNITED STATES DISTRICT JUDGE

PHILIP M. PRO
UNITED STATES DISTRICT JUDGE