

**District of Nevada
Report of the Advisory Group
Expense and Delay Reduction Plan**

Summary

PART ONE: REPORT OF THE ADVISORY GROUP

I. Assumptions; Miscellany; and Background

- A. The district serves the entire state of Nevada. Nevada is now the fastest growing state, and Las Vegas the fastest growing city, in the country. State population has increased over 60% from 1980 to 1993, while the population of practicing attorneys has increased by 54% since 1986 alone. The state's prison population has quadrupled over the past twelve years, and prisoner complaints has constituted over 33% of the court's civil docket since 1990. The state contains over 25 Native American Reservations and the Lake Mead National Recreation Center, both important factors shaping litigation in this court.
- B. The district maintains two informal divisions to serve the nation's eighth largest state. These divisions are located in Las Vegas and Reno, which are separated by over 450 miles.
- C. The district has four authorized judgeships, all but one of which is filled (i.e., 1 vacancy). There are four full-time magistrate judges. The district has no active senior judges.
- D. The advisory group conducted interviews of all judicial officers. The Advisory Committee also drew and analyzed a sample of pending cases to number, type, and learn the status of motions and orders; conducted a general survey of the federal bar, their clients, and pro se litigants; analyzed the use of judicial time by case or court event; and evaluated procedures utilized in the Office of the Clerk.
- E. Local rules bearing on CJRA management concepts include: page limitations on briefs and memoranda; procedures regarding pretrial and settlement conferences; referrals to alternative dispute resolution methods; procedures regarding scheduling order discovery deadlines; "meet and confer" certification requirements for discovery motions; a requirement of the joint submission of pretrial orders; and consent referrals of civil cases to magistrates for trial. By court order, a discovery "hotline" was established by the court and is now staffed by a magistrate judge. A pretrial procedures handbook is published by

the court which lists the standard and individual pretrial practices of the district's judges.

- F. The court employs a "stacked master" calendar for trials in its southern division (Las Vegas).
- E. The district is currently attempting to develop its own automated case management system, and has declined ICMS and its Pacer and Chaser applications.

II. State of the Docket

A. Status the Civil and Criminal Dockets

- 1. Civil case filings have increased by 9.5% since 1987; civil case terminations have decreased 5.1% over the same period.
- 2. Criminal case commenced increased 15.6% from 1987 to 1992; pending criminal cases increased 63.8% over the same period.

B. Trends in Case Filings

- 1. The civil docket's composition shows declines in contract cases, with off-setting increases in property actions.
- 2. While prisoner petitions decreased by 17% in the northern division, the southern division showed an 84.7% increased over the five years from 1987-1992. They remain the largest component of the civil dockets for both the northern and southern divisions.
- 3. Civil cases pending over three years have decreased by 65.5% from 1987 to 1992.
- 4. All trial categories have increased dramatically from 1987 to 1992: civil jury trial rose from 13 to 34, a 161.5% increase; criminal jury trials increased form 45 to 66, a 46.7% rise.
- 5. Pending criminal case rose from 287 in 1987 to 470 in 1992, an increased of 63.8%.
- 6. 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.

7. Weighted filings in Nevada per judge now stand at 582, ranking the district fourth in the U.S., and second in the Ninth Circuit on a per judge basis.

III. Principle Causes of Cost and Delay

- A. The inadequate number of judicial officers and other court personnel
- B. The ever-burgeoning number of prisoner filings and the insufficient means to manage them.
- C. The 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.
- D. The disregard shown by some attorneys in abiding by the FRCP 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.
- E. The use of the master trial calendar (Las Vegas) and stacked calendar (Reno).

IV. Recommendations

- A. **Court Staffing**
 1. **Judgeships**
 - a. Congress and the President should nominate and confirm a candidate fill the existing vacancy, and create the two additional judgeships now statistically justified.
 - b. The determination of the location of the headquarters of the district judges should be based upon the apportionment of the caseload in the district.
 2. **Clerk's Office Staffing**
 - a. Congress and the Judicial Conference should allocate funds to staff the Clerk's Office at 100% of necessary positions under the work measurement formula.
 - b. Work should continue on the automated case management system, and the Administrative Office should authorize the

district to purchase high speed data communications lines to support it.

B. Prisoner Filings

1. **Alternate Dispute Resolution:** the court should appoint a special study committee to develop a coordinated solution to the problems of prisoner filings, including an alternative grievance system.
2. **Staffing**
 - a. **Judicial and clerical staffing levels** should be augmented to handle prisoner filings.
 - b. The court should regularly assess whether existing and augmented staff are being effectively utilized.
3. **Filing Fees:** the court appointed special study committee should consider a revised or alternate fee schedule for prisoner filings that balances court costs, litigant access rights and serves as a deterrent to frivolous suits (fee schedule draft attached in appendix).
4. **Sanctions:** the special study committee should explore the development of appropriate non-monetary sanctions under the authority of FRCP 11.
5. **Pro Se Handbook:** the special study committee should develop a pro se handbook covering the process and procedures governing federal litigation and require prisoner and non-prisoner pro se litigants to certify they have read and understood it.
6. **Standardized Discovery:** the special study committee should develop mandatory standardized discovery protocols that would apply to all prisoner cases.

C. Legislative and Executive Branch Responsibilities

- 1, **Congress and the president** should review current legislation for judicial impacts.
2. **Proposed legislation** should carry a judicial impact statement, prepared by an Office of Judicial Impact Assessment, relating the number of judicial and other court resources necessary to meet its additional burdens.

3. The proposed Office of Judicial Impact Assessment should help insure that new legislation is capably drafted to meet congressional intent.

D. Enforcement of Federal and Local Rules

1. Counsel should certify that they have obtained client agreement for continuances.
2. Any motion lacking a timely response should be submitted to the appropriate judicial officer for consideration within the time required by local rule.
3. Sanctions should be imposed by the court where appropriate for rule enforcement.
4. The local counsel requirement of the local rules should be modified to eliminate mandatory preparation and appearance by local counsel for all proceedings.
5. Continuing legal education classes covering federal rules and procedures should be established by the court in conjunction with the state bar.
6. The court should develop and periodically update a permanent pretrial procedures handbook covering the practices of all jurists on the court.

E. Stacked and Master Calendar Systems

1. To alleviate some of the uncertainties of time and judge in trial scheduling under the present master trial calendar system, the court should offer parties one of three choices for trial:
 - a. schedule the case according to current master calendar practices;
 - b. consent to trial before a specific magistrate judge; or
 - c. agree to submit to non-binding arbitration.

F. Other Recommendations

1. Greater court utilization of scheduled oral arguments and bench rulings would speed the disposition of dispositive motions.
2. The court should experiment with the use of telephonic argument for motions hearings.

PART TWO: THE COURT PLAN

I. Statutory Purpose

This plan has been developed and adopted pursuant to 28 U.S.C. §471.

II. Consideration of the Model Plan

The model plan offered by the Judicial Conference of the U.S. was considered by the court and Advisory Group, but rejected in favor of a custom plan.

III. Plan Components

The Advisory Group's recommendations in its report are included with all existing local rules, unless otherwise noted.

A. Court Staffing/Equipment

1. **Judgeships:** the court trusts that the Senate and the President will act promptly on the unfilled vacancy that now exists in the court, as well as the statistically justified need for two additional article III judgeships and two additional magistrate judgeships.
2. **Clerk's Office:** funds should be made available to staff the Office of the Clerk at 100% of its need under the work measurement formula.
3. **Equipment:** the court endorses the continued development of the electronic docketing system, and requests authorization for the purchase of the necessary hardware (long lines) to allow the high speed data communications between court offices that the system entails.

B. Pro Se Prisoner Filings

1. **Alternative Dispute Resolution:** the court charges the Special Study Committee to examine meaningful alternatives to the existing inadequate prisoner grievance system for pro se and prisoner litigation in Nevada.
2. **Staffing:** Clerk's Office staffing should be augmented to acknowledge the special burdens of prisoner and pro se litigation in this district.
3. **Filing Fees:** the Special Study Committee will review and the Advisory Group's drafts of a new fee schedule for prisoner and pro se litigants.

4. **Sanctions:** the court directs the Special Study Committee to consider appropriate monetary and non-monetary sanctions as they relate to pro se and prisoner filings.
5. **Pro se handbook:** the court directs the Special Study Committee, to consider the development of such a handbook in conjunction with the federal bar.
6. **Standardized discovery:** the Special Study Committee should consider the development of mandatory standardized discovery for all prisoner and pro se cases.

C. Legislative and Executive Branch Responsibilities

1. Congress and the Executive branch should review the requirements of current legislative initiatives and Executive branch policies (especially those of the Department of Justice) to determine any judicial impacts.
2. Congress should be more cognizant of the judicial impacts of proposed legislation, and should seek the input of the Judicial Conference of the U.S. in this regard.
3. A formal legal process should be adopted requiring a continuing dialogue between the branches of government for assessing the judicial impacts of various initiatives.

D. Enforcement of Federal and Local Rules

1. **Continuances:** the court directs the Special Standing Committee on Local Rules to consider a certification requirement for counsel that continuance requests have been discussed and concurred with by clients.
2. **Delay reduction in motions practice:** any motion not having a responsive memorandum filed with the Clerk within the requisite time specified in the local rules shall be forwarded for consideration by the appropriate judicial officer.
3. **Sanctions:** the court will continue to monitor and consider the imposition of sanctions as warranted.
4. **Local counsel requirement:** the court directs the Standing Committee on Local Rules to consider modifications to the local counsel rule relaxing current requirements for local counsel to prepare for and attend all case proceedings.

5. Continuing legal education: the court recognizes the need for continuing education in federal court rules, procedures, and practices, and recommends the establishment of appropriate classes to serve this need.
 6. Pretrial Handbook: the court will develop and update such a handbook.
- E. Stacked and Master Calendar Systems
1. The court has instituted exclusive months for civil trials to avoid some of the delay civil trials faced due to criminal trial priorities.
 2. The court has formed an Ad Hoc Committee on the Stacked and Master Calendar Systems for further study and further possible modifications.
- F. Additional Actions by the Court
1. The court will study the possibility of greater use of oral arguments and bench rulings to reduce motion disposition time.
 2. The court will continue to experiment with telephonic motions arguments, and expand the practice where appropriate.

IV. Schedule of Implementation

Implementation will begin December 1, 1993; all cases filed before and after this date will be subject to the plan, unless a judicial exclusion is specifically granted.

V. Explanation of Compliance with 28 U.S.C. §473 (a)

- A. §§ (a)(1) "...systematic differential treatment of cases...": FRCP 16(b) and local rule 190 provide, either directly or through implication, for the systematic, differential treatment of cases, and are included in the court's plan.
- B. §§ (a)(2) "...early and ongoing control of the pretrial process through...a judicial officer...": judicial officers of this district provide such ongoing control through local rule 190, although case volume limits the level of assessment and planning; early and firm trial dates will be set as practicable; the local rule cited is sufficient to control discovery; and motions under the plan will be submitted promptly to a judicial officer for consideration if a reply memorandum is not timely filed.

- C. §§ (a)(3) "...for all cases... determined complex,...deliberate monitoring through a discovery\case management conference...": such conferences are sanctioned under local rules and used when appropriate.
- D. §§ (a)(4) "...encouragement of cost-effective discovery through voluntary exchange of information...": this matter will be considered by the Special Study Committee established by the court.
- E. §§ (a)(5) "...prohibiting the consideration of discovery motions unless unaccompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel...": a similar requirement already exists in this district's local rules.
- F. §§ (a)(6) "...authorization to refer appropriate cases to alternative dispute resolution programs...": such referral authority already exists under local rules and includes consent referrals to magistrate judges; the court is also considering arbitration as an alternative to the stacked/master calendar system.

VI. Explanation of Compliance with 28 U.S.C. §473(b)

- A. §§ (b)(1) "...requirement that counsel for each party jointly present a discovery\case management plan...": the court does not routinely conduct pretrial conferences, due to the existing shortage of judicial personnel, but does designate individual cases for such treatment as warranted.
- B. §§ (b)(2) "...each party be represented at each pretrial conference by an attorney who has the authority to bind...": this is the current accepted practice in this district, when such conferences are held.
- C. §§ (b)(3) "...all request for extensions...for discovery or for postponement of the trial be signed by the attorney and the party...": judges are free to impose such requirements, but the court will impose a requirement that such joint signatures will be required for any trial continuances.
- D. §§ (b)(4) "...a neutral evaluation program...": both the court and the Advisory Committee considered and rejected this option.
- E. §§ (b)(5) "...representatives of the parties with authority to bind them...be present or available... during any settlement conference...": this is a current requirement in this district.
- F. §§ (b)(6) "...such other features as the district court considers appropriate...": the court is not now considering any other initiatives, but will amend as necessary.

- G. Consideration of the needs, circumstances, and contributions of the court, litigants and attorneys: the court is confident that the needs, circumstances and contributions of the court, litigants and attorneys were adequately represented through the surveys, and interviews of the three groups conducted by the Advisory Group, and its examination and analysis of case data; furthermore, its conclusions are represented in its recommendations and the plan adopted by this court.

- H. Annual assessment of the docket: the court, in consultation with the Advisory Group, will examine any "appropriate additional actions" necessary to reduce delay and cost for civil litigation in each year following the adoption of this plan, and will consider revisions when new judicial resources are made available to it.